#### BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR.

#### Appeal No. 372/2016

Date of Institution... 06.04.2016Date of Decision... 27.08.2019

Mst. Nazia Qazi daughter of Muhammad Akbar resident of Village Yaqubi Tehsil Lahore District Swabi, Ex-PST Teachger GPS Razi Bahadar Kotay Yaqoobi Swabi. ... (Appellant)

#### VERSUS

The Director (E&SE), Khyber Pakhtunkhwa, Peshawar and five others.

... (Respondents)

Present:

MR. YAQOOB KHAN, Advocate

MR. KABIRULLAH KHATTAK, Additional Advocate General

- For appellant.

-- For respondents.

MR. AHMAD HASSAN, MR. MUHAMMAD HAMID MUGHAL - MEMBER(Executive) - MEMBER(Judicial)

#### JUDGMENT

AHMAD HASSAN, MEMBER:- Arguments of the learned counsel for the parties heard and record perused.

ARGUMENTS

02. Learned counsel for the appellant argued that after observance of all codal formalities, she was appointed as PST in District, Kohistan vide order dated 07.12.2008. As she possessed the domicile of District wabi, therefore, through order dated 20.09.2011, she was posted in District Swabi and started performing duty. After putting in nine years service, she was removed from service vide order dated 22.10.2015 issued by respondent no.3. Feeling aggrieved, she tiled departmental appeal on 20.12.2015, which remained unanswered, hence, the present service appeal. Impugned order was not served on the appellant and subsequently, obtained through personal efforts. It was issued without fulfillment of requirement laid down in the relevant rules thus was arbitrary, illegal and unlawful. The appellant was denied the opportunity of defense. Reliance was placed judgment of this Tribunal dated 22.03.2019 passed in service appeal no. 716/2016, whereby a case of similar nature was referred to the respondents to conduct de-novo enquiry.

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03. Learned Addl: Advocate General: that she was illegally appointed and when the matter came to the notice of respondents the then DEO, Kohistan was directed to conduct enquiry. Enquiry report confirmed that her appointment was not in the prescribed manner laid down in the rules thus the same was illegal. On the basis of the said enquiry major penalty of removal from service was imposed on the appellant and other teachers. All codal formalities were observed before passing the impugned order.

#### CONCLUSION

04. The stance of the appellant about her regular appointment vide order dated 07.12.2008 and subsequent transfer to District Swabi through order dated 20.09.2011 was vehemently opposed by the respondents. They leveled allegations of serious irregularities in the appointment process which was confirmed on the basis of enquiry conducted by the then DEO, Kohistan. Enquiry report revealed that her appointment was illegal and made in utter disregard to the laid down criteria. As a sequel to enquiry report major penalty of removal from service was awarded to the appellant vide order dated 22.10.2015 issued by respondent no.3.

05. We will not dispute that the respondents had every right to probe into the irregularities that surfaced during the appointment of the appellant. However, they made a serious mistake by conducting fact finding enquiry that has no legal sanctity and any penalty awarded on the basis of such enquiry is not sustainable in the eyes of law. In order to award punishment to a civil servant he was required to be proceeded under E&D Rules 2011. Needless to point out that in the enquiry in question, the appellant was not associated with the proceedings thus condemned unheard. The only saner course left with the respondents is to conduct enquiry in accordance with the spirit of E&D Rules 2011 and thereafter may pass any order as deemed appropriate. The principle of consistency also demands that the case of the appellant be dealt with as per judgment of this Tribunal dated 22.01.2019 and 22.03.2019, as similar question of facts and law are involved.

06. As a sequel to the above, the instant appeal is accepted, impugned order dated 22.10.2015 is set aside. The respondents are directed to conduct de-novo enquiry strictly in accordance with law and rules. Parties are left to bear their own costs. File be consigned to the record room.

AHMAD HASSAN) MEMBER

(MUHAMMAD HAMID MUGHAL) MEMBER

<u>ANNOUNCED</u> 27.08.2019 <u>Order</u>

27.08.2019

Appellant with counsel present, Addl: AG for respondents present. Arguments heard and record perused.

Vide our detailed judgment of today of this Tribunal placed on file, the instant appeal is accepted, impugned order dated 22.10.2015 is set aside. The respondents are directed to conduct denovo enquiry strictly in accordance with law and rules. Parties are left to bear their own cost. File be consigned to the record room.

Announced: 27.08.2019 Ahmad Hassan) Member (Muhammad Hamid Mughal) Member

22.03.2019

Counsel for the appellant and Addl: AG for the respondents present.

Due to paucity of time, instant matter is adjourned to 14.05.2019 before the D.B.

Member

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14.05.2019

None for the appellant present. Addl: AG alongwith Mr. Muhammad Sadique, ADO and Mr. Abdul Ghaffar, Supdt for respondents present. Adjourned to 04.07.2019 for arguments before D.B.

(Ahmad Hassan) Member

(M. Amin Khan Kundi) Member

04.07.2019

None present on behalf of the appellant. Mr. Muhammad Jan learned Deputy District Attorney alongwith Ashraf DEO for the respondents present. Notice be issued to the appellant and his counsel for attendance on the next date of hearing. Adjourned. To come up arguments on 27.08.2019 before D.B.

(Hussain Shah) Member

(M. Amin Khan Kundi) Member Member

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30.01.2019

Learned counsel for the appellant and Mr. Kabir Ullah Khattak learned Additional Advocate General present. Learned counsel for the appellant seeks adjournment. Adjourn. To come up for arguments on 01.02.2019 before D.B.

Member

01.02.2019

Learned counsel for the appellant and Mr. Kabirullah Khattak learned Additional Advocate General for the respondents present. Learned counsel for the appellant requested for adjournment. Adjourned. To come up for arguments on 13.02.2019 before D.B.

Member

Member

13.02.2019

Learned counsel for the appellant and Mr. Kabirullah Khattak learned Additional Advocate General for the respondents present. Learned counsel for the appellant requested for adjournment Adjourned. To come up for arguments on 22.03.2019 before D.B.

(Hussaln Shah) Member

mad Amin Khan Kund)) Member

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#### 13.09.2018

Learned counsel for the appellant and Mr. Muhammad Jan Learned Deputy District Attorney for the respondents present. Learned counsel for the appellant seeks adjournment. Adjourned. To come up for arguments on 30.10.2018 before D.B



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(Muhammad Hamid Mughal) Member

#### 30.10.2018

Due to retirement of Hon'ble Chairman, the Tribunal is incomplete. Therefore, the case is adjourned. To come up for the same on 07.12.2018.

07.12.2018

Counsel for the appellant present. Mr. Ziaullah, Deputy District Attorney for the respondents present. It was pointed out by the learned Deputy District Attorney that similar nature cases are fixed on 20.12.2018 therefore, requested that the instant case may also be fixed on the said date. Request is accepted. Case to come up for arguments on 20.12.2018 before D.B.

(Ahmad Hassan) Member

(M. Amin Khan Kundi) Member

20.12.2018

None present on behalf of the appellant. Mr. Kabirullah Khattak, Additional AG for the respondents present. Adjourned. To come up for arguments on 30.01.2019 before D.B.

(Hussain Shah) Member

(Muhammad Amin Khan Kundi) Member 10.01.2018

Husband of the appellant and Asst: AG along with Jamshid Khan ADO for respondents present. Husband of the appellant requested for adjournment as the counsel is not available. Adjourned. To come up for arguments on 06.03.2018 before D.B.

(Ahmad Hassan) Member(E)

mid Mughal) (M. Ha Member (J)

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06.03.2018

Clerk to counsel for the appellant and Mr. Muhammad Jan, Learned Deputy District Attorney for the respondents present. As similar nature case has been adjourned so the same is also adjourned. To come up for arguments on 09.05.2018 before D.B

(Muhammad Amin Kundi) Member

STATES STATES

(Muhammad Hamid Mughal) Member

09.05.2018

Due to retirement of the worthy Chairman, the Tribunal is incomplete, therefore the case is adjourned. To come up for same on 19.07.2018.

