

BEFORE THE KPK SERVICE TRIBUNAL PESHAWAR.

CM NO: _____/2024

in

Appeal No. 628/2022

Khyber Pakhtunkhwa
Service Tribunal

Diary No. 17650

Dated 06-11-24

Naqeeb Ullah, SPST,
GPS Takht-E-Nasrati No. 01, District Karak.

(APPELLANT)

VERSUS

1. The Secretary Elementary and Secondary Education, Civil Secretariat, Peshawar.
2. The Director, Elementary and Secondary Education, Peshawar.
3. The District Education Officer (Male), Karak.
4. The Accountant General Khyber Pakhtunkhwa, Peshawar.

(RESPONDENTS)

SUBJECT: **APPLICATION FOR DISPOSAL OF INSTANT APPEAL IN SAME MANNER AS APPEAL NO: 553/2022, 600/2022, 601/2022, 602/2022, 604/2022, 605/2022, 606/2022, 629/2022 WERE ACCEPTED, BEING SIMILAR AND CONNECTED APPEAL.**

RESPECTFULLY SHEWETH:

1. That the appellant along with other appellants has filed the Service Appeal for increment and against the recovery and instituted on same day on 07/04/2022.
2. That the service appeal NO: 553/2022, 600/2022, 601/2022, 602/2022, 603/2022, 604/2022, 605/2022, 606/2022, 628/2022, 629/2022 was in argument stage and fixed on 06/11/2023. the case was heard and hon'able Tribunal was kind enough to accept the appeal of the appellant as prayed for. But when the judgment came into field the counsel for the appellant noted that the appeal no: 628/2022 was not mentioned in the judgment. On query the counsel was informed that the above mentioned appeal was not placed before the bench mistakenly and directed the counsel to filed application in in the instant appeal for disposal of the appeal in same manner. Copy of judgment is attached as annexure-A.

3. That the appellant being on similar footing and this appeal is connected appeal of the appeals which were already decided vide judgment dated 06/11/2023, the appellant needs the same treatment. So, in light of Supreme Court judgment cited as *1996 SCMR 1185, 2009 SCMR 1, 2018 SCMR 380 and 2021 SCMR 1313*.

It is, therefore, most humbly prayed that on acceptance of this application the instant appeal of the appellant may be accepted in same manner as already connected appeals are accepted. Any other remedy which the august court deems appropriate that may also be awarded in the favor of appellant.

Naqeebullah
APPELLANT
Naqeebullah

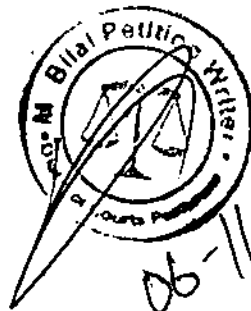
THROUGH:

SYED Noman Ali Bukhari
(SYED NOMAN ALI BUKHARI)
ADVOCATE HIGH COURT

AFFADAVIT

I, Appellant, do hereby affirm that the contents of this application are true and correct and nothing has been concealed from the Hon'ble Court.

Naqeebullah
Deponent



All Appeals were Admitted for Regular hearing on same date 28-4-22



KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 603/2022

BEFORE: MRS. RASHIDA BANO ... MEMBER (J)
MR. MUHAMMAD AKBAR KHAN ... MEMBER (E)

Mushtaq Ahmad, SPST, BPS-14, GPS Amain Khel Chokara, District Karak. (Appellant)

VERSUS

1. The Secretary Elementary and Secondary Education, Civil Secretariat, Peshawar.
2. The Director Elementary & Secondary Education Department, Peshawar.
3. The District Education Officer (M), Karak.
4. The Accountant General, Khyber Pakhtunkhwa, Peshawar Cant. (Respondents)

Syed Noman Ali Bukhari
Advocate ... For appellant

Mr. Muhammad Jan
District Attorney ... For respondents

Date of Institution.....07.04.2022
Date of Hearing.....06.11.2023
Date of Decision.....06.11.2023

JUDGMENT

RASHIDA BANO, MEMBER (J): The instant service appeal has been instituted under section 4 of the Khyber Pakhtunkhwa Service Tribunal, Act 1974 with the prayer copied as below:

“On acceptance of this appeal, the impugned entry of recovery of Rs. 30500/- may kindly be set aside and the respondents may kindly be directed to grant annual increment for the year 2014 to the appellant and also pay him his salary of three months which are for the month of June, July & August 2014.

R

ATTESTED

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

2. Through this single judgment we intend to dispose of instant service appeal as well as connected (1) Service Appeal No. 553/2022 titled "Sajid Islam Vs. Education Department" (2) Service Appeal No. 600/2022 titled "Muhammad Zahid Iqbal Vs. Education Department" (3) Service Appeal No. 601/2022 titled "Muhammad Razim Vs. Education Department" (4) Service Appeal No. 602/2022 titled "Raham Diaz Vs. Education Department" (5) Service Appeal No. 604/2022 titled "Shafiq Ullah Vs. Education Department" (6) Service Appeal No. 605/2022 titled "Hazrat Usman Vs. Education Department" (7) Service Appeal No. 606/2022 titled "Saif Ullah Vs. Education Department" (8) Service Appeal No. 629/2022 titled "Saeed Akhtar Vs. Education Department" as in all these appeals common question of law and facts are involved.

