

BEFORE THE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL PESHAWAR

Service Appeal No. 7388/2021

Date of Institution ... 01.09.2021

Date of Decision ... 28.10.2022

Mst. Bibi Saleha D/O Saadur Rashid (Wife of Iftikhar Ahmad) (S.P.E.T, Government Girls Middle School Shikray Baba Mardan) R/O Mohallah Mandookhol Village Sawaldher Mardan.

... (Appellant)

VERSUS

The Secretary, Elementary & Secondary Education Department, Khyber Pakhtunkhwa, Peshawar and two others.

... (Respondents)

MR. MUHAMMAD ADAM KHAN,
Advocate

--- For appellant.

MR. MUHAMMAD RIAZ KHAN PAINDAKHEL,
Assistant Advocate General

--- For respondents.

SALAH-UD-DIN
MIAN MUHAMMAD

--- MEMBER (JUDICIAL)
--- MEMBER (EXECUTIVE)

JUDGMENT:

SALAH-UD-DIN, MEMBER:- Precisely stated the averments as raised by the appellant in her appeal are that she was appointed as Physical Education Teacher (BPS-9) in Education Department vide order dated 14.11.2000 and her salary was gradually raised up to BPS-15. The appellant while posted at Government Girls Middle School Shikray Baba, Mardan was promoted to the post of Senior Physical Education Teacher (BPS-16) vide Notification dated 06.09.2017. Upon promotion of the appellant in BPS-16, her salary



was not fixed in BPS-16, therefore, she filed representation on 24.05.2021, which was not responded, hence the appellant filed the instant service appeal for redressal of her grievance.

2. Respondents contested the appeal by way of submitting para-wise comments, wherein they refuted the assertions as raised by the appellant in her appeal.

3. Learned counsel for the appellant has contended that the appellant joined service as Physical Education Teacher in the year 2000 and was promoted to the post of Senior Physical Education Teacher (BPS-16) vide Notification dated 06.09.2017 but she has not been paid the salary of BPS-16, which is against the fundamental rights of the appellant guaranteed under the Constitution of Islamic Republic of Pakistan; that vide adjustment order dated 23.09.2017, the appellant was adjusted at Government Girls High School Mohib Ullah Banda but the said order was neither communicated to the appellant nor she was relieved from Government Girls Middle School Shikray Baba, Mardan and she is still performing her duty in the said school; that the appellant perused her salary slip for the month of April 2021 and came to know that she is still being paid salary of BPS-15; that the appellant was promoted to BPS-16 on 06.09.2017, therefore, she is entitled for fixation of her salary in BPS-16 with effect from the said date but the respondents have failed to fix her salary in BPS-16.

4. On the other hand, learned Assistant Advocate General for the respondents has argued that upon promotion of the appellant to the

post of Senior Physical Education Teacher on 06.09.2017 (BPS-16) , her services were placed at the disposal of DEO (F) Mardan for further posting; that the respondent-department has issued adjustment order dated 23.09.2017, whereby the appellant was adjusted as Senior Physical Education Teacher (BPS-16) at Government Girls High School Mohib Ullah Banda but she failed to assume the charge of her post in the said school, therefore, her salary could not be fixed in BPS-16 for the reason that she has not at all actualized her promotion; that the appellant was well aware of her adjustment in GGHS Mohib Ullah Banda but she deliberately avoided actualization of her promotion in the said school.



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

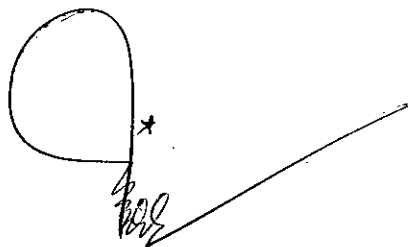
6. A perusal of the record would show that the appellant was promoted as Senior Physical Education Teacher (BPS-16) vide Notification dated 06.09.2017 and her services were placed at the disposal of District Education Officer (Female) Mardan. Vide order dated 23.09.2017, the appellant was adjusted at Government Girls High School Mohib Ullah Banda as Senior Physical Education Teacher (BPS-16), however it is the contention of the appellant that she was not communicated the aforementioned order of her adjustment and she continued her duty at Government Girls Middle School Shikray Baba, Mardan. On the other hand, it is the contention of the respondents that upon promotion of the appellant to the post of Senior Physical Education Teacher (BPS-16) vide Notification dated

06.09.2017, she was adjusted at Government Girls High School Mohib Ullah Banda vide order dated 23.09.2017 but she deliberately avoided to actualize her promotion in the said school, therefore, she is not entitled for fixation of her salary in BPS-16. Keeping in view the nature of controversy between the parties, it deems appropriate that the appellate Authority shall first decide the departmental appeal of the appellant. We would, therefore, refrain from giving any finding on merits lest it may not prejudice the case of either party.