19.07.2018

Learned counsel for the appellant and Mr. Zia Ullah learned Deputy District Attorney present. Learned counsel for the appellant seeks adjournment. Adjourned. To come up for arguments on 13.09.2018 before D.B

(Ahmad Hassan) Member

(Muhammad Hamid Mughal) Member

#### 27.03.2017

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Appellant in person and Assistant AG for respondents present. Appellant submitted rejoinder and requested for adjournment as his counsel is not available today. Adjourned for final hearing to 19.07.2017 before D.B.

Chairman

19.07.2017

Mr. Muhammad Arif, husband of the appellant, on behalf of the appellant present. Mr. Muhammad Adeel Butt, Additional AG for the respondents also present. Due to strike of the bar learned counsel for the appellant is not available today. Adjourned. To come up for arguments on 15.11.2017 before D.B.

(Gul Zeb/Khan) Member

(Muhammad Amin Khan Kundi) Member

14.11.2017

Mr. Muhammad Arif, husband of the appellant and Mr. Ziaullah, DDA alongwith Mr. Jamshaid Khan, ADO for respondents present. Learned DDA stated that similar nature of appeal has already been fixed before D.B on 10.01.2018, therefore the same may also be clubbed with the said appeal. To come up for arguments on 10.01.2018 before D.B alongwith connected appeal.

(Muhammad Hamid Mughal) Member

(Ahmad Hassan) Member

# 27.10.2016

27.12.2016

Husband of the appellant and Mr. Sajjad Ahmad, ADO alongwith Addl. AG for respondents present. Written reply submitted by respondents No. 1, 2, 5, and 6 while respondent No. 3 rely on the same. Written reply not submitted by respondent No. 4. To come up for written reply of respondent No. 4 on 27.12/016 before S.B.

None for the appellant present. Asst: AG for respondents present. Written reply on behalf of respondent No.4 not submitted. Request for further time. Last opportunity granted to respondent No.4. To come up for written reply of respondent No.4 on 01.02.2017.

#### 01.02.2017

Counsel for the appellant and Addl. AG for the respondents present. Written reply by respondents No. 1, 2, 5 and 6 have already been submitted. Learned Addl. AG relies on the same on behalf of respondent No. 4. The appeal is assigned to D.B for rejoinder and final hearing for 27.03.2017.

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Para 1

Chairman

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#### 20.05.2016

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Counsel for the appellant present. Preliminary arguments heard and case file perused. Through the instant appeal, the appellant has impugned order dated 22.10.2015 vide which the appellant was removed from service with immediate effect. Against the impugned order appellant filed a departmental appeal which was not responded within statutory period hence, the instant service appeal.

Since the appellant has been removed from service and the matter pertains to terms and conditions of service of the appellant and the appeal is in hand also within time, therefore the same is admitted for regular hearing subject to deposit of security and process fee within 10 days, notices be issued to the respondents for written reply/comments for 09.08.2016 before S.B.

Member

#### 09.08.2016

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Clerk to counsel for the appellant and Addl: AG for respondents present. Written reply not submitted. Requested for adjournment. To come up for written reply/comments on 27.10.2016.

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# Form- A

# FORM OF ORDER SHEET

Court of 372/2016 Case No Order or other proceedings with signature of judge or Magistrate S.No<sup>i</sup>. Date of order Proceedings 2 3 1 06.04.2016 1 The appeal of Mst. Nazia Qazi PST presented today by Mr. Yaqoob Khan Advocate may be entered in the Institution Register and put up to the Worthy Chairman for proper order please. 11-04-2016 2 This case is entrusted to S. Bench for preliminary hearing to be put up thereon 13.4.16СНА None present for the appellant. The appeal be relisted 3.4.2016 To come up for preliminary hearing on 28.04.2016. Chaiman 28.4.2016 appellant present. Husband the Seeks of adjournment due to strike of the bar. Adjourned for preliminary hearing to 20.5.2016 before S.B. Charman

Before The Service Tribunal KPK Peshawar

Appeal No. 379-12016

Mst. Nazia Qazi

.....Appellant

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#### VERSUS

Director of Education etc

.....Respondents

#### SERVICE APPEAL

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3	Copy of corrigendum & Domicile	<i>"B"</i>	9	10
4	Copy of the transfer order	" <i>C</i> "	_	11
5	Copy of charge report	"D"	••••	12
6	Copy of service book & LPC	" <i>E</i> "	13	16
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Appellant, Mizia Mst. Nazia Qazi

fr. oyv Trough counsel

Yaqoob Khan advocate High Court at Distr. courts Mardan.

Dated 04/04/2016

# Before The Hon'able Service Tribunal of KPK at Peshawar

Appeal No. 372 /2016

Mst. Nazia Qazi daughter of Muhammad Akbar resident of village Yaqubi Tehsil Lahore District Swabi, Ex; PST Teacher GPS Razi Bahadar Kotay Yaqoobi Swabi

#### VERSUS

1. Director (E & SE) KPK Peshawar.

2. D.E.O (Female) Kohistan

3. D.E.O (Female) Swabi

4. District Account Officer Swabi

5. District Account Officer Kohistan.

Appeal U/S-4 of the Service Tribunal Act 1974, against order of respondent No.1 dated 22/10/2015 & order of respondent No.2 dated 22/10/2015, whereby appellant is removed from service without any reason, which is illegal, against law d facts.

#### **Respectfully Sheweth;**

# 6/4/16

#### Appellant humbly submits as under

- *I*. That appellant is lady by her very personal status and is parda nasheen lady and employee of respondent department.
- That respondents have advertized the post of PST for which appellant has properly applied and after completion of all codal formalities, appellant was appointed as a PST Teacher in District Kohistan vide order dated 07/12/2008. (Copy of appointment order is attached as Annex: "A").

- 3. That after appointment of appellant is said education department, her academic and Domicile certificate were verified through proper channel.
- 4. That after verification of documents, a corrigendum was issued regarding amendment that please read the resident of Miss Nazia Qazi District wabi instead of Komila vide order dated 09/12/2010. (Copy of corrigendum & Domicile are attached as Anne: "B").
- 5. That appellant being resident of District swabi, appellant filed an application for adjustment/ transfer from District Kohistan to District Swabi, which was allowed and appellant was transferred from District Kohistan to District Swabi as a PST Teacher in FFPS Razi Bahadar Kotey District Swabi vide order dated 20/09/2011 after completion of all codal formalities through proper channel. (Copy of the transfer order is attached as Anenx: "C").
- 6. That appellant has relieved her charge of PST Teacher in FFPS Barsmeen Kohistan and taken over charge in GGPS Razi Bahadar Kotey District Swabi vide charge report dated 20/09/2011. (Copy of charge report is attached as Annex: "D").
- 7. That respondent No.2 has issued LPC and service book to the appellant, which deposited with D.E.O (Female)
  Swabi. (Copy of service book & LPC are attached as Annex: "E").
- 8. That District Account officer Swabi has written a memo to the District Accountant officer Kohistan along with service book and LPC for verification, which they properly scrutinized/ verified and returned to District Account Officer Swabi after proper verification vide letter dated 28/11/2008. (Copy of letters are attached as Annex: "F").

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D. That after proper cheicking / verification of LPC & service book of appellant, they were paid her salaries to the appellant update. (Copy of cheque slip of pay is attached as Annex: "G").

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- 10. That appellant has performed 9x years her duty with entire satisfaction of her superior and no complaint has been received against appellant.
- 11. That after 9x years of her service, respondent No.1 has withdrawn the transfer order of appellant dated 20/09/2011 after 3x years vide order dated 22/10/2015, which is illegal, against law and facts. (Copy of order dated 22/10/2015 is attached as Annex: "H").
- 12. That appellant is removed from service without any reason and without initiating any disciplinary proceedings, vide impugned order dated 22/10/2015, which is illegal, against law and facts. (Copy of the impugned order dated 22/10/2015 is attached as Annex: "I").
- 13. That appellant preferred an appeal dated 20/12/2015 against the impugned order before respondent No.1 but in vain. (Copy of departmental appeal is attached as Annex: "J").
- 14. That respondents have not submitted impugned order dated 22/10/2015 to the appellant but she received on her own efforts on 23/11/2015, filed department appeal before respondent No.1 on 20/12/2015 hence appeal of the appellant is within time.
- 15. That impugned order of respondent No.1 dated 22/10/2015 and order of respondent No.2 dated 22/10/2015 are illegal, against law and facts on the following grounds:-

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#### GROUNDS

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A. That orders of respondents are illegal, against law and facts and without lawful authority.

