

Service Appeal No. 1610/2022 titled "Mrs. Naveeda Gul versus The Government of Khyber Pakhtunkhwa through Secretary (E&SE) Department, Khyber Pakhtunkhwa, Peshawar and 03 others" and Service Appeal No. 1611/2022 titled "Mrs. Muntaha Begum versus The Government of Khyber Pakhtunkhwa through Secretary (E&SE) Department, Khyber Pakhtunkhwa, Peshawar and 03 others", decided on 15.11.2024 by Division Bench comprising of Mr. Kalim Arshad Khan, Chairman and Mr. Aurangzeb Khattak, Member Judicial, Khyber Pakhtunkhwa Service Tribunal, Peshawar.

**KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,**  
**PESHAWAR.**

BEFORE: **KALIM ARSHAD KHAN ... CHAIRMAN**  
**AURANGZEB KHATTAK ... MEMBER (Judicial)**

**Service Appeal No. 1610/2022**

Date of presentation of Appeal.....11.11.2022  
Date of Hearing.....15.11.2024  
Date of Decision.....15.11.2024

**Mrs. Naveeda Gul** D/o Afzal Khan, Ex-PST, R/o Akhunzada, Shulgara,  
P/o Charsadda, Tehsil & District Charsadda.....**Appellant**

Versus

1. The Government of Khyber Pakhtunkhwa through Secretary (E&SE) Department, Khyber Pakhtunkhwa, Peshawar.
2. The Director of (E&SE) Department, Khyber Pakhtunkhwa, Peshawar.
3. The Director of Education (Merged Area), Merged Area Secretariat, Warsak Road, Peshawar.
4. The District Education Officer, District Mohmand.

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

**APPEAL UNDER SECTION 4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974 AGAINST THE INACTION OF THE RESPONDENTS BY NOT MAKING PAY FIXATION OF THE APPELLANT W.E.F 12.03.2000.**

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**Service Appeal No. 1611/2022**

Date of presentation of Appeal.....11.11.2022  
Date of Hearing.....15.11.2024  
Date of Decision.....15.11.2024

**Mrs. Muntaha Begum** W/o Asad Jan, Ex-PST, R/o Amanullah Khan  
Koroona, P/o Ghazgai, Tehsil & District Charsadda.

.....**Appellant**

Versus

5. The Government of Khyber Pakhtunkhwa through Secretary (E&SE) Department, Khyber Pakhtunkhwa, Peshawar.
6. The Director of (E&SE) Department, Khyber Pakhtunkhwa, Peshawar.
7. The Director of Education (Merged Area), Merged Area Secretariat, Warsak Road, Peshawar.
8. The District Education Officer, District Mohmand.

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

Present:

Mr. Noor Muhammad Khattak, Advocate.....For appellants.

Mr. Muhammad Jan, District Attorney .....For respondents.

**APPEAL UNDER SECTION 4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974 AGAINST THE INACTION OF THE RESPONDENTS BY NOT MAKING PAY FIXATION OF THE APPELLANT W.E.F 23.06.2000.**

**CONSOLIDATED JUDGMENT**

**KALIM ARSHAD KHAN, CHAIRMAN:-** Through this single judgment, we intend to dispose of both the above-mentioned service appeals, as common questions of law and facts are involved in both the appeals.

2. The facts of both the appeals are that the appellants, Mrs. Naveeda Gul and Mrs. Muntaha Begum, were appointed as PTC BPS-7 (now PST BPS-12) teachers at female community schools in Mohmand Agency. Their services commenced on March 12, 2000 and June 23, 2000, respectively. Initially possessing matric qualifications, both appellants later acquired Intermediate Certificates and PTC certificates from the Directorate of Curriculum and Teacher Education, Khyber Pakhtunkhwa. In 2010, due to the deteriorating law and order situation, many community schools in the former FATA region, now merged with Khyber Pakhtunkhwa, were closed. Following a period of rehabilitation, notification dated May 11, 2012, was issued, which outlined the reappointment of community school teachers eligible for PST posts. Despite this, the appellants' requests for reappointment were



unmet. The appellants referenced a decision by the Peshawar High Court, dated February 26, 2019, which directed the reappointment of another teacher in similar circumstances. Vide Regularization/ Adjustment order of Female Community Teachers dated September 26, 2020, the appellants were regularized with immediate effect. The appellants then filed writ petition for pay fixation and other emoluments, which was treated as departmental appeal and sent to the respondents for its consideration and decision strictly in accordance with civil servants Pension Rules 1963 as well as the guidelines laid down by Larger Bench in its judgment dated 22.06.2017 rendered in Writ Petition No. 3394-P/2016, however, the same was not responded. Hence, the appellants have now approached this Tribunal for redressal of their grievances.

