

Service Appeal No. 1511/2019


1. Mr. Abdul Saboor Khan, Advocate for the appellant present.
Mr. Kabir Ullah Khattak, Additional Advocate General for respondents present. Arguments heard and record perused.

2. Vide our detailed judgement containing 05 pages, placed in connected Service Appeal No. 1400/2019 titled "Sharafat-un-Nisa Vs. Director Elementary & Secondary Education Peshawar and one other", we arrived at the conclusion that the appeal in hand is allowed and the case is remitted back to the department for denovo inquiry with the direction that the appellant should be associated in the inquiry. A detailed, self contained inquiry, fulfilling all codal formalities should be completed within sixty days of the receipt of this judgment. The appellants are reinstated in the service for the purpose of denovo inquiry. The issue of back benefits shall be subject to the final outcome of the denovo inquiry. The respondents shall intimate the date of receipt of judgement to the Registrar of this Tribunal and also the result of the inquiry. Parties are left to bear their own costs. Consign.

3. *Pronounced in open court in Abbotabad and given under our hands and seal of the Tribunal on this 22nd day of September, 2022.*



(FAREEHA PAUL)
Member (E)
(Camp Court Abbottabad)



(KALIM ARSHAD KHAN)
Chairman
(Camp Court Abbottabad)

22.12.2021

Learned counsel for the appellant present and stated that security and process fee have not been deposited due to having no knowledge of the same and in this respect, he submitted an application for allowing him to deposit the same. The application is placed on file in connected Service Appeal No. 1483/2019, which is accepted and the appellant is directed to deposit security and process fee within seven working days from today. After the requisite deposit, notices be issued to the respondents for submission of written reply/comments on 17.02.2022 before the S.B at Camp Court Abbottabad.

Appellant Deposited
Security & Process Fee

[Handwritten signature]
22/12/21

[Handwritten signature]

(Salah-Ud-Din)
Member (J)
Camp Court Abbottabad

21st July 2022

Counsel for the appellant present. Mr. Kabirullah Khattak, Addl: AG and Mr. Noor Zaman Khattak, District Attorney alongwith Mr. Shah Wali Ullah, Computer Operator for the respondents present.

Written reply on behalf of the respondents not submitted. Representative of the respondents seeks time to submit written reply/comments. Last chance is given to the respondents to submit written reply/comments within fifteen days in office, failing which their right for submission of written reply shall be deemed as struck of. To come up for arguments on 22.09.2022 before D.B at camp court Abbottabad.

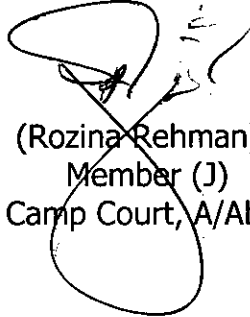
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(Kalim Arshad Khan)
Chairman
Camp Court Abbottabad

17.03.2021

Appellant present through counsel. Preliminary arguments heard. File perused.

Points raised need consideration. Appeal is admitted to regular hearing subject to all legal objections. Appellant is directed to deposit security and process fee within 10 days. Thereafter, notices be issued to respondents for reply/comments. To come up for written reply/comments on 13.07.2021 before S.B at Camp Court, Abbottabad.


(Rozina Rehman)
Member (J)
Camp Court, A/Abad

13.07.2021

Due to cancellation of tour, Bench is not available. Therefore, case to come up for the same as before on 13.10.2021.

Reader

13.10.2021

None is present on behalf of the appellant.

Security and process fee have not been deposited, therefore, notices could not be issued to the respondents. Notice be issued to the appellant/counsel to deposit the security and process fee within 07 days. Thereafter, notices be issued to the respondents for submission of written reply/comments on next date positively, otherwise their right for submission of written reply/comments shall be deemed as struck off. Case to come up on 22.12.2021 before the S.B at at camp court, Abbottabad.

(Salah-ud-Din)
Member (J)
Camp Court, A/Abad


Chairman
Camp Court, A/Abad

Due to covid ,19 case to come up for the same on / /
at camp court abbottabad.