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- B. That after giving proper verification of documents of appellant by respondents, then respondents has no power to declare the appointment of appellant is illegal/ irregular, therefore order of respondents are void abinitio and illegal , against law and facts hence, liable to be set aside.
- C. That respondent No.1 has issued a transfer order of appellant from District Kohistan to District Swabi after proper checking and verification of documents of appellant, and respondent No.1 has got no power to withdraw the transfer order of appellant after 3x years.
- D. That appellant has performed years her service with entire satisfaction of her superior, thereafter respondents have no power to remove the appellant from her service because locus potential is applicable to instant case.
- E. That orders of respondents are illegal, against taw and facts.
- F. That no specific charge has been proved against appellant.
- G. That neither regular inquiry has been conducted nor any opportunity for personal hearing has been given to the appellant, which is mandatory for imposition of major penalty.
- H. That appellant cannot be victimized/ punished for no fault on their part.
- I. That the impugned order is arbitrary, illegal, unlawful and void abinitio having no effect on the right of the appellant.
- J. That it is well settled proposition of law that where nature of charges in a departmental inquiry is such that the issues could not be proved without according statements of witnesses, then holding of a regular inquiry thorough an

inquiry officer cannot be dispensed with. On this reliance is place on the following verdicts of the superior courts:-

$\checkmark$	SMCR	2004	P-316
√	PLC	2004	P-524 (CS)
	PLC		P-57
	SCMR		P-1566
$\checkmark$	SCMR	2000	P-1321 & 1868
	PLC		P-1717(CS)
$\checkmark$	SCMR	1993	P-603

In the instant case also the nature of the charge attributed to the petitioner was such that the same could only be proved by according statements of witnesses through a full-fledged inquiry. The impugned order passed without holding regular inquiry is therefore violative of the law laid down by the August Supreme court of Pakistan as well as this Hon'able court as referred to above and is therefore, liable to be set aside on this score along.

- K That order of respondent No.3 illegal, against law and facts and without law full authority, hence not tenable and liable to be set aside.
- L That neither show cause notice nor charge sheet along with statement of allegations nor opportunity of personal hearing has been given to the appellant, therefore, solely on this ground order of respondent No.3 is liable to be set aside.
- M That no any regular inquiry has been conducted against appellant by respondent No.3 as competent authority.
- N That appellant has at his credit 12 years of unblemished record of service and no complaint, whatsoever, has been received from any person against the appellant.
- O That all the proceedings initiated/ conducted and concluded are without lawful authority, unauthorized officer and at back of the appellant because appellant was

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in jail during the concluding of proceedings, hence order of respondent No.3 is not tenable but liable to be set aside.

P That the punishment as imposed upon the appellant is too harsh keeping in view the unblemished service record of the appellant.

Q That appellant seeks permission of this August Tribunal to agitate additional grounds at the time of hearing.

It is, therefore, humbly prayed that on acceptance of this appeal, orders of respondent No.1 dated 22/10/2015 and order of respondent No.2 dated 22/10/2015 may please be set aside and appellant may please be re-instated in service at her post with all back benefit. Any other relief deemed fit may also be graciously awarded.

Appellant, Mst. Nazla Oazi

Trough counsel Yaqoob Khan cate High Court at Distt: courts Mardan.

#### Dated 04/04/2016

#### AFFIDAVIT

I, do hereby solemnly affirm and declare on oath that all the contents of the appeal mentioned above are true and correct to the best of my knowledge and belief and noting has been concealed from this Hon'able court.

Advocate



04-7-2016

Before The Hon'ble Khyber Pakhtunkhwa Bakhtukhwa Service Tribunal, Peshawar. Service Tribunal Diary No. 690

Service Appeal No 716 / 2016 and

Aneela Iqbal D/O Iqbal Muhammad, Ex-PST, C/O Hospital Road, Near Saddam Medical Store, Tehsil and District Swabi, Swabi.

.....Appellant

## Vs

District Education Officer (Female), Kohistan. 1.

Director, E&SE, Khyber Pakhtunkhwa, Peshawar. 2.

District Education Officer (Female), Swabi;

.....Respondents

<u>Service Appeal Under Sec 4, KPK Service</u> Tribunal Act, 1974 Against The Impugned Order No 384 - 89/DEO (F)KH, Dated 21st January, 2016; And Brought Into The Knowledge Of Appellant On 4<sup>th</sup> April, 2016 By Respondent No 3.

Removal Order passed:

Deptt Appeal:

Service Appeal:

21<sup>st</sup> January, 2016. Impugned order communicated: 4<sup>th</sup> April, 2016. 6<sup>th</sup> April, 2016. July, 2016.

ATTESTED Knyber Pakhtaniawa Service Tributal, Peshawar



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# BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUANL, PESHAWAR

# Appeal No. 716/2016

Date of Institution ... 04.07.2016

Date of Decision ... 22.03.2019

Aneela Iqbal D/o Iqbal Muhammad, Ex-PST, C/o Hospital Road, Near Saddam Medical Store, Tehsil and District Swabi. (Appellant)

#### <u>versus</u>

District Education Officer (Female), Kohistan and two others.

(Respondents)

For appellant.

For respondents.

CHAIRMAN

MEMBER(Executive)

Kp wa

MR. FAZLI MAHMOOD, Advocate

MR. KABIRULLAH KHATTAK Additional Advocate General

MR. AHMAD HASSAN, MR. HAMID FAROOQ DURRANI

JUDGMENT

AHMAD HASSAN, MEMBER .- Arguments of the learned counsel for the

parties heard and record perused.



#### ARGUMENTS

2. Learned counsel for the appellant argued that she was appointed as PST in Peshawar the respondent-department vide order dated 02.12.2009. That vide order dated 07.10.2010 issued by respondent no.2, the appellant was transferred from GGPS, Kohistan to GGPS no.1 Dher Gandaf, Swabi against a vacant post. She continued to serve from 07.10.2010 to 31.03.2016 under the administrative control of DEO (F) Swabi and regularly received salary. However, vide impugned order dated 21.01.2016, she was removed from service by the DEO(F), Kohistan with immediate effect. The said order was handed over to the appellant on 04.04.2016. Feeling aggrieved, she filed departmental appeal on 12.04.2016, which remained unanswered. Impugned order of removal from service was passed without holding regular enquiry and fulfillment of allied formalities. In short the appellant was condemned unheard. Reliance was placed on case law reported as K.L.R 2013 Labour and Service Cases-1 and NLR 2010 Service 40.

3. On the other hand learned Additional Advocate General argued that appointment of the appellant was reportedly fake/bogus. In order to probe the issue, an enquiry was conducted by Mr. Riasat Khan the then DEO, Kohistan in which, it was confirmed that eight PST Teachers appointed in District Kohistan and then transferred to District Swabi were appointed illegally. On the basis of said enquiry, she was removed from service vide impugned order referred to above. All codal formalities were observed before passing the impugned order.

# CONCLUSION

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4. In this case as alleged by the respondents appointment of the appellant was illegal/fake. In order to dig out the facts leading to her appointment, a fact finding enquiry was conducted by the then DEO, Kohistan and thereafter impugned removal order was passed. This Tribunal has been repeatedly emphasizing that penalty cannot be awarded to a civil servant on the basis of fact finding enquiry. However, the respondents have again repeated the same mistake that has rendered the entire process illegal/unlawful. Any penalty can only be awarded to a civil servant after following the process laid down in E&D Rules 2011. The only option left with the respondents is to conduct de-novo enquiry and thereafter pass orders as deemed appropriate.

5. As a sequel to above, the appeal is accepted, impugned order dated 21.01.2016 and the appellant is reinstated in service. The respondents are directed

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to conduct de-novo enquiry within a period of ninety days after the date of receipt of this judgment. The issue of back benefits shall be subject to the outcome of the de-novo enquiry. Parties are left to bear their own costs. File be consigned to the record room.

(HAMID FAROOQ DURRANI) CHAIRMAN

Certif e tra fitte copy  $\tilde{\ell}^{-1}$ Tribunal. Pestawar <sup>ы</sup>на

<u>ANNOUNCED</u> 22.01.2019

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(AHMAD HASSAN) MEMBER

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# EFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUANE PESHAWAP

Appeal No. 117/2016

Mst. Musarrat Beguin, Ex-PTC, GGPS Muhib Bahda, District Swabi D/o Hazrat Wali, R/o Village Badraga, P.O Dagai, Tensil Razar, District Swabi. (Appellant)

#### VERSUS

MR. KHALED RAHMAN.

