

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

Service Appeal No. 7600/2021

BEFORE: MR. KALIM ARSHAD KHAN, ... CHAIRMAN
MISS FAREEHA PAUL ... MEMBER(E)

Hassin Ullah S/O Bakht Zamin Khan, the then SPST (BPS-14) posted at Government Primary School Shangwati District Swat R/O Mohallah Bakht Abad, Sichbanr, Roniyal, Tehsil Matta, District Swat.

..... (Appellant)

Versus

1. District Education Officer (M) Swat at Gulkada.
2. Sub Divisional District Education Officer (M) Matta District Swat.
3. Director, Elementary & Secondary Education Khyber Pakhtunkhwa, Peshawar.
4. Asstt. Director, Elementary & Secondary education (Establishment), Peshawar.
5. Assistant Director, Elementary & Secondary Education, Local Office, Peshawar.

.....(Respondents)

Qazi Zakiud Din,
Advocate

... For appellant

Mr. Muhammad Riaz Khan Paindakhel,
Assistant Advocate General

... For respondents

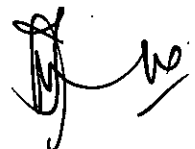
Date of Institution..... 15.10.2021

Date of Hearing..... 08.12.2022

Date of Decision..... 08.12.2022

JUDGEMENT

FAREEHA PAUL, MEMBER (E): The service appeal in hand has been instituted under Section 4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974 against the order dated 14.12.2020 whereby the appellant was removed from service and against the order dated 04.10.2021 whereby his departmental appeal was rejected. It has been prayed that on acceptance of



the appeal, both the impugned orders might be set aside and the appellant might be reinstated in service by treating the absence period of the appellant into extraordinary leave without pay.

2. Brief facts of the case, as given in the memorandum of appeal, are that the appellant was employed in the Education Department on 06.10.2005 as PTC (BPS-9) and was posted at Government Primary School Khwar Mandaw, Mian Kalay, Matta, District Swat. The appellant served the department for about 15 years honestly and to the best of his ability. He applied to respondent No. 1 for the grant of extraordinary leave without pay w.e.f. 09.03.2020 to 08.03.2023 (1095) days. According to the appellant, he was verbally told that leave had been granted and hence after becoming satisfied, he left for abroad with a stay at Karachi. He was proceeded against for absence from duty despite the fact that he had already applied for extraordinary leave without pay to which he was entitled as a right by the reason that he had already completed 15 years service. Inquiry was conducted as a result of which the appellant was awarded punishment by passing the impugned order of removal from service dated 14.12.2020. Feeling aggrieved of the impugned order of respondent No. 1, the appellant preferred a departmental appeal to respondent No. 3 which was rejected. Thereafter, he instituted a Writ Petition No. 860/2020 but the same was disposed off for want of jurisdiction; hence the present appeal.

3. Respondents were put on notice who submitted written replies/comments on the appeal. We have heard the learned counsel for the



appellant as well as the learned Assistant Advocate General for the respondents and perused the case file with connected documents in detail.

4. Learned counsel for the appellant after presenting the case in detail contended that both the impugned orders of respondents No. 1 & 3 were passed without referring to any cogent reason or legal and factual provision. He further contended that the so-called inquiry allegedly conducted had failed to take into consideration the fact that application of the appellant for extraordinary leave without pay was not rejected till then and that he was proceeded against by ignoring that important aspect of the case and was condemned unheard. He further contended that the appellant had 15 years spotless service at his credit and a harsh view was taken against him. He requested that the appeal might be accepted as prayed for.

5. Learned Assistant Advocate General, while rebutting the arguments of learned counsel for the appellant, contended that the appellant submitted application for extraordinary leave for 1095 days from 09.03.2020 to 08.03.2023, whereas he should have applied for Ex-Pakistan leave. Without getting his leave sanctioned, the appellant went aboard on 06.03.2020 even before the date from which he had applied for leave. He referred to the travel history of the appellant obtained from the FIA which showed that the appellant left the country on 06.03.2020. He requested that the instant appeal might be dismissed with cost.

