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BEFORE THE KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 549/ 2024

Mr. Abdul Rahman, PET BPS-15,
GHS Aladhair, District Swabi.

..... (Appellant)

VERSUS

1. Director E&SE Dept. KP Peshawar
2. District Education Officer (M) Swabi

..... (Respondents)

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District Education Officer
Male Swabi

17.10.24

BEFORE THE KHYBER PAKHTUNKHWA

(2)

SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 549/ 2024

Khyber Pakhtunkhwa
Service Tribunal

Diary No. 16932

Dated 18/10/24

Mr. Abdul Rahman, PET BPS-15,
GHS Aladhair, District Swabi.

..... (Appellant)

VERSUS

1. Director E&SE Dept. KP Peshawar
2. District Education Officer (M) Swabi

..... (Respondents)

PARA-WISE COMMENTS ON BEHALF OF THE RESPONDENTS.

PRELIMINARY OBJECTIONS:

1. That the service appeal is badly barred by time, hence not maintainable.
2. That the service appeal is wrong, baseless and not maintainable, it shows no strong cause to be taken for adjudication; therefore, the same service appeal is liable to be rejected/ dismissed.
3. That the service appeal is unjustifiable, baseless, false, frivolous and vexatious. Hence the same is liable to be dismissed with the order of special compensatory cost in favor of respondents.
4. That the appellant has not come to the Court/Tribunal with clean hands.
5. That the appellant has concealed the material facts from this Honorable Tribunal.
6. That the appeal is bad for misjoinder and non-joinder of the necessary party.
7. That the appellant has filed the instant appeal just to pressurize the respondents.
8. That the appellant has no cause of action to file the instant appeal.
9. That the appeal is not maintainable in the eye of law.
10. That the instant appeal is not maintainable in the present form and also in the present circumstances of the issue.
11. That the appellant has no locus standi to file appeal against the respondents.

Facts:

1. That the para is related to the 1st school based appointment as PET (BPS-15) of the appellant for a period of one year on adhoc/ temporary basis.
2. That the para is related to the 2nd school based appointment as PET (BPS-15) of the appellant on adhoc/ temporary basis.
3. That the para is related to the regularization of the appellant with others through (Appointment and Regularization of Service) Act 1 Of 2018. (Annex- A)
4. That the nature and circumstances of the instant service appeal are different from the mentioned ones, and there is no analogy between them. After regularization in 2018, the appellant has already been granted pay protection/ back benefits from the initial date of his second appointment as PET BPS-15. Section 3 of the Regularization Act clearly states that only those employees/ teachers would be deemed to have been validly appointment on regular basis from the day of initial appointment who held post till the commencement of Regularization Act 2018, while the appellant had left his earlier service and had opted for his fresh appointment on 16.03.2017 i.e before the commencement of the said Act; hence, not entile for any benefits from the initial day of his first appointment i.e. 01.03.2016.
5. That the appellant was not entitled for grant of pay protection/ fixation from the initial date of his first appointment as per Section 3 of the (Appointment and Regularization of Service) Act 1 Of 2018.
6. That the respondents have not aggrieved the appellant in any way. Hence, the instant service appeal is prayed to be dismissed on the following grounds.

GROUND:

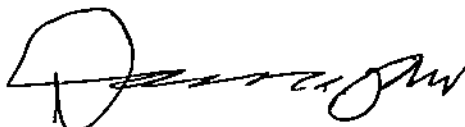
- A. Incorrect. Because the appellant has already been granted pay protection/ fixation from the date of his second (fresh) appointment i.e. 16.03.2017 which was his due right as per law and prevailing rules. Besides, the Honorable Peshawar High Court in its judgment of 10.06.2021 in the WP No 5181-P/2020 has dismissed the said writ petition (filed by the appellant and others) being meritless. (Annex-B)