3. Brief facts of the case, as given in the memorandum of appeal, are that appellants were initially appointed as Primary School Teacher (BPS-12) on adhoc basis vide order dated 31.05.2014. Later on services of the appellant were regularized vide notification dated 15.03.2018 from the date of their appointment. He was promoted to the post of Senior Primary School Teacher (BPS-14) vide order dated 12.02.2018. An entry dated Nil was, however made by Account Officer, Pay Fixation Party in the service books of the appellant to the effect that a recovery of Rs. 30500/- be made from the appellant as he was not entitled to annual increment granted to him for the year 2014. Similarly, the appellant was not granted the salary for initial three months of service. Feeling aggrieved, they filed departmental appeal on 10.12.2021, which was not responded, hence the instant service appeal.

ATTESTED

Khyber/Pakistan
Service Tribunal
Peshawar

4. Respondents were put on notice who submitted written replies/comments on the appeal. We have heard the learned counsel for the appellant as well as the learned District Attorney and perused the case file with connected documents in detail.

5. Learned counsel for the appellant argued that appellant has not been treated in accordance with law and rules and respondents violated Article 4 and 25 of the Constitution of Islamic Republic of Pakistan, 1973. He further argued that the act and omission of the respondents by illegally deducting annual increment for the year 2014 and not releasing salaries is against the law, facts, material available on record and norms of natural justice hence not tenable in the eye of law is liable to be struck down. He submitted that appellant has properly submitted his charge report and mark his attendance in the attendance register on 31.05.2014 and he is held entitled for annual increment for the year 2014.

6. Learned District Attorney contended that the appellant has been treated in accordance with law and rules. He further contended that initially the appellant was appointed on 31.05.2014, but the appointment order of the appellant and his colleagues were amended and in this regard a corrigendum was issued. The amended order directed the appointees to take charge from 01.09.2014, because of long summer vacations to save the public exchequer.

7. Perusal of record reveals that appellants were appointed as Primary School Teachers vide appointment order dated 31.05.2014 and it is admitted fact that appellants submitted their arrival report on the same day i.e 31.05.2014. They were regularized from the date of their appointment, vide notification dated 15.03.2018. According to the terms and conditions

ATTESTED

EXAMINER
Punjab
Service Tribunal
Lahore

as mentioned in the appointment order, they could draw their pay with effect from 01.09.2014, however in view of section 17 of Civil Servants Act, 1973 and FR17. The appellants are entitled for the payment of their salaries with effect from 31.05.2014, the date on which they submitted their arrival report. The appellants are thus entitled to receive salary for the months of June, July and August 2014. Moreover, while counting their service from 31.05.2014, the six months service period as required for grant of annual increment stood completed and the appellants are thus legally entitled for annual increment of 2014. So far as the question of limitation is concerned, suffice it is state that being a financial matter, the appellant is having a continual cause of action, therefore, limitation will not have any adverse implication on the claim of the appellant.

8. For what has been discussed above, the instant appeal as well as connected service appeals are allowed as prayed for and the appellants are held entitled to all back benefits. Costs shall follow the event. Consign.

9. *Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal on this 6th day of November, 2023.*

(MUHAMMAD AKBAR KHAN)
Member (E)

(RASHIDA BANO)
Member (J)

Copy of the original
Kaleemullah
copy
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

Date of Presentation of Appeal 06-11-2023
Number of Words 47
Copying Fee 20/-
Urgent
Total 20/-
Name of Copyist
Date of Completion 11-12-2023
Date of Delivery 11-12-2023

12.07.2023

Learned counsel for the appellant present. Mr. Asad Ali Khan,
Assistant Advocate General for the respondents present.

Neither reply/comments on behalf of respondents submitted nor costs of Rs. 2000/- was deposited on their behalf. Therefore, right of respondents for submission of reply/comments is hereby struck off. Adjourned. To come up for arguments on 06.11.2023 before D.B. Parcha Peshi given to the parties.

SCANNED
K.P.S.T
Peshawar

Kaleemullah

(Muhammad Akbar Khan)
Member (F)

ORDER
06.11.2023

1. Learned counsel for the appellant present. Mr. Muhammad Jan learned District Attorney for the respondents present.

2. Vide our detailed judgement of today placed on file, the instant appeal is allowed as prayed for and the appellant is held entitled to all back benefits. Costs shall follow the event. Consign.

3. *Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal on this 6th day of November, 2023.*

(Muhammad Akbar Khan)
Member (E)

(Rashida Bano)
Member (J)

Kaleemullah