



KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR.

Service Appeal No. **411** of **2022**

Waseem Jan Versus Government of Khyber Pakhtunkhwa
through Secretary Education
Department, Peshawar and two others.

S.No. of Order & Date of proceedings	Order or other proceedings with signature of Chairman/Member(s)/Registrar and that of parties or counsel where necessary
Order-17 23 rd October, 2024	<p>Present:</p> <ol style="list-style-type: none">1. Sheikh Iftikhar-ul-Haq, Advocate for the appellant present.2. Mr. Asif Masood Ali Shah, Deputy District Attorney for the respondents present. <p>01. Vide our detailed judgment consisting of 04 pages, the appeal is accepted, as prayed for, with the direction to the respondents to immediately release the monthly salaries of the appellant from the date he submitted his arrival report i.e. 12.08.2017 and adjust him against the post on which he was appointed vide the initial appointment order dated 11.08.2017. Cost shall follow the event. Consign.</p> <p>02. <i>Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal on this 23rd day of October, 2024.</i></p> <p style="text-align: center;"> (FAREEHA PAUL) Member (E)</p> <p style="text-align: center;"> (AURANGZEB KHATTAK) Member (J) 23¹⁰ 2024</p> <p>*Fazle Subhan, P.S*</p>

MEMO OF COSTS.
KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

Service Appeal No. 411/2022

Waseem Jan son of Gulli Jan Khan, R/O village Nandoor Post Office Pai, Tehsil and District Tank.

.... (Appellant)

VERSUS

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

Mr. Sheikh Iftikharul Haq,
Advocate

... For appellants

Mr. Asif Masood Ali Shah,
District Attorney

... For respondents.


Date of Institution..... 28.02.2022
Date of Hearing.....23.10.2024
Date of Decision..... 23.10.2024

Appellant	Amount	respondents	Amount
1. Stamp for memorandum of appeal	Rs. Nil	1. Stamp for memorandum of appeal.	Rs. Nil
2. Stamp for power	Rs. Nil	2. Stamp for power	Rs. Nil
3. Services of processes	Rs. Nil	3. Services of processes	Rs. Nil
4. Pleader's fee	Rs. Nil	4. Pleader's fee	Rs. Nil
5. Security fee	Rs. 100/-	5. Security Fee	Rs. Nil
6. Profess fee	Rs. Nil	6. Process fee	Rs. Nil
7. Costs	Rs. Nil	7. Costs	Rs. Nil
Total	Rs. 100/-	Total	Rs. Nil

Note:- Counsel Fee is not allowed as the required certificate has not been furnished

Given under our hands and the seal of this Court, this 23rd day of October, 2024.


(FARNIHA PAUL)
Member (E)



(AURANGZEB KHATTAK) 2024.
Member(J)

466-D/2020, according to which respondent No. 3, who was the District Education Officer, Elementary & Secondary Education (Male) Tank, stated at the bar that the petitioner had already submitted his joining report, he could not respond, rather referred to para- 2 of the reply, wherein the present respondents had stated that the appellant had not taken over the charge at GPS Momin Khan Koroona. It was noted with concern that the departmental authorities were not aware of the proceedings in COC No. 466-D/2020 before the Hon'ble High Court on 08.03.2021 where their own DEO stated that the petitioner had already submitted his joining report. In view of the record presented before us, there seems no confusion that after getting appointment on 11.08.2017, the appellant submitted his arrival report on 12.08.2017 and the same was signed by the Head Teacher GPS Momin Khan Koroona District Tank also. The arguments of the present respondents, that the appellant had not submitted his arrival report, therefore, become groundless.

7. In view of the above discussion, the appeal is accepted, as prayed for, with the direction to the respondents to immediately release the monthly salaries of the appellant from the date he submitted his arrival report i.e. 12.08.2017 and adjust him against the post on which he was appointed vide the initial appointment order dated 11.08.2017. Cost shall follow the event. Consign.

