

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

Service Appeal No. 1642/2022

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

Naheed Kousar W/O Bakht Pur Khan R/O Near Khazana Sugar Mills, Tehsil
and District Peshawar.(Appellant)

Versus

1. The Director General Health Services Khyber Pakhtunkhwa, Peshawar.
 2. The Secretary Health, Government of Khyber Pakhtunkhwa, Civil Secretariat,
Peshawar.
 3. Accountant General Khyber Pakhtunkhwa.
 4. District Health Officer, Peshawar.
 5. District Accounts Officer, Peshawar.
-(Respondents)

Mr. Malak Sabitullah Khan,
Advocate

... For appellant

Mr. Naseer-ud-Din Shah,
Assistant Advocate General

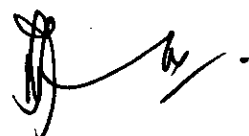
... For respondents

Date of Institution.....	18.11.2022
Date of Hearing.....	30.10.2024
Date of Decision.....	30.10.2024

JUDGEMENT

FAREEHA PAUL, MEMBER (E): The service appeal in hand has been instituted under Section 4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974 with the prayer that on acceptance of the instant appeal, the respondents might be directed to award all the ancillary and incidental benefits, alongwith pension to the appellant, as are admissible after retirement, which the appellant deserved, alongwith any other remedy which the Tribunal deemed appropriate.

02. Brief facts of the case, as given in the memorandum of appeal, are that the appellant was appointed as Lady Health Worker BPS- 05 on contract basis



in the Health Department District Peshawar vide order dated 02.03.1996 and was posted at BHU Khazana. Her services were regularized w.e.f 01.07.2012, vide order dated 19.09.2014. She got retired from service w.e.f. 01.02.2021 on attaining the age of superannuation, vide order dated 14.09.2021. Under the rules, the department was bound to finalize the pension papers/documents for the grant of pension within one month, however, that could not be done even after more than one year, hence she filed a writ petition before the Hon'ble Peshawar High Court Peshawar. Vide order dated 23.02.2023, the Hon'ble Court treated the said Writ Petition as departmental appeal and transmitted it to the Secretary Health Peshawar, with the direction to decide the same strictly in accordance with law. Vide order dated 10.11.2022, the departmental appeal was regretted by respondent No. 1; hence the instant service appeal.

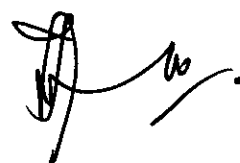
03. Respondents were put on notice who submitted their written reply/comments. We heard the learned counsel for the appellant as well as the learned Assistant Advocate General for the respondents and perused the case file with connected documents in detail.

04. Learned counsel for the appellant, after presenting the case in detail, argued that the appellant was an employee in the respondent department and as per law the pensionary benefits were her vested right for the service rendered by her. He argued that the appellant was entitled to her claim under the Pension Rules but the department misused its authority and she was deprived of her vested right. He requested that the appeal might be accepted as prayed for.

A handwritten signature in black ink, consisting of a stylized initial 'J' followed by a long horizontal stroke and a small flourish at the end.

05. Learned Assistant Advocate General, while rebutting the arguments of learned counsel for the appellant, argued that initially the appellant was appointed on contract basis and in the light of judgment of the august Supreme Court of Pakistan, her services were regularized w.e.f. 1st July, 2012 and she served as a regular government employee till her retirement on attaining the age of superannuation on 01.02.2021. It meant that she served for less than 09 years and was not entitled for any pensionary benefits because pension benefit would accrue after ten years from the date of regularization. He requested that the appeal might be dismissed.

06. Through the instant appeal, the appellant has prayed for grant of retirement/pensionary benefits for her services that she rendered as Lady Health Worker. Record presented before us shows that the appellant was appointed as LHW in 1996 on contract basis. The programme was regularized through the Khyber Pakhtunkhwa Regularization of Lady Health Workers Programme and Employees (Regularization and Standardization) Act, 2014 with effect from 01.07.2012. This means that she rendered around nine years of regular service, whereas qualifying service for pensionary benefits is ten years. Here it would not be out of place to mention the judgment in case of Chairman Pakistan Railways Government of Pakistan Islamabad and others Versus Shah Jehan (PLD 2016 SC 534) where the honourable Supreme Court of Pakistan has clearly held that without completing ten years qualifying service, the services rendered by a government servant or civil servant on contract/fixed pay could not be counted for pensionary benefits. If an employee has not completed ten years service after regularization, his or her




previous service that he/she had rendered on contract/fixed pay could not be added to the qualifying service for pensionary benefits.

07. In view of the above discussion, the service appeal in hand is dismissed being devoid of merit. Cost shall follow the event. Consign.

08. *Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal this 30th day of October, 2024.*


(FARNEHA PAUL)
Member (E)


(AURANGZEB KHATTAK) 30/10
Member(J) 2024.

FazleSubhan P.S

MEMO OF COSTS.
KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

Service Appeal No. 1642/2022

Naheed Kousar W/O Bakht Pur Khan R/O Near Khazana Sugar Mills, Tehsil and District Peshawar.(Appellant)

Versus

1. The Director General Health Services Khyber Pakhtunkhwa, Peshawar.
 2. The Secretary Health, Government of Khyber Pakhtunkhwa, Civil Secretariat, Peshawar.
 3. Accountant General Khyber Pakhtunkhwa.
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-(Respondents)

Mr. Malak Sabitullah Khan,
Advocate

... For appellant

Mr. Nasser-ud-Din Shah,
Assistant Advocate General


... For respondents

Date of Institution..... 18.11.2022
Date of Hearing..... 30.10.2024
Date of Decision..... 30.10.2024

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 30th day of October, 2024.




(FARVEHA PAUL)
Member (E)


(AURANGZEB KHATTAK)
Member(J)

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR.

Service Appeal No. 1642 of 2022

Naheed Kausar Versus The Director General Health Services,
Khyber Pakhtunkhwa Peshawar and four
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-19 30 th October, 2024	<p>Present:</p> <ol style="list-style-type: none">1. Mr. Malak Sabitullah Khan, Advocate on behalf of the appellant.2. Mr. Naseerud Din Shah, Assistant Advocate General on behalf of the respondents. <p>01. Vide our detailed judgment consisting of 04 pages, the service appeal in hand is dismissed being devoid of merit. 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 30th day of October, 2024.</i></p> <p> (FAREHHA FAUL) Member (E)</p> <p> (AURANGZEB KHATTAK) Member (J)</p> <p>*Fazle Subhan, P.S*</p>