<u>. 10111</u>

MR. KABIRUILLAH KHATTAK Additional Advocate General

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MR. AHMAD HASSAN, MR. HAMID FAROOQ DURRANI For respondents.

For appellant.

MEMBER(Executive)

: : :

#### JUDGMENT

AHMAD HASSAN, MEMBER-

This judgment shall dispose of the instant service appeal as well as connected service appeals no. 177/2016 entitled (whereas a Begrup as similar question of law and facts are involved therein

Arguments of the learned counsel for the parties heard and record perused.

#### ARGUMENTS

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3. Learned counsel for the appellant argued that she was appointed as Ph Teacher vide order dated 01.02.1996 by the then/DEO. Kohistan and posted at GGPS, Bahdur Sahib. That in 2008 the Provincial Government notified potion of there include the stated that subsequently

appointment of PTC Teachers near their nome their holne district. Subsequently, those teachers posted outside be repatriated to their holne district. Subsequently those transferred to District Swabi, v deforder dated 27.00 2008 by respondent she was transferred to District Swabi, v deforder dated 27.00 2008 by respondent in a transferred to District Swabi, v deforder dated 27.00 2008 by respondent in a transferred to the said order, she was relieved by FDO. Kohistan through order no.1. Dursuant to the said order, she was relieved by FDO. Kohistan through order dated 30.09 2008. Before transfer even her service documents were verified vide

dated 30.09.2008. Astonishingly, her transfer order referred to above was letter 09.06.2008. Astonishingly, her transfer order referred and atter lapse of withdrawn vide order dated 22.10.2015 without any justification and atter lapse of seven years. Through impugned order dated 22.10.2015, she was removed from service with immediate effect. For redressal of her grievances, a departmental appeal was filed on 19.11.2015, which was turned down on 20.01.2016.

4. Appellant was appointed after observance of codal formalities and rendered more than twenty years service. The moderalid manner of withdrawal of transfer order followed by removal from service was contrary to the hid down procedures it was void ab-initio and not systainable under the law, Before passing any adverse order regular inquiry under E&D Rules was required to be conducted. Reliance was placed on case law reported as 2015 SCMIR 1418. 2003. SCMR 410-2007

SCMR 1643 and 2006 SCHART S. On the other hand learned Additional Advocate (legeral while 5. On the other hand learned Additional Advocate (legeral while controverting the stance of the learned counsel appellant informed that initial appointment order of the appellant dated 01 02 (996 was found fake/bogus A fact finding inquiry into the matter was also conducted by the completent authority Resultantly, her transfer order to District. Swabi was also withdrawn being fake/bogus. After introduction of Promotion and upgradation policy: 13 11.201

1117 マンド APPENDER BARRIER BARRIER the appellant was not fake/bogus, it would automatically restore the transfer order dated 27.09.2008. The issue of back benefits shall be subject to the outcome of the de-novo enquiry. Parties are left to bear their own costs. File be consigned to the regord room. MAD HASSAN) MEMBER (HAMID FAROOD DURRAND) CHAIRMAN <u>ANNOUNCED</u> 22.03.2019 Certit S, Pesnana Deter Dates

# BEFORE THE KPK SERVICE TRIBUNAL PESHAWAR

In Ref; to Service Appeal No $\frac{251}{1000}$  of 2018.

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#### <u>VERSUS</u>

- 1. Inspector General of Police/ Provincial Police Officer, Khyber Pakhtunkhwa, Central Police Office Peshawar.
- 2. Deputy Inspector General of Police/Regional Police Officer Mardan Range, Mardan.

3. District Police Officer (DPO) Mardan.....<u>RESPONDENTS</u>

Appeal U/S 4 of the KPK Service Tribunal Act. against the impugned Order bearing No. 449/ES. Dated 19-01-2018 passed by the Respondent No. 2. Communicated to the appellant on 23-01-2018 whereby the Departmental Representation of the Appellant Dated 10-12-2017 was rejected and the major penalty of dismissal from service recorded vide OB No. 2688 dated 20-11-2017 passed by the respondent No. 3 was upheld.

<u>PRAYERS:-</u>

2/18

On acceptance of this appeal the impugned order passed by the respondent No. 2 dated 19-01-2018 Communicated to the appellant on 23-01-2018 may be set-aside whereby the departmental appeal filed by the appellant Dated 10-12-2017 was rejected and the major penalty of dismicral from service recorded vide OB No. 2688 dated 20-11-2017 passed by the respondent No. 3 was upheld and the appellant be re-instated in service as Constable with all back benefits, seniority and allied allowances.

RESPECTFULLY SHEWETH:-

# BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUAL PESHAWAR areakhua Appeal No. 234/2018 19.02.2018 Date of Institution ... 13:03.2019 Date of Decision Hayat Zaman Ex-Constable No. 2931, Police Station Takht Bhai District Mardan. <u>VERSUS</u> Officer, Khyber Police Inspector General of Police/Provincial ...(Respondents) Pakhtunkhwa, Peshawar and two others.

<u>Present.</u> Mr. Muhammad Usman Khan Turlandi, Advocate.

Mr. Muhammad Riaz Khan Paindakhel, Asstt. Advocate General,

MR. HAMID FAROOQ DURRANI, MR. AHMAD HASSAN,

ATTESTED IUDGMENT

HAMID FAROOO DURRANI, CHAIRMAN.-

Instant appeal is directed against the order of respondent No. 3 passed on 20.11.2017, whereby, major punishment of dismissal from service with immediate effect was passed against the appellant. His departmental appeal was also rejected on 19.01.2018 by respondent No. 2.

For appellant

For respondents

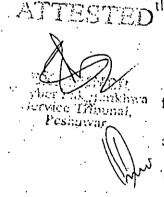
CHAIRMAN

MEMBER

2. The facts as available on record, suggest that the appellant joined the service in Police Department Khyber Pakhtunkhwa as constable in the year 2009. At the relevant time the appellant was posted at Police Station Takht Bhai Mardan, when he was proceeded against departmentally on the allegations of contupt practices, in-efficiency, close association with criminals and sharing information regarding the movement of Police Officers with miscreants. The appellant was suspended and closed to the Police Lines, Mardan.

We have heard learned counsel for the appellant and learned Asstt.A.G on behalf of the respondents.

Learned counsel for the appellant vehemently argued that no proper/formal enquiry was conducted against the appellant in order to prove the grave allegations contained in the charge sheet and statement of allegations, issued on 12.10.2017, to the appellant. He further contended that the allegations in the charge sheet were different than those which prevailed with the enquiry officer who had submitted a scanty report on 03.011.2017. Further stated that no show cause notice was ever issued to the appellant before imposition of major penalty upon him.



On the other hand, learned Asstt. A.G argued that all the codal formalities were fulfilled in the process of proceedings against the appellant. That, the appellant was dismissed on 24.02.2017 due to misconduct and was subsequently reinstated on 10.04.2017. In his view, the appellant was habitual offender and was rightly awarded the impugned major penalty.

4. We have carefully gone through the available record. The respondents had submitted alongwith their reply to the appeal a purported departmental enquiry report dated 03.11.2017, wherein, it was noted that "on receipt of enquiry constable Hayat Zaman No. 2931 was called in the office and heard at length. His statement was part of the enquiry file. He was questioned and counter questioned. From enquiry following facts were transpired:-

"While posted in Police Post Sari Behlol constable Hayat Zaman on receiving the graft willfully let the accused Hazrat Karim go. Hazrat Karim was wanted in many theft cases and he was under interrogation for the purpose."

