

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR.

Khyber Pakhtunkhwa
Service Tribunal

S.A.#542/2022

Diary No. 3079

Mst. Dilafroze Ex-Principal BS-19.....Appellant. Dated 20-1-2023

VERSUS

Govt: of Khyber Pakhtunkhwa through Chief Secretary & others.....**Respondents.**

PARAWISE COMMENTS ON BEHALF OF THE RESPONDENTS NO 01 to 03.

Respectfully Sheweth,

Preliminary Objections

1. That the appellant has got no cause of action/locus standi.
2. That the instant application is badly time barred.
3. That the applicant has concealed the material facts from this Hon'able Tribunal hence is liable to be dismissed on this score.
4. That the applicants not come to this Hon'ble Tribunal with clean hands.
5. That the applicants filed the instant application with malafide intension just to pressurize the Respondent for gaining illegal service benefits.
6. That the present application is liable to be dismissed for mis-joinder & non joinder of necessary parties.
7. That the instant application is against the prevailing law & rules.
8. That the applicant is estopped by his own conduct to file the instant application.
9. That the instant application is not maintainable in its present form and also in the present circumstances of the issue.
10. That the notification dated 06.09.2018 of the respondent is legally competent and is liable to be maintained.

FACTS.

1. Pertains to record.
2. Incorrect, however it is state that a complaint was filed/ lodged against the appellant and the E&SED constituted a committee comprising of Mr. Umar Khan Kundi (MC BS-19) and Mst. Naheed Anum to probe into the complaints against Mst. Dil Afroze (TC BS-19) for her frequent absent from duty and traveling abroad / KSA without NOC and staying there for months. On the recommendations of the committee formal disciplinary proceedings were initiated against the accused Principal. A formal enquiry committee comprising of Miss. Fareeha Paul (PCS SC BS-20) and Mst. Jamila Tahira (TC BS 20) was accordingly constituted to probe into the allegations and the accused was charged as follow:

- i. That she remained absent from duties w.e.f 01.07.2007 to 16.02.2009 without sanctioned leave
- ii. That she applied for 26 days leave for umrah w.e.f 26.12.2018 which was regretted even then, she avail the leave.
- iii. That she travelled abroad in the year 2014, 2018 and 2019 without applying for leave/NOC. On another occasion, she applied only for earned leave; however, she proceeded abroad concealing her official status.
- iv. That she ws on medical leave from 06.10.2008 to 10.12.2008 but record shows that she proceeded abroad during this period.
- v. That she maintained two attendances registers during her posting as HM in GGHS Pind Kargo Khan, Abbottabad.
- vi. That she served in a school during her stay at Saudi Arabia.
- vii. That she used two passports for travelling abroad.

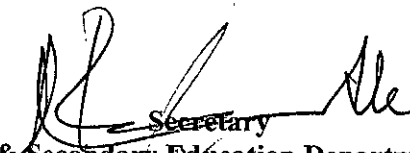
The enquiry committee declared all the allegations as proved except Serial No. VI above . The competent authority served a show cause notice upon the accused Principal and tentatively imposed major penalty of "Compulsory retirement from service" under E&D Rules, 2011. Reply of the accused Principal to the above show cause notice was not found satisfactory. However, the competent authority gave a chance of personal hearing to the accused principal under rules mentioned through the Secretary Industries, Commerce and Technical Education KP on 12.10.2021 (Annex-A).

3. Incorrect That appellant made false story, the appellant was granted personal hearing on behalf of the Chief Minister by the Secretary Industries, Commerce and Technical Education, KP at 12.10.2021
4. Incorrect, the petitioner is guilty and is not entitled for any relief. Furthermore, an inquiry was conducted against the accused/appellant who submitted their respective inquiry report to the competent authority wherein the accused has been found guilty of misconduct and inefficiency; hence a show cause notice was served upon the appellant, duly replied by the appellant in an unsatisfactory and evasive form. Hence the Competent Authority after having considered the charges and evidence on record, inquiry report, explanation of the accused lady officer in response to the charge sheet/statement of allegation/show cause notice and personal hearing granted to her by the Secretary Industries, Commerce and Technical Education Department on behalf of Chief Minister was of the view that the charges leveled against her, heave been proved without any shadow of doubt, hence she has been proceeded against the E&D Rules, 2011 by imposing upon her the penalty of compulsory retirement, upon the appellant vide notification by the Competent Authority in light of the facts and circumstances of the case.
5. Incorrect, the impugned Notification dated 02.12.2021 is according to law and procedure.

