

JUDGMENT SHEET  
IN THE PESHAWAR HIGH COURT,  
MINGORA BENCH (DAR-UL-QAZA), SWAT  
(Judicial Department)

**W.P No.833-M/2018**

*Inayat Khan son of Khan Shahzada resident of Godar Tehsil Adenzai,  
District Dir Lower Dir (retired as Office Assistant from  
FEF).....Petitioner.*

*Versus*

*Government of Khyber Pakhtunkhwa through Secretary Frontier  
Education Foundation (FEF) Khyber Pakhtunkhwa at Peshawar and  
others.....Respondents.*

**Present:** *Syed Abdul Haq, Advocate for Petitioner.*

*Mr. Haq Nawaz Khan, A.A.G for official Respondents.*

*Mr. Zartaj Anwar, Advocate for Respondent/ FEF through  
Video Link.*

**Date of hearing:** 14.02.2023.

**JUDGMENT**

**MUHAMMAD NAEEM ANWAR, J.-** By invoking the constitutional jurisdiction of this Court under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973, through instant petition, the petitioner seeks issuance of a writ to respondents directing them to count the period of his employment w.e.f. 16.08.2002 i.e., the date of his appointment as Naib Qasid, on contract basis, followed by his regularization w.e.f. 01.08.2013 and thereafter retired, towards his pensionary benefits in consonance with Article 371-A of Civil Service Regulations (C.S.R), Pension Rules, and in pursuit of the desired writ, it was averred that he was appointed as Naib Qasid in the Frontier Education Foundation (F.E.F) Girls Degree College, Chakdara on contract basis on 16.08.2002 and thereafter was promoted to the post of Office Assistant (BPS-14) and his contractual employment was followed his regularization being based upon

the approval of the Board of Directors of F.E.F in the meeting dated 25<sup>th</sup> July, 2013 in consonance with the judgment of the Hon'ble Supreme Court of Pakistan dated 08.07.2013, the petitioner alongwith others were regularized through office order bearing No.FEF/Academics/Regularization/2013 dated 30.08.2013 w.e.f. 01.08.2013, and thereafter, he has been retired as Office Assistant (BPS-14) on superannuation w.e.f. 01.4.2018 vide office order dated 15.03.2018.

2. When put on notice, respondents No.2, 3 & 5 submitted their parawise comments/reply to the instant petition, by controverting the contents of the petition pertaining to prayer of the petitioner and resisted the issuance of the writ in his favour on different legal and factual objections. It was negated by the respondents that the petitioner was promoted as office Assistant (BPS-14), however, the factum of his regularization alongwith others was not denied by them. It was contended by the respondents in their comments that the case of the petitioner, being the employees of respondents No.2, 3 & 5, shall be dealt with in accordance with the Khyber Pakhtunkhwa Education Foundation, Financial Rules, 2008, where rule 7 pertains to pay, allowances and increments for regular employees, while its rule 8 relates to pay and allowances for contract employees. It was averred by them that the case of the petitioner neither falls under rule 7 nor rule 8 of the *ibid* Rules, as such, the petitioner is not entitled for any relief.

3. Submissions of learned counsel for the parties heard and with their able assistance record of the case was gone through.

4. It is not disputed that the petitioner was the employee of respondents No.2, 3 & 5, being appointed on contract basis on 16.08.2002, regularized w.e.f. 01.8.2013 and thereafter retired on attaining the age of superannuation through order dated 15.03.2018 w.e.f. 01.4.2018. Insofar as the submission of the petitioner pertaining to Article 371-A of C.S.R is concerned, for sake of convenience, same is reproduced as under:

**371-A. Notwithstanding anything contained in the Articles 355 (b), 361, 368, 370 and 371 of these Regularizations, temporary and officiating service in the case of Government Servants who retired on after the 1<sup>st</sup> January, 1949 or who joined service thereafter, shall count for pension according to the following rules:**

- i. Government servants borne on temporary establishments who have rendered more than 5 years continuous temporary service shall count such service for the purpose of pension or gratuity excluding broken periods of temporary service, if any, rendered previously, and
- ii. Continuous temporary and officiating services of less than five years immediately followed by confirmation shall also count for gratuity or pension, as the case may be."