The dismissal from service was recommended as punishment against the appellant. The record also contained statement of allegations and charge sheet dated 12.10.2017, wherein, the allegations were of altogether different nature. It was noted therein that constable Hayat Zaman No. 2931 was proceeded against departmentally for the charges of corrupt practices, inefficiency, close association with criminals and sharing information regarding the movement of Police Officers with miscreants. S.P (OPS) was, therefore, appointed as enquiry officer in the matter. Similar ATTESTED

THE THE WEATHE

It is evident from one page enquiry report dated 03.11.2017 that in 5. pursuance to memol dated 12.10.2017 (statement of allegations and charge sheet) the proceedings were conducted in a cursory manner and, except the statement of appellant, no other evidence was ever collected to connect the appellant with serious allegations contained in the statement/charge sheet. The enquiry officer came up with the findings which were not only based on grounds extraneous to those contained in the statement/charge sheet but were rebutted from other record including FIR No. 1611, recorded on 08.10.2017, at P.S Takht Bhai District Mardan as well as Daily Diary of the same Police Station dated 14.10.2017. The FIR pertained to nomination of Hazrat Karim son of Amra Ali alongwith some other persons in offence recorded under Sections 457/380-PPC, while Mad No. 7 dated 14.10,2017 was regarding the arrest of said Hazrat Karim alongwith others on even date. The said record when examined in juxtaposition to the contents of enquiry report and the statement of allegations suggested that on the date the letter was issued Hazrat Karim was not even arrested. On the contrary in the report the only allegation against the appellant was in terms that he willfully let the accused Hazrat Karim go on receiving the graft. We have also remained unsuccessful in laying hands on any show cause notice throughout the record including the reply of respondents. The said factum alone would suggest that the departmental proceedings against the appellant were not conducted in the mode and manner required by the

TTESTED

rules, that too, in a case where major penalty of dismissal from service was awarded to a civil servant. In view of the above discussion, the appeal in hand is owed as prayed for. Consequently, the appellant is reinstated in servic ith all back and consequential benefits. Parties are left to bear their respective costs. File be consilito the record room. (HAMID FAROOQ DURRA CHAIRMAN HASSAN) лAD MEMBER 1-0 Date of Presentalian of Number of Visiola 2402 ANNOUNCED Copying Fee 13.03.2019 Urgent\_\_\_\_\_2 16. Total\_\_\_\_\_ Certifical A he ture copplate of Constantion of Cory Date of Delivery of Copy \_\_\_\_ /8 = ainual. Peshawar

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Better Copy P-OFFICE OF THE EXECTIVE DISTRICT OFFICER SCHOOL & LITRACY, KOHISTAN.

# NO TIPICATION

Consquent upon the approval of the department selection committee of Schools and Literacy Department Kohistan, authority is approved to appoint the following gresh (Female) PTC competent Wntrained Trained Matric Pass in MPS 05 Rs. 2415-115-5865 plus usual allewance as due and admissible under the Rules on contract basis in the Schools nated against their names according to the interest of public service with immediate effect.

Name/wather's Name. **S**. :,Residence School by here appts; Remarks 1- Nazia Qazi B/O Mond-Akbar Kamila 2- Nazia Akbar D/9 Mehd Akbar GGPS Kal Agst: Y. Post. 3- **Fozia Batul Zaman D/9** Muhammad Juhara CGPS Barbak - 40-Yeunas

# CO NOI TIO NS

- 1 No.TA / DA is allowed to any one.
- 2- Charge report should be submitted to all concerned. 3- Their appointment are purely temporary basis and liable to
- termination at any time without any assigning meason/natice. 4- Their certificate if not verified should be verified by the DHO (F) Dr.Mr. Abdur Hehman I/C DHO(F) Kohistan before handing over charge to them.
- 5- They will be governed by such rules & regulations enforced and as presdribed by the Government from time to time for the category of the government servants to which they
- 6- In case of the above candidates failed to assume the charge their post within Fifteen days their appointment will automatically stand cancelled.
- V- They should produce Health Certificate from EBO Kohistan Pattan 8- They should be able to take charge with time of above.

Sxecutive District officer School & Literacy, Kehistan.

#### Annexur 📕 ENECODINE DESTROY E 山田田田田 E OF THE MALS AND LITTERAL

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Executive DEarler Officer Schools & Educary Robidu Daved Stabiatan the j ferring No Copy of the above is forwarded to the:-S to Secretary Schools & Literacy Department SWIP Postacion A to Director Debugie & Themes DWPP Prahavat Øfstrict Nazim Kohistan District Coordination Officer Kehistan District Accounts Officer Kuhistan Beplity District Officer (F) S&L Foundant andidates concerned Executive District Officer Schools & Literacy Kelustan Executive Distl. Officer Fiecueive Distle Diffeet (S&L) Dist: Kohistan

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# DIRECTORATE OF ELEMENTARY & SECY EDUCATION KHYBER PAKHTUNKHWA, PESHAWAR, OFFICE ORDER,

Consequent upon the ban relaxation by the competent authority, Mst. Nazia Qazi PST GGPS Bar Komila District Kohistan is hereby transferred/adjusted against the vacant post of PST at GGPS Razi Bahadar Kotay District Swabi in her own pay & BPS in the interest of public service with immediate effect.

Charge report should be sent to all concerned.

No TA/DA etc are allowed.

The EDOs (E&SE) concerned are directed to check her original service documents before making payment of salary. Her Seniority will be determined under the rules.

# DIRECTOR

ELEMENTARY & SECONDARY EDUCATION KHYBER PAKHTUNKHWA Aux C

\_\_\_\_\_/F.No.167/Posting/transfer/V-ll Dated Peshawar the

Copy of the above is to the:-

- The Executive District Officers (E&SE) Kohistan & Swabi.
- The District Accounts Officers Kohistan & Swabi
- Principal GGHSS/GGHS concerned,
- SST concerned.

Note: -

Endst: No.

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PA to Director E&SE, Khyber Pakhtunkhwa, Peshawar. M/File.

> Deputy Directress (Estab) Elementary & Secondary Education Khyber Pakhtunkawa Peshawar.

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a she was de la state de la APPLICATION FORM FOR INTER DISTRICT TRANSFER Name of the Teacher/Applicant & District of Domicile. Designation/Post hold with BPS Dato of 1" Appointment  $\mathcal{O}$ 2 Date of Taking over Charge (District of present post) Name of Present School of Posting Name of School where posting is required (List three options) 11.010 Reason for Transfer Home G.P.Fund No. 8-Personal No. 9 Numbers of C/Leave (Availed) .10-Signature of Prl:/HM/HT 11 12-Signature of A.D.O in case of Primary Teacher I solemnly declare that all above information's from S.No.1 to 12 m ALEI KOHIS en concealed. has b Signaturo-Name of Applicant NQZ N.I.C 140. 200 Certificate by the relieving EDO E&SE Certified that I have no o jection to the transfer of Mr/Msu Kaluitai Dis Dist. From The following: trangement will be made by up for filling up the post of in cuse of tran for of ArrMist Y79 It is contified hat:-The Study/Education of the st adents of the school will not suffer with proposed transfer ii) The applicant is regular cample yee and not contract (Mention) period Signature offic of Name of EDO EASE Endst:No. 5/7511. 1D. cd 04.11.12 POST-AVAILABILITY CE ITIFICATE OF THE EXECUTIVE DISTRIC ELEMENTARY & SECONDARY EDUCATION WHERE POST ISPROPÓ V I have no objection to the tr offer of an/Mst. 19279 of against a vacant post of \_\_\_\_\_\_\_ p37 at (Nime of Schools) fall BAIHADA C Of District t have also examined higher relevent documen s'and found correct. It is also certified that no N.Q.C. has been issued to any other person as inst this pert ΠC Yout lies in Husliand uc Depun District Officer (E&SE) Female Spati Numo of EDO E&SE (Jane) ABDUS SALAM Signature 1.Da :d. 10/9/0//Stamp Endst No. 786 Note, The following, 'oc ments (dulyattested) sl-suld be provided:-Executiv च गोल्सनती पूर्व der Elementary & Secondary Edugation: Service Bool Ph to States S-WABI I<sup>th</sup> appointment of 'cr (Or 'ginal OR attested ) hole stat copy by EDO E&SE. Domicito. ( i) Prev bus transfer order (Ifiany )r () SSC, Intermediate, PTC, CT, B.Ed, etc. 2 Lost Puy Poll, (7), ast B. LA CBSO! alinsin ale) Séo MinJeter for Evenan Secondary Educa khyher Pakhtunk

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OFFICE OF THE DISTRICT ACCOUNTS OFFICER SWABI

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The District Accounts Officer Kohistan.