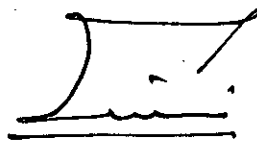
7. In view of the above, the departmental appeal of the appellant is remitted to the appellate Authority with the direction to decide the same through a speaking order in accordance with relevant law/rules within a period of one month of receipt of copy of this judgment. The appeal in hand is disposed of accordingly. Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCED

28.10.2022

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(MIAN MUHAMMAD)
MEMBER (EXECUTIVE)

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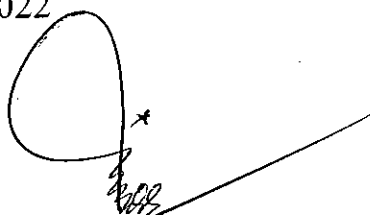
(SALAH-UD-DIN)
MEMBER (JUDICIAL)

ORDER
28.10.2022

Appellant alongwith her counsel present. Ms. Abida Parveen, District Education Officer (Female) Mardan alongwith Mr. Muhammad Riaz Khan Paindakhel, Assistant Advocate General for the respondents present. Arguments heard and record perused.

Vide our detailed judgment of today, separately placed on file, the departmental appeal of the appellant is remitted to the appellate Authority with the direction to decide the same through a speaking order in accordance with relevant law/rules within a period of one month of receipt of copy of this judgment. The appeal in hand is disposed of accordingly. Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCED
28.10.2022



(Mian Muhammad)
Member (Executive)



(Salah-Ud-Din)
Member (Judicial)

01.09.2022

Learned counsel for the appellant present. Mr. Abdul Jamil Litigation Officer alongwith Mr. Muhammad Adeel Butt, learned Additional Advocate General for the respondents present.

Learned Member (Judicial) Mrs. Rozina Rehman is on leave, therefore, arguments could not be heard. Adjourned. To come up for arguments on 19.10.2022 before the D.B.



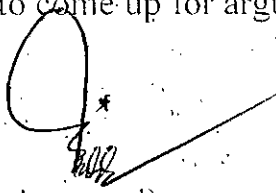
(Salah-Ud-Din)
Member(J)

17.10.2022

Appellant alongwith her counsel present. Mr. Abdul Jamil Litigation Officer alongwith Mr. Naseer-ud-Din Shah, Assistant Advocate General for the respondents present.

According to previous order sheet, the appeal in hand was fixed for 19.10.2022, however according to both the parties, they have been given P.P for today and as per diary maintained by the Reader, the appeal in hand was fixed for today i.e 17.10.2022, therefore, the appeal in hand was brought on the cause list of today.

In view of controversy in question, we deem it appropriate to direct respondent No. 3 to appear in person alongwith complete record and to come up for arguments on 28.10.2022 before the D.B.



(Mian Muhammad)
Member (E)



(Salah-Ud-Din)
Member (J)

09.06.2022

Appellant in person present.

Muhammad Riaz Khan Paindakheil learned Assistant Advocate General alongwith Sajid Ali ADEO for respondents present.

Representative of respondents submitted reply. Copy of the same was handed over to the appellant who requested for adjournment as lawyers are on general strike. Adjourned. To come up for preliminary hearing on 15.07.2022 before S.B.



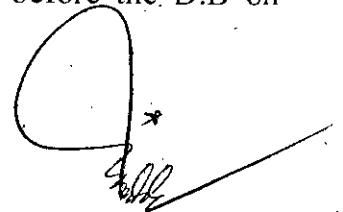
(Rozina Rehman)
Member (J)

15.07.2022

Appellant with counsel present. Mr. Muhammad Riaz Khan Paindakhel, Assistant Advocate General for the respondents present.

Reply/comments on behalf of respondents have already been submitted.

Points raised need consideration. The appeal is admitted to regular hearing, subject to all just and legal objections. The appellant is directed to deposit security and process fee within 10 days. Learned counsel for the appellant submitted rejoinder which is place on file and copy of the same is handed over to learned Assistant Advocate General. Adjourned. To come up for arguments before the D.B on 01.09.2022.



(MIAN MUHAMMAD)
MEMBER (E)

SCANNED
KPST
Peshawar

Appellant Deposited
Security & Process Fee
27/7

Better Copy of
Annexure I
Page - 14

Relieving Chit

Bibi Saliha PET G.G.M.S

Matha Jaded is hereby

Relived of his duty today

13-06-2015 to G.G.M.S

Shikray baba Katlang Mardan
No.

S/d
Head Mistress
G.G.M.S Matha Jadeed
Katlang

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Sigh 13/6/2015.