Likewise, rule 2.3 of the West Pakistan Civil Service Pension Rules, 1963 is the verbatim of Article 371-A of C.S.R, which is hereby reproduced as under:

**"2.3 Temporary and officiating service - Temporary and officiating service shall count for pension as indicated below:**  
**(i) Government servants borne on temporary**

establishment who have rendered more than five years continuous temporary service shall count such service for the purpose of pension or gratuity; and  
(ii) temporary and officiating service followed by confirmation shall also count for pension or gratuity.”

Insofar as the submission of learned counsel for the petitioner, while making reference of C.S.R and Pension Rules, that if a person remained in service on contract or work charge basis, followed by his regularization, the period for which, he remained on contract, shall be counted towards his pensionary benefits is concerned, no doubt, the service rendered by an employee on contract basis (as in the instant case) could be counted for pensionary benefits but it does not mean that it shall be added to make the deficiency good towards completion of qualifying service for pension, which is *sine qua non* for holding an employee entitled for pensionary benefits. The service rendered on contract followed by regularization could only be counted for pensionary benefits provided he has had qualifying service of ten years at his credit. For the first time, the issue for the purpose of counting of service rendered on contract side followed by regular employment was considered by the three members Bench of the apex Court in the case of “Mir Ahmad Khan Vs. Secretary to Government and others” (1997 SCMR 1477), wherein it was held that:

“Admittedly, the appellant put in more than ten years' temporary service before his services were terminated, he was, therefore, entitled to pensionary benefits under

Regulation 371-A(i) of Civil Service Regulations. It appears that this provision of the Civil Service Regulation was not cited before the Tribunal otherwise the observation to the contrary could not have been made in the impugned judgment. Resultantly, the appellant and similarly placed other employees of the Afghan Refugees Organization, being Government civil servants, are held entitled to pensionary benefits if 'their cases are covered by Regulation No. 371-A of Civil Service Regulations. We allow this appeal, set aside the impugned judgment of the Federal Service Tribunal with no order as to costs.

Later on, in the case of "Chairman Pakistan railway Government of Pakistan Islamabad and others Vs. Shah Jehan Shah" (PLD 2016 SC 534), the Larger Bench of the Hon'ble Supreme Court interpreted Article 371-A of C.S.R has held that:

"In other words, Article 371-A cannot be used as a tool to bypass the conditions for qualifying service of pensionary benefits, and such government servant has to fulfill the minimum number of years for grant of pension. This is due to the use of the word "count" as opposed to "qualify" or "eligible", as rightly argued by the learned counsel for the appellant. As per the settled rules of interpretation, when a word has not been defined in the statute, the ordinary dictionary meaning is to be looked at. Chambers 21<sup>st</sup> Dictionary defines "count" as "to find the total amount of (items), by adding up item by item; to include". Oxford Advanced Learner's Dictionary of Current English (7th Ed.) defines "count" as "to calculate the total number, of people, things, etc. in a particular group; in include sb/sth when you calculate a total; to consider sb/sth in a particular way; to be considered in a particular way."

In para 8 of the judgement in the case (*supra*) it was held that:

8. Adverting to the law laid down in the case of Mir Ahmad Khan (supra) wherein it was held:-

"Admittedly the appellant put in more than ten years' temporary service before his services were terminated he was, therefore, entitled to pensionary benefits under Regulation 371-A(i) of Civil Service Regulations."

In light of the discussion in paragraph No.6, the judgment delivered in Mir Ahmad Khan's case (supra) is declared to be per incuriam.

5. No doubt, there is a judgment of the Larger Bench of this Court, wherein this Court, while interpreting Article 371-A of C.S.R in juxtaposition with the principle laid down by the apex Court in the case of "Muhammad Nawaz, Special Secretary Cabinet Division through his legal heirs vs. Ministry of Finance Government of Pakistan through its Secretary Islamabad (1991 SCMR 1192)", has held that the services rendered on contract followed by regularization shall be counted for entitlement of the pensionary benefits. But the matter pertains to interpretation of Article 371-A of C.S.R, as reproduced above, has been put to rest by the Hon'ble supreme Court in the case of "Chairman Pakistan railway Government of Pakistan Islamabad and others". Thus, the counting of service temporary or contractual for pensionary benefits, could not be interpreted in a manner, which tantamount to complete the qualifying service of ten year which is otherwise essential for pensionary benefits. The word 'add' and 'count' are neither synonym nor antonym of each other rather both are intransitive nouns have its own meaning. Recently, in the case of "Ministry of Finance through Secretary

and others Vs. Syed Afroz Akhtar Rizvi and others” (2021

SCMR 1546), it was held by the apex Court that:

“In case, an employee had served a government department for the duration of the period qualifying him to receive pension, the period spent as a contractual employee may be added to his regular qualifying service only and only for the purpose of calculating his pension and for no other purpose. The provisions of Article 371-A of Civil Service Regulations (C.S.R.) started with a non obstante clause which meant that the said Article did not relate to the question entitlement or eligibility to receive pension. It was clearly and obviously restricted to counting the period of a minimum of five years which had been rendered by a temporary contractual employee to be taken into account with the object of calculating the quantum of his pension and not more. The non-obstante clause in Article 371-A of C.S.R. did not allow those who did not fulfill the requisite conditions for qualifying for pension to bypass such conditions and add up regular and contractual periods of employment for the purpose of meeting the eligibility criterion of ten years of service. Such an interpretation would create absurd situations and would render other provisions and Articles of C.S.R. redundant, unnecessary and surplus. Therefore, Article 371 of C.S.R. did not allow Government Servants rendering temporary service in a temporary establishment for more than 5 years to be entitled for grant of pension rather such period could be counted towards calculation of pension only if otherwise entitled to pension by meeting the criteria of qualifying service.”

6. Being based upon the interpretation of Article 371-A of C.S.R made by the apex Court; it is concluded that the service rendered on contract followed by regularization could only be counted for pensionary benefits provided the civil servant has completed qualifying ten years’ service independently. Thus, the

contention of learned counsel for petitioner for addition of service of the petitioner rendered on contractual side in the service rendered by him after his regularization for pensionary benefits is misconceived.

7. Turning to the other limb and significant aspect of the instant matter, where it is an admitted position that the petitioner was the employee of respondents No.2, 3 & 5 i.e., Frontier Education Foundation, the employees whereof are dealt with by the Khyber Pakhtunkhwa Education Foundation Financial Rules, 2008 where-under, rules 7 & 8 pertain to pay, allowances and increments of regular as well as pay and allowances for contract employees. According to rule 7 of the *ibid* Rules of 2008, if an employee of foundation has completed minimum 10 years continuous service is held entitled for pay, allowances and increments including other fringe benefits of a regular employee as admissible to a civil servant, if otherwise not defined in these rules or prescribed by the Board, however, a regular employee shall be entitled for the special bonus as per the schedule after completion of minimum ten years of continuous service in the manner i.e., "last pay x 4 x service length". As the petitioner has not completed 10 years as regular employment being regularized w.e.f. 01.08.2013 and got retired w.e.f. 01.04.2018, therefore, rule 7 *ibid* is not applicable to the case of the petitioner. Rule 8 *ibid* pertains to pay and allowances for a contract employee, where a contract employee who has completed 10 years of



minimum service would be entitled for special bonus as per the formula i.e., last pay x 2 x service length. The petitioner was appointed as Naib Qasid on 16.08.2002 and he was regularized on 01.08.2013, as such, he has completed 10 years contract employment of the foundation, therefore, he would be entitled for special bonus in accordance with rule 8 of the Khyber Pakhtunkhwa Education Foundation Financial Rules, 2008 framed in consonance with section 17 of Khyber Pakhtunkhwa Education Foundation Act, 1992 (Khyber Pakhtunkhwa Act No. III of 1992). Though, learned counsel for the respondents submitted at the bar that total length of the service of the petitioner on contract is less than 10 years, however, his submission is not supported by the record.

8. Thus, for the reasons discussed above, it is held that the petitioner is entitled for special bonus on completion of 10 years minimum service on contract side being employee of the respondents as provided under rule 8 of the Khyber Pakhtunkhwa Education Foundation Financial Rules of 2008 and he shall be paid same in accordance with the criteria as provided in the Rules.

9. This petition is disposed of accordingly.

Announced.  
14.02.2023.

  
JUDGE

  
JUDGE

23/2/2023  
Sabz Ali\* (D.B)

HON'BLE MR. JUSTICE MUHAMMAD NAEEM ANWAR  
HON'BLE MR. JUSTICE MUHAMMAD IJAZ KHAN