08. *Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal on this 23rd day of October, 2024.*


(FAREEHA PAUL)
Member (E)


(AURANGZEB KHATTAK) 23/10
2024.
Member (J)

04. Learned counsel for the appellant, after presenting the case in detail, argued that inaction and omission of respondents by not releasing the monthly salaries of appellant, after appointment, was against the law, facts and circumstances. He requested that the appeal might be accepted as prayed for.

05. Learned Deputy District Attorney, while rebutting the arguments of learned counsel for the appellant, argued that father of the appellant retired from service and accordingly he was appointed as Chowkidar (BPS- 03) at GPS Momin Khan Koroona under 25% retired son quota vide order dated 11.08.2017, upon directions of the Hon'ble Peshawar High Court, however, he had not taken over the charge at the school where he was appointed. He argued that since the appellant had neither taken over charge nor performed duties at station where he was posted, therefore, claiming salaries without performance of duties was entirely against the law. He requested that the appeal might be dismissed.

06. Arguments and record presented before us transpired that the appellant was appointed against the post of Class-IV vide an order dated 11.08.2017 against employees son quota at GPS Momin Khan Koroona. In pursuance of that order, he submitted his arrival report on 12.08.2017. Since then, he had been performing his duties but had been denied the payment of salaries. During the course of arguments, learned Deputy District Attorney raised the point that the appellant had not submitted his arrival report in pursuance of his appointment order and based on that he was not entitled for salaries or any other service benefits. When his attention was invited to an order dated 08.03.2021 of the Hon'ble Peshawar High Court D.I.Khan Bench in COC No.



02. Brief facts of the case, as given in the memorandum of appeal, are that father of the appellant retired from Education Department on 06.10.2006 after which the appellant applied for the post of Class-IV in Education Department Tank on the basis of retired son quota, which was not allowed. He filed a Writ Petition No. 63-D/2014 before the Hon'ble Peshawar High Court, D.I.Khan Bench which was allowed vide judgment dated 16.05.2017. On the directions of the Hon'ble Peshawar High Court, the appellant was appointed against the retired employee's son quota vide order dated 11.08.2017 and adjusted at Government Primary School Momin Koroona. Two other persons i.e real brothers of the same village were having quarrel on the post of Class-IV and the appellant was not allowed to perform his duties. He came to the office of DEO (Male) Tank, submitted his joining report and started performing his duties, without marking his attendance. Initially, on the inaction of respondents, he submitted a Contempt of Court Petition No. 466-D/2020 before the Hon'ble Peshawar High Court, D.I.Khan Bench which was fixed on 08.03.2021 before the Division Bench. During arguments, it was thrashed out that actually the respondents/authority fully obeyed the order of the court, hence the counsel for the appellant was verbally directed to submit an application for release of his salaries. Thereafter, the appellant made an application to the respondents for release of his salaries but the same was not decided; hence the instant service appeal.

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



BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

Service Appeal No. 411/2022

BEFORE: MR. AURANGZEB KHATTAK... MEMBER (J)
MISS FAREEHA PAUL ... MEMBER (E)

Waseem Jan son of Gulli Jan Khan, R/O village Nandoor Post Office Pai,
Tehsil and District Tank.

.... (*Appellant*)

VERSUS

1. Government of Khyber Pakhtunkhwa through Secretary Education Department, Khyber Pakhtunkhwa, Peshawar.
2. Director Elementary and Secondary Education, Khyber Pakhtunkhwa Peshawar.
3. District Education Officer (Male) Elementary and Secondary Education Tank.

....(*Respondents*)

Mr. Sheikh Iftikharul Haq,
Advocate

... For appellants

Mr. Asif Masood Ali Shah,
District Attorney

... For respondents.

Date of Institution..... 28.02.2022

Date of Hearing.....23.10.2024

Date of Decision..... 23.10.2024

JUDGMENT

FAREEHA PAUL, MEMBER (E): The instant service appeal has been instituted under section 4 of the Khyber Pakhtunkhwa Service Tribunal, Act 1974, with the prayer that on acceptance of the appeal, the respondents might be directed to release the monthly salaries of the appellant since 11.08.2017 till date, with further direction to adjust him against the proper vacant post and allow him to perform duties.

