

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR.

BEFORE: **AURANGZEB KHATTAK ... MEMBER (Judicial)**
MUHAMMAD AKBAR KHAN ... MEMBER (Executive)

Service Appeal No. 621/2022

Date of presentation of Appeal.....14.03.2022
Date of Hearing.....18.11.2024
Date of Decision.....18.11.2024

Mst. Bakht Pari W/o Qari Ihsan Ullah, R/o Daskor-Bala, Tehsil Wari, Upper Dir, (Malakand Division), presently working as Secondary School Teacher (SST) (General) BPS-16 and posted at Government High School Daskor Bala Dir Upper, Malakand.

.....**Appellant**

Versus

1. The honorable Director, Elementary & Secondary Education, Khyber Pakhtunkhwa, Peshawar.
2. The Accountant General, Khyber Pakhtunkhwa, Peshawar.
3. The District Education Officer (F) Dir Upper.
4. District Accounts Officer, Dir Upper.

.....**(Respondents)**

Present:

Mr. Muhammad Usman Khan Turlandi, Advocate.....For appellant.
Mr. Naseer-ud-Din Shah, Assistant Advocate GeneralFor respondents.

JUDGMENT

AURANGZEB KHATTAK, MEMBER (JUDICIAL): The facts of the case as narrated by the appellant in her appeal are that, she completed her SSC in 1996 and obtained the "Sanad-ul-Firagh, Shahadat-ul-Alamia" from Darul Uloom Islamia, Anwar-ul-Uloom Nali Par, Mardan in 1998, which was recognized and sanctioned by relevant authorities. She was appointed as an Arabic Teacher BPS-9 in 1999 and due to her qualifications, she was later granted BPS-14 in 2009. Arrears

18/11/2024.

for the BPS-14 scale were refused for payment to her by the respondents on grounds that no equivalency from HEC was available for her degree at that time. Feeling aggrieved, she filed Writ Petition No. 2819/2009 before the Peshawar High Court, Mingora Bench, however, the same was dismissed vide judgment dated 05.04.2012. There-after, she approached the Supreme Court of Pakistan through filing of Civil Petition No. 258-P of 2012, which was disposed of being not pressed vide order dated 24.05.2013. The certificate of equivalency *Itehad-ul-Madaris-Al-Arabia Pakistan* was granted by the Government of Pakistan, Ministry of Federal Education & Professional Training, Higher Education vide letter dated 03.02.2021. Therefore, she filed departmental appeal on 08.03.2021 for grant of arrears of BPS-14, which was rejected vide impugned order dated 08.02.2022, hence she filed the instant service appeal before this Tribunal for redressal of her grievance.

2. The respondents were summoned, who contested the appeal by way of filing their respective written replies/comments.

3. The learned counsel for the appellant contended that the *Sanad* from Darul Uloom Islamia, Anwar-ul-Uloom Nali Par, Mardan, of the appellant was recognized by the Government of NWFP in 1987 and affiliated with the Pakistan Madrassa Education Board in 2003. He next contended that the *Sanad* of the appellant was equivalent to the prescribed qualification for Arabic Teachers as per service rules and notifications issued by the Directorate of Education. He further contended that arrears of Rs. 151,072/- were sanctioned by the Education

18/11/2024.

Department but payment was refused by District Accounts Officer, Dir Upper based on the non-recognition of her *Sanad* by the HEC, despite equivalency being granted by the HEC in 2021. He also contended that in similar situation individuals in Service Appeals No. 490, 491, and 492 of 2005 were granted relief by this tribunal and that decision was upheld by the Supreme Court in 2009, therefore, the appellant is also entitled for the said relief being similar. He next argued that the refusal of pay scale benefits is discriminatory and contrary to natural justice and fundamental rights guaranteed under Articles 4, 25, and 27 of the Constitution.

4. On the other hand, learned Assistant Advocate General for the respondents opposed the contention of learned counsel for the appellant and contended the appellant requisite *Sanad* lacked equivalency certification from the HEC or any recognized regulatory body. He next contended that the appellant's *Sanad* institution, Darul Uloom Islamia, was not registered or recognized at the relevant time. He further contended that the appellant failed to obtain the required equivalency certificate from the HEC within the stipulated period, rendering her claims baseless. He also contended that the appellant does not meet the prescribed qualifications for BPS-14 as per service rules, which require a recognized MA in Arabic or an equivalent qualification. He next argued that the appellant's pay scale benefits were mistakenly accorded due to concealment of material facts. In the last, he argued that earlier writ petition and service appeal of the appellant were already dismissed by this Tribunal and High Court, therefore, the instant appeal is barred by time, hence liable to be dismissed on this ground alone.

18/11/2024.

5. We have heard the arguments of learned counsel for the parties and have perused the record.

6. The record shows that the appellant is seeking correction of her pay scale to BPS-14 along with arrears effective from December 15, 1999 based on the qualifications, *Sanad-ul-Firagh* and *Shahadat-ul-Alamia*, obtained from Darul Uloom Islamia, Anwar-ul-Uloom Nali Par, Dang Baba, Mardan. She contends that her pay scale was initially revised to BPS-14 but subsequent departmental actions led to the withholding of arrears and benefits due to a lack of equivalency certification from the Higher Education Commission (HEC). However, the record indicates that Darul Uloom Islamia, Anwar-ul-Uloom Nali Par, was registered under the Societies Act on September 30, 2005. Furthermore, the Higher Education Commission (HEC) recognized its degrees effective February 10, 2021. The rules governing eligibility for pay scale upgrades explicitly require that qualifications be recognized by the competent authority at the relevant time. As of the appellant's claimed period for arrears, her *Sanad-ul-Firagh* and *Shahadat-ul-Alamia* lacked equivalency certification from the HEC. The department's refusal to grant arrears and benefits linked to the appellant's pay scale upgrade is consistent with the regulatory requirements. The subsequent recognition of the institution and its qualifications by the HEC in 2021 cannot be applied retrospectively to validate the appellant's claims for a period preceding the recognition date.