REPLY ON GROUNDS.

- A. Incorrect and denied. The appellant has been treated as per law, rules and procedure prior to the issuance of impugned Notification dated 02.12.2021 which is not only legally competent but is also liable to be maintained in the interest of justice because the Appellant has been found guilty of irregularities.
- B. Incorrect and denied. The statement of the appellant is against the facts and circumstances of the case proceeding against her were carried out according to E&D Rules 2011 vide the impugned Notification dated 02.12.2021 issued by the respondent after observing the codal formalities.
- C. Incorrect and denied, the appellant has been found guilty by the inquiry committee and has thus resultantly impugned Notification dated 02.12.2021 issued in the light of the material available on record.
- D. Incorrect and denied. Detailed reply of this ground has been given in the foregoing paras and the competent authorities have the discretion by imposing upon her the penalty of compulsory retirement.
- E. Incorrect and denied.
- F. Incorrect. The appellant has properly provided fair chance of personal hearing by the competent authority.
- G. Incorrect. The inquiry committee has acted under the mandate and legal procedure given by the competent authority and consequently the appellant has been found guilty of charges leveled against her.
- H. Para H to J are incorrect, hence denied.
- K. The Respondent will also seek permission of this Honorable Service Tribunal for further Additional ground at the time of arguments.

In view of the above made submissions, it is, therefore, most humbly prayed that this Honourable Tribunal may very graciously be pleased to dismiss the appeal with cost in favor of the Respondents.


Secretary
Elementary & Secondary Education Department
Government of Khyber Pakhtunkhwa

BEFORE THE HON'BLE SERVICE TRIBUNAL PESHAWAR

Service Appeal #542/2023

Mst. Dilafroze..... Petitioner

VERSUS

Govt. of Khyber Pakhtunkhwa & others..... Respondents

AFFIDAVIT

I, Muhammad Imran Zaman, Section Officer (Litigation-II) Elementary & Secondary Education, Department do hereby solemnly affirm and declare that the contents of the accompanying parawise comments, submitted by the respondents, are true and correct to the best of my knowledge and belief and nothing has been concealed from this Honorable court.

DEPONENT .



MUHAMMAD IMRAN ZAMAN
Section Officer (Lit-II)
E&SE PESHAWAR





MOST IMMEDIATE / OUT TODAY E/B

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**GOVERNMENT OF KHYBER PAKHTUNKHWA
INDUSTRIES, COMMERCE AND
TECHNICAL EDUCATION DEPARTMENT**

Annex: D

No. E&A(IND)2-6/G/2021/265-17.

4th October, 2021

To

✓ Mst. Dil Afroz (BS-19),
Principal,
GGHSS Sirikot,
District Haripur.

Subject: - INQUIRY AGAINST MST. DIL AFROZ (TC BS-19)

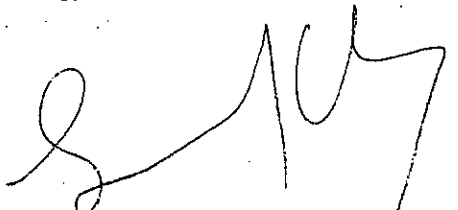
I am directed to refer to the subject note above and to state that the Competent Authority (Chief Minister Khyber Pakhtunkhwa) has been pleased to nominate Secretary, Industries, Commerce & Technical Education Department to grant you opportunity of personal hearing on his behalf in the subject case.

You are therefore, requested to come for personal hearing on 12th October 2021 at 12:00 Noon in the office of Secretary, Industries, Commerce & Technical Education Department alongwith relevant record on the date and time mentioned above.


SECTION OFFICER (ADMN)

Endst; No. & Date Even:-

1. Secretary to Government of Khyber Pakhtunkhwa, Elementary & Secondary Education, Peshawar with the request to depute departmental representative fully conversant with the case alongwith relevant record on date and time mentioned above, to assist the Secretary, Industries Commerce & Technical Education Department during the personal hearing.
2. Section Officer (S/F) Elementary & Secondary Education, Peshawar With the request to inform the accused officer.
3. PS to Secretary, IC&TE Department, Peshawar.
4. PA to Special Secretary, IC&TE Department, Peshawar.


SECTION OFFICER (ADMN)