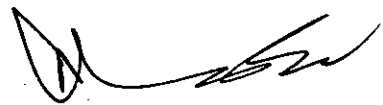
6. After hearing the arguments from both sides and going through the record, it is clear that the appellant submitted an application for leave



without pay w.e.f. 09.03.2020 to 08.03.2023 (1095 days). Copy of application provided with the service appeal bears endorsement No. 941 dated 19.02.2020, whereas a copy of the same provided with the reply has no endorsement number and date. There is no sanction for the said leave available on record. Travel history provided with the reply indicates that the appellant travelled to Canada from Benazir Bhutto International Airport, Islamabad on 06.03.2020. It is noted here that the leave applied for was from 09.03.2020 whereas the appellant's travel history reveals that he left the country on 06.03.2020, which shows that he went abroad without getting his leave sanctioned. He applied only for extraordinary leave without pay and concealed the fact that he was actually travelling abroad for which he required ex-Pakistan leave alongwith NOC also. A civil servant is bound under the law/rules to get his leave sanctioned from his competent authority and then proceed accordingly.

7. In view of the above discussion, appeal in hand is dismissed. Parties are left to bear their own costs. Consign.

8. *Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal this 8th day of December, 2022.*



(KALIM ARSHAD KHAN)
Chairman



(FAREEHA PAUL)
Member (E)

Service Appeal No. 7600/2021

08th Dec 2022

Qazi Zakiud Din, Advocate for appellant present. Mr. Muhammad Riaz Khan Paindakhel, Assistant Advocate General for the respondents present. Arguments heard and record perused.

2. Vide our detailed judgement containing 04 pages, appeal in hand is dismissed. Parties are left to bear their own costs. Consign.

3. *Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal this 8th day of December, 2022.*



(KALIM ARSHAD KHAN)
Chairman



(FAREEHA PAUL)
Member (E)

01.11.2022

Appellant in person present. Mr. Hussain Ali, ADEO along with Mr. Asif Masood Ali Shah, Deputy District Attorney for the respondents present.

Appellant requested for adjournment on the ground that his counsel is not available today. Adjourned. To come up for arguments on 08.12.2022 before the D.B.



(Mian Muhammad)
Member (E)



(Salah-Ud-Din)
Member (J)

08.12.2022 Appellant in person present. Mr. Muhammad Kiaz
Khan (Paindakhel, Asst. AG) along with Mr. Hussain Ali,
Legal Representative for respondents present.

This case pertains to camp court Svat, therefore, let it
be fixed for arguments at camp court Svat on 07.02.2023
before the D.B. P is given to the parties.

(Faraha Paul)
Member (Executive)

(Salim Arshad Khan)
Chairman

06th July, 2022

Appellant alongwith his counsel present. Mr. Kabir Ullah Khattak, Additional AG for respondents present.

SCANNED
KPS
Peshawar


Respondents have not submitted written reply/comments. Learned AAG seeks time for submission of written reply/comments. Last chance is given. To come up for written reply/comments on 07.09.2022 before S.B.

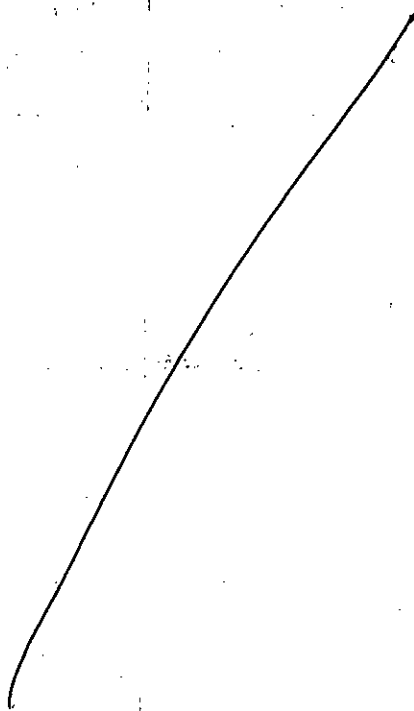

(Kalim Arshad Khan)
Chairman

07.09.2022

Clerk of learned counsel for the appellant present. Mr. Muhammad Adcel Butt, Additional AG alongwith Muhammad Zahid, SIDO, Swat for respondents present.