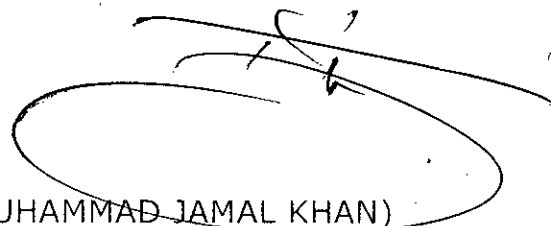
Reader

Due to summer vacation case to come up for the same on
18 19 20 at camp court abbottabad.


Reader

18.09.2020

Appellant has not forth come in person however, the clerk of the counsel did appear. According to him Mr. Abdul Saboor Khan learned counsel for the appellant has proceeded to District Kohistan for attending a case in the Model Court situated there, therefore, requested for adjournment. The appeal is adjourned to 14.12.2020 on which to come up for preliminary hearing before S.B at Camp Court, Abbottabad.

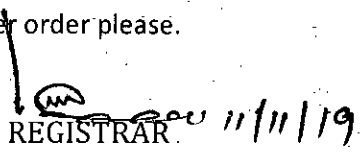

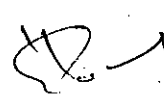

(MUHAMMAD JAMAL KHAN)
MEMBER
CAMP COURT ABBOTTABAD

Form- A

FORM OF ORDER SHEET

Court of _____

Case No.- 1511/2019

S.No.	Date of order proceedings	Order or other proceedings with signature of judge		
1	2	3		
1-	11/11/2019	<p>The appeal of Mst. Gul Pari received today by post through Mr. Abdul Saboor Khan Advocate may be entered in the Institution Register and put up to the Worthy Chairman for proper order please.</p> <p style="text-align: right;"> REGISTRAR 11/11/19</p> <p>2-</p>	24.01.2020	<p>This case is entrusted to touring S. Bench at A.Abad for preliminary hearing to be put up there on <u>24-1-20</u></p> <p style="text-align: right;"> CHAIRMAN</p> <p>Clerk to counsel for the appellant present and seeks adjournment on the ground that learned counsel for the appellant is not in attendance. Adjourn. To come up for preliminary hearing on 20.03.2020 before S.B. at Camp Court Abbottabad.</p> <p style="text-align: right;"> Member Camp Court, A/Abad</p>

BEFORE THE SERVICE TRIBUNAL
K.P.K PESHAWAR

Service appeal No 511 of 2019

Gul Pari.....Appellant

VERSUS

Director Elementary and Secondary
Education Peshawar etc**Respondents**

APPEAL

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Dated 05.11.2019

Gul Pari
GUL PARI
(Appellant)

Through:-

Abdul Saboor Khan
ABDUL SABOOR KHAN
Advocate High Court

BEFORE THE SERVICE TRIBUNAL
K.P.K PESHAWAR

Service appeal No 1511 of 2019 **19** **ayber Pakhtunkhwa**
Service Tribunal

Diary No. 1607

Dated 11-11-2019

Gul Pari, Ex-Primary School Teacher at
Government Girls Primary School, Dadir
Goshali, Tehsil Dassu, District Kohistan
upper.....**Appellant**

VERSUS

- 1) Director Elementary and secondary
Education Peshawar.
- 2) District Education officer (Female)
Kohistan at Dassu.

.....**Respondents**

Filed to-day

Registrar

11/11/2019

APPEAL UNDER SECTION 4 OF KPK
SERVICE TRIBUNAL, ACT, 1974
AGAINST THE IMPUGNED ORDER
3072-75 DATED 05.07.2019,
PASSED BY RESPONDENT NO 2
WHEREBY MAJOR PENALTY OF
REMOVAL FROM SERVICE OF
APPELLANT ON THE GROUND OF
ALLEGED ABSENCE FROM DUTY
WAS IMPOSED.

PRAYER:-

On acceptance of the instant service appeal, the impugned order bearing No 3072-75 dated 05.07.2019, passed by respondent No 02 may kindly be set-aside declaring it illegal, void-abnito and against the law on the subject and appellant be re-instated into service with all back benefits.

Respectfully Sheweth:-

1. That, appellant was appointed in a prescribed manner by competent authority against the post of Primary school Teacher vide appointment order dated 07.08.2009.

