

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No.6872/2020

Date of Institution ... 29.06.2020
Date of Decision ... 13.10.2021

Mrs. Hina Idrees Ex-Qaria (BPS-12) G.G.H.S, Muhammadzai,
Peshawar.

... (Appellant)

VERSUS

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

... (Respondents)

Kamran Khan,
Advocate

... For appellant.

Kabir Ullah Khattak,
Additional Advocate General

... For respondents.

Rozina Rehman
Atiq Ur Rehman Wazir

... Member (J)
... Member (E)

JUDGMENT

Rozina Rehman, Member(J): Facts gleaned out from the memorandum of appeal are that appellant was inducted as Qaria. She applied for extraordinary leave for four years which was accordingly sanctioned. She approached the concerned quarter on the expiry of her EOL and accordingly, submitted her arrival report. She was conditionally adjusted, where-after, she started her duty without salary. She filed service appeal for release of her salary which was dismissed, where-after, she filed another service appeal for conversion of conditional adjustment order into permanent adjustment order, however, during the pendency of service appeal, the impugned order in respect of her removal from service was passed. Therefore,

her appeal was dismissed and she filed departmental appeal against the impugned order of her removal from service, which was not responded to, hence, the present service appeal.

2. We have heard Kamran Khan Advocate for appellant and Kabir Ullah Khattak, learned Additional Advocate General for the respondents and have gone through the record and the proceedings of the case in minute particulars.

3. Kamran Khan Advocate learned counsel appearing on behalf of appellant, in support of appeal contended with vehemence that the impugned order dated 03.02.2020 is against law, facts and norms of natural justice, hence, not tenable in the eye of law. He argued that the appellant was not treated in accordance with law and rules and as such, they violated Article-4 & 25 of the Constitution of Islamic Republic of Pakistan, 1973. He contended that no regular inquiry was conducted and no charge sheet and statement of allegations were ever issued to the appellant and lastly, he submitted that she was conditionally adjusted despite the fact that her EOL was sanctioned by the competent authority.

4. Conversely, learned A.A.G submitted that the appellant applied for extraordinary leave for four years which was illegally sanctioned because she was not entitled due to her less than 10 years service under the Revised Leave rules, 1981. He contended that although her leave was illegally sanctioned yet she availed it but after expiry of her leave, she did not resume her duty and remained absent from duty w.e.f 21.09.2012 and lastly, he submitted that the appellant herself submitted an affidavit that she will not claim any benefit till the approval by the competent authority of her absence

period and therefore, her appeal was rightly dismissed by the Service Tribunal.

5. From the record it is evident that appellant was appointed against the post of Qaria in the Education department on 16.05.2005. She availed medical leave from time to time, where-after, she applied for extraordinary leave for four years w.e.f 20.08.2008 to 20.09.2012. A short history of appellant in respect of her leave is given below:

- I. Maternity Leave w.e. from 27.09.2005 to 25.12.2005.*
- II. Maternity leave w.e from 06.09.2006 to 04.12.2006.*
- III. Medical leave w.e. from 05.12.2006 to 06.12.2006.*
- IV. Medical leave w.e from 12.12.2006 to 21.12.2006.*
- V. Extraordinary leave w.e from 22.12.2006 to 25.12.2006.*
- VI. Extraordinary leave w.e. from 01.07.2007 to 28.02.2007.*
- VII. Extraordinary leave w.e from 20.09.2007 to 25.09.2008.*
- VIII. Extraordinary leave without pay w.e.f 20.09.2008 to 20.09.2012.*
- IX. Absence without pay 21.09.2012 to 10.11.2013.*
- X. Absence from February, 2014 till removal from service.*

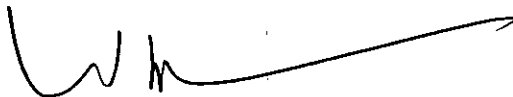
6. Admittedly, she was not entitled to the said leave due to her less than 10 years service under the Revised Leave Rules, 1981 and EOL was illegally sanctioned. She availed four years leave, where-after, she was bound to resume her duty on 21.09.2012. She reported for duty on 11.11.2013. She failed to justify this period from 21.09.2012 to 10.11.2013 for 14 months and it was on 18.12.2013 when her adjustment order was issued and consequent upon the undertaking given by her, she was adjusted against the vacant post of Qaria at G.G.H.S Muhammadzai, Peshawar w.e.f 11.11.2013. Her

Service Appeal No.693/2018 for release of her salary and allowances from the date of adjustment (11.11.2013) was dismissed on 24.01.2019. Admittedly, she did not perform duty w.e.f 14.02.2014, therefore, a notice was properly issued by the respondent. Show cause notice was also served upon her and she submitted her reply to the show cause notice which has been mentioned by the District Education Officer in her letter addressed to the appellant in respect of her personal hearing. Charge sheet and statement of allegations were properly issued. Inquiry report is available on file and as per record, it becomes crystal clear that she performed her duty after adjustment from 20th December, 2013 to 14th February, 2014. Learned counsel for appellant was asked in respect of her performance of duty, who categorically admitted her non-performance of duty after February, 2014 till the date of her removal from service.

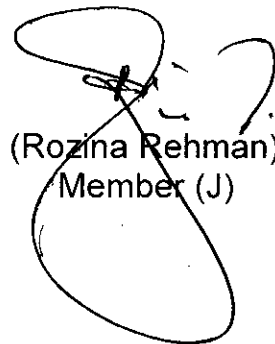
7. Having considered the matter from all angles in the light of material available on file, we do not find any merit in the instant service appeal which is hereby dismissed. Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCED.

13.10.2021



(Atiq Ur Rehman Wazir)
Member (E)



(Rozina Rehman)
Member (J)

Order

13.10.2021

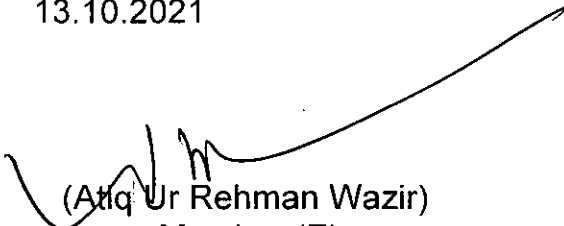
Appellant present through counsel.


Kabir Ullah Khattak learned Additional Advocate General for respondents present. Arguments heard and record perused.

Vide our judgment of today of this Tribunal placed on file, we do not find any merit in the instant service appeal which is hereby dismissed. Parties are left to bear their own costs. File be consigned to the record room.

Announced.

13.10.2021


(Atiq Ur Rehman Wazir)
Member (E)


(Rozina Rehman)
Member (J)

11.06.2021

Counsel for the appellant present.

Mr. Kabirullah Khattak, learned Additional Advocate General for respondents present.

Due to general strike of the Bar, case is adjourned to 13.10.2021 for arguments before the D.B.

(Rozina Rehman)
Member(J)

Chairman

~~13.10.2021~~

~~Appellant present through counsel.~~

~~Kobir-Ullah-Khattak learned Additional Advocate General for respondents present. Arguments heard and record perused.~~

~~Under our judgment of today of this Tribunal placed on file, we do not find any merit in the instant service appeal which is hereby dismissed. Parties are left to bear their own costs. File be consigned to the record.~~

~~Approved.
13.10.2021~~

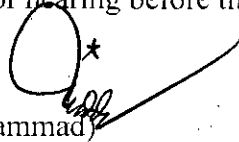
~~(A. M. Rehman, Member)~~
~~Member (E)~~

~~(Rozina Rehman)~~
~~Member (J)~~

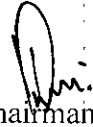
16.03.2021

Counsel for the appellant and Mr. Noor Zaman Khattak,
District Attorney for the respondents present.

Due to paucity of time, instant matter is adjourned to
11.06.2021 for hearing before the D.B.



(Mian Muhammad)
Member (E)



Chairman

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[Faint handwritten text]

28.10.2020

Nemo for appellant.

Mr. Kabir Ullah Khattak learned Additional Advocate General present.

Written reply on behalf of respondents is still awaited. Notice be issued to respondents in order to submit reply/comments. To come up for written reply/comments on 23.12.2020 before S.B.



(Rozina Rehman)
Member (J)

23.12.2020

Junior counsel for appellant present.

Kabir Ullah Khattak learned Additional Advocate General alongwith toseef ur Rehman Legal Advisor for respondent No.3 and Abdul Waheed Litigation Officer for respondents No. 1 & 2 present.

Representative of respondent No.3 submitted reply/comments while representative of respondents No.1 & 2 stated that respondents No.1 & 2 rely on the reply of respondent No.3. To come up for rejoinder, if any, and arguments on 16.03.2021 before D.B.