Written reply on behalf of respondents No. 1 to 5 submitted which is placed on file. A copy of the same is handed over to clerk of learned counsel for the appellant. To come up for rejoinder/ arguments on 01.011.2022 before D.B.


(Fareeha Paul)
Member (E)



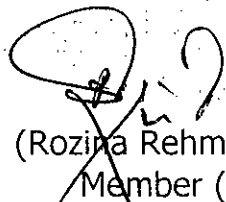
20.12.2021 Appellant present through counsel.

Preliminary arguments heard. Record perused.

Points raised need consideration. Instant appeal is admitted for regular hearing subject to all legal objections. The appellant is directed to deposit security and process fee within 10 days. Thereafter, notice be issued to respondents for submission of written reply/comments. To come up for written reply/comments on 07.03.2022 before S.B.

Appellant Deposited
Security & Process Fee

20/12/21


(Rozina Rehman)
Member (J)

7-3-2022

Due to retirement of the Honorable Chairman the case is adjourned to come up for the same as before on 24⁵ 2022


Reader

24.05.2022 Nemo for the parties. Mr. Kabirullah Khattak, Addl. AG for the respondents present.

Previous date was changed on the strength of Reader note, therefore notice be issued to the respondents for submission of written reply/comments. Adjourned. To come up for written reply/comments on 06.07.2022 before S.B. Notice be also issued to the appellant and his counsel for the date fixed.




(Mian Muhammad)
Member (E)

Form- A

FORM OF ORDER SHEET

Court of _____

Case No.- 7600 /2021

S.No.	Date of order proceedings.	Order or other proceedings with signature of judge
1	2	3
1-	15/10/2021	<p>The appeal of Mr. Hassin Ullah presented today by Mr. Qazi Zaki ud Din 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</p> <p>This case is entrusted to S. Bench at Peshawar for preliminary hearing to be put up there on <u>20/2/21</u>.</p> <p style="text-align: right;"> CHAIRMAN</p>
2-		

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

CHECK LIST

Case Title: Hassimullah vs D B O / Ms Sweet

S#	CONTENTS	YES	NO
1	This Appeal has been presented by:		
2	Whether Counsel/Appellant/Respondent/Deponent have signed the requisite documents?	✓	
3	Whether appeal is within time?	✓	
4	Whether the enactment under which the appeal is filed mentioned?	✓	
5	Whether the enactment under which the appeal is filed is correct?	✓	
6	Whether affidavit is appended?	✓	
7	Whether affidavit is duly attested by competent Oath Commissioner?	✓	
8	Whether appeal/annexures are properly paged?	✓	
9	Whether certificate regarding filing any earlier appeal on the subject, furnished?	✓	
10	Whether annexures are legible?	✓	
11	Whether annexures are attested?	✓	
12	Whether copies of annexures are readable/clear?	✓	
13	Whether copy of appeal is delivered to AG/DAG?	✓	
14	Whether Power of Attorney of the Counsel engaged is attested and signed by petitioner/appellant/respondents?	✓	
15	Whether numbers of referred cases given are correct?	✓	
16	Whether appeal contains cutting/overwriting?	✓	
17	Whether list of books has been provided at the end of the appeal?	✓	
18	Whether case relate to this court?	✓	
19	Whether requisite number of spare copies attached?	✓	
20	Whether complete spare copy is filed in separate file cover?	✓	
21	Whether addresses of parties given are complete?	✓	
22	Whether index filed?	✓	
23	Whether index is correct?	✓	
24	Whether Security and Process Fee deposited? On	✓	
25	Whether in view of Khyber Pakhtunkhwa Service Tribunal Rules 1974 Rule 11, notice along with copy of appeal and annexures has been sent to respondents? On	✓	
26	Whether copies of comments/reply/rejoinder submitted? On	✓	
27	Whether copies of comments/reply/rejoinder provided to opposite party? On	✓	

It is certified that formalities/documentation as required in the above table have been fulfilled.

Name:

Qazi Zubair L

Signature:

Dated:

[Signature]