Subject : VERIFICATION OF LPC IN RESPECT OF MST. NAZIA QAZI, PST

Mêmo ;

The LP.C in respect of the above named official

is sent here with for verification and early returned to this office.

District Accounts officer Swabi

Copy forwarded to District officer (I) Lahore for

information a d requested to please avoid the submission of such cases without obtaining pay release of the competent authority in future.

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#### OFFICE OF THE

DEPUTY DIRECTOR OFFICER (F) Prys PRIMARY EDUCATION KOHISTAN.

No. 400 Pated 28/11/2008

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The Peputy Bistrict Officer, (Memal) Pry, Education Swabi.

Subject: VERIFICATION OF SERVICE DOCUMENTS

Memo:

Please refer to your office letter No.967. dated 24-11-2008, on the subject cited above.

The desired documents duly verified by this office are found correct, after verification/ attestation the same are returned herwith for further n/action please.

> Peputy District Officer, (Female) Pry; Edu: , Kehistan.

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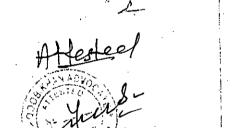
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#### OFFICE OF THE DIRECTOR OF ELEMENTARY & SECONDARY EDUCATION KHYBER PAKHTUNKHWA, PESHAWAR

#### NOTIFICATION

AnaH

The transfer orders of the following teachers from District Kohistan to District Swabi issued vide this office Endst: No. detail given below are hereby withdrawn due to their illegal and irregular appointments as per report of the inquiry officer vide letter No.02 dated 2-12-2014.

S.N	Name of	From District	To District Swabi	Enást:No.
0	Teacher	Kohistan		
1.	Alia Ghafoor PST	GGPS Banjar Yanjool	GGPS Battai <sub>,</sub> No.2	Endst.No.2511-15 dated 19-10-2011
2.	Ruqia PST	GGPS Mada Khel	GGPS Haryan Banda	Et:No.2511-15 dated 19-10-2011
3.	Nuzhat PST	GGPS Banjar Yanjool	GGPS Haryan Banda	Endst:No.2527-31 datd 24-11-2010
4	Khushnama PST	GGCMS Jijal Kohistan	GGPS Hayatabad	Endst:No.985-90 dated 08-01-2011
5	Nesia Qazi PST	GGPS Bar Komila	GGPS ·Razi Bahadar Koti	Endst.No.4980-85 dated 20-09-2011
6	Sara PST	GGPS Saglo	GGPS Aala Dher	E.No.1599-1605 dated 15-02-2011
7	Mussarat PST	GGPS Samad Abad Sao	GGPS Palosai	Endst.No.7490-95 dated 27-09-2008
8	Aneela PST	GGPS Koz	GGPS No.1 Dheri Gandaf	Endst.No.505-10 dated 08-10-2010

#### Director

/F.No.20/(F)Enquiry dated Peshawar the  $\frac{22}{10}$  2015

Elementary & Secondary Education Khyber Pakhtunkhwa,

Endst: No. 🖄

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- Copy to the:-
  - District Account Officer Swabi & Kohistan
- District Officer (Female) Swabi & Kohistan,
- Teacher Concerned.
- P.A to Director Local Office

Deputy Difector (Female) (E&SE) Khyber Pakhtunkhwa,

19/8/15

Sab Devision of Edwards

OFFICE OF THE DISTRICT EDUCATION OFFICER (FEMALE) SWABI. Endst: No. 3040-6 /DA-I (Estab) Datse! Swabi'the 12/11 /2015 Copy of the above is forwarded for information and strict compliance to the:-Sub-Divisional Education Othcer (Female) Lahor, Swabi and Top District Accounts Officer Swabi. DISTRICT EDUCATION OFFICER (FEMALE) SWABI. in of The Sub-Demosional Education offic (7) Some No 916 1 Date 13/11 / 2015 Formen that in on geniel A. The Head FSCODS. Muliib Bonda for Forthe Levens - CE ~1 Strict compliance. 12:2 Juny 4



Anx I

OFFICE OF THE DISTRICTEDUCATION OFFICER, (F)KOHISTAN.

Ph: & Fax No.0998407225

### OFFICE ORDER..

In compliance with the Director, Elementary & Secondary Education Khyber Pakhtunkhwa Peshawar letter No.3081/F.No.20 (F) enquiry dated 16/03/2015, Reminder No. 2200/F No.20/(F) enquiry dated 20/04/2015/, No. 3530/ F No.20/(F) enquiry dated 22/05/2015, and No.3696/F No.20/(F) enquiry Dated 24/08/2015.and In light of recommendation of enquiry officer, the following PST teachers are hereby removed from service with immediate effect.

S/NO	Name	School
1	Nuzhat PST	GGPS Kas banda
2	Nazia Qazi PST	GGPS Bar komila
3	Alia Ghafoor	GGPS Kas banda
4	Rugia PSTt	GGPS Kas banda
5	Sara PST	GGPS Kundal
6	Khushnuma PST	GGPS Dubair
7	Mussarat bibi PST	GGPS-Badar shaha

District Education Officer

tr<del>iet Ed</del>ucation Officer (Female) Kohistan

### E/No, /Estab: 7/05- 10 /DEO (F) KH: dated 22-10/2015.

Copy of the above is forwarded to:

- 1. The Director, Elementary & Secondary Education, Khyber Pakhtunkhwa Peshawar.
- 2. The District Education Officer (F) Distirct Swabi, for necessary action at her end as the above teachers are now posted in District Swabi.
- 3. The District Accounts Officer, Swabi.
- 4. The District Accounts Officer, Kohistan.
- 5. The Sub Divisional Education Officer (F) kohistan.
- 6. Office record .

# Before The Director of (E & SE) KPK Peshawar



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#### VERSUS

1. D.E.O (Female) Kohistan

2. D.E.O (Female) Swabi

3. District Account Officer Swabi

4. District Account Officer Kohistan.

..... Respondents

Departmental appeal/ representation against order of Director of E & SE dated 22/10/2015 & order of respondent No.1 dated 22/10/2015, whereby appellant is removed from service without any reason, which is illegal, against law d facts.

#### **Respectfully Sheweth;**

### Appellant humbly submits as under

- *I*. That appellant is lady by her very personal status and is parda nasheen lady and employee of respondent department.
- 2. That respondents have advertized the post of PST for which appellant has properly applied and after completion of all codal formalities, appellant was appointed as a PST Teacher in District Kohistan vide order dated 07/12/2008.
- 3. That after appointment of appellant is said education department, her academic and Domicile certificate were verified through proper channel.
- 4. That after verification of documents, a corrigendum was issued regarding amendment that please read the resident of Miss Nazia Qazi District wabi instead of Komila vide order dated 09/12/2010.

باعث تحريراً نك مُقدمہ مندرجہ عنوان بالا میں اپنی طرف سے واسطے پیروی وجواب دہی دکل کاروائی متعلقہ آن مقام کر کر جر سے لئے کہ کو کن رو کر کر کر میں مقرر کر کے اقرار کیا جاتا ہے کہ صاحب موصوف کو مقدمہ کی کل کاروائی کا کال اختيار ہوگا۔ نيز وکيل صاحب کو راضي نامہ وتقرر ثالث وفيصلہ پر حلف دينے جواب دہی اور اقبال دعویٰ اور بصورت ڈگری کرانے اجراء اور وصولی چیک رو پید اور عرضی دعویٰ اور درخواست ہرقتم کی تصدیق زراس پر دستخط کرنے کا اختیار ہوگا۔ نیز بصورت عدم پیروی یا ڈگری یک طرفہ یا اپیل کی برآمد ہوگی اورمنسوخ دائر کرنے کی اپیل گلرانی و نظر ثانی و پیروی کرنے کا اختیار ہوگااور بصورت ضرورت مذکور کے عمل یا جزوی کاروائی کے واسطے اور دکیل یا مختار قانونی کواپنی ہمراہ یا اپنی بجائے تقرر کا اختیار ہوگا اور صاحب مقرر شده كوبهى جمله مذكوره بالا اختيارات حاصل هونكح اور اسكا ساخته برداخته منظور دقبول ہوگا اور دوران مقدمہ میں جوخرچہ دہر جانہ التوائے مقدمہ کے سبب سے ہوگا اسکے ستحق وکیل صاحب ہو گئے۔ نیز بقایا وخرچہ کی وصولی کرتے وقت کا بھی اختیار ہوگا اگر کوئی تاریخ پیشی مقام دورہ پر ہویا حد ہے باہر ہوتو وکیل صاحب یابند نہ ہوئے کی پیروی مقدمه مذکور لہذ اوکالت نا مہلکھ دیا کہ سندر ہے۔ المرقوم\_ \_ و اه ش ـد ه الـع کے لئے منظور بمقام: Awfred ested