- B. Incorrect. No constitutional rights of the appellant have been violated by the respondents; hence, denied.
- C. Incorrect. That as per rules the appellant was not entitled for allowing pay fixation from the date of his 1st appointment i.e 01.03.2016 due to clause 3 of the (Appointment and Regularization of Service) Act 1 Of 2018.
- D. Denied. That there has been no discrimination of the appellant.
- E. Incorrect. The said article of the Constitution of Pakistan does not apply in the instant case.
- F. Incorrect. The said rule does not apply in the instant case because the appellant had left his earlier post (PET BPS-15) and had opted for fresh appointment as PET BPS-15 on 16.03.2017. The respondent department has already granted pay protection/ fixation from initial date of his second/ fresh appointment.
- G. That the respondents also seek leave to advance other grounds at the time of arguments.

Therefore, in view of the above made submissions, it is earnestly prayed that on acceptance of the instance reply to the titled sevice appeal, the appeal in hand may very graciously be dismissed in favour of the Respondent Department in the interest of justice.

Dated: 17 / 10 / 2024

(SAMINA ALTAF)
DIRECTOR



AUTHORISED OFFICER
ABDUS SAMAD
DEPUTY DIRECTOR
E&SE Department, Khyber
Pakhtunkhwa, Peshawar
Respondent No.1

Midrar



(MIDRAR ULLAH)
District Education Officer
Male Swabi
Respondent No.2

BEFORE THE KHYBER PAKHTUNKHWA**SERVICE TRIBUNAL PESHAWAR**

Service Appeal No. 549/ 2024

Mr. Abdul Rahman, PET BPS-15,
GHS Aladhair, District Swabi.

..... (Appellant)

VERSUS

1. Director E&SE Dept. KP Peshawar
2. District Education Officer (M) Swabi

..... (Respondents)

AFFIDAVIT

I, Midrar Ullah, DEO (M) Swabi do hereby solemnly affirm and declare on oath that the contents of the instant para-wise comments submitted by the respondents are true and correct to the best of my knowledge and belief and that nothing has been concealed from this Honourable Tribunal. It is further stated on oath that in this appeal the answering respondents have neither been placed Ex-Parte nor has their defense been struck off.



(Midrar Ullah)
District Education Officer
Male Swabi

Dated: 17/10/2024

OFFICE OF THE DISTRICT EDUCATION OFFICER (M) SWABI

AUTHORITY LETTER

I, Midrar Ullah, DEO (M) Swabi do hereby authorised Mr. Nadeem Akhtar, Head Master GHS Ghulama Swabi for submission of Para-wise comments in Service Appeal No. 549/2024 case titled Abdul Rahman PET GHS Aladhair Swabi VS E&SE Department, Govt of Khyber Pakhtunkhwa.

Hence, an authority letter is hereby issued in favor of the above-named officer.



(Midrar Ullah)
District Education Officer
Male Swabi

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Annex-A

EXTRAORDINARY
GOVERNMENT



REGISTERED NO. PIII
G A Z E T T E

KHYBER PAKHTUNKHWA

Published by Authority

PESHAWAR, MONDAY, 8th JANUARY, 2018.

PROVINCIAL ASSEMBLY SECRETARIAT,
KHYBER PAKHTUNKHWA

NOTIFICATION

Dated Peshawar, the 8th January, 2018.

No. PA/Khyber Pakhtunkhwa/Bills/2018/671.—The Khyber Pakhtunkhwa Employees of Elementary and Secondary Education Department (Appointment and Regularization of Services) Bill, 2017 having been passed by the Provincial Assembly of Khyber Pakhtunkhwa on 15th December, 2017 and assented to by the Governor of the Khyber Pakhtunkhwa on 4th January, 2018 is hereby published as an Act of the Provincial Legislature of the Khyber Pakhtunkhwa.