(Copy of appointment order dated 07.08.2009, is annexed as Annexure "A").

2. That, respondent No 02, allegedly issued show cause notice on 02.05.2019 to the appellant for alleged willful absence from duty, but appellant never receive the same.
3. That, all of a sudden, respondent No 02 without citing any reason and intimation straightaway, with a single stroke of pen imposed Major penalty of removal from service upon appellant

w.e.f. 01.02.2019 on the ground of alleged absence from duty, vide impugned order No. 3072-75 dated 05.07.2019.

(copy of impugned order dated 05.07.2019 is annexed as Annexure "B").

4. That, appellant filed a Departmental appeal on dated 05.08.2019, with respondent No 02, who vide office letter dated 07.08.2019, sought comments from respondent NO 02, but no decision on the appeal was communicated to the appellant within the statutory period.

(Copies of Departmental appeal and letter dated. 07.08.2019 are annexed as Annexure "C&D" respectively).

5. That, felling aggrieved from the impugned orders dated 05.07.2019, appellant having no other remedy except to file the present service appeal before this Honourable Tribunal for interference inter alia, on the following amongst other grounds.

GROUND:-

- A) That, appellant never remained absent as alleged and the alleged entire proceedings were carried out

fictitiously, while sitting in office by respondent No 02 out of mala-fide.

- B) That, before imposing the impugned penalty, no publication as required under rule 9 of E&D, Rules, 2011, was ever made in the leading newspapers, commonly available in the District of the appellant, hence, the impugned order is not sustainable in the eyes of law on the subject.
- C) That, no inquiry into the alleged allegations was ever conducted and the impugned penalty was imposed without having the allegations proved.
- D) That, appellant was never confronted with the alleged allegations at any point of time, condemning her unheard.
- E) That, before passing the impugned order, appellant was not put on notice to present his view point/explanation under the Doctrine of **AUDI AULTEM PARTEM**, hence, the impugned order is not sustainable and maintainable under the law.
- F) That, no evidence worth name was attempted to collect by respondent No 02 against the appellant for alleged absence from duty and he has been

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condemned on flimsy and perverse grounds with mala-fide intention.

- G) That, appellant had a long unblemished service record at her credit and she has been removed from service with a single stroke of pen without observing due process of law and having the allegations proved.
- H) That, no complaint was ever filed by any one against the appellant for her being absent from duty as alleged on any working day with any authority.
- I) That, the impugned order on its very face value, is illegal, unlawful, without lawful authority, without jurisdiction and of having no legal effect.

PRAYER:-

On acceptance of the instant service appeal, the impugned order bearing No 3072-75 dated 05.07.2019, passed by respondent No 02 may kindly be set-aside declaring it illegal, void-abnito and against the law on the subject and appellant be re-instated into service with all back benefits.

Dated 05.11.2019


GUL PARI
(Appellant)

Through:-


ABDUL SABOOR KHAN
ADVOCATE HIGH COURT

VERIFICATION :

I, Gul Pari, Ex-Primary School Teacher at Government Girls Primary School, Dadir Goshali, Tehsil Dassu, District Kohistan upper, do hereby solemnly affirm and declare that the contents of fore-going Appeal are true and correct to the best of my knowledge and belief and nothing has been concealed or suppressed from this Honorable Tribunal.

GUL PARI
GUL PARI

BEFORE THE SERVICE TRIBUNAL
K.P.K PESHAWAR

Service appeal No _____ of 2019

Gul Pari.....**Appellant**

VERSUS

Director Elementary and Secondary
Education Peshawar etc**Respondents**

APPEAL

AFFIDAVIT

I, Gul Pari, Ex-Primary School Teacher at Government Girls Primary School, Dadir Goshali, Tehsil Dassu, District Kohistan upper, do hereby solemnly affirm and declare on oath that the no such subject matter appeal has ever been filed before this honorable court nor pending nor decided. That the contents of foregoing affidavit are true and correct to the best of my knowledge and belief and nothing has been concealed or suppressed from this Honourable tribunal.