(Rozina Rehman)
Member (J)

20.08.2020

Counsel for the appellant present. Preliminary arguments heard and case file perused. Learned counsel for the appellant contended that the appellant was appointed as Qaria (BPS-07) vide office order dated 16.05.2005. That due to blood feud and serious threats to her life, she applied for extra ordinary leave (EOL) w.e.f. 20.08.2008 to 20.09.2012 (1460 days) without pay and the same was sanctioned to the appellant by the Competent Authority vide order dated 20.09.2008. That after completion and on expiry of the extra ordinary leave the appellant approached the concerned quarter and submitted her arrival report. However, she was conditionally adjusted against her post in GGHS Muhammadzai, Peshawar vide order dated 18.12.2013. Thereafter, the appellant filed service appeal no. 693/2018 for release of her salary, before this Tribunal but the same was dismissed on the ground of no work no pay vide judgment dated 24.01.2019. Thereafter the appellant filed another service appeal No. 717/2019 for conversion of her conditional adjustment order dated 18.12.2013 to permanent adjustment order but during the pendency of the said service appeal, impugned order dated 03.02.2020 was passed against the appellant whereby major penalty of removal from service was imposed on her. She filed departmental appeal on 17.03.2020 which was not responded within the stipulated statutory period, hence the instant service appeal on 29.06.2020. Learned counsel for the appellant further contended that the appellant submitted several applications for sanction to condonation/leave and referred to correspondence dated 15.01.2014, 28.01.2014 and 23.06.2014 issued by the Respondents. It was argued that impugned order dated 03.02.2020 is against law, facts and norms of natural justice. The appellant has not been treated in accordance of law and rules and the respondents have violated Article-4 and 25 of the Constitution. Mandatory requirements under Rule-9 of the Khyber Pakhtunkhwa Government Servants (Efficiency and Discipline) Rules, 2011 have not been fulfilled. No proper enquiry has been conducted against the appellant which is against the spirit of natural justice and fair trial. The appellant has, thus, been discriminated as the principles of natural justice have been violated by the Respondents.

Points urged need consideration. Service appeal is admitted subject to all legal objections. Appellant is directed to deposit security and process fee within 10 days, thereafter, notices be issued to the respondents for written reply/comments for 28.10.2020 before S.B.

Appellant Deposited
Security & Process Fee

26/8/20

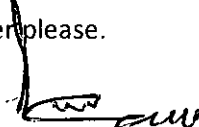


(MAIN MUHAMMAD)
MEMBER (E)

Form- A

FORM OF ORDER SHEET

Court of _____

Case No.- 6872 /2020

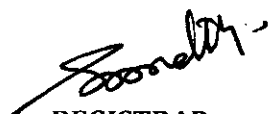
1S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1-	07/07/2020	<p>The appeal of Mst. Hina Idrees resubmitted today by Mr. Shahzaullah Yousafzai Advocate may be entered in the Institution Register and put up to the Worthy Chairman for proper order please.</p> <p style="text-align: right;"> REGISTRAR</p> <p>2-</p> <p>This case is entrusted to S. Bench for preliminary hearing to be put up there on <u>20/08/2020</u></p> <p style="text-align: right;"> CHAIRMAN</p>

The appeal of Mst. Hina Idrees, Ex-Qaria received today i.e on 29-06-2020 is incomplete on the following score which is returned to the counsel for the appellant for completion and resubmission within 15 days.

1. Annexure- C of the appeal is illegible which may be replaced by legible/better one.
2. Application for extra ordinary (EOL) and Sanction order mentioned in para-2 is not attached with the appeal which may be placed on it.
3. Impugned order dated 07-02-2020 mentioned in para-10 is not attached with the appeal which may be placed on it.
4. copies of charge sheet, statement of allegation, show cause notice, enquiry report and replies thereto are not attached with the appeal which may be placed on it.

No. 1341 /S.T,

Dt. 29-06/2020


REGISTRAR
SERVICE TRIBUNAL
KHYBER PAKHTUNKHWA
PESHAWAR.

Shahzullah, Adv, Peshawar.

Objection no:2 is not relevant as the mentioned documents has not been ^{annexed} ~~attached~~ in the memo of appeal

Objection no:3 Copy of impugned order is ~~attached~~ ^{annexed} as annexure F.

Objection No 4 is not relevant as the mentioned documents are ^{not} annexed to the memo of appeal. as enquiry charge sheet etc has not been served on appellant.

Objection No 1. has been removed by placing ~~in~~ file better copy of ~~the~~ Annexure - C

07/07/2020 All objection removed resubmitted
Accordingly Shahzullah Younsuzai Adv

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR

APPEAL NO. 6872/2020

HINA IDREES

VS

EDUCATION DEPTT:

INDEX

S.NO.	DOCUMENTS	ANNEXURE	PAGE
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2.	Adjustment order	A	5.
3.	Copies of attendance certificate & register	B	6-9.
4.	Inquiry report	C	10- 11.
5.	Copies of letters	D	12-14.
6.	Service Tribunal judgment	E	15-16.
7.	Impugned order	F	17.
8	Memo of appeal & order sheet	G&H	18-19
9	Departmental appeal	I	20-21
10	wakalatnama	22

APPELLANT

THROUGH:


SHAHZULLAH YOUSAFZAI
ADVOCATE

Room No. 3 & 4, Upper Floor,
Islamia Club Building,
Khyber Bazar, Peshawar
0302-8578851

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

APPEAL NO. 6872/2020

Khyber Pakhtunkhwa
Service Tribunal

Diary No. 5689

Dated 29-6-2020

Mrs. Hina Idress Ex: Qaria (BPS-12)
GGHS, Muhammadzai, District Peshawar.

..... **APPELLANT**

VERSUS

- 1- The Secretary Elementary (E&SE) Department Khyber Pakhtunkhwa, Peshawar.
- 2- The Director (E&SE) Department, Khyber Pakhtunkhwa, Peshawar.
- 13- The District Education Officer (F), District Peshawar.

..... **RESPONDENTS**

APPEAL UNDER SECTION 4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT 1974 AGAINST THE IMPUGNED ORDER DATED 03/02/2020 COMUNICATED TO APPELLANT ON 09/03/2020, WHEREBY MAJOR PENALTY OF REMOVAL FROM SERVICE WAS IMPOSED ON APPELLANT AND AGAINST NOT TAKING ACTION ON THE DEPARTMENTAL APPEAL OF THE APPELLANT WITHIN THE STATUTORY PERIOD OF NINETY DAYS.

PRAYER:

That on acceptance of this appeal the impugned order dated 03/02/2020 may kindly be set aside and the appellant may please be reinstated in to service with all back benefits. Any other remedy which this august Tribunal deems fit that may also be awarded in favor of the appellant.

R/SHEWETH:

ON FACTS:

Brief facts giving rise on the present appeal are as under:

- 1- That appellant was initially inducted in the respondent department as Qaria (BPS-7) vide order dated 16/05/2005. That in response to the aforementioned appointment order the appellant submitted arrival report and started performing her duty quite efficiently and up to the entire satisfaction of her superiors.
- 2- That the appellant due to blood feud and serious threats to her life applied for extra ordinary leave (EOL) w.e.f 20/8/2008 to 20/09/2012 (1460 days) without pay and the

Filed to-day
Registrar

Re-submitted to-day
and filed.
Registrar

same was sanctioned to the appellant vide order no.6908-10 dated 20/09/2008, however the same order has not communicated to appellant.

- 3- That after completion and on expiry of the extra ordinary leave the appellant approached the concerned quarter and submitted her arrival report, however she was conditionally adjusted against her post in GGHS Muhammadzai vide order dated 18/12/2013 on the pretext, that competent authority has illegally granted EOL without pay, therefore the release of salary of appellant was made conditional with sanctioning of EOL without pay by finance department. Copy of the conditional adjustment order dated 18/12/2013 is attached as annexure **A.**
- 4- That after conditional adjustment order the appellant started her duty at GGHS Muhammadzai and continuously performed duty for six months without salary. Copy of attendance register is attached as annexure.....**B.**
- 5- That after conditional adjustment an inquiry was ordered in the appellant case and in that inquiry it was recommended that EOL was granted to appellant by competent authority on no fault on part of appellant therefore the respondent no.3 shall sanction the EOL from finance department. Copy of of inquiry report is attached as annexure **C.**
- 6- That it is worth mentioning here that respondents no.1 and 2 directed respondent no.3 through various letters to provide relevant record to finance department for sanctioning/condoning EOL of appellant but the respondent no.3 malafidely used delaying tactics and did not provide the relevant record to finance department. Copies of letters directed to respondent no.3 are attached as annexure.....**D.**
- 7- That it is pertinent to mention here that it was not possible for appellant to continue her duty without salary, therefore the appellant stop performing her duty and pursue her case before the respondents to first sanction/condone her EOL from finance department, but due to malafide and slackness of respondents no response was received from finance department i.e neither the EOL was sanctioned/condoned nor the same was refused.
- 8- That it is worth mentioning here that when no response was received from respondents regarding sanctioning/condonation despite repeated request, the appellant filed service appeal 693/2018 for release of her salary before this

honorable court but the same was dismissed on the ground of no work no pay vide judgment dated 24/01/2019. Copy of judgment dated 24/01/2019 is attached as annexure.....**E.**

- 9- That it is pertinent to mention here that appellant being kept on hanging position filed departmental appeal before respondents for conversion of her conditional adjustment order dated 18/12/2013 to permanent adjustment order as she was granted EOL by competent authority but the same was not responded within ninety days, therefore the appellant filed service appeal 717/2019 before this honorable court for conversion of conditional adjustment order in to permanent adjustment, however when the case was called for final hearing on 09/03/2020 the respondents produced before this honorable court the impugned order dated 07/02/2020 whereby major penalty of removal from service was imposed on appellant, this honorable court disposed of the aforementioned appeal being infructuous vide order sheet/judgment dated 09/03/2020. Copies of impugned order dated 07/02/2020, memo of appeal and order sheet/judgment dated 09/03/2020 are attached as annexure.....**F,G&H.**
- 10- That feeling aggrieved the appellant filed departmental appeal against the impugned order dated 07/02/2020 but the same has not been responded within statutory period of ninety days. Copy of departmental appeal is attached as annexure.....**I.**
- 11- That feeling highly aggrieved and having no other remedy the appellant preferred the instant appeal on following grounds inter alia.