3. On receipt of the appeal and its admission to full hearing, the respondents were summoned. Respondents put appearance and contested the appeal by filing written reply raising therein numerous legal and factual objections.

4. The learned counsel for the appellants contended that the appointments and subsequent reappointment requests of the appellants adhered to legal standards and prior court judgments. He next contended that the respondents violated Articles 4 and 25 of the Constitution of the Islamic Republic of Pakistan, 1973, as well as Section 24(a) of the General Clauses Act, 1987, by not fixing their pay from the date of their initial appointments. He further contended that

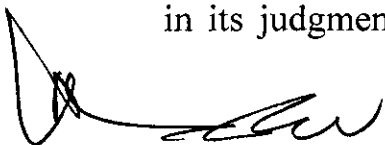
the respondents discriminated against the appellants in handling their cases, depriving them of their entitlement to pay protection and back benefits for services rendered. In the last, he requested that both appeals might be allowed by granting the appellants pay fixation/pay protection along with all back benefits from the date of their initial appointments.

5. On the other hand, learned District Attorney for the respondents opposed the contention of learned counsel for the appellant and contended that the community school project concluded on December 31, 2010 and the appellants' services were legitimately terminated. He next contended that subsequent reappointments were made on September 1, 2013, under a notification from the Governor of Khyber Pakhtunkhwa, yet the appellants were deemed ineligible for these roles. He further contended that the appellants' situation differed significantly from others, citing distinctions made in various court cases, such as the *Shamina Gilani* case and contended that pay protection is not applicable due to a break in their service. He also referred to a government notification dated February 6, 2014, which specifies that pay protection is not granted when there is a break between contract and regular service and that service on a contract basis does not count towards eligibility for pension or gratuity. In the last, he requested that both appeals, being without merit, might be dismissed with costs.

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



7. The perusal of case files show that the appellants, Mrs. Naveeda Gul and Mrs. Muntaha Begum, were appointed as Primary Teaching Certificate (PTC) teachers in BPS-7, later upgraded to Primary School Teachers (PST) in BPS-12, at female community schools in Said Kamal Kor, Bangla No. 2, Mohmand Agency. Mrs. Naveeda Gul was appointed on March 12, 2000 and Mrs. Muntaha Begum on June 23, 2000. However, due to the law and order situation in 2010, many community schools, including those in the former FATA region, became non-functional and were subsequently closed. Following rehabilitation efforts, notification dated May 11, 2012, was issued by the FATA Secretariat (now merged with the Khyber Pakhtunkhwa Secretariat), approving the reappointment of community school teachers who qualified for regular PST posts in phases within their respective districts. Despite being qualified, the appellants repeatedly sought reappointment under the notification but received no favorable response. The appellants subsequently filed departmental appeals and writ petitions, which were eventually allowed in terms similar to the *Shamina Gilani* judgment. The appellants were regularized vide Regularization/Adjustment order dated on September 26, 2020 as PSTs with immediate effect. The appellants later on filed writ petition for pay fixation and other emoluments, which was treated as departmental appeal and sent to the respondents for its consideration and decision strictly in accordance with civil servants Pension Rules 1963 as well as the guidelines laid down by Larger Bench in its judgment dated 22.06.2017, rendered in Writ Petition No. 3394-



P/2016, however, the same were not responded. Aggrieved by the lack of pay fixation from their initial appointments in 2000, the appellants filed the instant service appeals, arguing that the respondents' inaction violated legal provisions, constitutional protections, and principles of natural justice.

8. The record further shows that pay protection under F.R. 22 apply when a civil servant inducted into government service was previously working in an autonomous body or project and earning a higher salary. In this case, the appellants' salaries in their temporary roles were not higher than the graded pay of their regular posts. Therefore, they were not entitled to pay protection or its fixation. The appellants argued that they were entitled to pay protection/fixation of pay and back benefits for services rendered temporarily rendered earlier upon their regularization. However, the regularization of the appellant vide Regularization/Adjustment order dated 26.09.2020 with immediate effect, constitutes a fresh appointment to the post and does not account for service rendered before regularization. This position is supported by precedents set by the Supreme Court of Pakistan, including:

- *Vice Chancellor Agriculture University Peshawar and others vs. Muhammad Shafiq and others (2024 SCMR 527)*
- *Deputy Director Food Faisalabad Division, Faisalabad and others vs. Muhammad Tauqir Shah and others (2021 SCMR 760)*
- *Province of Punjab through Secretary Livestock and Dairy Development Department, Government of Punjab, Lahore and others vs. Dr. Javed Iqbal and others (2021 SCMR 767).*