THE KHYBER PAKHTUNKHWA EMPLOYEES OF ELEMENTARY AND SECONDARY EDUCATION DEPARTMENT (APPOINTMENT AND REGULARIZATION OF SERVICES) ACT, 2017

(KHYBER PAKHTUNKHWA ACT NO. I OF 2018)

(First published after having received the assent of the Governor of the Khyber Pakhtunkhwa in the Gazette of the Khyber Pakhtunkhwa, (Extraordinary), dated the 8th January, 2018).

AN
ACT

to provide for the appointment and regularization of the services of certain employees appointed on adhoc or contract basis or appointed in certain projects in the Elementary and Secondary Education Department in the Province of the Khyber Pakhtunkhwa.

WHEREAS it is expedient to provide for the appointment and regularization of the services of certain employees appointed on adhoc or contract basis or appointed in certain projects in the Elementary and Secondary Education Department in the Province of the Khyber Pakhtunkhwa, in the public interest;

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Attested

Nabat
17-10-24

It is hereby enacted as follows:

1. Short title, application and commencement.—(1) This Act may be called the Khyber Pakhtunkhwa Employees of the Elementary and Secondary Education Department (Appointment and Regularization of Services) Act, 2017.

(2) It shall apply to all the employees in the Elementary and Secondary Education Department, as defined in clause (c) of sub-section (1) of section 2 of this Act.

(3) It shall come into force at once and it shall be deemed to have taken effect from the date of the initial appointment of the employees as referred to in clause (c) of sub-section (1) of section 2 of this Act.

2. Definitions.—(1) In this Act, unless the context otherwise requires,

- (a) "Commission" means the Khyber Pakhtunkhwa Public Service Commission;
- (b) "contract appointment" means appointment of a duly qualified person for a specific period made otherwise than in accordance with the prescribed method of recruitment;
- (c) "employees" mean duly qualified persons,
 - (i) who are appointed as teachers on adhoc or contract basis by the Government after 2013 through National Testing Service but does not include the teachers engaged on work charge basis or who are paid out of contingencies;
 - (ii) who are appointed in the projects on contract basis in accordance with the project policy; and
 - (iii) who are appointed as Junior Clerk in the Elementary and Secondary Education Department by Government after 2013 through National Testing Service;
- (d) "Government" means the Government of the Khyber Pakhtunkhwa;
- (e) "law or rule" means the law or rule for the time being in force governing the selection and appointment of civil servants;
- (f) "project" means,

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[Signature]

- (i) IT/Computer Teachers in Computer Labs Projects in Khyber Pakhtunkhwa (Phase-II);
- (ii) establishment of five hundreds (500) IT Labs in Government High and Secondary Schools in Khyber Pakhtunkhwa; and
- (iii) establishment of five hundreds (500) IT Labs in Government High Schools in Khyber Pakhtunkhwa (Phase-III); and

(g) "teacher" means a teacher of primary, middle, secondary or higher secondary school.

(2) The expressions "ad hoc appointment" shall have the same meaning as respectively assigned to them in the Khyber Pakhtunkhwa Civil Servants Act, 1973 (Khyber Pakhtunkhwa Act No. XVIII of 1973).

3. Regularization of services of employees.---(1) Notwithstanding anything contained in any other law or rules, the employees, who hold posts till the commencement of this Act, shall be deemed to have been validly appointed on regular basis from the day of the initial appointment; provided that-

- (i) they possess the same qualification and experience required for a regular post;
- (ii) they have not resigned from their services or terminated from services on account of misconduct, inefficiency or any other ground, before the commencement of this Act; and
- (iii) the service promotion quota of all service cadres shall not be affected.

(2) The services of the employees shall be deemed to have been regularized only on the publication of their names in the official Gazette.

4. Determination of seniority.---(1) The employees whose service are regularized under this Act or in the process of attaining service at the commencement of this Act, shall rank junior to all other employees belonging to the same Cadre, who are in service on regular basis on the commencement of this Act, and shall also rank junior to such other persons, if any, who, in pursuance of the recommendation of the Commission made before the commencement of this Act, are to be appointed to the Cadre, irrespective of their actual date of appointment.