Dated: 05.11.2019

Gul Pari

**GUL PARI
DEPONENT**



BEFORE THE SERVICE TRIBUNAL
K.P.K PESHAWAR

Service appeal No _____ of 2019

Gul Pari,.....**Appellant**

VERSUS

Director Elementary and Secondary
Education Peshawar etc**Respondents**

APPEAL

CORRECT ADDRESSES OF THE PARTIES

APPELLANT:

Gul Pari, Ex-Primary School Teacher at
Government Girls Primary School, Dadir
Goshali, Tehsil Dassu, District Kohistan
upper.

RESPONDENTS:

- 1) Director Elementary and secondary
Education Peshawar.
- 2) District Education officer (Female)
Kohistan at Dassu.

Dated 05.11.2019

Gul Pari

GUL PARI
(Appellant)

Through:-

ABDUL SABOOR KHAN
Advocate High Court

OFFICE OF THE EXECUTIVE DISTRICT OFFICER ELEMENTARY &
SECONDARY EDUCATION KOHISTAN

APPOINTMENT

Consequent upon approval of District Departmental Selection Committee of Elementary & Secondary Education Department Kohistan the competent authority is pleased to appoint the following (Female) candidates against the post of PST in EPS-5 (U/C Wise) in the schools noted against each according to the Policy issued by the Government of NWFP Elementary & Secondary Education Department in the interest of public service with immediate effect.

S.#.	Name of Candidate	Father Name	R/O	Name of School where appointed	Remarks
1	Gul Jabeen	Sabir	Khotakot	GGPS Behramabad	Agst V.Post
2	Gul Pari	Ghulam Haider	Baryar	GGPS Pero Bela	-do-

CONDITIONS

1. No TA/ DA is allowed to any one
2. Charge report should be submitted to all concerned.
3. Their appointment is purely on temporary basis and liable to termination at any time with out assigning any reason/ notice
4. They will be governed by such rules & regulation enforced and as prescribed by the Government from time to time for the category of the Government Servants to which they belong
5. In case the above candidates failed to assume the charge of his post with in fifteen days of the issuance of this Order their appointment will automatically stand cancelled.
6. They should produced Age & Health Certificate from EDO Health Kohistan
7. They should not be allowed to take over charge if their age is less than 18-years & above 35-years.
8. Their original certificates/ Degrees should be verified by Dy: District Officer (Female) E&SE Kohistan from the concerned board/ University/ Institution before drawl of their pay

Endst: No. 56-61

Dated Kohistan the

Executive District Officer
E&SE Kohistan

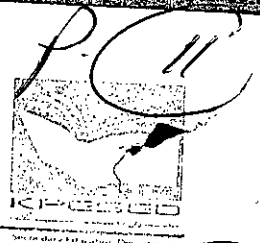
7/8 /2009

Copy of the above is forwarded to the:-

1. PS to Secretary Elementary & Secondary Education Department NWFP Peshawar
2. PA to Director Elementary & Secondary Education NWFP Peshawar
3. District Coordination Officer Kohistan
4. District Accounts Officer Kohistan
5. Dy: DO (F) E&SE Kohistan
6. Candidates concerned

Executive District Officer
E&SE Kohistan

OFFICE OF THE DISTRICT EDUCATION OFFICER (FEMALE)
DISTRICT UPPER KOHISTAN



NOTIFICATION

5/11/2019

Annex B

WHEREAS Mst. Gul Pari PST GGPS Dadir Goshali District Upper Kohistan proceeded against under Khyber Pakhtunkhwa, Government Servants (Efficiency & Discipline) Rules, 2011 on account of her willful and unauthorized absence from duty.

2. AND WHEREAS as per report of ASDEO Circle as well as report of the DCMAs of IMU Kohistan the teacher concerned was reported remained absent from her duties w.e.f 01/02/2019 to till date without any prior permission/leave sanctioned of the competent authority.

3. AND WHEREAS Show Cause notice was served upon her vide this office letter No. 1357 dated 02/05/2019, she submitted her reply to the Show Cause notice through SDEO latter no 626 dated 29/05/2019.