GROUND:

- A- That the impugned order dated 07/02/2020 issued by the respondents is against the law, facts and norms of natural justice hence not tenable in the eye of law and liable to be set aside.
- B- That the petitioner has not been treated in accordance with law and rules by the respondent Department on the subject noted above and as such the respondents violated Article 4 and 25 of the Constitution of Islamic Republic of Pakistan 1973.
- C- That the respondents acted in arbitrary and malafide manner by issuing the impugned order dated 07/02/2020, whereby major penalty of removal from service was imposed on appellant in order to save their own skin.

- D- That no codal formality i.e no regular inquiry no charge sheet and no show cause notice has been issued by the respondents before issuing the impugned order.
- E- That no publication has been made in two leading newspaper which is mandatory under rule 9 of E&D rules 2011 before imposing penalty on charges of absentia.
- F- That the appellant has been discriminated on the subject noted above and as such the respondents violated the principle of natural justice.
- G- That the appellant was not willful absent from duty rather she was conditionally adjusted by the respondents despite the fact that her EOL was sanctioned by competent authority and due that conditional adjustment order the respondents were not releasing her salary due to which she was unable to perform duty.
- H- That appellant seeks permission to advance other grounds and proofs at the time of hearing.

It is therefore most humbly prayed that the appeal of the appellant may be accepted as prayed for.

Dated: 22.6.2020

APPELLANT


Hina Idrees

THROUGH: 
SHAHZULAH YUOSAFZAI


KAMRAN KHAN
ADVOCATES



Annexure A-5

DISTRICT EDUCATION OFFICER (FEMALE) PESHAWAR

ADJUSTMENT

Being involved the condition sanction Govt. of Khyber Pakhtun Khwa Finance Department to be obtained to regularize the service of Ms. Hina Idrees Qaria GGHS No.1 Peshawar Cantt Peshawar for availing Extra Ordinary Leave with out pay more than 02 years and consequent upon the under taking given by her, She is hereby adjusted against the vacant post of Qaria at GGHS Mohammadzai Peshawar w.e.f. 11/11/2013.

Note:-
1. Her Pay will only be released when condonation sanction is accorded by the Finance Department. In case the Finance Department did not accord sanction then she will neither claim the past service nor she will claim salary for the period she will work.
2. Her services will ceased to exist if the Finance Department regret the case of condonation.

(SAMINA GHANI)
DISTRICT EDUCATION OFFICER
(F) E & S EDU: PESHAWAR

Endst No. 2264-67 P.F. Hina Qaria dated 12/11/2013.

Copy of the above is forwarded to the:

1. Accountant General Khyber Pakhtun Khwa Peshawar.
2. Principal/Head Mistress concerned.
3. Official concerned.
4. B & A O local office

(Signature)

DISTRICT EDUCATION OFFICER
(F) E & S EDU: PESHAWAR

20/9/2008 To 20/09/2012

condoned by competent authority

The executive District Officer

Peshawar vide sanction Endo No 6908-10

Dated 20/9/2008

ATTESTED

Annexure B-6

ATTENDANCE CERTIFICATE

Certified that Mrs. HINA IDREES Qaria
appointed at this school vide DEO (E)
Peshawar office order NBR 0864-67/P.E
Hina Qaria dated 20-12-2013
attended this school W-e-F 20-12-2013
to 14-02-2014 as per attendance
register of this school.

Head Mistress
Govt Girls High
School Muhammadzai
Peshawar

Nat

HEAD MISTRESS
G.G.H.S. Mohammadzai
Dalazak Road, Peshawar

ATTESTED

ENQUIRY REPORT

I was appointed as inquiry officer to conduct inquiry against Mst. Hina Idrees Qaria GGMS Muhammad Zai Peshawar (vide order of the District Education Officer (F) Peshawar vide Endst: No. 6055-57 dated 28.06.2014 in connection with her prolong absence from duty and regular sanction of leave.

The enquiry was conducted on 02-12-2014. The questionnaires were given to her according to available record of the school/office of the DEO (F) Peshawar/Directorate of Elementary & Secondary Education as well as the service book of the Mistress concerned, the following report is submitted please.

She was appointed as Quria on 16-05-2005 & she took over charge on 16-05-2005. She has availed the following leave on full pay during here service after proper sanction of leave.

- i. Maternity leave w.e. from 27.09.2005 to 25.12.2005 (90 days on full pay).
- ii. Maternity leave w.e. from 06.09.2006 to 04.12.2006 (90 days on full pay).
- iii. Medical leave w.e from 05.12.2006 to 06.12.2006 (2 days on full pay).
- iv. Medical leave w.e from 12.12.2006 to 21.12.2006 (10 days on full pay).

She also avoid the extra ordinary leave for the following period after proper sanction of her leave by the competent authority i.e Ex-EDO (E&SE) Peshawar.

- i. Extra ordinary leave w.e from 22.12.2006 to 25.12.2006 (4 days without pay).
- ii. Extra ordinary leave w.e from 01.07.2007 to 28.02.2007 (59 days without pay).
- iii. Extra ordinary leave w.e from 20.09.2007 to 25.09.2008 (253 days without pay).

She again applied for extra ordinary leave with effect from 20.09.2008 to 20.09.2012 (4 years without pay) but which was illegally sanction by Mr. Said Rehman Ex-Executive District Officer (E&SE) Peshawar vide sanction Endst: No. 6908-10 dated 20.09.2008 (Copy attached) while she was not entitled for the said leave due to her less than 10 years service under the revised leave rules 1981. The Headmistress informed the EDO (E&SE) concerned in time to scrutinize the case as the teacher concerned is not entitled for the said leave vide her letter No. 1383 dated 27.10.2008 (Copy attached), but the EDO concerned did no honour the request of the Headmistress concerned. This is the violation of the Rules/ignorance but the said EDO has been died on 4.05.2011. However she availed her leave according to the leave sanction but after expiry of leave she did not report for duty and she remained absent from duty with effect from 21.09.2012.

Later on she reported for duty on 11.11.2013. She give an undertaking on judicial stamp paper that on her adjustment she will not claim salary/seniority etc if the competent authority does not approved her leave condonation (Copy attached). So she was conditionally adjusted at GGMS Muhammad Zai Peshawar by the DEO(F) Peshawar with effect from 11.11.2013 vide order Endst: No. 5864-67 dated 18.12.2013 (copy attached).

Better Copy. 11

Findings

The Teacher concerned has stated that she was not in a position to resume duty due to life threat to her by the enemies on the ground of her inherited property for which enemies murdered her father (copies of F.I.R and court case are attached). Hence the period of non attendance was beyond her control due to life threat. After her adjustment, she has been working honestly and regularly.

Recommendation:-

It is recommended that the leave granted to her with effect from 20.09.2008 to 20.09.2012 (04 years without pay). May be regularized from the Finance Department in the light of rule-4 of rule-12 of the Leave Rules vide Finance Department notification No.FD.SO9(SR-IV)5-54/80.Vol-IV dated 6-7-1999 (copy attached) and the absence period with effect from 21.09.2011 to 10.11.2013 may also be got sanctioned from the Finance Department as Extra ordinary leave (without pay) on humanitarian ground and being a female teacher.

Dated 12-12-2014

Enquiry Officer

(Ruqqaya Khanam)

Principal GGHS Dabgari Gate Peshawar.

ENQUIRY REPORT

Annexure — C-10

I was appointed as Enquiry officer to conduct enquiry against Mst Hina Idress Qaria GGMS Muhammad Zai Peshawar (vide order of the Distt. Education Officer (F) Peshawar vide Endst. No. 6055-57 dated 28-6-2014) in connection with her prolong absence from duty and irregular sanction of leave.

