

SUPREME COURT OF PAKISTAN

(Appellate Jurisdiction)

Present:

Mr. Justice Shakeel Ahmad

Mr. Justice Ishtiaq Ibrahim

Civil Petition No. 50-P of 2022

(Against the judgment dated 07.12.2021, passed by the Khyber Pakhtunkhwa Service Tribunal, Peshawar, Camp Court, Swat in Service Appeal No. 1496/2019)

Government of Khyber Pakhtunkhwa through
Secretary Population Welfare, Department &
others

...Petitioner(s)

Versus

Mst. Bacha Jehan

...Respondent(s)

For the Petitioner(s) : Mr. Naseer ud Din Shah, Addl. AG,
Khyber Pakhtunkhwa alongwith
Ahmad Yar Khan, AD (Legal),
Population Welfare

For the Respondent(s) : Ms. Mehnaz, ASC alongwith
respondent in person.

Date of Hearing : 30.07.2026

ORDER

SHAKEEL AHMAD, J.- Leave is sought against the judgment dated 07.12.2021 (***“impugned judgment”***), passed by the Khyber Pakhtunkhwa Service Tribunal, Peshawar, Camp Court, Swat (***“Tribunal”***), whereby the Service Appeal filed by the respondent was allowed and the order, through which her resignation was accepted, was converted into retirement entitling her to pensionary benefits.

2. Heard both sides and record gone through.

3. Before examining the rival submissions advanced by the learned counsel for the parties, it is necessary to consider the scope of the Tribunal's statutory powers and the legality of its decision declaring the respondent's resignation to be invalid while simultaneously converting it into retirement so as to confer pensionary benefits. Two distinct questions arise for determination: (i) whether the alleged resignation was genuine, voluntary and legally valid; and (ii) whether, upon holding the resignation to be invalid, the Tribunal was competent to convert it into retirement solely for the purpose of extending pensionary benefits. In our considered view, unless the governing service law expressly confers such power, the Tribunal cannot, on equitable considerations alone, substitute one legally recognized mode of cessation of service for another. Where an employee specifically denies having tendered a resignation,

particularly where the employee is an illiterate person, the burden squarely rests upon the department to establish that the resignation was voluntarily executed, that the employee understood its contents and legal consequences, that it was free from coercion, fraud or misrepresentation, and that it was accepted strictly in accordance with the applicable service law and rules. Failure to discharge this burden renders the resignation void *ab initio*. The legal consequence of such invalidity is that the employee is deemed to have continued in service in the eye of law until her services are lawfully terminated by retirement, dismissal, removal or any other mode recognized by law.

4. Retirement and resignation are juristically distinct modes of cessation of service and cannot be treated as interchangeable. Resignation is a voluntary relinquishment of office by the employee, whereas retirement takes place only in the manner prescribed by the applicable service law, whether upon attaining the age of superannuation or through voluntary retirement where the relevant rules so permit. Mere completion of the qualifying period of service for pension does not, by itself, entitle an employee to be treated as retired, nor does it transform an otherwise invalid resignation into retirement. The powers of the Tribunal under Section 7 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974, are essentially appellate in nature. It may set aside an unlawful order, direct reinstatement, remand the matter, modify the penalty imposed, or grant such consequential relief as the law permits. However, in the absence of express statutory authority, it cannot create a legal fiction by converting a resignation into retirement solely to enable an employee to receive pensionary benefits. It is true that exceptional circumstances may justify moulding the relief. For instance, where the employee has attained the age of superannuation during the pendency of the proceedings, reinstatement has become impracticable owing to the passage of time, or the parties have lawfully agreed upon a settlement regarding pensionary benefits, the Tribunal may, after declaring the resignation invalid, treat the employee as having continued in service until the date of superannuation and grant all consequential service and pensionary benefits in accordance with law. Such relief, however, is predicated upon the legal fiction that the employee remained in service because

the resignation was void, and not upon the mere fact that the employee had completed the minimum qualifying service for pension. In the present case, the Tribunal converted the respondent's resignation into retirement solely on the ground that she had rendered more than ten years' qualifying service. It neither found that she had attained the age of superannuation nor that she had otherwise become entitled to retire under the applicable service rules. Such an approach is legally unsustainable. Had the Tribunal first held the resignation to be invalid and, upon finding that the respondent had subsequently reached the age of superannuation during the pendency of the proceedings, treated her as having remained in service until that date with all consequential benefits, the matter might have stood on an altogether different footing. That, however, is not the case before us.

5. For the foregoing reasons, this petition is converted into an appeal and is partly allowed. The impugned judgment of the Tribunal is set aside to the extent that it converts the respondent's resignation into retirement and thereby entitles her to pensionary benefits. However, the finding of the Tribunal declaring the respondent's resignation to be invalid is maintained. Consequently, the petitioners are directed to treat the respondent as having continued in service from the date of the purported resignation and to extend to her all consequential service benefits in accordance with law. Furthermore, the respondent is at liberty to seek appropriate remedy for invalid pension on account of her poor health, if so desired. No order as to costs.

Peshawar
30th July, 2026
Zia/ *

"Approved for reporting"