4. AND WHEREAS reply to the Show Cause notice submitted by the teacher concerned was declared as non-convincing by the Competent authority, and directed the teacher to attend this office on 13/06/2019 before the District Education Officer Female Kohistan Upper for personal hearing vide this office letter No. 2696-99 Dated 30/05/2019, but she failed to avail opportunity of personal hearing..

5. AND WHEREAS the Competent Authority (District Education Officer ('F') after having considered the charges and evidence on record, response to the Show Cause Notice, is of the view that the charges against the accused teacher have been proved.

6. NOW, THEREFORE, in exercise of the powers conferred under the Khyber Pakhtunkhwa, Government Servants (Efficiency & Discipline) Rules, 2011, the Competent Authority (District Education Officer ('F') is pleased to impose major penalty of "REMOVAL FROM SERVICE" w.e.f 01/02/2019 upon Mst. Gul Pari PST GGPS Dadir Goshali District Upper Kohistan. Salary drawn by the teacher concerned during her absence period w.e.f 01/02/2019 to 30/05/2019 if any will be recovered.

-SD-

District Education Officer (F)
Upper Kohistan

Endst: No 3072-75 dated 5/11/2019:

Copy forwarded for information and necessary action to the -

1. Director, Elementary & Secondary Education, Khyber Pakhtunkhwa, Peshawar
2. Deputy Commissioner District Kohistan
3. District Accounts Officer District Kohistan
4. District Monitoring Officer IMU Kohistan
5. Sub Divisional Education Officer (F) Kohistan with the directions to ensure recovery for absent period mentioned above (if any) within 15 days under intimation to this office
6. Teacher Concerned.
7. Office File.

District Education Officer (F)
Upper Kohistan

Attested

P. 12

میرزا محمد علی صاحب کے لئے

میرزا محمد علی صاحب کے لئے

ANNEX C

3072-79

5-5

میرزا محمد علی صاحب کے لئے
میرزا محمد علی صاحب کے لئے
میرزا محمد علی صاحب کے لئے
میرزا محمد علی صاحب کے لئے

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میرزا محمد علی صاحب کے لئے

5-5

میرزا محمد علی صاحب کے لئے

میرزا محمد علی صاحب کے لئے

Attested
5/5/19

Accepted
By
05/11/2019

P 13

Annex C

Better copy of Departmental Appeal

بخدمت جناب ڈائریکٹر صاحب ایلمینٹری اینڈ سیکنڈری ایجوکیشن پشاور

عنوان: بحالی ملازمت برائے PST ٹیچر آرڈر نمبر 79-3072 مورخہ

05.07.2019

جناب عالی!

گزارش ہے کہ سائلہ GPS دادیر گوشالی میں اپنی ڈیوٹی احسن طریقے سے سرانجام دے رہی تھی۔ سائلہ لوکل ہونے کی وجہ سے بغیر تکلیف اپنی ڈیوٹی سرانجام دے رہی تھی سرکل ASDEO نے جان بوجھ کر میری بغیر حاضری شوکر کے مجھے ملازمت سے برخاست کرائی ہے۔

سائلہ کے چھوٹے چھوٹے بچے ہیں گھر کی واحد ذریعہ ہے۔

استدعا ہے کہ سائلہ کو ملازمت سے بحالی کرنے کا حکم صادر فرما کر مشکور فرمایا

جائے۔

05.08.2019

جناب کی عین نوازش ہوگی۔

العارض

گل پری GGPS دادیر گوشالی داسو کوہستان

P. 19

Attested
5/11/2019



*Advisory
Office
of the
Director
of
Elementary
& Secondary
Education*

DIRECTORATE OF ELEMENTARY & SECONDARY EDUCATION KHYBER
PAKHTUNKHWA PESHAWAR

No. 903 of No. 325/77 Appeal Kohistan

Dated Peshawar the 07/11/2019

To

The District Education Officer,
(Female) Kohistan *(Uttara Pindir, Upper Kohistan)*

Subject:

APPEALS REGARDING REMOVAL FROM SERVICE

I am directed to refer to the subject cited above and to enclose herewith a photo
copies of appeals in respect of the following PST Teachers District Kohistan and to ask you to
submit detail reports/remarks/comments in this direction (Separately) for further necessary action.