# BEFORE THE KHYER PAKTUNKHAWA SERVICE TRIBUNAL, PESHAWAR

Service appeal No.372/2016

Nazia Qazi .....APPELLANT

### VERISUS

Govt: of KPK and others......RESPONDEN'S

### SERVICE APPEAL UNDER SECTION 4 OF 5THE KHYBER PAKTUNKHAWA SERVICE TRIBUNAL ACT, 1974,

Respectfully Sheweth,

# PARA WISE COMMENTS ON BEHALF OF RESPENDENTS No.1,2,5,6 AS UNDER:-

Writ Petition INDEX

S.No	Description of documents	Annexure	Pages
1.	COMMENTS		1-5
2.	Affidavit	and and a second sec	·····
3.	LETTER OF INQUIRY	A	6
4	Clarification letter	В	7
5.	Inquiry Report	C	8-10
6.	Letter of Respondent No. 1 to Respt 2	D	11
7.	Removal order and Inter District orcer	E&F	12-14

ÉDUCATIONOFFICER (FEMALE) KOHISTAN

# BEFORE THE KHYER PAKTUNKHAWA SERVICE TRIBUNAL, PESHAWAR

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Service appeal No.372/2016

Nazia Qazi .....APPELLANT

### VERISUS

Govt: of KPK and others......RESPONDENTS

### SERVICE APPEAL UNDER SECTION 4 OF 5THE KHYBER PAKTUNKHAWA SERVICE TRIBUNAL ACT, 1974,

Respectfully Sheweth,

## PARA WISE COMMENTS ON BEHALF OF RESPENDENTS No.1,2,5,6 AS UNDER:-

### PRELIMINERY OBJECTIONS.

- 1. That the appellant is not an aggrieved persons.
- 2. That the appellant has got no cause of action/locus standi to file the instant Appeal.
- 3. That the Appeal is not maintainable in the present form.
- 4. That the appellant has concealed the material facts from Hon'ble Tribunal.
- 5. That the appeal is time barred and not maintainable in eye of Law.
- 6. That the appellant has not come to the tribunal with clean hands .
- 7. That the appellant has estopped by her own conduct.

# FACTUAL OBJECTIONS.

- 1. No comments
- 2. Para No.1 is incorrect, the appointment order of appellant is faked, fictitious, she had indulged into the Government Service fraudulently. In such illegal appointments, the DirectorElementary & Secondary Educat on Khyber Paktunkhwa Peshawar was initiated an enquiry whereby "the Mr.Riyast BS-19 District Education Officer was appointed an Inquiry Officer to conductan Inquiry Of Eight (8) PST Teachers appointed in District Kohistan and then transfers to District Swabi



to verify as to whether they have been appointed legally or Illegally' Vide Notification Endst No. 826-29 dated 09-10-2014 (Annexure A). That the Inquiry Officer conducted an Inquiry and submitted reports regarding the appointment of eight PST including the appellant, wherein the committee recommended to the extent of the appellant that at S.No (VIII) in enquiry report Nazia Qaz instead of Nadia Qazi clarification letter from Department E&S KPK Peshawar (Annexure B) (a). Mst. Nazia Qazi PST D/O Muhammad Akbar was appointed as PST at GGPS Bar komila vide appointment order issued Endst: No. 8836-42 dated 07-12-2006.(b) according to the list of female candidates for the year 2006 , she falls at S.No28/06 being SSC. (c) She was appointed on simple hand written application without merit list and without codel formalities (d) She was appointed by pick and chooses method (e). No other record is available for further verification. That after perusal of available record, facts and finding, the an inquiry office has made the following recommendation as

- 1. The appointment orders are illegal and irregular and against the recruitment policy/ rules. The appointing authority could not absolve himself from the responsibilities, hence Department proceeding/legal action may be initiated against the appointing authority.
  - 2. <u>The appointments of above mention</u> <u>teachers (including appellant) are</u> <u>illegal and irregular hence liable to be</u> <u>withdrawn / cancelled / terminated.</u> (Inquiry Report as Amnexure C)

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That an Inquiry Report mention ibid was sent to Respondent No. 2 by the Respondent No. 1 for implementation and further process in according to report of Inquiry Office vide latter No. 3081 dated 16-03-2015, (Annexure D)On the bases on inquiry ibid Removal form Service Orders of all Eight PST including appellant were issued by the Respondent No. 2, vide Office Order No. 7105-10 dated 22-10-2015, (Annexure E)

- 3. Para No. 3 is incorrect, as the factual position has already been explained, that appointment order was illegal the appellant did not stand in the merit anywhere, as per report of the inquiry Officer the transfers orders of the all the teachers from District Kohistan to District Swabi issued by the Director, Elementary & Secondary Education Khyber Paktunkhwa Peshawar Respondent No. 1 was withdrawn due to their illegal and irregular appointments vide Notification Endst. No. 3887-84 datred 22-10-2015. (Annexure F)
  - 4. Para No. 4 is incorrect, reply is already given in above Paras.
  - 5. Para is correct but after report of the inquiry officer withdrawn of Inter District transfer orders and issued removal from service orders.
- 6. Para is in correct, but after report of the inquiry officer the department followed by inquiry officer recommendations (appointment order of appellant is faked, illegal, out of merit, contrary to the rules and policy of the Government) and withdrawn of Inter District transfer orders and issued removal from service orders.
  - 7. As stated above Para No.6.
  - 8. As per Paras mentioned above.
  - 9. Pertains as record.

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- 10 Para No.10 is incorrect the appellant was appointed illegally in 2008.
- 11. Para No. 11 is incorrect, as the factual position has already been explained, that appointment order was Illegal the appellant did not stand in the merit anywhere, as per report of the inquiry Officer the transfers orders of the ali the teachers from District Kohistan to District Swabi issued by the Director, Elementary & Secondary Education Khyber Paktunkhwa Peshawar Respondent No. 1 was withdrawn due to their illegal and irregular appointments vide Notification Endst. No. 3887-84 datred 22-10-2015.

12 Para No. 12 is incorrect, as the factual position has already been explained, that appointment order was faked the appellant did not stand in the merit anywhere, as per report of the inquiry Officer the transfers orders of the all the teachers from District Kohistan to District Swabill issued by the Director, Elementary &

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Secondary Education Khyber Paktunkhwa Peshawar Respondent No. 1 was withdrawn due to their illegal and irregular appointments vide Notification Endst. No. 3887-84 datred 22-10-2015. On the bases on inquiry ibid Removal form Service Orders of all Eight PST including appellant were issued by the Respondent No. 2, vide Office Order No. 7105-10 dated 22-10-2015.

- 13.Para is incorrect, the departmental appeal of appellant was rightly, has rejected by Respondent No. 1. As per rule Whereas the appellant has no right to invoke the jurisdiction of this Hon'bieTribunal.
- 14. Para is incorrect, the order sent her on her home address available in this office.
- 15. Para is incorrect, all real facts stated above in Para No.1.

### **GROUNDS** -

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- A. Para is incorrect, the appointment order of appellant is illegal, out of merit, contrary to the rules and policy of the Government.Hence the respondents are accordingly to Law.
- B. Para is incorrect detail reply has given in Para No.A.
- C. Para is incorrect, all the proceeding was adopted as per rules and report of the inquiry officer.
- D. Para is incorrect, Respondents are bound to obey the rules, policy and law. Locus ponettentiatis not applicable illegal act/order.
- E. Para is incorrect, the order of Removal from service was issued after observing all the codal formalities.
- F. Para is incorrect, appellant has no right of standing on the bases of illegal appointment order.
- G. Para is incorrect detail reply has given in para No.1.
- H. Para is incorrect detail reply has given in para No.1.
- I. Para is incorrect.
- J. Para is incorrect appellant appointment order was declared illegal...
- K. Para is incorrect the impugned order is in accordance with Law.
- L. Para is incorrect All the codel formalities were fulfilled.
- M. Para is incorrect detail reply has given in Para No.1.
- N. Para is incorrect there are contradictions in the stance of the appellant in the appeal with respect for her length of service.
- O. Para is incorrect detail reply hus given in para No.1.