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[Signature]

(2) The seniority inter-se of those employees, whose services are regularized under this Act within the Cadre, shall be determined on the basis of their continuous service in Cadre:

Provided that if the date of continuous service in the case of two or more employees is the same, the employee older in age shall rank senior to the younger one.

5. **Overriding effect.**--- Notwithstanding anything to the contrary contained in any other law or rules for the time being in force, the provisions of this Act shall have an overriding effect and the provisions of any such law or rules to the extent of inconsistency to this Act shall cease to have effect.

**BY ORDER OF MR. SPEAKER
PROVINCIAL ASSEMBLY OF KHYBER PAKHTUNKHWA**

(INAMULLAH KHAN)
Secretary
Provincial Assembly of Khyber Pakhtunkhwa

Attested
e. Vahid

**BEFORE THE HON'BLE PESHAWAR HIGH COURT
PESHAWAR**



Writ Petition No. 5181P/2020

1. Muhammad Naseer, C.T,
GHSS Ayub Khan Killi, Swabi.
2. Shah Khalid, C.T,
GHSS Jalala, Mardan.
3. Shaukat Hayat, C.T,
GHS Bazargi, Swabi.
4. Asad Ali, C.T,
GHSS Bamkhel, Swabi.
5. Shabir Ahmad, C.T,
GHS Gari Hameed Gul, Charsadda.
6. Muhammad Awais, C.T,
GHS Katozai SKF, Charsadda.
7. Sammam Pasha, C.T,
GHSS Mian Kalay, Dir Lower.
8. Shafiq Ahmad, C.T,
GHS Dapoor Bolo Khan, Dir Lower.
9. Faizan ul Haq C.T,
GHS Damtal, Dir Lower.
10. Muhammad Shraz, C.T,
GMS Mula Yousaf, Buner.
11. Nageena Begum, C.T,
GGMS Bagh Dushkhel, Dir Lower.
12. Jalal ud Din, C.T,
GMS Tekni Bala, Dir Lower.
13. Abdur Rahim Khan, C.T,
GHS No.1, Abbottabad.
14. Gul Muhammad, C.T,
GHS Karkabanj Dir, Upper.
15. Asad Ali, S.S.T,
GHS Dildar Garhi, Charsadda.
16. Ahmad Ali, S.S.T,
GHSS Mandani, Charsadda.
17. Ijaz Ullah, S.S.T,
GHS Qillagai Siar, Dir Lower.
18. Qaisar Khan, S.S.T,
GHSS Khair Abad, Dir Lower.
19. Inam Ullah, S.S.T,
GHSS Zaimdara, Dir Lower.

Attested

Abdul

17-10-24

FILED TODAY

Deputy Registrar

09 NOV 2020

ATTESTED

EXAMINER
Peshawar High Court

Judgment Sheet
PESHAWAR HIGH COURT, PESHAWAR
 Judicial Department

WP No.5181-P/2020 with I.R.

"Muhammad Naseer and 71 others

Versus

Government of Khyber Pakhtunkhwa through Chief
 Secretary, Civil Secretariat, Peshawar, and others."



JUDGMENT

Date of hearing 10.06.2021

Petitioner by: Mr. Muhammad Ijaz Khan Sabi,
Advocate.

Respondents by: Mr. Arshad Ahmed Khan, AAG.

S M ATTIQUE SHAH, J: - The petitioners have invoked the Constitutional jurisdiction of this Court under Article-199 of the Constitution of Islamic Republic of Pakistan, 1973, seeking the following prayer;

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"It is, therefore, prayed that by accepting this petition;

- a. *a writ of certiorari may please be issued to declare the impugned regularization order respectively attached as annex "G" to "G/34", whereby petitioners initial/first date of entry in service has wrongly been mentioned, be declared as illegal unlawful, against the mandate of section-3 of the Khyber Pakhtunkhwa Employees of Elementary & Secondary Education Department (Appointment &*

Mubey

ATTESTED
 EXAMINER
 Peshawar High Court

Regularization of Services) Act, 2017 and thus ineffective upon the rights of petitioners;

- b. *a writ of mandamus may be issued by directing the respondents to issue a formal regularization order of petitioners from the date/day of their first entry in service as shown in column No.5 of annexure "A".*

or

Any other relief deems fit and appropriate in the circumstances of the case may be granted in favour of the petitioners."