S No	Name and Designation	School Name
1.	Fatmida PST	GCPS Bait Kuz Sharifal KP, Kohistan
2.	Gul Pari PST	GCPS Dildar Chishti Kohistan
3.	Bushra Hafeez PST	GCPS Bait Kuz Sharifal KP, Kohistan

[Signature]
Deputy Director (Female)
D.E.S.E. Khyber Pakhtunkhwa
6/11/2019

وکالت نامہ

P. (15)

بعدالت جناب سروس ٹریبونل KPK پشاور

ڈائریکٹر ایلیمنٹری اینڈ سیکنڈری ایجوکیشن وغیرہ

بنام

مسماة گل پری

سروس اپیل

اپیلانٹ

منجانب:

باعث تحریر آئندہ!

عبدالصبور خان ایڈووکیٹ ہائی کورٹ

اندریں مقدمہ عنوان بالا اپنی طرف سے برائے بیرونی وجوہ دہی بمقام پشاور ہائی کورٹ

کو بدیں شرط وکیل مقرر کیا ہے کہ میں ہر پیشی پر خود یا بذریعہ مختیار خاص رُو بڑ و عدالت حاضر ہوتا رہوں گا اور بوقت پکارے جانے وکیل صاحب موصوف کو اطلاع دیکر حاضر کروں گا۔ اگر کسی پیشی پر مظہر حاضر نہ ہوا اور غیر حاضری کی وجہ سے کسی طور پر مقدمہ میرے خلاف ہو گیا تو صاحب موصوف اس کے کسی طرح ذمہ دار نہ ہوں گے۔ نیز وکیل صاحب موصوف صدر مقام پشاور کی پکھری کے علاوہ کسی اور جگہ پکھری کے مقررہ اوقات سے پہلے یا بروز تعطیل بیرونی کرنے کے مجاز نہ ہونگے۔ اگر مقدمہ مقام پشاور کی پکھری کے آگے یا پیچھے سماعت ہونے پر مظہر کو کوئی نقصان پہنچے تو صاحب موصوف ذمہ دار نہ ہوں گے اور صاحب موصوف کو عرضی دعویٰ اور درخواست اجراءے ڈگری و نظر ثانی، اپیل و نگرانی دائر کرنے نیز ہر قسم کی درخواست پر دستخط تصدیق کرنے کا بھی اختیار ہوگا اور کسی حکم یا ڈگری کے اجراء کرانے اور ہر قسم کاروبار وصول کرنے اور رسید دینے اور داخل کرنے کا، ہر قسم کا بیان دینے اور سپرد ثالثی و راضی نامہ و دستبرداری و اقبال دعویٰ کا اختیار ہوگا اور بصورت اپیل و برآمدگی مقدمہ یا منسوخی ڈگری یکطرفہ درخواست حکم امتناعی یا فیصلہ ڈگری و اجراءے ڈگری بھی صاحب موصوف کو بشرط ادائیگی علیحدہ فیس کرنے کا مجاز ہوگا۔ بصورت ضرورت بدوران مقدمہ یا اپیل و نگرانی کسی دوسرے وکیل یا پیرسٹر کو بجائے خود یا اپنے ہمراہ مقرر کریں اور ایسے مشیر قانونی کو بھی اس امر میں وہی اختیارات حاصل ہوں گے جیسے صاحب موصوف کو، پوری فیس تاریخ پیشی سے پہلے ادا نہ کروں تو صاحب موصوف کو پورا اختیار ہوگا کہ وہ مقدمہ کی بیرونی نہ کریں اور ایسی حالت میں میرا مطالبہ صاحب موصوف کے برخلاف نہیں ہوگا۔ مجھے کل ساختہ پرداختہ مثل ذات خود منظور و قبول ہوگا۔ لہذا وکالت نامہ لکھ دیا ہے تاکہ سند رہے۔ مضمون وکالت نامہ سن لیا اور اچھی طرح سمجھ لیا ہے اور منظور ہے۔

مورخہ 05.11.2019

گل پری سابقہ پرائمری سکول ٹیچر دادیر گوشالی داسو کوہستان..... پبلیشر

Gl PARI

Attested & Accepted
Abdul Saboor Khan
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