Service Appeal No. 1610/2022 titled "Mrs. Naveeda Gul versus The Government of Khyber Pakhtunkhwa through Secretary (E&SE) Department, Khyber Pakhtunkhwa, Peshawar and 03 others" and Service Appeal No. 1611/2022 titled "Mrs. Muntaha Begum versus The Government of Khyber Pakhtunkhwa through Secretary (E&SE) Department, Khyber Pakhtunkhwa, Peshawar and 03 others", decided on 15.11.2024 by Division Bench comprising of Mr. Kalim Arshad Khan, Chairman and Mr. Aurangzeb Khattak, Member Judicial, Khyber Pakhtunkhwa Service Tribunal, Peshawar.


The appellants were regularized under a new Regularization/ Adjustment order of Female Community Teachers dated 26.09.2020 with immediate effect and not regularized from their previous temporary service. Therefore, their earlier service could not be counted for pay fixation, seniority, or other benefits.

9. Consequently, based on the aforementioned reasons, the appellants' claims for pay protection/pay fixation, deemed devoid of merit, hence both the above captioned service appeal are dismissed. Parties are left to bear their own costs. File be consigned to the record room.

10. *Pronounced in open Court at Peshawar and given under our hands and the seal of the Tribunal on this 15<sup>th</sup> day of November, 2024.*



**KALIM ARSHAD KHAN**  
Chairman

  
**AURANGZEB KHATTAK** 15/11/2024  
Member (Judicial)

\*Naeem Amin\*

**MEMO OF COSTS**  
**KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR**

**Service Appeal No. 1610/2022**

Date of presentation of Appeal 11.11.2022  
Date of hearing 15.11.2024  
Date of Decision 15.11.2024

**Mrs. Naveeda Gul** D/o Afzal Khan, Ex-PST, R/o Akhunzada, Shulgara,  
P/o Charsadda, Tehsil & District Charsadda.....**Appellant**

Versus

1. The Government of Khyber Pakhtunkhwa through Secretary (E&SE) Department, Khyber Pakhtunkhwa, Peshawar.
2. The Director of (E&SE) Department, Khyber Pakhtunkhwa, Peshawar.
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.....(**Respondents**)

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**APPEAL UNDER SECTION 4 OF THE KHYBER  
PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974  
AGAINST THE INACTION OF THE RESPONDENTS BY  
NOT MAKING PAY FIXATION OF THE APPELLANT  
W.E.F 12.03.2000.**


**PRESENT**

1. Mr. Noor Muhammad Khattak, Advocate.....For appellant.
2. Mr. Muhammad Jan, District Attorney .....For 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
<b>Total</b>	<b>Rs. Nil</b>	<b>Total</b>	<b>Rs. Nil</b>

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 15<sup>th</sup> day of November 2024.

  
**Aurangzeb Khattak** 15/11  
Member (Judicial) 2024 -



  
**Kalim Arshad Khan**  
Chairman



**KHYBER PAKHTUNKHWA SERVICE TRIBUNAL**

Service Appeal No. 1610 of 2022

Mrs. Naveeda Gul versus The Government of Khyber Pakhtunkhwa through Secretary (E&SE) Department, Khyber Pakhtunkhwa, Peshawar and others.

S.No. of Order & Date of proceeding	<b>Order or other proceedings with signature of Chairman/Member(s)/Registrar and that of parties or counsel where necessary</b>
<p>Order-22 15<sup>th</sup> November, 2024.</p>	<p>Present:</p> <ol style="list-style-type: none"><li>1. Mr. Noor Muhammad Khattak, Advocate on behalf of appellant.</li><li>2. Mr. Muhammad Jan, District Attorney, on behalf of respondents.</li><li>3. Arguments heard and record perused.</li><li>4. Vide our detailed judgment of today placed on file, the appellant claim for pay protection/pay fixation, deemed devoid of merit, hence the appeal in hand is dismissed. Parties are left to bear their own costs. File be consigned to the record room.</li><li>5. <i>Pronounced in open Court at Peshawar and given under our hands and the seal of the Tribunal on this 15<sup>th</sup> day of November, 2024.</i></li></ol> <p style="text-align: center;"> (Aurangzeb Khattak) 15-11-2024. Member (Judicial)</p> <p style="text-align: center;"> (Kalim Arshad Khan) Chairman</p> <p>*Naeem Amin*</p>