2. In essence, grievance of the petitioners is that, respondents advertized the posts of SST, CT, PST, AT, TT Qari, PET, DM etc in the newspaper in the year 2014-15; that the petitioners applied for the said posts respectively and; succeeded in written test, interview and; were appointed against the ibid posts respectively. Subsequently, the respondents advertised some other posts of SST, CT, AT, PST, PET etc, for which the petitioners also applied, wherein, they succeeded and; were accordingly appointed; that the petitioners relieved from the earlier posts and assumed their duties at the newly appointment places on the same date without gap of a single day and were in continuous service; that the Government of Khyber Pakhtunkhwa enacted an Act i.e

Attested.

*Maher
Azeem*

Annexure

ATTESTED
EXAMINER
Peshawar High Court

The Khyber Pakhtunkhwa Employees of E&SE Department (Appointment & Regularization of Services) Act, 2017, whereby under section-3 of the Act, the services of all the contract employees were regularized from the day of their initial appointment; that the respondents issued the impugned regularization orders of petitioners, however, their date of initial appointment was wrongly shown in the impugned orders as their second date of appointment was shown instead of their first date of appointment; that being aggrieved some of the petitioners approached the respondents for correction of date of first entry in regularization, however, their appeals were neither considered nor decided till date, hence, the petitioners have approached this Court for redressal of their grievance by filing the instant writ petition.

3. The respondents were put on notice with direction to file the requisite para-wise comments to the writ petition, which were submitted accordingly; whereby they strongly resisted the claim of the petitioners.

4. Arguments of learned counsel for the parties heard and available record gone through with their able assistance.

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ATTESTED
EXAMINER
Peshawar High Court

5. Perusal of record reveals that the petitioners were appointed in the year 2015 for a period of one year on adhoc, temporary and; contract basis. During the period of their service, the respondents advertised some other posts and; the petitioners also applied alongwith others for the said posts and, were accordingly appointed against the said posts after their selection. Meanwhile, during the currency of their service, the Government of Khyber Pakhtunkhwa passed regularization Act, 2018, thereby the services of the petitioners were regularized pursuant to the ibid regularization Act. Now, the petitioners seek their regularization from the date of their first appointment i.e from the year 2015.

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[6.] Now the precise question for determination before this Court in the instant case is that whether the regularization of the petitioners is to be considered from the date of their first appointment i.e 2015 or from the date of their subsequent appointment i.e 2017. Indeed, upon the subsequent advertisement and; appointment thereunder, the petitioners left their earlier service and opted for their fresh appointment and; therefore, the question of first appointment had lost its significance for having become a past and closed transaction. Thus, the

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EXAMINER
Peshawar High Court

petitioners cannot take any benefit out of the same qua their regularization under the Act, 2018, as the subsequent appointment of the petitioners was a fresh appointment for all practical and material purposes and; the same cannot be considered as continuation of their earlier service. Therefore, the respondents had rightly not so considered the same for the regularization of the services of the petitioners.

In view of the above, the instant writ petition is
dismissed being meritless.

Announced.
Dated. 10.06.2021.

[Signature]
SENIOR PUISNE JUDGE

(D.B of)
Hon'ble Mr. Justice Rooh-ul-Amin Khan,
Hon'ble Mr. Justice S.M Attique Shah.

(Kausar Ali PS)

[Signature]
JUDGE

Authorised by the Secretary
The Government of Punjab
Order No. 27 of 2021

16 JUN 2021

Attested

[Signature]
A.C.

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