The enquiry was conducted on 2-12-2014. The questionnaires were given to her. According to the available record of the School/Office of the DEO(F) Peshawar/Directorate of Elementary & Secondary Education as well as the Service Book of the mistress concerned, the following report is submitted please:-

She was appointed as Qaria on 16-5-2005 & she took over charge on 16-5-2005. She has availed the following leave on full pay during her service after proper sanction of leave:-

- i. Maternity leave w.e. from 27-9-2005 to 25-12-2005 (90 days on full pay).
- ii. Maternity leave w.e. from 6-9-2006 to 4-12-2006 (90 days on full pay)
- iii. Medical leave w.e. from 5-12-2006 to 6-12-2006 (2 days on full pay)
- iv. Medical leave w.e. from 12-12-2006 to 21-12-2006 (10 days on full pay)

She also availed the Extra ordinary leave for the following period after proper sanction of her leave by the competent authority i.e Ex-EDO (E&SE) Peshawar:-

- i. Extra ordinary leave w.e. from 22-12-2006 to 25-12-2006 (4 days without pay)
- ii. Extra ordinary leave w.e. from 1-7-2007 to 28-2-2007 (59 days without pay)
- iii. Extra ordinary leave w.e. from 20-9-2007 to 29-5-2008 (253 days without pay)

She again applied for Extra ordinary leave with effect from 20-9-2008 to 20-9-2012 (4 years without pay) but which was illegally sanctioned by Mr. Said Rehman Ex-Executive District Officer (E&SE) Peshawar vide sanction Endst. No. 6908-10 dated 20-9-2008 (copy attached) while she was not entitled for the said leave due to her less than 10 years service under the Revised Leave Rules 1981. The Headmistress informed the EDO (E&SE) concerned in case to scrutinize the case as the teacher concerned is not entitled for the said leave vide her letter No. 1383 dated 27-10-2008. (copy attached), but the EDO concerned did not honour the request of the Headmistress concerned. This is the violation of the Rules/ignorance. but the said EDO has been died on 4-5-2011. However she availed her leave according to the leave sanction. but after expiry of leave, she did not report for duty and she remained absent from duty with effect from 21-9-2012.

Later on, she reported for duty on 11-11-2013. She gave an undertaking on judicial stamp paper that on her adjustment she will not claim salary/seniority etc if the competent authority does not approve her leave condonation (copy attached). So she was conditionally adjusted at GGMS Muhammad Zai Peshawar by the DEO (F) Peshawar with effect from 11-11-2013 vide order Endst. No. 5864-67 dated 18-12-2013 (copy attached).

75
67
(25)
(11)

Findings

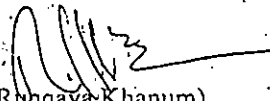
The teacher concerned has stated that she was not in a position to resume duty due to life threat to her by the enemies on the ground of her inherited property for which enemies murdered her father (copies of F.I.R. and court case are attached). Hence the period of non attendance was beyond her control due to life threat. After her adjustment, she has been working honestly and regularly.

Recommendations:-

It is recommended that the leave granted to her with effect from 20-9-2008 to 20-9-2012 (4 years without pay) may be regularized from the Finance Department in the light of rule 4 of rule 12 of the Leave Rules vide Finance Department Notification No. FD.S09SR.IV.5-54/80 Vol-IV dated 6-7-1999 (copy attached) and the absence period with effect from 21-9-2012 to 10-11-2013 may also be got sanctioned from the Finance Department as Extra ordinary leave (without pay) on humanitarian grounds and being a female teacher.

Dated 2-12-2014

Enquiry officer



(Ruqqaya Khanum)

Principal GGHS Dabgari Gate Peshwar.

ATTACHED

Annexure - D (12)

Government of Khyber Pakhtunkhwa
Elementary & Secondary Education Department

No. SO (PE) E&SED/5-1/Misc/2014

Date: 15-01-2014

To

The Secretary Finance Department
Govt of Khyber Pakhtunkhwa, Peshawar.

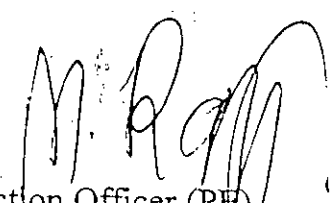
Subject: APPLICATION FOR SANCTION OF CONDONATION/ LEAVE

I am directed to enclose herewith a copy of directorate of Elementary and Secondary Education Khyber Pakhtunkhwa letter No 1370/F.No. 6/leave (F) Teachers Dated 10/01/2014 alongwith its enclosures in R/O Mrs. Hina Idrees Qaria GGHS Mohammad Zai, Peshawar for grant of extra ordinary leave being domain of Finance Department under the rules.

Section Officer (PE)
E & SE Department
Khyber Pakhtunkhwa

Copy Forwarded to the:-


Director Elementary & Secondary Education, Khyber Pakhtunkhwa, Peshawar
W/R to his No. 1370/F.No. 6/Leave (F) teachers


Section Officer (PE)
E & SE Department
Khyber Pakhtunkhwa

ATTESTED

203

(13)

	<p align="center">GOVERNMENT OF KHYBER PAKHTUNKHWA FINANCE DEPARTMENT (REGULATION WING) No. SO(FR)/FD/5-13/2012(A) Dated Peshawar, the 28-01-2014</p>
---	--

To

The Secretary to Govt. of Khyber Pakhtunkhwa,
Elementary & Secondary Education Department.

Subject:- APPLICATION FOR SANCTION OF CONDONATION / LEAVE

Dear Sir,


I am directed to refer to your letter No. SO(PE)/E&SED/5-1/Misc/2014
Dated 15-01-2014 on the subject noted above and to state that Administrative
Department is requested to furnish the following information / documents for further
processing the case.

P-154

- 1) The Administrative Department may clarify under which rule 05 years EOL was granted to the concerned Qaria while total length of service of the concerned Qaria is less than 10 years.
- 2) A copy of FIR may also be furnished. ✓
- 3) Whether any departmental inquiry has been taken against the concerned official or otherwise? If yes then the Committee report may be furnished. ✓

Please
SO(PE)
28/01/2014
 Please forward to Directorate/
 DEO concerned for reply.


Yours faithfully,



SECTION OFFICER(FR)

28/1/2014

fm

ATTESTED 

(14) 229



GOVERNMENT OF KHYBER PAKHTUNKHWA
ELEMENTARY & SECONDARY EDUCATION DEPARTMENT
No. SO(PE)E&SED/5-1/Misc/2014
Dated Peshawar the 23-06-2014

The Director
Elementary & Secondary Education
Khyber Pakhtunkhwa, Peshawar.

Subject:- APPLICATION FOR SANCTION OF CONDONATION/LEAVE.

I am directed to refer to this department letter of even No. dated 18-03-2014 & 5-04-2014 on the subject noted above in r/o Mrs. Hina Idrees Qaria GGHS Muhammad Zai Peshawar and to state that progress of the case is still awaited at your end, the same please be forwarded to this department for further processing the case.

[Handwritten Signature]
(ZAMIN KHAN MOMAND)
SECTION OFFICER (PRIMARY)

ATTESTED

Annexure E - 15

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR.

Appeal No. 693/2018

Date of Institution ... 04.05.2018

Date of Decision ... 24.01.2019



Mst. Hina Idrees. Qaria. GGHS Muhammad Zai, Peshawar.

(Appellant)

VERSUS

Director Elementary and Secondary Education, Peshawar and two others.

(Respondents)

MR. MUHAMMAD SAEED KHATTAK,
Advocate

For appellant.

MR. MUHAMMAD JAN
Deputy District Attorney

For respondents.

MR. AHMAD HASSAN,
MR. MUHAMMAD AMIN KHAN KUNDI

MEMBER (Executive)
MEMBER (Judicial)

JUDGMENT

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

ATTESTED

ARGUMENTS

2. Learned counsel for the appellant argued that she was appointed against the post of Qaria in the Education Department on 16.05.2005. The appellant availed Extra Ordinary Leave and medical leave from time to time. She reported for duty on 11.11.2013 and was adjusted in GGHS, Muhammad Zai Peshawar conditionally. Release of her pay was subject to condonation/sanction of leave by the Finance Department. In case sanction was not accorded, she would not claim salary for the said period. Moreover, she will cease to be a government servant. Time and again she approached the respondents but no avail. Present appeal has been filed for release of salary and allowances from the date of adjustment i.e.

ATTESTED
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

ATTESTED



(16)

11.11.2013. The appellant was also present during the hearing. On a query of this Tribunal whether she was performing duty or not, informed that she was not performing duty?

3. On the other hand learned Deputy District Attorney argued that she remained willfully absent from duty after expiry of leave granted to her. That she submitted an affidavit not to claim benefits for the period she remained absent. She was treated according to law and rules.

CONCLUSION

4. Initially the appellant served the Education Department as Qaria. She availed Extra Ordinary Leave from time to time. After expiry of leave she failed to resume duty on 21.10.2012. The appellant submitted arrival for duty on 11.11.2013 and was adjusted in government Girls High School No.1 Peshawar Cantt. She had given an undertaking on judicial stamp paper that not to claim pay/ seniority for the period she remained absent. Her adjustment order was conditional and subject to regularization/condonation of leave by the Finance Department. As the appellant stated at the bar that she did not perform duty after 11.11.2013, so was not entitled for salary from the said period onward.

6. As a sequel to above, the appeal is dismissed. Parties are left to bear their own costs. File be consigned to the record room.

(Signature)

(AHMAD HASSAN)
MEMBER

(Signature)

(MUHAMMAD AMIN KHAN KUNDI)
MEMBER

ANNOUNCED
24.01.2019

Copy to be made
(Signature)
Khyber Pakhtunkhwa
Tribunal,
Peshawar

Date of Presentation of _____ 28-1-19

Number of Words _____ 800

Copying Fee _____ 6

Urgent _____

Total _____ 6

Name of Copyist _____

Date of Completion of Copy _____ 31-1-19

ATTESTED
(Signature)

NOTIFICATION.

Annexure - F-17

- 1 WHEREAS the principal GGHS Mohammadzai Peshawar has reported that Mst. Hina Idress Qaria is absent from duty w.e.from 14/2/2014 after expiry of leave without any application vide No. 107 dated 24/2/2014.
- 2 AND WHEREAS she was proceeded against under Khyber Pakhtunkhwa Govt: Servant rules 2011 for the charge of willful absence and show cause notice was served through Principal vide No1697 dated 15/6/2019 but no response received.
- 3 AND WHEREAS Mst. Saima Principal GGHS Mian Gujar Peshawar and Mst. Humera H/M GGHS Dalazak Peshawar were appointed as enquiry officers vide this office Notification-E. No. 996-97 /Estab: I/PF dated 30/5/2019 to enquire against the above named official who is absent from duty to submit detail report into the matter.
- 4 AND WHEREAS the enquiry Officers has submitted enquiry report vide No. 3352 dated 24/6/2019. The enquiry officers have pointed out that the above named official is absent from duty w.e.from 14/2/2014.
- 5 AND WHEREAS charge sheet was issued to the above named official through Head Mistress and copy thereof endorsed at her home address vide No. 2625-26 dated 4/7/2019 but no response received till date.
- 6 AND WHEREAS letter for personal hearing was also issued vide No. 3558 dated 18/1/2019 (P-133) in response of her show cause notice to appear in person before the undersigned on 25/7/2019 in connection with your reply, but you failed to avail the opportunity.
- 7 AND WHEREAS the absent Notice was published in two leading Newspapers daily AKHBAR dated 23/10/2019 and daily Mashriq on 24/10/2019 to attend the Office but neither you resume the duty nor responded to these notices.
- 8 AND WHEREAS The competent authority, District Education Officer (Female) Peshawar, after having considered the charges, evidence on record, and facts of the case, of the view that the charge of misconduct/willful absence from duty against the accused has been proved.
- 9 NOW THEREFORE, in exercise of the powers under Rules-4(b)iii of Khyber Pakhtunkhwa Government Servants(Efficiency and Discipline Rules 2011, I, the competent authority District Education Officer (Female) Peshawar is pleased to impose major Penalty of "Removal from Service" upon Mst: Hina Idress Qaria GGHS Mohammadzai Peshawar with immediate effect. The period of her absence with effect from 15/2/2014 till date is hereby treated as unauthorised absence from duty without pay.

(SAMINA GHANI)
DISTRICT EDUCATION OFFICER,
(FEMALE) PESHAWAR.

Sl. No. 3352-36 dated Peshr; the 03/02 /2020

- Copy of the above is forwarded to the:-
- 1 Accountant General Khyber Pakhtunkhwa Peshawar.
 - 2 Deputy Commissioner Peshawar.
 - 3 Director (E&SE) Khyber Pakhtunkhwa Peshawar.
 - 4 District Monitoring Officer Peshawar.
 - 5 Head Mistress GGHS Mohammadzai Peshawar with the remarks to recover any over payment made to the above named Official and deposit in to Govt: Treasury under intimation to this Office.
 - 6 Official concerned.

03/02/2020
DISTRICT EDUCATION OFFICER,
(FEMALE) PESHAWAR.

ATTESTED

Anzumi - 2-18

**BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR**



APPEAL NO. 717 / 2019

Diary No.

Dated

27/5/2019

MS. Hina idrees, Qaria (BPS-12),
GGHS, Mohammadzai, District Peshawar.....**APPELLANT**

VERSUS

- 1- The Secretary (E&SE) Department, Khyber Pakhtunkhwa, Peshawar.
- 2- The Director (E&SE) Department, Khyber Pakhtunkhwa, Peshawar.
- 3- The District Education Officer(F), District Peshawar.

.....**APPELLANT**

APPEAL UNDER SECTION-4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT-1974 AGAINST THE INACTION OF THE RESPONDENTS BY NOT CONVERTING THE CONDATIONAL ADJUSTMENT ORDER DATED 18/12/2013 IN TO PERMANENT ADJUSTMENT AND AGAINST NO ACTION TAKEN ON THE DEPARTMENTAL APPEAL OF THE APPELLANT WITHIN THE STATUTORY PERIOD OF NINETY DAYS.

PRAYER:

That on acceptance of this appeal the respondents may kindly be directed to adjust appellant against her post on permanent basis. Any other remedy which this august Tribunal deems fit that may also be awarded in favor of the appellant.

R/SHEWETH:
ON FACTS:

1- That the appellant was initially inducted in the respondent Department as qaria (BPS-7) vide order dated 16.05.2005. That in response to the said appointment order the appellant submitted arrival report and started performing her duty quite efficiently and up to the entire satisfaction of his superiors.

ed to-day
Registrar
27/5/19

2- That the appellant was of tender age when her father was murdered on land dispute. That later on the property of appellant father was illegally occupied by her enemies which resulted in civil litigations. That the appellant and her sister being the sole legal heir of their father's property were facing life threats from her enemies. Copies of FIR and revenue courts orders are attached as annexure
..... **A&B.**

3- That the appellant due to serious threats to her life, applied for Extraordinary Leave (EOL) w.e.f. 20.08.2008 to 20.09.2012 (1460

ATTESTED
EXAMINER
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

Annexure - H - 19

09.03.2020

Counsel for the appellant present. Mr. Ziaullah, DDA alongwith Mr. M. Arshad, ADEO for respondents present. This appeal was filed by the appellant against the order dated 18.12.2013 whereby the appellant was allegedly illegally adjusted. Today representative of the respondents furnished copy of removal order dated 03.02.2020 of the appellant, the same is placed on file. A copy of the same is also handed over to the learned counsel for the appellant. Learned counsel for the appellant stated that the order of removal dated 03.02.2020 has been passed during the pendency of this service appeal but was never communicated to the appellant or her counsel and came to know today about the removal order. As such the instant appeal stands dismissed being infructuous. However, the appellant is at liberty to avail proper departmental remedy etc against the order dated 03.02.2020. No order as to cost. File be consigned to the record room.

Announced:
09.03.2020

Certified to be true copy
EXAMINER
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

(Mian Muhammad)
Member

(M. Amin Khan Kundi)
Member

Date of Presentation of Application 17-6-2020
Number of Words 800
Copying Fee 12
Urgent 4
Total 16
Name of Copyist [Signature]
Date of Completion of Copy 17-6-20
Date of Delivery of Copy 17-6-20

ATTESTED

To,

Annexure - I - 26

The director, elementary and secondary education,
Khyber Pakhtunkhwa, Peshawar.

SUBJECT: DEPARTMENTAL APPEAL AGAINST THE IMPUGNED ORDER DATED 03/02/2020 COMMUNICATED TO APPELLANT ON 09/03/2020, WHEREBY MAJOR PENALTY OF REMOVAL FROM SERVICE WAS IMPOSED ON APPELLANT WITH IMMEDIATE EFFECT.

R/S: HEWETH:
ON FACTS:

- 1- That the appellant was initially appointed as Qaria (BPS-7) in E&S education department vide order dated 16/05/2005 and right from appointment the appellant served her respective Department quite efficiently and upto the entire satisfaction of his superiors.
- 2- That during service the appellant due to serious threats to her life from enemies applied for extra ordinary leave (EOL) w.e.f 20/08/2008 to 20/09/2012 (1460-days) without pay and the same was sanctioned to appellant by competent authority i.e the than DEO vide order no.6908-10 dated 20/09/2008.
- 3- That after completion/expiry of the extra ordinary leave the appellant approached the concerned quarter and submitted her arrival report, however the appellant was conditionally adjusted in GHSS Muhammad zai vide order dated 18/12/2013 on the pretext that the competent authority has illegally granted EOL without pay, therefore the release of salary of appellant was made conditional with sanctioning of EOL without pay by finance department.
- 4- That the appellant started her duty at GHSS Muhammad zai and continuously performed duty for six months at GHSS Muhammad zai without salary. That it is pertinent to mention here that the DEO did not properly pursued the case of appellant before finance department to either approve or refuse sanction for EOL of appellant and kept appellant on hanging position till the issuance of impugned order through an illegal and unlawful conditional order dated 18/12/2013.
- 5- That the appellant approached DEO (F) several time for conversion of her illegal conditional order into permanent adjustment but all in vein. That finally the appellant filed service appeal no.717/2019 before KP service tribunal for conversion of her conditional adjustment order 18/12/2013 into permanent adjustment but during pendency of the aforementioned appeal

ATTESTED

the DEO issued the impugned order dated 03/02/2020, communicated to appellant on 09/03/2020 in the court, in order to save her own skin.

- 6- That felling aggrieved from the impugned order dated 03/02/2020 the appellant preferred the instant departmental appeal on following grounds.

GROUND:

- A- That the impugned order dated 3/2/2020 communicated to appellant on 9/3/2020 is against the law, facts and norms of natural justice, hence liable to be set aside.
- B- That the concerned authority has not been treated the appellant in accordance with law and rules on the subject noted above and as such the respondents violated Article 4 and 25 of the Constitution of Pakistan 1973.
- C- That the concerned authority acted in arbitrary and malafide manner by keeping appellant on hanging position for undue length of time and when she approached the honorable service tribunal the concerned authority issued the impugned removal order just to save her skin before the honorable court.
- D- That no codal formalities has been followed by the concerned authority while issuing the impugned removal order.

It is therefore, most humbly prayed that on acceptance of this Departmental appeal the impugned order dated 03/2/2020 may kindly be set aside and the appellant be reinstated into service with all back benefits.

Dated: 17.03.2020

APPELLANT

Hina ~~idress~~
Ex-qaria GHSS muhammadzai,
Peshawar.

ATTESTED

VAKALATNAMA

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR

_____ OF 2020

Hina idress

(APPELLANT)

(PLAINTIFF)

(PETITIONER)

VERSUS

Eda Meppal

(RESPONDENT)

(DEFENDANT)

I/We Hina idress

Do hereby appoint and constitute **SHAHZULLAH YOUSAFZAI, Advocate, Peshawar** to appear, plead, act, compromise, withdraw or refer to arbitration for me/us as my/our Counsel/Advocate in the above noted matter, without any liability for his default and with the authority to engage/appoint any other Advocate Counsel on my/our cost.

I/we authorize the said Advocate to deposit, withdraw and receive on my/our behalf all sums and amounts payable or deposited on my/our account in the above noted matter.

Dated. ____/____/2020

Hina

CLIENT(S)

SHAHZULLAH YOUSAFZAI
ACCEPTED
SHAHZULLAH YOUSAFZAI
&

KAMRAN KHAN
KAMRAN KHAN
ADVOCATES

SERVICE APPEAL NO.6872/2020

MST: Hina Idrees.....Petitioner

Vs

Secretary (E&SE) KPK Peshawar.....Respondents

REPLY ON BEHALF OF RESPONDENTS.

Respectively Sheweth:

The Respondent submits below:

PRELIMINARY OBJECTIONS:

1. That the Appellant has got no cause of action /locus standi.
2. That the Appellant has concealed material facts from this Hon,ble Tribunal.
3. That the Appellant has been estopped by her own conduct to file the instant appeal before this Hon'ble Tribunal.
4. That the instant Appeal is badly time barred.
5. That the instant Appeal is not maintainable in its present form.
6. That the instant Appeal is bed for mis- joinder and non- joinder of the necessary parties.
7. That the Appellant has not come with clean hands to this Hon'ble Tribunal.
8. That the instant Appeal is barred by law.

ON FACTS.

1. That Para No.1 pertains to record.
2. That in reply to Para No.2, it is submitted that the Appellant applied for extra ordinary leave with effect from 20/09/2008 to 20/09/2012 (04 years without pay) which was illegally sanctioned, while she was not entitled for the said leave due to her less than 10 year service under the Revised Leave Rules 1981 because at that time the Appellant service was 3 years 4 months and 4 days. Therefore, the Head Mistress informed the competent authority to scrutinize the case, because the Appellant was not entitled for the said leave.

Although her leave was illegally sanctioned but she availed it, but after expiry of her leave she did not resume her duty and remained absent from her duty with effect from 21/09/2012.

3. That Para No.3 is incorrect, misleading and against the facts. The Appellant submitted affidavit under her own signature, that she will not claim any benefit etc till the approval of competent authority of her absent period.

Furthermore, she admitted at the bar that she was willful absent from her duty after 11/11/2013.

(Copy of Affidavit & Judgment are annexed as A& B).

4. That Para No.4 is incorrect, misleading and against the facts. The appellant was willful absent from her duty. Therefore, the competent authority issued her show cause notice. Later on issued letters for personal hearing and conducted inquiry. In light of inquiry report etc the competent authority took action against the appellant.

(Copy of Show Cause, Letters of Personal Hearing and Inquiry Report are Annexed as C, D & E).

5. That Reply to Para No.5, it is submitted that the Appellant enjoy illegal extraordinary leave, and it is the competency of Finance Department, to sanction the said leave or reject the said period of illegal leave.
6. That Para No.6 Pertains to record.
7. That reply of Para No.7 has already been given in the above Para.
8. That in reply to Para No.8, it is submitted that the Appellant filed S.A No: 693/2018 before this Hon'ble Service Tribunal and admitted the facts at the bar, that she did not perform her duty and remained willfully absent from her duty.

Therefore, this Hon'ble Tribunal dismissed her appeal on dated 24/01/2019 which has already been annexed as annex (B) of the reply.

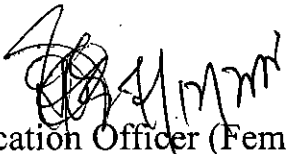
9. That in reply to Para No.9, it is submitted that the Appellant was willful absent from her duty, therefore, the competent authority issued her show cause notice, call for personal hearing, so she did not satisfied the competent authority. Then they conducted inquiry and after fulfilling all the codal formalities removed him from her duty according to law.
10. That Para No.10 also pertains to record.
11. That reply to Para No.11, it is submitted that the Appellant has no cause of action to file the instant appeal in this Hon'ble Tribunal.

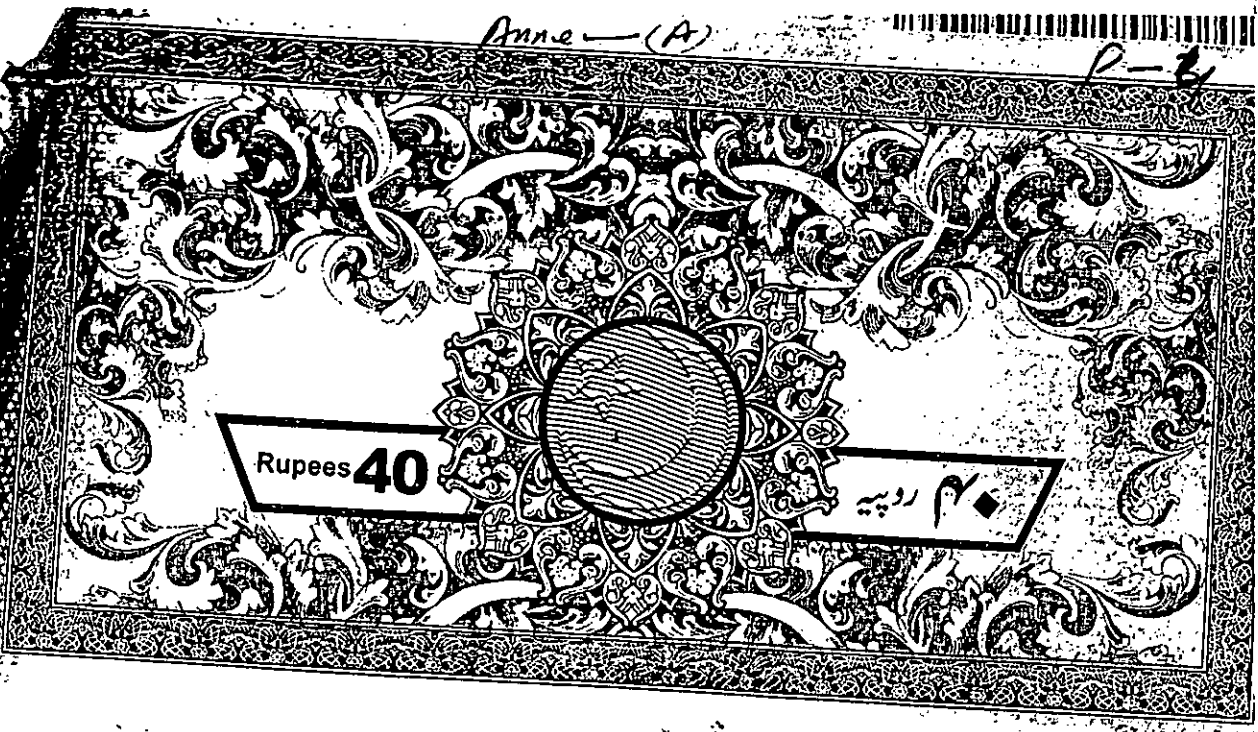
GROUND

- A. That Ground-A is incorrect and misleading. The said order is according to law.

- B. That Ground-B is also incorrect and misleading. The Respondents are bound to act according to law.
- C. That Ground-C is incorrect and misleading. The detailed reply has been given the above facts Para.
- D. That Ground-D is also incorrect and misleading. All codal formalities were adopted according to law.
- E. That Ground-E is incorrect and misleading. The Appellant admitted at the bar that she was willful absent from her duty.
- F. That Ground-F is also incorrect and misleading. The detailed reply has been given in the above facts Para.
- G. That Ground-G is incorrect and misleading. The Appellant was willful absent from her duty and admitted it the bar.
- H. That the Respondent also seeks permission to submit other case grounds and proofs at the time of arguments.

It is therefore, very humbly prayed that on acceptance of this reply, the instant appeal may very kindly be dismissed with cost.


 District Education Officer (Female),
 Peshawar.



UNDERTAKING.

**DISTRICT EDUCATION OFFICER
ELEMENTARY & SECONDARY
EDUCATION FEMALE, PESHAWAR.**

The undersigned hereby undertake as under.

1. I availed EOL upto 20/10/2012.
2. I did not attend after expiry of my EOL on 21/10/2012 due to circumstances beyond my control (Life threat in my father murder case by enemies)
3. Consequent upon my arrival for duty on 11/11/2013 to the Principal GGHS-1 Peshawar Cantt. I was referred to DEO E&SE Female Peshawar for adjustment.
4. The gap of 21/10/2012 till the date of adjustment is due to reasons beyond control as stated in my application.
5. I hereby undertake that my present adjustment on duty will not be claimed by the undersigned for salary & seniority purpose, if the competent authority did not approve my leave condonation submitted by DEO E&SE Peshawar.

Dated. 2/12/2013.

Hina Idrees
 Mst. Hina Idrees
 M. Sc. B. Ed
 Qaria GGHS-1 Peshawar Cantt.

Sigra Vant
Tahirullah
 17301-3641570-5

Enst No

Dated.

Copy of the above is forwarded to the.

1. District Account Officer, Peshawar.
2. Principal GGHS-1 Peshawar Cantt.
3. Principal/Headmistress GGHS
4. P/F concerned.
5. Official concerned.

Peshawar.

ATTESTED



[Handwritten signature]

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

Appeal No. 693/2018

Date of Institution ... 04.05.2018

Date of Decision ... 24.01.2019

Mst. Hina Idrees, Qaria, GGHS Muhammad Zai, Peshawar.

... (Appellant)

VERSUS

Director Elementary and Secondary Education, Peshawar and two others.

... (Respondents)

MR. MUHAMMAD SAEED KHATTAK,
Advocate

--- For appellant.

MR. MUHAMMAD JAN
Deputy District Attorney

--- For respondents.

MR. AHMAD HASSAN,
MR. MUHAMMAD AMIN KHAN KUNDI

--- MEMBER(Executive)

--- MEMBER(Judicial)

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 against the post of Qaria in the Education Department on 16.05.2005. The appellant availed Extra Ordinary Leave and medical leave from time to time. She reported for duty on 11.11.2013 and was adjusted in GGHS, Muhammad Zai Peshawar conditionally. Release of her pay was subject to condonation/sanction of leave by the Finance Department. In case sanction was not accorded, she would not claim salary for the said period. Moreover, she will cease to be a government servant. Time and again she approached the respondents but no avail. Present appeal has been filed for release of salary and allowances from the date of adjustment i.e

11.11.2013. The appellant was also present during the hearing. On a query of this Tribunal whether she was performing duty or not, informed that she was not performing duty?

3. On the other hand learned Deputy District Attorney argued that she remained willfully absent from duty after expiry of leave granted to her. That she submitted an affidavit not to claim benefits for the period she remained absent. She was treated according to law and rules.

CONCLUSION

4. Initially the appellant served the Education Department as Qaria. She availed Extra Ordinary Leave from time to time. After expiry of leave she failed to resume duty on 21.10.2012. The appellant submitted arrival for duty on 11.11.2013 and was adjusted in government Girls High School No.1 Peshawar Cantt. She had given an undertaking on judicial stamp paper that not to claim pay/ seniority for the period she remained absent. Her adjustment order was conditional and subject to regularization/condonation of leave by the Finance Department. As the appellant stated at the bar that she did not perform duty after 11.11.2013, so was not entitled for salary from the said period onward.

6. As a sequel to above, the appeal is dismissed. Parties are left to bear their own costs. File be consigned to the record room.

Muhammad Amin
(MUHAMMAD AMIN KHAN KUNDI)
MEMBER


(AHMAD HASSAN)
MEMBER

ANNOUNCED
24.01.2019

Office of the District Education Officer, (Female) Peshawar.

Show Cause Notice.

Amner (C)

P-7

I, Mst. Samina Ghani, District Education Officer, (Female) Peshawar, as competent Authority, under the Khyber Pakhtunkhwa Government Servants (Efficiency and Discipline) Rules, 2011, do hereby serve you, Ms. Hina Idress, Qaria GGHS Mohammadzai Peshawar as follow.

I am satisfied that you have committed the following acts/omissions specified in rule 3 of the said rules:

- (a) Absent from duty w.e.f 15.02.2015
- (b) Misconduct.

As a result thereof, I, as competent authority, have tentatively decided to impose upon you the major penalty under rule 4 of the said rules.

You are, therefore, required to show cause as to why the aforesaid penalty should not be imposed upon you and also intimate whether you desire to be heard in person.

If no reply to this notice is received within seven days or not more than fifteen days of its delivery, it shall be presumed that you have no defense to put in and in that case an ex-parte action shall be taken against you.

Man 15/06/15
(COMPETENT AUTHORITY)
DISTRICT EDUCATION OFFICER,
(FEMALE) PESHAWAR.

نوٹس غیر حاضری

P-8

ہر گاہ آپ حناء اور لیس قاریہ گورنمنٹ گرلز ہائی سکول محمد زئی پشاور مورخہ 14/02/2014 سے بغیر کسی اطلاع کے تا حال غیر حاضر ہے۔ آپ کو آپ کی غیر حاضری کے متعلق اظہار وجوہ کے نوٹس بذریعہ مراسلہ مورخہ 04/07/2019 کو ہیڈ مسٹریس صاحبہ گورنمنٹ گرلز ہائی سکول محمد زئی پشاور کے توسط سے بھیجا گیا۔ مگر آپ نے مذکورہ بالا نوٹس کی پروانہ کی اور نہ ہی ڈیوٹی پر حاضر ہوئی۔

لہذا آپ کو ایک بار بھر بذریعہ نوٹس ہذا مطلع کیا جاتا ہے کہ اس نوٹس کی اشاعت کے پندرہ دن کے اندر اندر زیر دستخطی کے دفتر میں دفتری اوقات کار مجاز آفسر کے روبرو پیش ہو کر اپنی غیر حاضری کی معقول وجہ بیان کریں۔ بصورت دیگر آپ کے خلاف حکومت خیبر پختونخواہ (E&D) رولز مجریہ 2011 کے تحت حاصل کردہ اختیارات بروئے کار لاتے ہوئے یکطرفہ کارروائی کی جائے گی جو آپ کی ملازمت سے برخاستگی پر منتج ہو سکتی ہے۔



(شمینہ غنی)

ڈسٹرکٹ ایجوکیشن آفیسر (زنانہ)

پشاور

Anna (12)

DISTRICT EDUCATION OFFICE,
(FEMALE) PESHAWAR.

~~100~~
P-90

NO. 3558 /Estb:-I / P.F

Dated Peshawar the 18/07 / 2019.

To

Ms. Hina Idrees Qaria

GGHS Mohammad Zai Peshawar.

SUBJECT: -

PERSONAL HEARING.

Memo:

Reference your reply of show cause notice and you are directed to attend this office and to appear in person before the Undersigned on 25.07.2019 in connection with your reply for further necessary action.

Endst:No. 3559

G. Man
DISTRICT EDUCATION OFFICER,
(FEMALE) PESHAWAR.

Copy forwarded to the:-

Head Mistress, GGHS Mohammad Zai Peshawar for information.

G. Man 18/07/19
DISTRICT EDUCATION OFFICER,
(FEMALE) PESHAWAR.



OFFICE OF THE DISTRICT EDUCATION OFFICER (FEMALE)
PESHAWAR.

CHARGE SHEET

I, SAMINA GHANI, District Education Officer (Female) Peshawar as competent Authority, hereby charged you Mst, **Hina Idrees Qaria** of GGHS Muhammad Zai Peshawar as follow.

That you have committed the following irregularities.

“According to the inquiry report you are completely remained absent from duty w.e.f 14.02.2014 till date without sanction of leave”

Whereas, a show cause was also served upon you vide this office letter No.1697/Est-I/P.F dated: 15.06.2019 but you have no responded yet.

In the light of above facts, I, District education officer as competent authority is satisfied enough to serve this charge sheet upon you for Misconduct and negligence of duty and have tentatively decided to impose upon you the major penalty “Removal from service” under rule 4 (b) (iii) of E& D rules 2011.

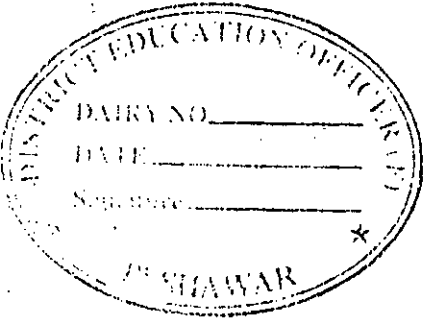
You are hereby directed to appear within seven days after issuance of this letter, before the undersigned to explain your position otherwise, it shall be presumed that you have no defense to put in and in that case as ex-parte action shall be taken against you.

S. Ghani 04/07/19

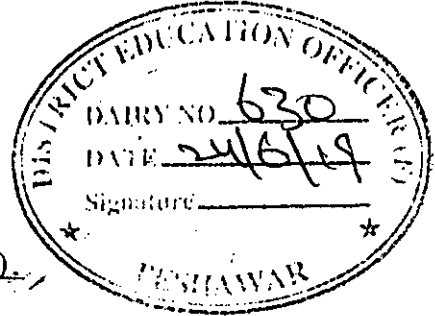
(SAMINA GHANI)
DISTRICT EDUCATION OFFICER,
(FEMALE) PESHAWAR.

Amno (E)

P-11



Office of the PRINCIPAL
Govt. Girls Higher Secondary
School Main Gujar Peshawar
No. 3352 Dated 24/06/2019.



To

The District Education Officer,
(Female) Peshawar.

Subject: ENQUIRY REPORT ABOUT Mst. Hina Idress (Qaria).

Memo,

I, Madam Saima, Principal of GGHS Mian Gujjar, was appointed as enquiry officer to conduct an enquiry against Mst. Hina Idrees (Qaria), at GGHS Muhammad Zai. A visit was paid to GGHS Muhammad Zai, on 13 June, 019.

The concerned teacher was not at school being absent from 15th Feb, 014. According to the Headmistress of the school she was posted here after her EOL and she resumed her duty at GGHS Muhammad Zai, on 20th Dec, 013 and did her duty up to 14th Feb, 014. But after that she is absent till date. According to her she informed the DEO (F) about her absence at that time. But she got no information from her or any sanction of her leave from office. Her short-time attendance record is attached herewith.

Her last availed EOL was from 20/09/08 to 20/09/12. She remained absent and reported her duty on 11/04/013. Later on she was adjusted at GGHS Muhammad Zai Peshawar, where she performed her duty from 20th Dec, 013 to 14th Feb, 014 and from then onwards she is absent till date.

Findings:-

The concerned teacher after getting post was continuously on various kinds of leave. Even after expiry of her last availed EOL, she did not resume her duty. And after her adjustment at GGHS Muhammad Zai, she remained present w.e.f 20th Dec, 013 to 14th Feb, 014 and then she is absent till date without any leave. So, how could a government employee remain absent for years. Now this matter is to be solved by the competent authority, according to service rules, either she can be granted leave for her absent period or to be terminated.

Thanking you.

PRINCIPAL

Govt. Girls Higher Secondary
School Main Gujar Peshawar

Govt. Girls Higher Secondary
School Main Gujar Peshawar

Estab-I

Saima
24/06/19



گورنمنٹ ہائی اسکول راج پورہ - گورنمنٹ ہائی اسکول راج پورہ

صبا عالیہ

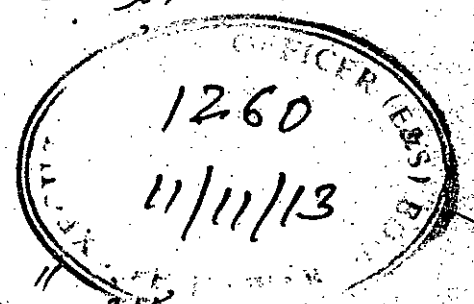
موردہ نامہ گزارش ہے کہ سائیدہ بطور تھانہ آگے
کلچل میں ٹرانسفر ہوئی جس کے بعد سائیدہ نے چار سال
کی عمر میں مدرسہ 20 ستمبر 2008ء تا 20 ستمبر 2012ء
کی درخواست دی جس پر باقاعدہ ای ڈی او نے سائیدہ نے
بحوالہ 10-6908 مدرسہ 20/9/2008 منظور کیا ہے۔ لیکن
مجموعی طور پر سائیدہ کے بنیاداً جدید ایک سال تک اپنی ڈیوٹی
پر حاضر ہو سکی۔ لیکن اب سائیدہ اپنی ڈیوٹی پر حاضر
ہونے کیلئے تیار ہے۔

لینڈا آپ سے التماس ہے کہ سائیدہ کو مدرسہ 20 ستمبر
2012ء تا 31 اکتوبر 2013ء تک کی عمر کی منظور کیا جا
جائے اور بعد از منظوری سائیدہ کو کسی بھی خالی پوسٹ پر
ایڈجسٹ کیا جائے۔

سائیدہ تاحیات دعا گو اور شکر مند ہے۔

Recommended & forwarded
to the D.E.O (F) Peshawar
for further n/a please

العا
آرٹھالند
Hina
صبا آدرلی
تھانہ



11
2013

Hanida
Head Mistress
High School
Rajpura Cantt.

1.8
رہنماؤں کی

143

OFFICE OF THE DISTRICT EDUCATION OFFICER (FEMALE) PESHAWAR.

NOTIFICATION.

- 1 WHEREAS the principal GGHS Mohammadzai Peshawar has reported that Mst. Hina Idress Qaria is absent from duty w.e.from 14/2/2014 after expiry of leave without any application vide No. 107 dated 24/2/2014.
- 2 AND WHEREAS she was proceeded against under Khyber Pakhtunkhwa Govt: Servant rules 2011 for the charge of willful absence and show cause notice was served through Principal vide No1697 dated 15/6/2019 but no response received.
- 3 AND WHEREAS Mst. Saima Principal GGHS Mian Gujar Peshawar and Mst. Humera H/M GGHS Dalazak Peshawar were appointed as enquiry officers vide this office Notification E. No. 996-97 /Estab: 1/PF dated 30/5/2019 to enquire against the above named official who is absent from duty to submit detail report into the matter.
- 4 AND WHEREAS the enquiry Officers has submitted enquiry report vide No. 3352 dated 24/6/2019. The enquiry officers have pointed out that the above named official is absent from duty w.e.from 14/2/2014.
- 5 AND WHEREAS charge sheet was issued to the above named official through Head Mistress and copy thereof endorsed at her home address vide No. 2625-26 dated 4/7/2019 but no response received till date.
- 6 AND WHEREAS letter for personal hearing was also issued vide No. 3558 dated 18/1/2019 (P-133) in response of her show cause notice to appear in person before the undersigned on 25/7/2019 in connection with your reply, but you failed to avail the opportunity.
- 7 AND WHEREAS the absent Notice was published in two leading Newspapers daily AKHBAR dated 23/10/2019 and daily Mashriq on 24/10/2019 to attend the Office but neither you resume the duty nor responded to these notices.
- 8 AND WHEREAS The competent authority, District Education Officer (Female) Peshawar, after having considered the charges, evidence on record, and facts of the case, of the view that the charge of misconduct/willful absence from duty against the accused has been proved.
- 9 NOW THEREFORE, in exercise of the powers under Rules-4(b)iii of Khyber Pakhtunkhwa Government Servants(Efficiency and Discipline Rules 2011, 1, the competent authority District Education Officer (Female) Peshawar is pleased to impose major Penalty of "Removal from Service" upon Mst: Hina Idress Qaria GGHS Mohammadzai Peshawar with immediate effect. The period of her absence with effect from 15/2/2014 till date is hereby treated as unauthorized absence from duty without pay.

(SAMINA GHANI)
DISTRICT EDUCATION OFFICER,
(FEMALE) PESHAWAR.

Order No. 3352-36 / dated Peshr; the 03/02 /2020

Copy of the above is forwarded to the:-

- 1 Accountant General Khyber Pakhtunkhwa Peshawar.
- 2 Deputy Commissioner Peshawar.
- 3 Director (E&SE) Khyber Pakhtunkhwa Peshawar.
- 4 District Monitoring Officer Peshawar.
- 5 Head Mistress GGHS Mohammadzai Peshawar with the remarks to recover any over payment made to the above named Official and deposit in to Govt: Treasury under intimation to this Office.
- 6 Official concerned.

03/02/2020
DISTRICT EDUCATION OFFICER,
(FEMALE) PESHAWAR.