18/11/2024


7. Moreover, the appellant previously filed Writ Petition No. 2819/2009 before the Peshawar High Court, challenging the denial of her pay scale upgrade and recognition of her qualifications. The said writ petition was dismissed on April 5, 2012. Subsequently, the appellant pursued Civil Petition No. 258/12 before the Supreme Court of Pakistan, which was disposed of being not pressed with the observation that in case the petitioner is successful in acquiring such certificate of recognition, the impugned judgment shall not stand in her way, vide order dated order dated 24.05.2013. Despite this observation, the appellant failed to provide a valid equivalency certificate covering the relevant period from 1999 to 2009. This failure rendered her claim for retrospective application of equivalency unsustainable. The appellant's qualifications from Darul Uloom Islamia, Anwar-ul-Uloom Nali Par, were not recognized by the Higher Education Commission (HEC) during the relevant timeframe. The HEC granted recognition to Ittehad-ul-Madaris qualifications only on February 10, 2021, which cannot retroactively validate the appellant's entitlement to benefits for the period predating this recognition. The appellant's assertion that her qualifications were valid at the relevant time is contradicted by the record. Furthermore, as per the Finance Department's Notification dated August 7, 1991, Arabic Teachers must possess valid qualifications such as an MA in Arabic or its equivalent to qualify for BPS-14 or higher pay scales. The appellant did not possess the required qualifications during the time of her claim for pay scale revision. The learned counsel for the appellant cited Service Appeals No. 490, 491 and 492 of 2005 in support


18/11/2024

of his arguments. However, these cases involved different circumstances. They neither addressed equivalency nor included the Higher Education Commission (HEC) as a party. This Tribunal independently examined whether the appellant's *Sanad* was recognized and the findings render the cited cases irrelevant to her situation. The HEC's recognition of the appellant's qualifications in 2021 cannot be applied retroactively to validate claims for benefits predating this recognition. This principle is consistent with established legal precedents regarding retrospective application of regulatory approvals.

8. Consequently, the appellant's claim for a pay scale upgrade to BPS-14 and arrears is rejected due to her lack of requisite qualifications from a recognized institution at the relevant time. The appeal is dismissed as being devoid of merit. Parties are left to bear their own costs. File be consigned to the record room.

9. *Pronounced in open Court at Peshawar and given under our hands and the seal of the Tribunal on this 18th day of November, 2024.*


AURANGZEB KHATTAK 18/11/2024.
Member (Judicial)


MUHAMMAD AKBAR KHAN
Member (Executive)

MEMO OF COSTS
KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

Service Appeal No. 621/2022

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Mst. Bakht Pari W/o Qari Ihsan Ullah, R/o Daskor-Bala, Tehsil Wari, Upper Dir, (Malakand Division), presently working as Secondary School Teacher (SST) (General) BPS-16 and posted at Government High School Daskor Bala Dir Upper, Malakand.**Appellant**

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1. The honorable Director, Elementary & Secondary Education, Khyber Pakhtunkhwa, Peshawar.
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.....**(Respondents)**

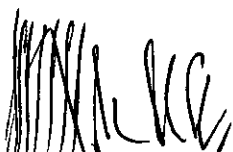
PRESENT


1. Mr. Muhammad Usman Khan Turlandi, Advocate.....For appellant.
2. Mr. Naseer-ud-Din Shah, Assistant Advocate GeneralFor respondents.

Appellants	Amount	Respondent	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. Pleader's fee	Rs. Nil	4. Pleader's fee	Rs. Nil
4. Security Fee	Rs.100/-	4. Security Fee	Rs. Nil
5. Process Fee	Rs. Nil	5. Process Fee	Rs. Nil
6. Costs	Rs. Nil	6. 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 18th day of November 2024.


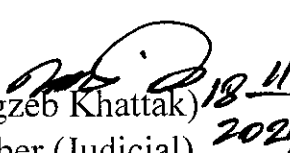

Muhammad Akbar Khan
Member (Executive)


Aurangzeb Khattak 18/11
Member (Judicial) 2024.

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL

Service Appeal No. 621/2022

Mst. Bakht Pari versus The Honorable Director, Elementary & Secondary Education, Khyber Pakhtunkhwa, Peshawar and others.

S.No. of Order & Date of proceeding	Order or other proceedings with signature of Chairman/Member(s)/Registrar and that of parties or counsel where necessary
<p><u>Order-22</u> 18th November, 2024.</p>	<p>Present:</p> <ol style="list-style-type: none">1. Mr. Muhammad Usman Khan Turlandi, Advocate on behalf of the appellant.2. Mr. Naseer-ud-Din Shah, Assistant Advocate General on behalf of respondents. <p>Arguments heard and record perused.</p> <p>Vide our judgment of today placed on file, the appellant's claim for a pay scale upgrade to BPS-14 and arrears is rejected due to her lack of requisite qualifications from a recognized institution at the relevant time. The appeal is dismissed as being devoid of merit. Parties are left to bear their own costs. File be consigned to the record room.</p> <p><i>Pronounced in open Court at Peshawar and given under our hands and the seal of the Tribunal on this 18th day of November, 2024.</i></p> <p> (Muhammad Akbar Khan) Member (Executive)</p> <p> (Aurangzeb Khattak) Member (Judicial) 18-11-2024.</p> <p>*Naeem Amin*</p>