

BEFORE THE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL PESHAWAR.

Service Appeal No. 526/2019

Date of Institution ... 03.01.2020

Date of Decision ... 22.11.2022

SCANNED
KPST
Peshawar

Mst. Musarrat Begum, PST, Government Girls Primary School, Kaddi, Dagai,
Tehsil Razzar, Swabi.

... (Appellant)

VERSUS

Secretary Education, Khyber Pakhtunkhwa, Peshawar and 03 others.

... (Respondents)

MR. ASAD MAHMOOD,
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:- Brief averments as raised by the appellant in her appeal are that she was appointed as PTC Teacher vide appointment order dated 01.02.1996 and assumed the charge of her post in Government Girls Primary School Bahadur Sahib District Kohistan. The appellant was then transferred from District Kohistan to District Swabi vide order dated 27.09.2008 and she started performing her duty in District Swabi, however it is

astonishing that her transfer order was withdrawn vide order dated 22.10.2015 after a lapse of about 07 years. On the same date i.e 22.10.2015, the appellant was removed from service on the ground that her appointment was fake, constraining the appellant to file Service Appeal No. 117/2016 before this Tribunal, which was allowed vide judgment dated 22.03.2019 with directions to the respondents to conduct de-novo inquiry within a period of 90 days. During the de-novo inquiry, the appointment order of the appellant was found genuine and the inquiry committee recommended that the appellant may be reinstated in service with all back benefits. The appellant was, however reinstated in service with immediate effect by treating the intervening period as extra ordinary leave without pay, constraining the appellant to file departmental appeal, whereby the impugned order dated 02.09.2019 to the extent of reinstatement with immediate effect and treatment of the intervening period as extra ordinary leave without pay, was challenged. The departmental appeal of the appellant remained un-responded, hence the instant service appeal.

2. Notices were issued to the respondents, who submitted their comments, wherein they refuted the assertions made by the appellant in her appeal.

3. Learned counsel for the appellant has contended that during the de-novo inquiry, the appointment order of the appellant was found genuine and the inquiry committee had recommended that the appellant may be reinstated in service with all back

benefits, therefore, the impugned order dated 02.09.2019 requires to be modified by reinstating the appellant with effect from 22.10.2015 with all back benefits. He further argued that the order of removal of the appellant from service has already been set-aside by this Tribunal vide judgment dated 22.03.2019, therefore, competent Authority was not justified in treating the intervening period as extra ordinary leave without pay. He also argued that as the appellant had not remained gainfully employed in any service during the intervening period, therefore, she was entitled to all back benefits. Reliance was placed on 2021 SCMR 962, 2015 SCMR 77 and 2007 SCMR 855.



4. Conversely, learned Assistant Advocate General for the respondents has argued that the very order of appointment of the appellant was fake and as she has been reinstated on technical ground, therefore, she is not entitled to any back benefits. He next contended that the appellant did not perform any duty during the intervening period, therefore, competent Authority has rightly treated the same as extra ordinary leave without pay. Reliance was placed on 2017 PLC (C.S) 177, judgment dated 18.02.2020 passed by this Tribunal in Service Appeal No. 803/2018 and judgment dated 18.01.2021 passed by this Tribunal in Service Appeal No. 603/2018.

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 removed from service vide order dated 22.10.2015 on the ground

that her appointment order was illegal/fake. The aforementioned order dated 22.10.2015 was challenged by the appellant through filing of Service Appeal No. 117/2016 before this Tribunal, which was allowed vide judgment dated 22.03.2019 and the respondents were directed to conduct de-novo inquiry within a period of 90 days of receipt of the judgment. In para-5 of her appeal, the appellant has mentioned that de-novo inquiry was conducted in the matter and the inquiry committee recommended the reinstatement of the appellant with all back benefits. In reply to the said para, the respondents have not contradicted the stance of the appellant regarding recommendation of the inquiry committee for her reinstatement in service with all back benefits but have taken the stance that the said inquiry was not a regular inquiry. The order of removal of the appellant dated 22.10.2015 was set-aside by this Tribunal on the ground that the same was the outcome of fact finding inquiry and the matter was remitted to respondent-department for de-novo inquiry against the appellant. It is astonishing that the respondents have alleged that even the de-novo inquiry was not a regular inquiry. In consequence of their own mistake of not conducting of the de-novo inquiry in accordance with Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011, the respondent-department while passing the impugned order dated 02.09.2019, has reinstated the appellant with immediate effect by treating the intervening period as extra ordinary leave without pay. The appellant

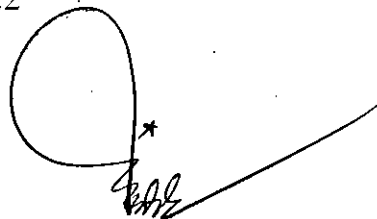


has thus been held liable to bear the brunt for the mistake of the respondents, which is unfair.

7. The order of removal of the appellant dated 22.10.2015 has already been set-aside by this Tribunal vide judgment dated 22.03.2019. The appellant was thus entitled to her reinstatement with effect from 22.10.2015 and she was entitled to all back benefits as nothing is available on the record, which could show that the appellant had remained gainfully employed in any service during the intervening period.

8. In view of the above discussion, the appeal in hand is allowed. The impugned order dated 02.09.2019 is modified and the appellant stands reinstated in service with effect from 22.10.2015 with all back benefits. Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCED
22.11.2022



(MIAN MUHAMMAD)
MEMBER (EXECUTIVE)



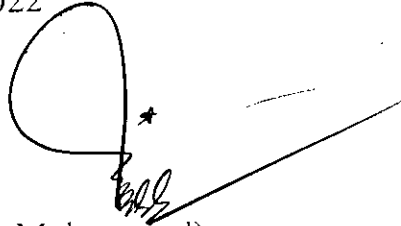
(SALAH-UD-DIN)
MEMBER (JUDICIAL)

ORDER
22.11.2022

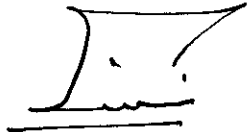
Learned counsel for the appellant present. Mr. Fazle Khaliq, ADEO alongwith Mr. Muhammad Riaz Khan Paindakhel, Assistant Advocate General for the respondents present. Arguments heard and record perused.

Vide our detailed judgment of today, separately placed on file, the appeal in hand is allowed. The impugned order dated 02.09.2019 is modified and the appellant stands reinstated in service with effect from 22.10.2015 with all back benefits. Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCED
22.11.2022

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(Mian Muhammad)
Member (Executive)

A handwritten signature in black ink, consisting of a stylized 'S' followed by a horizontal line.

(Salah-Ud-Din)
Member (Judicial)

29.08.2022

Clerk of learned counsel for the appellant present. Mr. Naseer-ud-Din Shah, Assistant Advocate General for the respondents present.

The Lawyers are on strike and Learned Member (Judicial) Ms. Rozina Rehman is also on leave, therefore, arguments could not be heard. Adjourned. To come up arguments on 22.11.2022 before the D.B.

H.



(Salah-Ud-Din)
Member (Judicial)

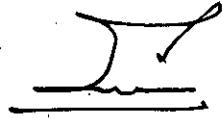
2022 08/29

02.02.2022

Learned counsel for the appellant present. Mr. Fazal Khaliq ADEO alongwith Mr. Muhammad Riaz Khan Paindakheil learned Assistant Advocate General for the respondents present and stated that connected nature appeals are fixed for arguments on 14.03.2022, therefore, appeal in hand may also be fixed on the said date. Learned counsel for the appellant is having no objection on the adjournment. Adjourned. To come up for arguments on 14.03.2022 before the D.B.



(Rozina Rehman)
Member (J)



(Salah-Ud-Din)
Member (J)

14-3-22

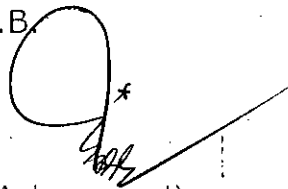
*Due to retirement of the Honble
Chairman the case is adjourned to
come up for the same as before on
17-6-22*

Rehman

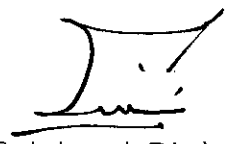
17.06.2022

Learned counsel for the appellant present. Mr. Fazle Khaliq, ADEO (litigation) alongwith Mr. Naseer-ud-Din Shah, Assistant Advocate General for the respondents present.

Representative of the respondents stated at the bar that similar nature appeal titled "Rudia Begum Versus Secretary Education, Khyber Pakhtunkhwa, Peshawar etc" is fixed for arguments on 29.08.2022, therefore, the appeal in hand may also be fixed for arguments on the said date. Request seems genuine, therefore, to come up for arguments on 29.08.2022 before the D.B.



(Mian Muhammad)
Member (E)




(Salah-ud-Din)
Member (J)

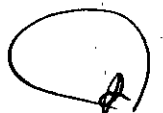
30.03.2021

Appellant present through counsel.

Kabir Ullah Khattak learned Additional Advocate General for respondents present.

Former made a request for adjournment. Adjourned. To come up for arguments on 13/07/2021 before D.B.



(Atiq ur Rehman Wazir)
Member (E)

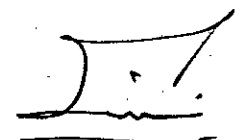

(Rozina Rehman)
Member (J)

13.07.2021

Clerk of counsel for the appellant present. Mr. Fazal Khaliq ADO alongwith Mr. Kabirullah Khattak, Additional Advocate General for the respondents present.

Clerk of counsel for the appellant stated that learned counsel for the appellant is unable to attend the Tribunal today due to strike of Lawyers. Adjourned To come up for arguments before the D.B. on 21.10.2021


(ATIQ-UR-REHMAN WAZIR)
MEMBER (EXECUTIVE)


(SALAH-UD-DIN)
MEMBER (JUDICIAL)

01.11.2021

Junior to counsel for appellant present.

Kabir Ullah Khattak learned Additional Advocate General for respondents present.

The learned Member (Judicial) is on leave, therefore, case is adjourned. To come up for arguments on 02.02.2022 before D.B.


Chairman

04.08.2020

Counsel for the appellant and Mr. Kabirullah Khattak, Additional AG alongwith Mr. Fazle Khaliq, ADEO for the respondents present.

Representative of the department seeks time to furnish the requisite reply/comments. Adjourned to 28.09.2020 on which date reply/comments shall positively be furnished.


(MIAN MUHAMMAD)
MEMBER (E)

28.09.2020

Junior to counsel for the appellant and Addl. AG alongwith Fazal Khaliq, ADO & Sajid Superintendent for the respondents present.

Representative of respondents No. 1 to 3 has furnished parawise comments on behalf of the said respondents. Representative of respondent No. 4 relies on the same. The matter is assigned to D.B for arguments on 28.12.2020. The appellant may furnish rejoinder, if any, within one month.


Chairman


28.12.2020

Due to summer vacation, case is adjourned to 30.03.2021 for the same as before.


Reader

17.06.2020

Counsel for the appellant present. Preliminary arguments heard and case file perused. Learned counsel for the appellant argued that this is the second round of litigation. The appellant was removed from service on 22.10.2015 against which she filed service appeal No. 177/2016 in this Tribunal which was accepted vide judgment dated 22.03.2019 and respondents were directed to conduct de-novo enquiry within a period of ninety days after the date of receipt of this judgment. After holding regular enquiry, if it is proved that appointment of the appellant was not fake/bogus it would automatically restore the transfer order dated 27.09.2008. The issue of back benefits shall be subject to the outcome of the de-novo enquiry. The respondents conducted de-novo enquiry wherein the appointment order of the appellant was found genuine. Thereafter, the appellant was reinstated in service on 02.09.2019 but her intervening period has been treated as Extra Ordinary Leave without pay. Against the said order, she filed departmental appeal on 27.09.2019 which was not responded within the statutory period of ninety days, hence the instant service appeal on 03.01.2020. Learned counsel for the appellant further argued that the appellant has not been treated according to law and rules.


Appellant Deposited
Security & Process Fee

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 04.08.2020 before S.B.

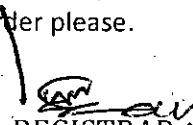
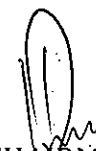

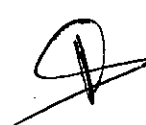

(MAIN MUHAMMAD)
MEMBER

Form- A

FORM OF ORDER SHEET

Court of _____

Case No.- 526 /2020

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1-	22/01/2020	<p>The appeal of Mst. Musarrat Begum resubmitted today by Mr. Asad Mehmood Advocate may be entered in the Institution Register and put up to the Worthy Chairman for proper order please.</p> <p> REGISTRAR</p>
2-		<p>This case is entrusted to S. Bench for preliminary hearing to be put up there on <u>28/02/2020</u>.</p> <p> CHAIRMAN</p>
	28.02.2020	<p>Nemo for the appellant. Adjourn. To come up for preliminary hearing on 25.03.2020 before S.B. Appellant be put to notice for the date fixed.</p> <p> Member</p>
	25.03.2020	<p>Due to public holidays on account of Covid-19, the case is adjourned. To come up for the same on 17.06.2020 before S.B.</p> <p> Reader</p>


Reader

The appeal of Mst. Musrrat Begum PST GGPS Kaddi Dagai Tehsil Razzar Swabi received today i.e. on 03.01.2020 is incomplete on the following score which is returned to the counsel for the appellant for completion and resubmission within 15 days.

- 1- Annexures A and B of the appeal are illegible which may be replaced by legible/better one.
- 2- Copy of enquiry report is not attached with the appeal which may be placed on it.
- 3- Print of the memo of appeal is very dim.
- 4- Wakalat nama in favour of appellant is blank which may be filled up.

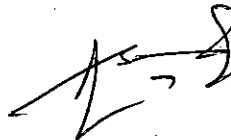
No. 15 /S.T,

Dt. 7-1- /2020.


REGISTRAR
SERVICE TRIBUNAL
KHYBER PAKHTUNKHWA
PESHAWAR.

Mr. Asad Mahmood Adv. Pesh.

- 1- Annexures A & B replaced with legible copies.
- 2- Copy of enquiry report attached.
- 3- Wakalat nama duly filed.


23/1

KHYBER PAKHTUNWA SERVICE TRIBUNAL, PESHAWAR

Appeal No. 526 /2019

Mst. Musarrat Begum, PST, Government Girls Primary School,
Kaddi, Dagai , Tehsil Razzar, Swabi.

.....**APPELLANT**

VERSUS

Secretary Education, KPK, Peshawar and others.

.....**RESPONDENTS**

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Through

Musarrat

APPELLANT

Fazli Mahmood
Advocate High Court

Asad Mahmood
Advocate High Court

KHYBER PAKHTUNWA SERVICE TRIBUNAL, PESHAWAR

Appeal No. 526 /2019

Khyber Pakhtunkhwa
Service Tribunal

Diary No. 188

Mst. Musarrat Begum, PST, Government Girls Primary School, Kaddi, Dagai, Tehsil Razzar, Swabi. Dated 3-1-2020

.....**A**PELLANT

VERSUS

1. Secretary Education, KPK, Peshawar.
2. Director, E & SE, KPK, Peshawar.
3. District Education Officer (Female), Swabi.
4. Secretary Finance, Govt. of KPK, Peshawar.

.....**R**ESPONDENTS

APPEAL UNDER SECTION 4 OF KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974 AGAINST AN IMPUGNED ORDER NO. 4404-G DATED 2nd SEPTEMBER, 2019 WHEREBY THE APPELLANT HAS BEEN RE-INSTATED INTO SERVICE WITH IMMEDIATE EFFECT INSTEAD OF FROM THE DATE OF DISMISSAL AND DENIED THE BACK / CONSEQUENTIAL BENEFITS BY TREATING INTERVENING PERIOD LEAVE WITHOUT PAY IN GROSS VIOLATION OF LAW AND AGAINST DEPARTMENTAL APPEAL NOT RESPONDED WITH IN A STATUTORY PERIOD OF 90 DAYS.

PRAYER:

ON ACCEPTANCE OF THIS APPEAL IMPUGNED ORDER DATED 2nd SEPTEMBER 2019, BEING PATENTLY ILLEGAL AND UNLAWFUL, MAY KINDLY BE MODIFIED TO THE EXTENT THAT APPELLANT MAY BE RE-INSTATED INTO SERVICE WITH EFFECT FROM THE DATE OF DISMISSAL AND MAY KINDLY BE AWARDED WITH ALL THE BACK BENEFITS IN TERMS OF FINANCIAL AND SERVICE BENEFITS FOR THE INTERVENING PERIOD WHERE SHE

Filed to-day
Registrar
3/01/20

Re-submitted to-day
and filed.

Registrar
22/01/2020

REMAINED OUT OF ANY GAINFUL JOB. ANY OTHER REMEDY, WHICH THIS AUGUST TRIBUNAL DEEMS FIT AND APPROPRIATE, MAY ALSO BE AWARDED IN FAVOUR OF APPELLANT.

FACTS:

Respectfully Sheweth,

Appellant humbly submitted as under:

1. That appellant has been appointed as PTC teacher in the education department Khyber Pakhtunkhwa through an appointment order dated 1st February 1996 and having commendable service record on her credit.
2. That appellant was transferred from Government Girls Primary School, Bahadur Sahib, Kohistan to Government Girls Primary School, Swabi vide order dated 27th September, 2008 but astonishingly her transfer order was withdrawn vide order dated 22nd October, 2015 without any legal justification and even after the lapse of seven years.
3. That appellant was illegally removed from service vide order dated 22nd October, 2015 with immediate effect without satisfy the codal procedure.
4. Subsequently, departmental appeal was filed by an appellant and instituted service appeal No. 117/2016 against the order dated 22.10.2015 which was set aside by the KPK Service Tribunal, Peshawar through an order dated 22.03.2019 (**Annexure-A**) and was kind enough to accept the appeal with a direction to conduct a denovo inquiry within a period of 90 days.
5. That the respondents department conducted denovo inquiry wherein appointment order of appellant is found genuine and recommended her re-instatement into service with all the back benefits (**Annexure-B**) but she has been re-instated into service with IMMEDIATE EFFECT vide impugned order dated 02.09.2019 (Annexure-C) wherein intervening period has been converted into

EXTAR ORDINARY LEAVE WITHOUT PAY and denied the back benefits for the period she remained out of service.

6. That appellant filed departmental appeal on 27.09.2019 (Annexure-D) against the impugned order which remained not responded even after the lapse of statutory period of 90 days.
7. Feeling aggrieved from impugned order, appellant files service appeal on the grounds inter alia:

LEGAL GROUNDS:

- A. Impugned order dated 2nd September, 2019 being illegal and unlawful, passed in violation of law, norms of justice and judgments of Apex Court, are liable to be modified to the extent of reinstating the appellant from the date of dismissal, awarding financial and service benefits for the intervening period.
- B. That appellant remained out of any gainful job since her illegal dismissal due to whimsical and arbitrary act of respondents and for no fault on the part of appellant entitles her for all the back benefits and emoluments for the period between dismissal from service and re-instatement in service. (2012 TD(Services)18, 1999SCMR1873, 2002 TD(Services)420, PLJ 2016 TrC (Ser)317)
- C. That in view of the judgement of Supreme Court Of Pakistan reported as 2007 PLC Supreme Court 184,

"SALARIES AND BACK BENEFITS OF THE CIVIL SERVANT CAN NOT BE WITHHELD FOR THE INTERVENING PERIOD WHEN HE REMAINED OUT OF SERVICE DUE TO WHIMSICAL AND ARBITRARY ACTION OF THE FUNCTIONARIES. CIVIL SERVANT HAD EVERY RIGHT TO RECOVER THE ARREARS".


Hence, the benefit of the judgment must also be extended to the appellant for having a case identical in nature.
- D. That appellant has been re-instated into service with IMMEDIATE EFFECT INSTEAD OF FROM THE DATE OF HIS DISMISSAL. Hence, the impugned order is not sustainable in the eyes of law and liable to be modified to the extent of re-instatement of appellant in service from the date of dismissal.

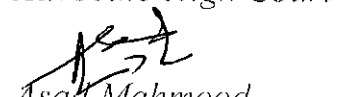
E. Seeking permission to take further legal grounds while advancing arguments.

It is, therefore, most humbly prayed that this appeal may kindly accepted as prayed for.

Musarrat
APPELLANT

Through


Fazli Mahmood
Advocate High Court


Asad Mahmood
Advocate High Court

KHYBER PAKHTUNWA SERVICE TRIBUNAL, PESHAWAR

Appeal No. _____/2019

*Mst. Musarrat Begum, PST, Government Girls Primary School,
Kaddi, Dagai, Tehsil Razzar, Swabi.*

.....**APPELLANT**

VERSUS

Secretary Education, KPK, Peshawar and others:

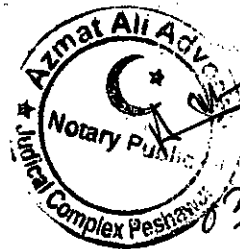
.....**RESPONDENTS**

AFFIDAVIT

*It is hereby solemnly affirm and declare on oath that contents of this
appeal are true and correct to the best of my knowledge and brief and
nothing has been concealed from this Hon'ble Tribunal.*

*Musarrat
Deponent*

ATTESTED



BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

Appeal No. 117/2016

Date of Institution ... 01.02.2016

Date of Decision ... 22.03.2019



Mst. Musarrat Begum, Ex-PTC, GGPS Muhib Banda, District Swabi D/o Hazrat Wali, R/o Village Badraga, P.O Dagai, Tehsil Razar, District Swabi.

... (Appellant)

VERSUS

The Govt. of Khyber Pakhtunkhwa through Director, Elementary & Secondary Education, Khyber Pakhtunkhwa, Peshawar and two others. ... (Respondents)

MR. KHALED RAHMAN,
Advocate

--- For appellant.

MR. KABIRULLAH KHATTAK
Additional Advocate General

--- For respondents.

MR. AHMAD HASSAN,
MR. HAMID FAROOQ DURRANI

--- MEMBER (Executive)
--- CHAIRMANJUDGMENTAHMAD HASSAN, MEMBER:-

This judgment shall dispose of the instant service appeal as well as connected service appeals no. 177/2016 entitled Musarrat Begum as similar question of law and facts are involved therein.

2. Arguments of the learned counsel for the parties heard and record perused.

ARGUMENTS

3. Learned counsel for the appellant argued that she was appointed as PTC Teacher vide order dated 01.02.1996 by the then DEO, Kohistan and posted at GGPS, Bahdur Sahib. That in 2008 the Provincial Government notified policy of


ATTESTED

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

appointment of PTC Teachers near their home districts. It was further stated that those teachers posted outside be repatriated to their home districts. Subsequently, she was transferred to District Swabi, vide order dated 27.09.2008 by respondent no.1. Pursuant to the said order, she was relieved by EDO, Kohistan through order dated 30.09.2008. Before transfer even her service documents were verified vide letter 09.06.2008. Astonishingly, her transfer order referred to above was withdrawn vide order dated 22.10.2015 without any justification and after lapse of seven years. Through impugned order dated 22.10.2015, she was removed from service with immediate effect. For redressal of her grievances, a departmental appeal was filed on 19.11.2015, which was turned down on 20.01.2016.

4. Appellant was appointed after observance of codal formalities and rendered more than twenty years service. The mode and manner of withdrawal of transfer order followed by removal from service was contrary to the laid down procedure. It was void ab-initio and not sustainable under the law. Before passing any adverse order regular inquiry under E&D Rules was required to be conducted. Reliance was placed on case law reported as 2015 SCMR 1418, 2003 SCMR 410, 2007 SCMR 1643 and 2006 SCMR 678.

5. On the other hand learned Additional Advocate General controverting the stance of the learned counsel appellant informed that initial appointment order of the appellant dated 01.02.1996 was found fake/bogus. A fact finding inquiry into the matter was also conducted by the competent authority. Resultantly, her transfer order to District Swabi was also withdrawn being fake/bogus. After introduction of Promotion and upgradation policy 13.11.2012,

ATTESTED

EXAMINER
 Khwile Pakhtunkhwa
 Service Tribunal,
 Peshawar

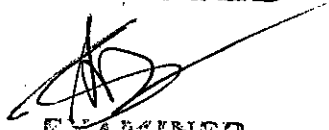
the post of PTC was upgraded from BPS-7 to BPS-9 to BPS-12 and qualification was also enhanced. Recruitment was made through NTS. As such case of the appellant was not covered under the said Policy.

CONCLUSION

6. The controversy involved in the appeals in hand relates to withdrawal of the transfer order of the appellant to District Swabi through order dated 22.10.2015 and impugned removal order dated 22.02.2015. In this case, it is also not disputed that she was appointed way back in 1997 but later on removed from service vide impugned order referred to above. Having rendered about twenty years service, she was required to be proceeded in the mode and manner prescribed in the E&D Rules-2011. It is very strange that a teacher who was transferred to District Swabi on 27.09.2008 was proceeded by DEO, Kohistan. Was he competent to initiate this process against an employee, who was not working under his administrative control? On the other hand respondents passed the impugned order on the basis of a fact finding enquiry, which is patently illegal, unlawful, void and arbitrary. Preliminary inquiry could not be equated to that of a regular inquiry. There are numerous judgments of the superior courts that in case major penalty is to be awarded then regular enquiry should invariably be conducted. Moreover, this point has been eloquently dealt with in the judgments relied upon by the learned counsel for the appellant (2007 SCMR 1643).

7. As a sequel to above, the appeal is accepted, impugned order dated 22.10.2015 and the appellant is reinstated in service. The respondents are directed to conduct de-novo enquiry within a period of ninety days after the date of receipt of this judgment. After holding regular enquiry, if it is proved that appointment of

ATTESTED


EXAMINER
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

the appellant was not fake/bogus, it would automatically restore the transfer order dated 27.09.2008. The issue of back benefits shall be subject to the outcome of the de-novo enquiry. Parties are left to bear their own costs. File be consigned to the record room.

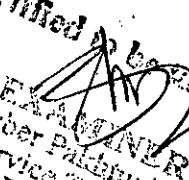


(HAMID FAROOQ DURRANI)
CHAIRMAN



(AHMAD HASSAN)
MEMBER

ANNOUNCED
22.03.2019

Certified to be true copy

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

Date of Presentation of Application 22-03-2019
Number of Words 2000
Copying Fee 22-00
Urgent _____
Total 22-00
Name of Copyist [Signature]
Date of Completion of Copy 22-03-2019
Date of Delivery of Copy 22-03-2019



No _____ /Dy. DEO (M) KH-L

Dated: _____ /2019

To

The Hon/ DEO (F)
Upper Kohistan.Subject:
R/Sir,**Submission of inquiry report in R/O Mst. Musarat Begum PST.**

Reference your letter No: 1343-44 dated 06-5-2019, the undersigned have the honor to submit a detailed report accordingly. As follows:

FACTS:

- ❖ Mst. Musarat was appointed as PTC (Untrained) vide order No: 1135-40 dated 01-2-1996 by the then DEO Kohistan. (See page 1 for ready reference Plz).
- ❖ She was posted at GGPS Bahadur sahib. (See page 1 for ready reference Plz).
- ❖ On 06-09-2008, she was recommended to be transferred to her home district Swabi by the then EDO vide letter No 3049. (See page 2 for ready reference Plz).
- ❖ On 27-9-2008, Deputy Director (Est) Peshawar issued her Transfer Orders from Kohistan to District Swabi vide Letter No: 7490-95. (See page 3 for ready reference Plz)
- ❖ On 30-9-2008, she was relieved by the then EDO Kohistan vide Letter No: 4500-4506. (See page 4 for ready reference Plz).
- ❖ On 28-11-2008, her service documents were duly verified by Dy: D.O. (F) Kohistan vide Letter No: 400. (See page 5 for ready reference Plz).
- ❖ On 16-11-2002, she successfully completed her PTC Course from Govt Elementary College (W) Khwaza Khela Swat. (See page 6 for ready reference Plz).
- ❖ On 18-11-2008, District Account Officer issued her LPC bearing No: 998, duly attested by the then EDO Kohistan. (See page 7 for ready reference Plz).
- ❖ Her Services have been verified by the then SDEO (F) up till 21-10-2015. (See page 8 for ready reference Plz).
- ❖ On 09-10-2014 Director E&SE Education Peshawar nominated Mr: Riasat Khan DEO BPS-19 as Inquiry Officer to VERIFY AS TO WHETHER THEY HAVE BEEN APPOINTED LEGALLY OR ILLEGALLY, vide Letter No: 826-29. (See page 9 for ready reference Plz).
- ❖ On 02-12-2014 the Inquiry Officer submitted his report and recommended the REMOVAL of eight teachers including Musarat. (See page 10, 11 and 12 for ready reference Plz).
- ❖ On 22-10-2015, her Transfer Orders from Kohistan to Swabi were WITHDRAWN by Director E&SE KPK Peshawar stating that their appointment was illegal/irregular, vide Letter No: 3887-89. (See page 13 for ready reference Plz).
- ❖ On the same day i.e on 22-10-2015, she was REMOVED from service by DEO (F) Kohistan vide letter No: 7105-10. (See page 14 for ready reference Plz).
- ❖ On 19-11-2015, she submitted her Departmental appeal before the Appellate Authority requesting for her re-instatement. (See page 15 and 16 for ready reference Plz).

- ❖ Her Appeal was rejected by the Appellate Authority (No record available/provided in this connection.)
- ❖ On 03-4-2019, Registrar KP Services Tribunal Peshawar sent Decision of the Hon/Services Tribunal Peshawar to the DEO(F) Kohistan vide letter No:665/ST. (See page 17 to 22 for ready reference Plz).
- ❖ On 06-5-2019, DEO (F) Kohistan issued REINSTATEMENT ORDER in R/O Mst: Musrat vide letter No: 1359-66/DEO9FO KH/Lit. (See page 23 for ready reference Plz).
- ❖ On 15-5-2019, the teacher took over charge of her duties at GGPS KASS BAANDA SWABI accordingly. (See page 24 for ready reference Plz).

PROCEDURE :

1-Consultation with DEO (F) at his office Dasso on 31-5-2019. (See page 25 for ready reference Plz).

2-Personal Hearing of the said teacher at DEO(F) Office Kohistan on 31-5-2019 . See pag. 25 for ready reference Plz .

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3-Perusal of the available record thoroughly.

FINDINGS.

- The Inquiry was meant only to verify the legality of the appointment, as clearly mentioned in the letter No:826-29, dated 09-10-2014. It was a preliminary inquiry on the basis of which, no one may be awarded Major penalty.
- In the very beginning of the inquiry report, the Inquiry Officer writes, To probe into the matter, it reveals that it was only Fact Finding Inquiry regarding the legal status of the appointments.
- An employee has been removed from service who is not under the control of the Inquiry Officer
- The person who has been removed, has served the department for more than 20 years.
- No where the undersigned have found any record whether she was served with Show cause and other Codal formalities mentioned in E&D Rules 2011, Rule No:2 (VI) and Rule No:4, b (III).
- It is astonishing to note that her services have been verified by the authority concerned and the other day she is being removed.(See Service book at page 13 for ready reference Plz).
- Last but not the least, even the District Account Officer Kohistan has issued her LPC, duly attested by the then EDO (F) Kohistan (See page 7 for ready reference Plz).

RECOMMENDATIONS:

After perusal of the entire available/provided record, facts, findings and consultation with the responsible officers/officials, the undersigned have made the following recommendations:

- 1- It is true that the teacher did have low qualification at the time of appointment, but later on, she gained the requisite qualifications and nowhere it is written in her appointment letter that she is under qualification.
 - 2- It is clearly written in the Appointment Letter that she has been appointed after holding of Interview (see page 1 for ready reference P12).
 - 3- During the passage of time, her services have been verified accordingly.
- Thus, sequel to all the above, **SHE MAY BE REINSTATED INTO GOVT SERVICE WITH ALL THE BACK BENEFITS ACCORDINGLY.**

1-(Hameedullah Khan Marwat.)
Sub Divisional Edu:Officer (M)
Kolai, Pallas, Kohistan.

2- (Naseer Ahmad Khan)
Dy: DEO (M)
Pattan ; Kohistan Lower.

Endst No: _____ Dated : ____/ 6/ 2019.

Copy for info to.

- 1- P.A. to Hon/ Deputy Commissioner K/P Kohistan.
- 2- DEO (M) K.P. Kohistan.
- 3- M.File.

1-(Hameedullah Khan Marwat.)
Sub Divisional Edu:Officer (M)
Kolai /Pallas, Kohistan.

2- (Naseer Ahmad Khan)
Dy:DEO (M)
Pattan , Kohistan Lower.



ANNEX-C

P.13

DISTRICT EDUCATION OFFICE (FEMALE) SWABI(Office phone Fax No 0938280339, emisfswabi@yahoo.com)**ADJUSTMENT ORDER.**

Consequent upon approval of the competent authority i.e. Director E&SE Khyber Pakhtunkhwa Peshawar vide Endst. Numbers & Date noted against each, the following PST (BPS-12) Teachers are hereby re-instated in service and adjusted against the vacant PST posts in the schools noted against each in the best interest of public service with immediate effect.

Note: The intervening period of each one is hereby converted into Extra Ordinary leave without pay as per the given detail.

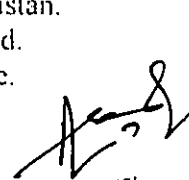
S.No	Name with Designation	School where adjusted	The intervening period which is converted into EOL without pay	Directorate Letter No & Date
1.	Ruqia Begum PST	GGPS. Muslim Abad (Razzar)	22-10-2015 to 01-09-2019	No.3662-66/F.No.20/ Inquiry Dated Peshawar the 28-8-2019
2	Musarrat Begum PST	GGPS. Kadi Dagai (Razzar)	22-10-2015 to 01-09-2019	No.3657-61/F.No.20/ Inquiry Dated Peshawar the 28-8-2019
3	Anila Iqbal PST	GGPS. No.3 Swabi	22-10-2015 to 01-09-2019	No.3653-56/F.No.20/ Inquiry Dated Peshawar the 28-8-2019


(DILSHAD BEGUM)
DISTRICT EDUCATION OFFICER
(FEMALE) SWABI

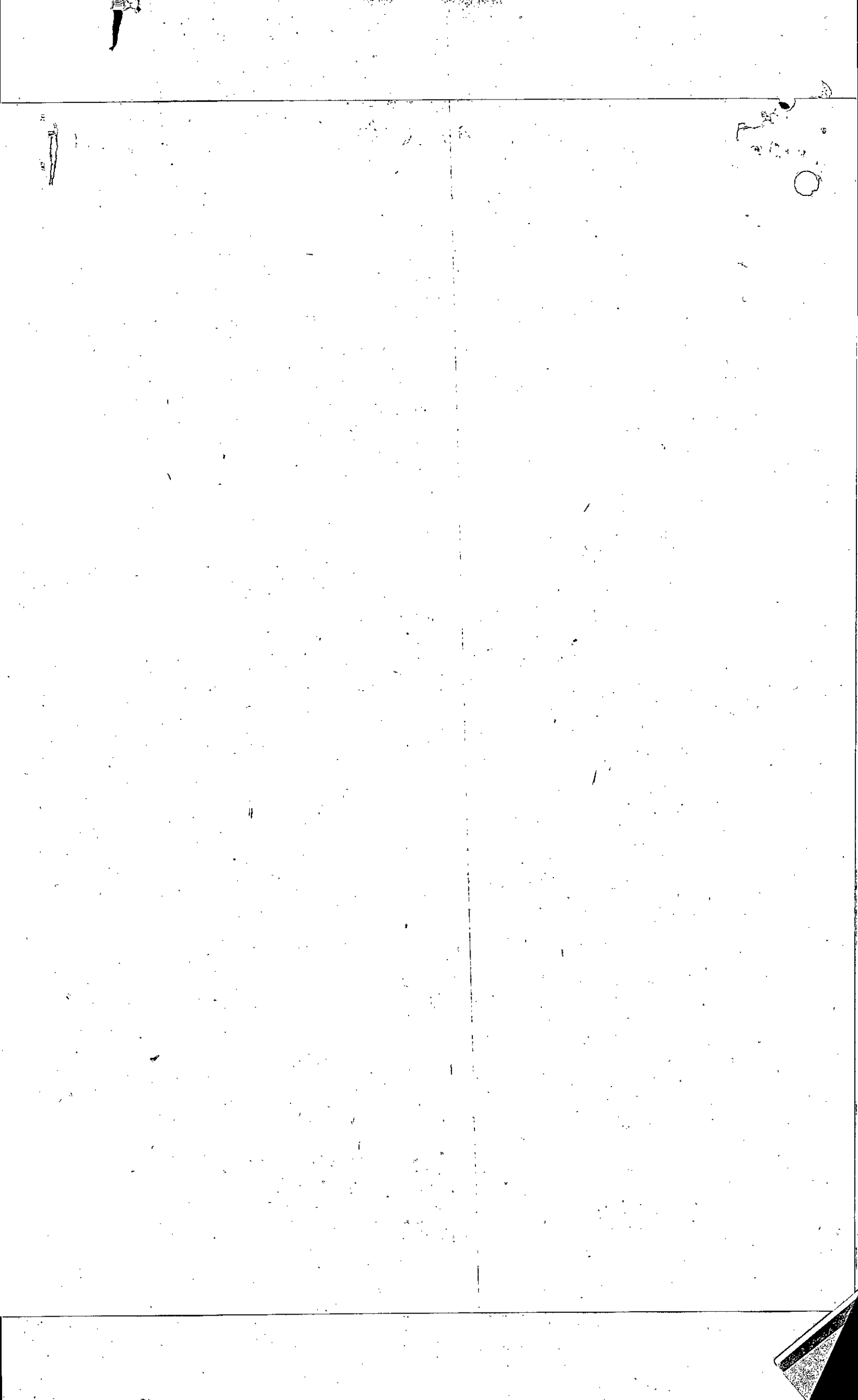
Endst: No., 4404-6 / DA-I/Adjustment/PST, Dated Swabi the 02 / 09 / 2019

Forwarded to the: -

1. Director E&SE Khyber Pakhtunkhwa Peshawar.
2. District Accounts Officer Swabi.
3. DEO (Female) District Kohistan.
4. S.D.E.O (Female) Concerned.
5. ADEO Primary Local Office.
3. Officials concerned.


DILSHAD BEGUM


DISTRICT EDUCATION OFFICER
(FEMALE) SWABI



بعدالت

سرکس ٹریبونل پشاور

مسرت بیگم بنام

حکومت تعلیم

مورخہ

مقدمہ

دعویٰ

جرم

باعث تحریر آنکہ

مقدمہ مندرجہ عنوان بالا میں اپنی طرف سے واسطے پیروی، جواب دہی وکل کاروائی متعلقہ آن مقام پشاور کیلئے فضل محمود، اسد محمود ایڈووکیٹس مقرر کر کے اقرار کیا جاتا ہے۔ کہ صاحب موصوف کو مقدمہ کی کل کاروائی کا کامل اختیار ہوگا۔ نیز وکیل صاحب کو راضی نامہ کرنے و تقرر ثالث و فیصلہ پر حلف دیئے جواب دہی اور اقبال دعویٰ اور بصورت ڈگری کرنے اجراء اور وصولی چیک دروپیہ ارضی دعویٰ اور درخواست ہر قسم کی تصدیق زرائیں پر دستخط کرانے کا اختیار ہوگا۔ نیز بصورت عدم پیروی یا ڈگری یکطرفہ یا اپیل کی برآمدگی اور منسوخی نیز دائر کرنے اپیل نگرانی و نظر ثانی و پیروی کرنے کا مختار ہوگا۔ از بصورت ضرورت مقدمہ مذکور کے کل یا جزوی کاروائی کے واسطے اور وکیل یا مختار قانونی کو اپنے ہمراہ یا اپنے بجائے تقرر کا اختیار ہوگا۔ اور صاحب مقرر شدہ کو بھی وہی جملہ مذکورہ باختیارات حاصل ہوں گے اور اس کا ساختہ پر داختم منظور و قبول ہوگا دوران مقدمہ میں جو خرچہ ہر جانہ التوائے مقدمہ کے سبب سے ہوگا۔ کوئی تاریخ پیشی مقام دورہ پر ہو یا حد سے باہر ہو تو وکیل صاحب پابند ہوں گے۔ کہ پیروی مذکور کریں۔ لہذا وکالت نامہ لکھدیا کہ سند ہے۔

Attested

Accepted

2020ء

ماہ

المرقوم

العبد گداہ العبد

مقام کے لئے منظور ہے۔

BEFORE THE KHYBER PAKHTUNKHWA HONOURABLE SERVICE TRIBUNAL PESHAWAR.

Service Appeal No: 526/2019

Mst. Mussarat Begum, PST, Government Girls Primary School Kaddi, Daggai, Tehsil Razzar, District Swabi.....Appellant

VERSUS

1. Secretary (E&SE) Department Khyber Pakhtunkhwa, Peshawar.
2. Director (E&SE) Department Khyber Pakhtunkhwa, Peshawar.
3. District Education Officer, Female Swabi.
4. Secretary Finance, Government of Khyber Pakhtunkhwa, Peshawar.

.....Respondents

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7	Judgment of this tribunal in SA No803/2018	F	15 - 18


DISTRICT EDUCATION OFFICER
(FEMALE) SWABI

District Edu. Officer
(Female) Swabi

①

BEFORE THE KHYBER PAKHTUNKHWA HONOURABLE SERVICE TRIBUNAL PESHAWAR.

Service Appeal No: 526/2019

Mst.. Mussarat Begum, PST, Government Girls Primary School Kaddi, Dagi , Tehsil Razzar , District Swabi.....Appellant

VERSUS

1. Secretary (E&SE) Department Khyber Pakhtunkhwa, Peshawar.
2. Director (E&SE) Department Khyber Pakhtunkhwa, Peshawar.
3. District Education Officer , Female Swabi.
4. Secretary Finance , Government of Khyber Pakhtunkhwa, Peshawar.


.....Respondents

Para wise Comments on behalf of respondents No. 1 to 03

Respectfully Sheweth,

PRELIMINARY OBJECTIONS.

- 1- That the appellant had not been acquitted of the charges but was reinstated into service on technical ground, Hence she is not entitled to any back benefits.
- 2- That there is no departmental appeal filed against the impugned order at the appropriate forum, hence the service appeal is not maintainable.
- 3- That departmental, appeal is not availed, so the instant service appeal is not maintainable.
- 4- That the departmental appeal, she claims, is not to the appropriate /Competent forum, hence the instant service appeal is not maintainable.
- 5- That the appellant has no locus standi or cause of action to file the instant service appeal.
- 6- That the appellant has not come to the tribunal with clean hands.
- 7- That the appellant has concealed the material facts from the Honorable Tribunal.
- 8- That the appellant has filed the instant service appeal just to pressurize the respondents.
- 9- That the appellant is estopped by her own conduct to file the instant service appeal.


District Education Officer
(Female) Swabi

10- That , the service appeal is not maintainable in the present form and also in the present circumstances of the Issue.

FACTS.

1. That the appellant Mst. Mussarat Begum D/o Hazrat Wali resident of District Swabi was appointed against Primary School Teacher (PST), in District Kohistan. Her initials appointment was made in out District which is objectionable


She was appointed as untrained teacher with a very poor academic qualification i.e. secondary school certificate (SSC) with 342/850 marks less than 40% marks (3rd Division). She was appointed vide order Ends No: 1135-40 dated 01-02-1996 and has taken over charge on 01-05-1996 after a lengthy gape of two months. As per rules the appointment order expires automatically after a lapse of one Month duration. In fact, her taking over of charge is questionable/ unjustified.

2. That the appellant was transferred from District Kohistan to District Swabi. An inquiry against the appellant was conducted on 02-12-2014. The recommendations of the inquiry officer are reproduced as under.

a) The appointments are illegal and irregular and against the recruitment rules / policy, the appointing authority could not absolve himself from the responsibilities, hence departmental proceeding/ legal action may be initiated against the appointing authority.

b) The appointments of above-mentioned teachers are illegal and irregular, hence liable to be withdrawn / cancelled / terminated. Thus statement of the appellant that astonishingly her transfer order was withdrawn vide order dated 22nd October, 2015 without any legal justification and even after the a lapse of seven years is incorrect, hence strongly denied. In fact she was also removed from service vide order E/No/Estab:7105-10/DEO (F) KH :dated 22-10-2015 by the then DEO (F) Kohistan and her transfer was withdrawn vide Ends No: 3887-89/F.No20/(F) Enquiry dated Peshawar the 22.-10-2015 by the then Director Elementary & Secondary Education KP, Peshawar. **Enquiry report, transfer withdrawn order and removal from service order are annexed as A,B & C.**

3. That the appellant was legally removed from service vide order dated 22nd October, 2015 with immediate effect.


District Enquiry Officer
(Female) Swabi


4. That the service appeal No: 117/2016 of the appellant vide Judgment date 22-03-2019 was accepted, impugned order dated 22-10-2015 and the appellant is reinstated in service. The respondents are directed to conduct de-novo enquiry within a period of ninety days after the date of receipt of this judgement. After holding regular enquiry, if it is proved that appointment of the appellant was not fake/bogus, it would automatically restore the transfer order dated 27-09-2008. The Issue of back benefits shall be subject to the outcome of de-novo enquiry. The de-novo enquiry was ordered to find whether the appointment of the appellant is fake/bogus or otherwise, but the enquiry committee badly failed to carry out enquiry in a proper way. During the conduction of this Enquiry the period of ninety days was lapsed. Therefore, the appellate authority in compliance of the court Judgement issued office order Ends No: 3657-61/F.no.20/F/Inquiry dated Peshawar the 28-08-2019 Thus the charge of fake / bogus appointment remained disputed and the appellant was re-instated on technical grounds. It is a settled law that delegated litigation cannot be given retrospective effect. Therefore, the appellant cannot claim any back benefits under section-17 civil servants ACT,1973 and FR 54. Reliance is placed on 1994 PLC (CS) 69 and 2017 PLC (CS) 177 **Office order, Judgment 2017 PLC (CS) 177 and judgement of this tribunal in SA No803/2018 are annexed as D, E & F.**
5. Incorrect, hence denied. The Enquiry she claims is not a regular enquiry. That is why the appellate authority did not agree with the enquiry officer recommendation and speaking order of re-instatement of the appellant was issued without any back benefits accordingly. The intervening Period was converted into Extra-ordinary leave without pay as per law rules and policy.
6. That in this particular case secretary E & SE Department was the Appellate authority and the appellant did not file any departmental appeal to that appropriate authority. It is a settled law that appeal/representation to another authority other than appellate authority could not extend, the period of limitation. Reliance is placed on 2002 SCMR 780. Public authority which could pass an order was amply empowered to vary, amend or rescind that order. Recalling of earlier order and directing the petitioners to refund the amount received by them as back benefits, was in accordance with law. Party could clam numerous reliefs but it was the descretion of the court to grant all are some of those reliefs. Services of the

petitioners were terminated and they have not served from the date of termination to date of joining, they were not entitled to payment of salary and other emoluments for the period during which they not serve. Same is reported in 2011 PLC(CS) 1645. Therefore, the service appeal is not maintainable and is liable to be dismissed.

7. That the appellant is not an aggrieved person at all, therefore she has no cause of action to file the instant appeal and the appeal in hand is liable to be dismissed, Inter alia the following grounds.

Grounds

- a) Incorrect hence denied the order dated 2nd September, 2019 being legal, lawful, Passed in accordance with law, norms of natural justice and numerous judgments of Apex court. Therefore, it is earnestly requested that the order may very graciously be kept intact.
- b) Incorrect, hence denied. Removal from service was legal because appointment order was questionable / unjustified. The appellant was re-instated in service without acquitting of the charges but on technical grounds, hence the appellant is not entitled for back benefits under section 17, Civil servants act 1973 or FR (54). Reliance is placed on 1994 PLC (CS) 69 and 2017 PLC(CS) 177.
- c) Incorrect hence denied, the appellant is not acquitted from the charge of feck/ bogus appointment but was re- instated on the technical ground. Therefore, she is not entitled for any back benefits under section 17 Civil servants ACT 1973 or FR 54.
- d) Incorrect, hence Strongly denied. She was highly treated as per FR 54 (b), which states, "if otherwise (i.e. reinstated but punished departmentally), such portion of such pay and allowances as the revising or appellate authority may prescribe. The suspension period in a case falling under clause (b) will not be treated as a period spent on duty unless the revising or appellate authority so directs". It is pertinent to state that the appellant was not suspended but was removed from service and was not on the strength of department. Hence the stance of the appellant about back benefits is conjectural and ludicrous.
- e) That the respondents may be allowed to raise further points/ grounds at the time of hearing of this case.


 District App. Officer
 (Female) Swabi

In view of the above submissions it is earnestly requested that the instant appeal may very graciously be dismissed with cost.

District Education Officer
(Female) Swabi
District Edu. Officer
(Female) Swabi

Director Elementary &
Secondary Education KP Peshawar
Director
Elementary & Secondary Education
Khyber Pakhtunkhwa Peshawar

Secretary E & SE Department
Govt of Khyber Pakhtunkhwa



AFFIDAVIT

We do hereby solemnly affirm and declare on faith that the contents of the para wise comments are true and correct to the best of our knowledge and belief, nothing has been concealed from this honorable tribunal or misstated.

DISTRICT EDUCATION
OFFICER (FEMALE) SWABI
District Edu. Officer
(Female) Swabi

Annexure - A 2013

(56) (33)

06

**OFFICE OF THE DISTRICT EDUCATION OFFICER,
(MALE) KOHISTAN.**

No. 02-10344 Dated: 02/12/2014.

Director,
Elementary & Secondary Education
Khyber Pakhtunkhwa Peshawar.

ADDE 29
10/3/12/2014

**INQUIRY REPORT REGARDING PROMPT ACTION AGAINST THE TEACHERS APPOINTED IN
DISTRICT KOHISTAN**

Subject:

Memo: Reference your letter issued under Endst No826-29 F.No.20/f teachers enquiry division dated 09/10/2014, the enquiry report on the subject matter is as under.

Background/ TOR

To probe into the matter on the subject cited above in R/O the following PST teachers who were appointed in District Kohistan and later on they were transferred to District Swabi.

1. Mst Nuzhat PST.

4. Mst Ruqia PST.

7. Mst Mussarat Bibi PST

2. Mst Nazia Qazi PST

5. Mst Sara PST

8. Mst Anila Iqbal PST

3. Mst Alia Ghafoor

6. Mst Khus Numa PST

DD(P)
10

(E) in Chair.

- Procedure:
1. Consultation with DEO (F) and SDEO (F)
 2. Collection of relevant record/ information from DEO (F) and SDEO (F)
 3. Validation of record/ information from District Accounts Officer Kohistan.

Facts:

- 2288
4/12
- Mst Nuzhat Begum PST:**
 - a. She was appointed as PST at GGPS Yazai vide appointment order issued Endstt No.3189-94 dated 31.07.2009 and she took over the charge on the same day at GGPS Kass Banda instead of GGPS Yazai. After taking over charge she was again adjusted at GGPS Banjar Yanjool w.e.f 01-03-2011 vide EDO E&SE Kohistan No.741-49 dated 22-04-2011.
 - b. The source I for the release of pay was verified from District Accounts Office Kohistan in the M/O 5/2011 along with the adjustment of arrear of pay for the M/O 3-4/2011, it mean that she could not get salary from date of appointment to 02/2011 (19 months).
 - c. That indicates that she was appointed without the availability of post and she was adjusted in at GGPS Banjar Yanjool.
 - d. She was appointed only on pick and chooses method.
 - e. She was appointed on single hand written application.

- Zahid
5/12/14
- Mst: Nazia Qazi PST:**
 - a. Mst Nazia Qazi D/O Qazi Abdul Haq was appointed as PST GGPS Bar Komila vides appointment order issued under Endstt No.8836-42 dated 07/12/2006 and She took over the charge on the same day.
 - b. According to merit list for the 2006, she falls at serial No.28 being only SSC.
 - c. No other record of Nazia Qazi such as photocopy of service book, appointment order is available in the office of DEO and SDEO (F).
 - d. She was appointed only on pick and chooses method.
 - e. She was appointed on single hand written application.

S/S
4/12/14

[Signature]
7/17/2020

District Accounts Officer
(Female) Swabi

242

SA

07

Mst Alia Ghafoor PST:

- a. Mst Alia Ghafoor D/O Ghafoor Gul R/O of District Swabi was appointed as pst at GGPS Kass Banda Vide appointment order issued Endstt No.3189-94 dated 31.07.2009 and took over the charge on the same day.
- b. She was again adjusted at GGPS Yanjool w.e.f 01-03-2011 vide EDO E&SE Kohistan No.741-49 dated 22-04-2011.
- c. The source I for the release of pay was verified from District Accounts Office Kohistan in the M/O 5/2011 along with the adjustment of arrear of pay for the M/O 3-4/2011.
- d. It mean that she could not get salary from date of appointment to 02/2011 (19 months) that indicate that she was appointed without the availability of post and on the availability of post she was adjusted in at GGPS Yanjool.
- e. She was appointed only on pick and chooses method.
- f. She was appointed on single hand written application.

iv. Mst Ruqia PST:

- a. Mst Ruqia Begum D/O Mustafa Gul R/O of District Swabi was appointed as pst at GGPS Kass Banda Vide appointment order issued Endstt No.3189-94 dated 31.07.2009 and took over the charge on the same day.
- b. After taking over charge she was again adjusted at GGPS Dassu w.e.f 01-03-2011 vide EDO E&SE Kohistan No.741-49 dated 22-04-2011.
- c. The source I for the release of pay was verified from District Accounts Office Kohistan in the M/O 5/2011 along with the adjustment of arrear of pay for the M/O 3-4/2011 it mean that she could not get salary from date of appointment to 02/2011 (19 months) that indicate that she was appointed without the availability of post she was adjusted at GGPS Dassu.
- d. She was appointed only on pick and chooses method.
- e. She was appointed on single hand written application.

v. Mst Sara PST:

- a. Mst Sara Begum D/O Fazal Yazdan R/O Mardan (Swabi) was appointed as PST GGPS Kundal vide DEO (F) Kohistan appointment order issued under Endst No.827-33 dated 2/2/1996 being SSC and PTC and as per entry in the service book she took over the charge on 3/2/1996.
- b. As per entry in the service book the pay of the said teacher was released vide DEO (F) Letter No. 6071-73 dated 12/10/2010 in the period w.e.f. 01/12/2006 to 3/4/2012 (41 Months) as treated as EOL without pay and the period w.e.f date of appointment 30/11/2006 is not trace able for the month of October 2010.
- c. As per entry in the service book, the source I for the release of salary was verified from District Accounts Office for the month of 11/2010, the pay of the teacher for the period 1/5/2010 to 31/10/2010 has already been drawn.
- d. She was appointed on 2/2/1996 and got the salary w.e.f 1/5/2010, that indicates that she remained without salary from 2/2/1996 to 30/4/2010 (14 years & 3 Months)
- e. It id astonishing that how the appointment is valid.
- f. She was appointed only on pick and chooses method.
- g. She was appointed on single hand written application.

vi. Mst Khus Numa PST:

- a. Mst Khush Numa D/O Khurshid Ahmad R/O Swabi was appointed as PST at GGPS Dobair Village being only SSC Vide appointment order issued under Endst No.539-44 dated Kohistan 2/12/2009 and she took over the charge in the school on 3/12/2009.
- b. She was again adjusted at GGCMS Jijal vide adjustment order issued under Endst No. 8004-6 dated 19/10/2010 at serial No. 13 of the order.
- c. As per entry in the service book the source I for the release of salary was verified from District Accounts Office for the month of 11/2010.

[Handwritten Signature]
 District Edu Officer
 (Female) Swabi

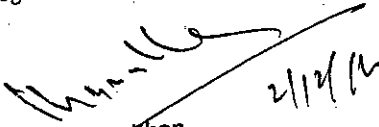
- 241
- (56) (08)
- d. She was appointed being low academic qualification.
 - e. She was transferred from Kohistan on 8/1/2011 and she got the salary for only 2 month from Kohistan.
 - h. She was appointed only on pick and chooses method.
 - i. She was appointed on single hand written application.
- vii. **Mst Mussarat Bibi PST:**
- a. Mst Mussarat Bibi D/O Hazrat Wali was appointed as PST at GGPS Badar Shaha vide appointment order issued Endst No.1135-40 dated 1/2/1996 w.e.f 1/5/1996.the order was issued in advance and as per entry in the service book she took over the charge on 1/5/1996.
 - b. She was appointed being only SSC with 342/850 marks less than 40% in 3rd division. She was appointed on simple hand written application without merit list and without other coddles formalities.
 - c. She was appointed with a very low academic qualification.
 - e. She was appointed on simple hand writing application
 - f. She was appointed by pick and chooses method
 - g. No other record is available for further verifications
- viii. **Mst.Nadia Qazi**
- a. Mst.Nadia Qazi D/O Qazi Fazal Haq was appointed as PST GGPS bar Komila vide appointment order issued under End: No.8836-42 dated 07-12-2006
 - b. According to the merit list of Female candidates for the year 2006, she falls at S.No.28/06 being SSC.
 - c. She was appointed on simple hand writing application
 - d. She was appointed by pick and chooses method
 - e. No other record is available for further verifications.
- The score of all these candidates has been changed/ inserted in pen writing and has been changed and the appointments were made randomly and disorderly.

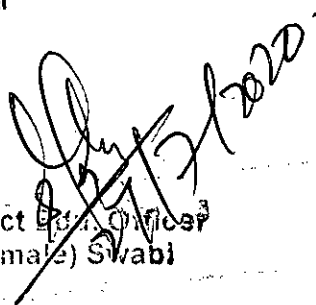
Findings

1. The appointments were made without the availability of vacant post and the submission of charge reports is merely the paper work that is why the source I for the release of salary was verified after the issuance and adjustment in 2nd orders.
 2. The appointments were made with poor/ relaxed criteria with the intension to induct the candidates and leave out them from District Kohistan as soon as possible and the similar has been done.
 3. The appointments were made to use District Kohistan as a launching bad/ back door for accommodating academically poor candidates.
 4. The appointments were made on pick and choose policy.
 5. The appointments were s made in piece-meal by violating the rules.
- Photocopy of appointment orders, charge report, pages of service books and merit lists for the year 2006 and 2008 are attached here with as Annexure "A" & "B".

Recommendations.

- After perusal of available record, facts and findings, the following recommendations are made.
1. The appointments are illegal and irregular and against the recruitment rules / policy, the appointing authority could not absolve himself from the responsibilities hence departmental proceeding/ legal action may be initiated against the appointing authority.
 2. The appointments of above mention teachers are illegal and irregular hence liable to be withdrawn / cancelled / terminated.


 Riasat Khan
 District Education Officer
 (Male) Kohistan


 District Education Officer
 (Female) Swabi



Annexure - E
"J"

10

OFFICE OF THE DISTRICT EDUCATION OFFICER, (F) KOHISTAN.

Ph: & Fax No.0998407225

OFFICE ORDER..

In compliance with the Director, Elementary & Secondary Education Khyber Pakhtunkhwa Peshawar letter No.3081/F.No.20 (F) enquiry dated 16/03/2015, Reminder No. 2200/F No.20/(F) enquiry dated 20/04/2015/, No. 3530/ F No.20/(F) enquiry dated 22/05/2015, and No.3696/F No.20/(F) enquiry Dated 24/08/2015. and In light of recommendation of enquiry officer, the following PST teachers are hereby removed from service with immediate effect.

S/NO	Name	School
1	Nuzhat PST	GGPS Kas banda
2	Nazia Qazi PST	GGPS Bar komila
3	Alia Ghafoor	GGPS Kas banda
4	Ruqia PST	GGPS Kas banda
5	Sara PST	GGPS Kundal
6	Khushnuma PST	GGPS Dubair
7	Mussarat bibi PST	GGPS Badar shaha

District Education Officer
(Female) Kohistan

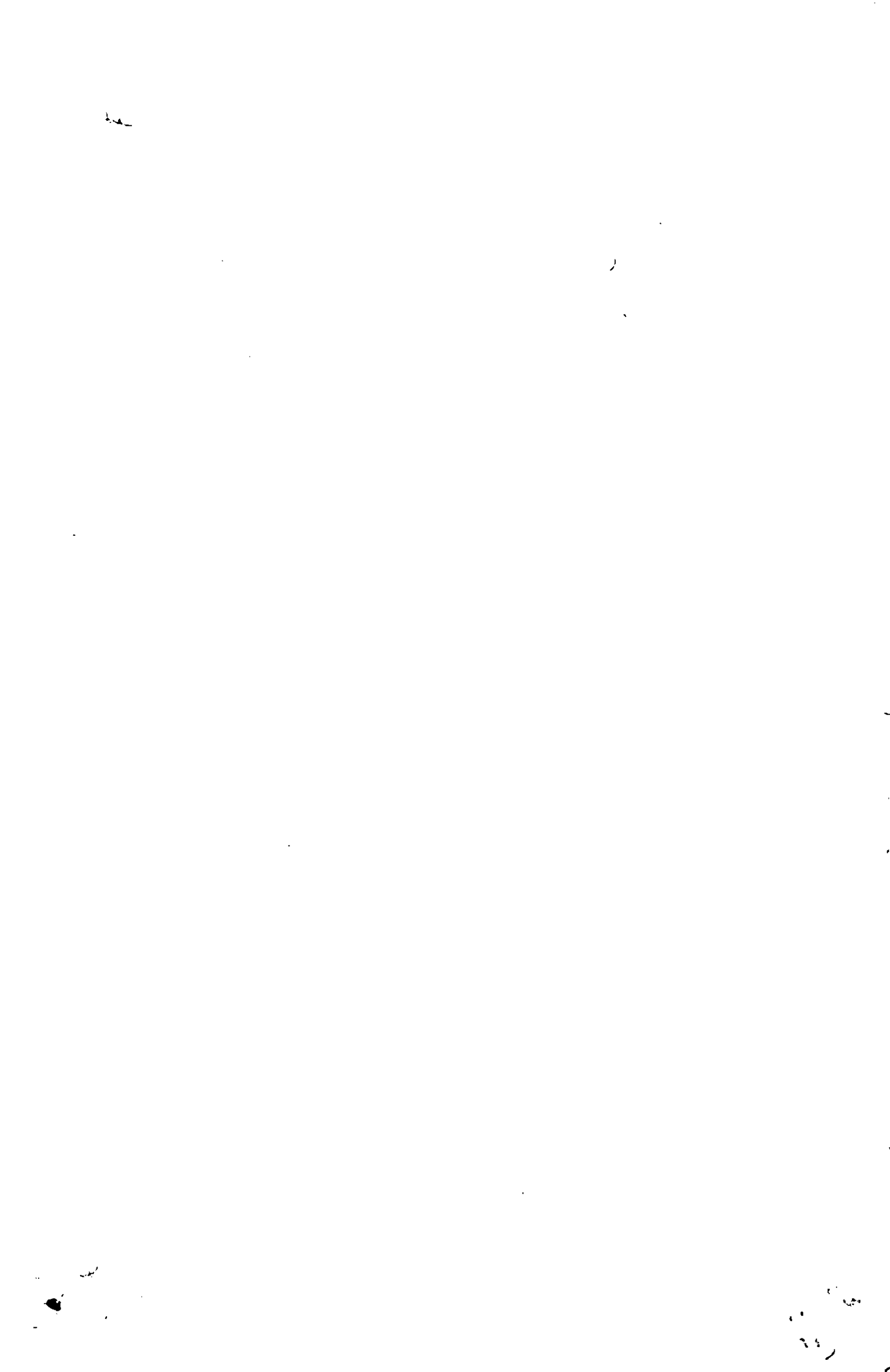
E/No, /Estab: 7/05-10 /DEO (F) KH: dated 22-10/2015.

Copy of the above is forwarded to:

1. The Director, Elementary & Secondary Education, Khyber Pakhtunkhwa Peshawar.
2. The District Education Officer (F) District Swabi, for necessary action at her end as the above teachers are now posted in District Swabi.
3. The District Accounts Officer, Swabi.
4. The District Accounts Officer, Kohistan.
5. The Sub Divisional Education Officer (F) Kohistan.
6. Office record .

District Education Officer
(Female) Kohistan

Attested to be
True Copy
District Ex. Officer
(Female) Swabi



Annexure - D

11

DIRECTORATE OF ELEMENTARY & SECONDARY EDUCATION KHYBER PAKHTUNKHWA
PESHAWAR

OFFICE ORDER

DA-I

Consequent upon Judgment of the Honourable Khyber Pakhtunkhwa Service Tribunal announced on dated 22/3/2019 in the Service Appeal No.117/2016, the transfer cancellation in respect of Mst. Musarrat Begum PST BS-12 GGPS Mohib Banda Dagai Swabi issued vide this office under Endst. No.3887-89 dated 22/10/2015 (copy attached) is hereby set aside in the light of the said judgment.

DEO



Note:- 1. The intervening period of the teacher concerned will be treated as leave without pay.

DIRECTOR
Elementary & Secondary
Education Khyber Pakhtunkhwa

Endst. No. 3657-4/F.No.20/F/Inquiry Dated Peshawar the 28/8/2019
Copy forwarded for information to the:-

1. District Education Officer (Female) Swabi with the remarks that if the post at the station where the teacher was working filled, she may be adjusted against any vacant post of PST BS-12 in District Swabi.
2. District Education Officer (F) Kohistan.
3. Sub Divisional Education Officer (Female) concerned.
4. Teacher concerned.
5. PA to Director Elementary & Secondary Education Khyber Pakhtunkhwa.

H. H.
Deputy Director (Female)
Elementary & Secondary Education
Khyber Pakhtunkhwa,

M.Zahir

Endst. No. 4354 (dated 30/8/2019) 27/8/19
Forwarded for information to the:-

SDDED (F) Razza with the direction to provide a suitable
PST. Vacant post for adjustment.

[Signature]
District Education Officer
(Female) Swabi

[Signature]
District Edu. Officer
(Female) Swabi

Annexure-B

OFFICE OF THE DIRECTOR OF ELEMENTARY & SECONDARY EDUCATION KHYBER PAKHTUNKHWA, PESHAWAR

NOTIFICATION

The transfer orders of the following teachers from District Kohistan to District Swabi issued vide this office Endst.No: detail given below are hereby withdrawn due to their illegal and irregular appointments as per report of the inquiry officer vide letter No.02 dated 2-12-2014

S.N	Name of Teacher	From Kohistan	District	To District Swabi	Endst.No.
1.	Alia Ghafoor PST	GGPS Yanjool	Banjar	GGPS Battai No.2	Endst.No.2511-15 dated 19-10-2011
2.	Ruqia PST	GGPS Mada Khel		GGPS Haryan Banda	Et.No.2511-15 dated 19-10-2011
3.	Nuzhat PST	GGPS Yanjool	Banjar	GGPS Haryan Banda	Endst.No.2527-31, dated 24-11-2010
4.	Khushnama PST	GGCMS Kohistan	Jijal	GGPS Hayatabad	Endst.No.985-90 dated 08-01-2011
5.	Nazia Qazi PST	GGPS Bar Komila		GGPS Razi Bahadar Koti	Endst.No.4980-85, dated 20-09-2011
6.	Sara PST	GGPS Saglo		GGPS Aala Dheri Dheri	E.No.1599-1605 dated 15-02-2011
7.	Mussarat PST	GGPS Abad Sao	Samad	GGPS Palosai	Endst.No.7490-95 dated 27-09-2008
8.	Aneela PST	GGPS Koz		GGPS No.1 Dheri Gandaf	Endst.No.505-10 dated 08-10-2010

Director
Elementary & Secondary Education
Khyber Pakhtunkhwa,

Endst: No. 3027-29 /F.No.20/(F)Enquiry dated Peshawar the 22/10/2015

Copy to the:-

1. District Account Officer, Swabi & Kohistan
2. District Officer (Female) Swabi & Kohistan
3. Teacher Concerned.
4. P.A to Director Local Office

Deputy Director (Female)
(E&SE) Khyber Pakhtunkhwa.

19/11/15

noted on
12/11/2015
notify to All
ASDEOS concern.
AC
12/11/2015

OFFICE OF THE DISTRICT EDUCATION OFFICER (FEMALE) SWABI.

Endst: No. 3090-4/DA-I (Estab) Dated Swabi the 12/11/2015

Copy of the above is forwarded for information and strict compliance to the:-

1. Sub-Divisional Education Officer (Female) Lahor, Swabi and Topi
2. District Accounts Officer:Swabi.

DISTRICT EDUCATION OFFICER
(FEMALE) SWABI

OFFICE OF THE SUB DIVISIONAL EDUCATION OFFICER FEMALE LAHOR

Endst.No: 1479-80 Dated Lahor the: 16/11/2015

Copy of the above is forwarded for information and strict compliance to the:-

1. District Education Officer Female Swabi w/r to her Endst. refer to above.
2. All concerned teacher from SNO: 1 to 6.

16/11/2015

Annexure - E

12

2017 P L C (C.S.) 177

[Punjab Subordinate Judiciary Service Tribunal]**Before Mehmood Maqbool Bajwa, Chairman and Shahid Waheed, Member****MUHAMMAD ANAYET GONDAL****Versus****REGISTRAR, LAHORE HIGH COURT, LAHORE**

S.A. No.11 of 2012 and C.M. No.1 of 2015, heard on 11th September, 2015.

Punjab Subordinate Judiciary Service Tribunal Act (XII of 1991)---

---S. 6---Civil Procedure Code (V of 1908), S.151---Judicial officer---Reinstatement by Service Tribunal---Execution petition for release of salaries and allowances i.e. back benefits---Contention of department was that the claim of back benefits of the applicant would be decided by the Authority after getting recommendations from the "Hearing Officer"---Validity---Service Tribunal had set aside the notification of dismissal of applicant due to certain infirmities in the procedure---Applicant had been reinstated in service without passing any order with regard to grant of back benefits---Back benefits were not granted to the applicant in circumstances---Applicant had not been acquitted of the charges but he was reinstated into service on technical ground---Applicant could not claim that he was entitled to the back benefits on his reinstatement into service---No direction for release of salaries, allowances and increments could be issued in the present case---Execution petition was dismissed in circumstances.

Syed Kamaluddin Ahmad v. Federal Service Tribunal and others 1992 SCMR 1348 rel.

Applicant in person.

Zubda Tul Hussain along with Taimoor Ali, Assistant Registrar Legislation and Litigation for Respondent.

Date of hearing: 11th September, 2015.

JUDGMENT**C.M. No.1 of 2015**

This is an application under section 6 of The Punjab Subordinate Judiciary Service Tribunal Act, 1991 read with section 151, C.P.C. for issuance of direction to the respondent to release applicant's salaries, allowances, increments etc. with effect from 24.5.2012 by implementing/executing the judgment dated 16.01.2015 passed by this Tribunal in S.A. No.11 of 2012.

2. Briefly the facts of the case are that the disciplinary proceedings were initiated against the applicant, Muhammad Anayet Gondal, under The Punjab Civil Servants (Efficiency and Discipline) Rules, 1999 which culminated in the Notification dated 24.5.2012 whereby major penalty of dismissal from service was imposed upon the applicant. Feeling anguished, the applicant challenged the said notification through an appeal under Section 5 of The Punjab Subordinate Judiciary Service Tribunal Act, 1991 i.e. S.A No.11 of 2012 before this Tribunal. Due to some procedural flaws in the disciplinary proceedings the said appeal was accepted vide judgment dated 16.01.2015 in the following terms:

[Signature]
District Judge, Swabi
(Female) Swabi

(13)

"In the sequel, while setting aside the impugned Notification dated 24.5.2012, this appeal is accepted and the Registrar of the Lahore High Court, Lahore is directed to place the matter before the Authority for granting reasonable time to the appellant for submitting reply to the final show cause notice dated 10.3.2012 and thereafter to take further steps as per relevant rules."

The applicant challenged the judgment of this Tribunal through CPLA. No.172 of 2015 before the Hon'ble Supreme Court of Pakistan. This petition was dismissed being without merit vide order dated 5.3.2015. Subsequently, in compliance with the judgment dated 16.1.2015 passed by this Tribunal the applicant was reinstated into service with immediate effect vide Notification No.53/RHC/CJJ, dated 27.3.2015. The applicant accordingly joined the duty on 1.4.2015. Now, the applicant has filed the present application with a prayer that a direction be issued to the respondent to release his salaries, allowances and increments, etc., that is, back benefits with effect from 24.5.2012.

3. The applicant, in person, submits that this Tribunal vide its judgment dated 16.1.2015 had reinstated him into service and, therefore, he is entitled to consequential back benefits; and that non-payment of back benefits is a clear violation of section 16 of The Punjab Civil Servants Act, 1974.

4. On the other hand, learned counsel for the respondent has submitted that in compliance with judgment dated 16.1.2015 of this Tribunal, matter was placed before the Authority; and, that the Authority, i.e., the Administration Committee of the High Court in its meeting held on 30.01.2015 resolved as follows:

"Judgment dated 16.1.2015 passed by Subordinate Judicial Service Tribunal in Service Appeal No.11 of 2012 titled "Muhammad Anayat Gondal v. Registrar, Lahore High Court, Lahore" perused and it is resolved to re-instate the Officer in service. Mr. Justice Syed Mazahar Ali Akbar Naqvi is requested to afford personal hearing to the Officer by granting him reasonable time for submitting reply to the Final Show Cause Notice dated 10.3.2012 and record Note on Personal Hearing along with recommendations for grant of back benefits to the Officer for consideration by the Committee."

The respondent's counsel summed up his arguments by submitting that the question of grant of back benefits to the applicant shall be decided by the Authority after getting recommendations from the Hearing Officer and, thus, this application being premature is not competent.

5. We have heard the parties and perused the record. This Tribunal vide its judgment dated 16.1.2015 in S.A. No.11 of 2012, after finding certain infirmities in the procedure, had set aside the notification dated 24.5.2012 and reinstated the applicant into service but without passing any order with respect to grant of back benefits. It means that the back benefits were not granted to the applicant. In the said appeal before this Tribunal the applicant had pleaded that reasonable time for submitting reply to the final show cause notice dated 10.3.2012, i.e. a notice for enhancement of punishment, was not given to him; that he had received the said show cause notice on 14.3.2012 and at that time he was discharging his duties as Civil Judge, Class-I, at Darya Khan; and that he had filed an application dated 14.3.2012 before the Registrar, Lahore High Court, Lahore with a request that he be allowed to peruse/consult record of inquiry proceedings and for provision of necessary documents for submitting the proper reply to the notice; and, that neither the documents were supplied to him nor reasonable time for filing reply to the show cause notice was granted and, therefore, the hearing afforded to him on 16.3.2012 was feigned. It was, in these circumstances, this Tribunal set aside the notification dated 24.5.2012 vide its judgment, referred to above, on technical grounds and directed the Registrar, Lahore High Court, Lahore to place the matter before the Authority for granting reasonable time to the applicant for submitting reply to the final show cause notice dated 10.3.2012 and thereafter to take further steps as per relevant rules. The contention of the applicant that on setting aside of the order of dismissal by this Tribunal he was entitled to the back

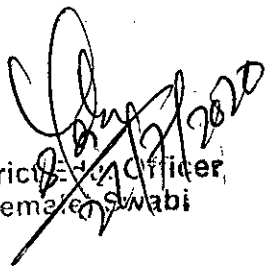
12

benefits under section 16 of The Punjab Civil Servants Act, 1974 is of no avail to him as obviously he was not acquitted of the charges but he was reinstated into service on technical grounds and, therefore, he cannot claim that he is entitled to the back benefits on his reinstatement into service. In this regard guidance may be had from the case Syed Kamaluddin Ahmad v. Federal Service Tribunal and others (1992 SCMR 1348). Since the judgment dated 16.01.2015, referred to above, which has attained finality with the approval of the order dated 5.3.2015 passed by the Hon'ble Supreme Court of Pakistan in CPLA. No.172 of 2015, is silent about the grant of back benefits, the direction, as prayed for in this application, for release of salaries, allowances, increments etc. is uncalled for.

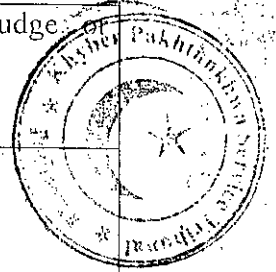
6. Upshot of the above discussion leads to the conclusion that the instant application sans merit and, therefore, the same is dismissed.

ZC/3/PST

Application dismisse


District Officer
(Female) Swabi

Sr. No	Date of order/ proceedings	Order or other proceedings with signature of Judge/Magistrate
1	2	3
	18.02.2020	<p style="text-align: center;">BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL Service Appeal No. 803/2018</p> <p style="text-align: right;">Date of Institution 07.06.2018 Date of Decision 18.02.2020</p> <p>Israr Ahmad Qari, Government High School No.2, Saleem Khan Tehsil & District Swabi. Appellant</p> <p style="text-align: center;">Versus</p> <ol style="list-style-type: none"> 1. Director Elementary & Secondary Education Khyber Pakhtunkhwa Peshawar. 2. Deputy Director Elementary & Secondary Education Khyber Pakhtunkhwa Peshawar. 3. District Education Officer (Male) Swabi. 4. Secretary Elementary & Secondary Education Khyber Pakhtunkhwa Peshawar. <p style="text-align: right;">Respondents</p> <p>Mr. Muhammad Hamid Mughal-----Member(J) Mr. Mian Muhammad -----Member(E)</p> <p style="text-align: center;"><u>JUDGMENT</u> <u>MUHAMMAD HAMID MUGHAL, MEMBER:</u></p> <p>Appellant with counsel and Mr. Muhammad Jan learned Deputy District Attorney alongwith Fazal Khaliq ADO present.</p> <p>2. The appellant (Qari), has filed the present service appeal against the order dated 10.05.2018 of the appellate authority (Director E&SE Khyber Pakhtunkhwa Peshawar) and the order dated 17.05.2018 of DEO (Male) Swabi on the ground that</p>



18.2.2020

ATTESTED

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

District Education Officer
(Female) Swabi

though the appellant has been reinstated but without all back benefits.

3. Learned counsel for the appellant argued that the appellant was taken into custody by the police authorities and other agencies on the pretext of having links with banned outfits; that father of the appellant informed the Education Department regarding illegal confinement of the appellant; that the appellant was roped in false, concocted and factitious criminal cases by CTD; that vide order dated 25.03.2017, the appellant was removed from service while treating the absence period as unauthorized absence from duty without pay; that the departmental appeal filed by the appellant was accepted and vide order dated 10.05.2018 he was reinstated in service while treating the absence period w.e.f 05.08.2015 to 21.11.2017 as leave without pay; that consequently the DEO (Male) Swabi vide order dated 17.05.2018 reinstated the appellant in service while converting the period w.e.f 05.08.2015 to 09.05.2018 as extraordinary leave without pay. Learned counsel for the appellant argued that the appellate authority treated the absence period w.e.f 05.08.2015 to 21.11.2017 as leave without pay but on the other hand, DEO (Male) Swabi treated the absence period w.e.f 05.08.2015 to 09.05.2018 as extraordinary leave without pay; that the appellant did not remain willfully absent from duty rather he was in custody of agencies, hence he is entitled to all the back benefits upon his reinstatement.

18.2.2020

ATTESTED

EXAMINED
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

District Education Officer
(Female) Swabi

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4. On the other hand learned DDA argued that the appellant has not come to this Tribunal with clean hands; that father of the appellant in his application dated 07.05.2015 addressed to the Headmaster admitted that his son had links with the local Taliqan; that due to absence of the appellant, he was removed from service however the appellate authority took the lenient view and reinstated the appellant with immediate effect while treating the absence period as leave without pay; that the appellant did not perform any duty w.e.f 05.08.2015 to 09.05.2018, hence he is not entitled to the salary/monitory benefits of the absence and out of service period.

5. Arguments heard. File perused.

6. Vide order dated 25.02.2017 the appellant was awarded major punishment of removal from service on the ground of absence from duty. Departmental appeal filed by the appellant was accepted and in compliance with the order of the appellate authority, DEO (Male) Swabi reinstated the appellant in service. DEO (Male) Swabi while reinstating the appellant converted the period w.e.f 05.08.2015 to 09.05.2018 as extraordinary leave without pay. Admittedly the appellant did not perform duties w.e.f 05.08.2015 to 09.05.2018. It is not the case of the appellant that due to his involvement in criminal cases, he remained in the judicial lockup during his entire absence period. No documentary evidence is available on file in support of the plea that the appellant was in custody of

18-2-2020

ATTESTED

EX. AMR
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

District Ex. Officer
(Female) Swabi

Before Chini S. J. and KP K. J.

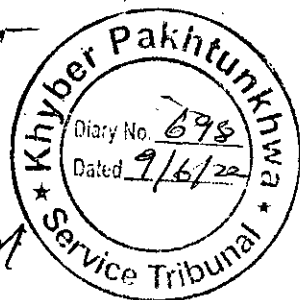
1) Roqia Begum vs Educator Dept

SO 409/2020

2) Musarrat Begum vs Educator Dept

526/2020

527/2020



Request for Joint the Case in Special
for Hearing Date

As it is that subject Case is just pending
and adjourned to 29.8.2022

put up to the court
with relevant appeal.

But the Case 7 SWD 2 is the same
matter with S.O.I.

10/6/22

Reader

That there is no law to collect
the same cases and suit may be
fixed to 29.8.2022.

4) That the parties belong to Swabi
and unable to pursue them.

If the case fixed for 29.8.2022
so there is easy to attend the court from

Request for Adjournment Joint both
the cases for hearing.

9/6/2022

Applicants
Mus Roqia Begum
Mus Musarrat Begum