P. Para is incorrect, Respondents are bound to obey the rules, policy and law.

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Q. No comments. However respondents also seek permission of this Honourable Tribunal to advance further grounds during arguments.

### PRAYER.

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It is therefore humbly prayed that on acceptance of above Para wise comments the appeal may graciously be dismissed with cost.

Respondents.....

Secretary

E&SE Khyber Pakhtunkhwa Peshawar

Directo E&SE Khyber Pakhtunkhwa Peshawar

istrict Account Kohistan. 6116 Liei Education Officer, (Female)Kohistan.

vils 38 OFFICE OF THE DIRECTOR ELEMENTARY & SEC <u>UCATION</u> KHYBER PAKHTUNKIMVA, PESILIBRAR NOTIFICATION. Kohistan is Mr. Riyast Khan (B-19) District Education 🔯 巍g储 (8) PST ety appointed as enquiry officer to conduct an enquit chers appointed in District Kohistan and their transfer to 200 To Perify as to whether they have been appointed legally or Wegally. The left Mar Education erg(Fømale) Swabi vide No.1931 dated 246-2012 houts \$0 imendations enquiry reports along with cleary indig should regen this office within 15 days positively. Education Flenerar Endst: No. 826-29 IF. No 20/(F)Teacher Esquiry Divis 10 Copy forwarded to the -Mr. Riyası Khan (B-19) District Laungdon Officers 🖁 kist and District Education Officer (Female) kohistan wäh f provide the relevant record to the Inquiry Officer con Juicel 5-6-13 District Education Officer (Femále) Swabi wer to hei PA to Director E&SE Peshawar M. File. 5 i Pesii  $i = (x^{i}, x^{i})$ 



OFFICE OF THE DIRECTOR ELEMENTARY & SECONDARY EDUCATION KHYBER PAKHTUNKHWA PESHAWAR NO. 7167/F.No.201/F/inquiry Dated Peshawar the 71/11/2015

The District Education Officer (Female) Kohistan.

### SUBJECT:- ENQUIRY REPORT.

### Memo:-

То

I am directed to refer your office letter No.7366 dated 07-11-2015 on the subject cited above and to state that the clarification are as under :-

<u> </u>		
S.No	Name	Clear position
1	Nadia Qazi	Nazia Qazi instead of Nadia Qazi
2	Anilq Iqbal	The name of Aneela Iqbal mentioned by the Enquiry officer Principal GHS NO.4 Kalabat Town Ship Haripur his letter No.691 dated 20-02-2014 and also letter No.1031 dated 05-06-2013 mentioned by the DEO(F) Swabi copy attached.



Deputy Director Establishment(F) Elementary & Secondary Education Khyber Pakhtunkhwa Peshawar

新設

24/11/15



### Before the Service tribunal KPK Peshawar

### In Appeal No.. 372/2016

Mst. Nazia Qazi .....Appellant

#### **VERSUS**

Director of E & SE of KPK & others.....Respondent

#### SUIT FOR RECOVERY

#### **Respectfully Sheweth:**

#### **Replication on behalf of appellant**

#### Preliminary Objections:-

All the preliminary objections are incorrect, misconceived, hence denied.

#### <u>FACTS:-</u>

1

2

Para No.1 of the appeal of appellant is admitted by respondents as correct with no comments.

That para No.2 of reply of respondents is incorrect. Denied and that of appeal is correct. Moreover, no proper inquiry is conducted by respondents and even in the fact finding inquiry report, it is held by respondents that irregularity has been committed by respondents i-e appointing authority, which is a fault of respondents and not of appellant and appellant has got locus potential in the instant case even respondents have admitted appointment of appellant as correct after, verification and scrutinize of appellant appointment and has issued pay to the appellant w.e.f 01/12/2011 to 21/10/2015 in public interest vide order No.4207-G dated 15/11/2016 and continued her service as correct which is also upheld by the Hon'able Peshawar High Court Peshawar in writ petition No.812/2013 vide judgment dated 03/03/2015. (Copy of order is attached as Annex: A-1).

- That para No.3 of reply of respondent is incorrect. Denied and that of appeal of appellant is correct. Moreover, explanation of the same is given in para 2 above.
- 4 That para No.4 of reply of respondent is incorrect. Denied and that of appeal of appellant is correct. Moreover, explanation of the same is given in para 2 above.
- 5-10 that par No.5 to 10 of appeal of appellant is admitted by respondents as correct.
- 11 That para No.11 of reply of respondent is incorrect, denied and that of appeal of the appellant are correct. Moreover, the inquiry officer was conducted fact finding inquiry in his office i-e in District Peshawar and without recording of statement of witnesses of District Kohistan area and without cross examination by appellant passed normal fact finding remarks, which has to be clarify by the local authority i-e appointing authority which is not competent authority hence, impugned order is without lawful and without conducting of regular

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inquiry which is only sole fact for setting aside of impugned order.

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- para No.12 of reply of respondent is incorrect. Denied and that of appeal of the appellant are cored. Detail answer has already been given in the above mentioned para. Moreover, respondent NO.1 Could not withdrawn appointment order of appellant after 9x years after verification and clarification and even after issuing of transfer order of appellant from District Kohistan to District Swabi, which is admitted by respondents as correct hence, impugned order of respondents is liable to be set aside.
- 13 that para No.13 of reply of respondents is incorrect denied and that of appeal is correct.

14 that para No.14of reply of respondents is incorrect denied and that of appeal is correct.

15 that para No.15 of reply of respondents is incorrect denied and that of appeal is correct.

#### GROUNDS;

12

That all grounds mentioned in reply of respondents are incorrect, denied and those of appeal of appellant are correct. It is, therefore, humbly requested that appeal of appellant may please be accepted and appellant may please be re-instated in service with all back benefit .

Dated:-27/03/2017

Appellant

Mst. Nazia Qazi

Through counsel

Yaqoob

Advocate

High

Court Distt: Courts Mardan

K∕han

<u>AFFIDAVIT</u>

I, do hereby solemnly affirm and declare that the contents of the reply mentioned above are true and correct to the best of my knowledge and nothing has been concealed from this Hon'able court.

Deponent

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# OFFICE OF THE DISTRICT EDUCATION OFFICER (F) KOHISTAN

### REINSTATEMENT

Consequent upon the judgment dated 22-03-2019, passed by the Honorable Khyber Pakhtunkhwa Service Tribunal, Peshawar rendered in service oppeal No.716/2016, in case titled Mst: Mussarat Begum Ex-PST District Kohistan, the appellant is hereby re-instated in her services against the PST (B-12) at GGPS Kass Banda District Kohistan subject to the outcome findings of the denovo inquiry. Note:

3. No.TA/DA is allowed

4. Charge report should be submitted to all concerned.

District Education Officer (Female) Kchistan

<u>·-</u>/2019

Enast: No. 1359-66/DEO (F) KH/lili: Dated Dassu the 6/5

Copy of the above is forwarded to:-

- 🐐 The Registrar Khyber Pakhtunkhwa Service Tribunal Peshawar 🔔 👘 👘
- 2. The Addi: Advocate General Khyber Pakhtunkhwa Service Tribunal, Peshawar
- 3. The Section Officer (Lit: 11) E&SE Department Peshawar.
- G. Deputy Commissioner Kohistan
- S The Deputy District Education Officer(F):
- & The District Account Officer Kohiston.
- **7**. The Sub-Divisional Education Officer (F) Kohistan.
- 8 Office file

District Education Officer (Female) Kohistan

KHYBER PAKHTUNKWA SERVICE TRIBUNAL, PESHAWAR

No. 1535 /ST

Dated 4 / 9 / 2019

The District Education Officer Female, Government of Khyber Pakhtunkhwa, Kohistan.

Subject: -

То

### JUDGMENT IN APPEAL NO. 372/2016, MST. NAZIA QAZI.

I am directed to forward herewith a certified copy of Judgement dated 27.08.2019 passed by this Tribunal on the above subject for strict compliance.

Encl: As above

REGISTRAR KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR.