BEFORE THE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL PESHAWAR.

Service Appeal No. 527/2019

Date of Institution ... 03.01.2020

Date of Decision ... 22.11.2022



Mst. Aneela Iqbal, PST, Government Girls Primary School No. 3, 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:- Precise facts as alleged by the appellant in her appeal are that she was appointed as PST in the respondent-department vide order dated 02.12.2009. Vide order dated 07.10.2010, the appellant was transferred from District Kohistan to District Swabi and she then performed her duty in District Swabi. The appellant was removed from service vide order 21.01.2016 constraining her to file Service Appeal No. 716/2016



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. The appointment of the appellant was found genuine during the inquiry proceedings and the inquiry committee recommended that she may be reinstated in service with all back benefits. The appellant was thus entitled to her reinstatement with effect from 21.01.2016, however vide order dated 02.09.2019 she was reinstated in service with immediate effect and the intervening period was converted into extra ordinary leave without pay. The departmental appeal of the appellant was not responded within the statutory period, therefore, she has now approached this Tribunal through filing of instant service appeal for redressal of her grievance.



- 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 argued 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 21.01.2016 with all back benefits. He further argued that the order of her removal dated 21.01.2016 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 is entitled to all back benefits. Reliance was placed on 2021 SCMR 962, 2015 SCMR 77 and 2007 SCMR 855.

- 4. On the other hand, 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 21.01.2016 on the ground that her appointment order was illegal/fake. The same was challenged by the appellant through filing of Service Appeal No. 716/2016 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 they have taken the stance that the said inquiry was not a regular inquiry. The order of removal of the appellant dated 21.01.2016 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 the de-novo inquiry was also not a regular inquiry. In consequence of their own mistake of not conducting of de-novo inquiry in accordance with Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011, the departmental Authority 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 for bearing the brunt of mistake of the respondent-

7. The order of removal of the appellant dated 21.01.2016 has already been set-aside by this Tribunal vide judgment dated 22.03.2019. The appellant was thus entitled for her reinstatement in service with effect from 21.01.2016 and she was also entitled to all

department, which is unfair.

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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 21.01.2016 with all back benefits. Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCED

22.11.2022

(SALAH-UD-DIN) MEMBER (JUDICIAL)

(MIAN MUHAMMAD)_. MEMBER (EXECUTIVE) 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 21.01.2016 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) 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.

(Salah-Ud-Din) Member (Judicial) 02.02.2022

Learned counsel for the appellant present. Mr. Fazai Khaliq ADEO alongwith Mr. Muhammad Riaz Khan Paindakheil learned Assistant Advocate General for the respondents present.

File to come up alongwith connected Service Appeal No.526/2020 titled Musarrat Begum Vs. Government of Khyber Pakhtunkhwa, on 14.03.2022 before the D.B.

(Rozina Rehman) Member (J) (Salah-Ud-Din) Member (J)

14-3-22

One to retreament of the Hon, ble chairman the case is adjourned to come up for the Same as before on 17-6-22

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 "Ruqia 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 $\frac{12}{202}$ /2021 before D.B.

(Atiq ur Rehman Wazir) Member (E) (Rozina Řehman) Member (J)

13.07.2021

Clerk of counsel for the appellant present. Mr. Fazal Khaliq ADO (litigation) 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 §1.1 .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

the appellant present. Preliminary Counsel for 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 21.01.2016 against which she filed service appeal No. 716/2016 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. 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 Fe

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	527	/2020	

S.No.	Date of order	Order or other proceedings with signature of judge
:	proceedings	
i	2	3
1	0.0 (0.1 (0.0 0.0	The appeal of Mst. Anila Iqbal resubmitted today by Mr. Asad
1-	22/01/2020	Mehmood Advocate may be entered in the Institution Register and put up
		to the Worthy Chairman for proper order please.
		REGISTRAR
2- _,		This case is entrusted to S. Bench for preliminary hearing to be
_ ,		put up there on 28/02/2020.
•	·	$\sqrt{1}$
:		I for
,		CHAIRMAN
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	· :-	
į	20.02.2020	Name for the analysis Advance To
	28.02.2020	Nemo for the appellant. Adjourn. To come up for
	_	eliminary hearing on 25.03.2020 before S.B. Appellant be
	рі	It to notice for the date fixed.
*		Member
	· ·	
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ı	25.02.2020	D 4 11: 1: 1: 1: 1: 1: 1: 1: 1: 1: 1: 1: 1:
	25.03.2020	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.
		Reader





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 Khybe 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	GGPŞ. 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/DA-I/Adjustment/PST, Dated Swabi the / / 09, /2019

Forwarded to the: -

- 1. Director E&SE Khyber Påkhtunkhwa 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.

DISTRICT EDUCATION OFFICER
(FEMALE) SWABI

);)/

ANNEX-D R-13 The Director Elementary Secondary Education, Jeshawar 100 subject: Request For Reenstatement heltretrosfective effect. SIX removed from Service Web 21-1-2016 vide DEO(F) Kohistan letter No 384-89 dt 21 1 2016 (Copy attached) graint which I had filed an appeal before the Bernices Pribunal perhawar Which was accepted with the Cendition that deno highery is reglerice to be Conducted graint me I was remisted into Service welk Immediate effect of 9.19 by the DEOF Sweet with is unjustibulle on the Following grounds. 1, That my removal order has aheady been set a side by the services Riberral feshavar. 2) My appointment has been found genuin and free. From all sort of dorebts. 3) My resistatement was required to ordered from The date I moval from Delvice in the light of Services Pribunal Peshawar + report of myung officer In new of above it is therefore respected that I may Kirdly be reinstated into Govt Service from the date of my removal with all back benifits so that I may not sustain financial loss were beside length of Service. I shall Demain very thank feel to you for This act of Kindness. your obediently thank 1 Aneela D+27/9/19 Anila 19/bal Copy & Sto(f) Sweb)
w/s order mentionel above PSTGGPS No.3 Swan 77-9-19

The appeal of Mst. Aneela Iqbal PST GGPS No. 3 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- Copy of enquiry report is not attached with the appeal which may be placed on it.
- 2- Wakalat nama in favour of appellant is blank which may be filled up.

No. 14 /S.T,
Dt. 7-1- /2020.

REGISTRAR SERVICE TRIBUNAL KHYBER PAKHTUNKHWA PESHAWAR.

Mr. Asad Mahmood Adv. Pesh.

1. lopy of enguly repoli allacked. 2. Wallalnama duly filled.

23/1

Khyber Pakhtunwa Service Tribunal, Peshawar

Appeal No. <u>527</u> /2019

Anila Iqbal, PST, Gove	rnment Girls Primary	School No. 3,	Swabi.
•		A	PPELLANT

VERSUS

Secretary Education, KPK, Peshawar and others.

 $oldsymbol{R}$ ESPONDENTS

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Through

APPELLANT

Ancela

Fazli Mahmood

Advocate High Court

Asad Mahmood

Advocate High Court

KHYBER PAKHTUNWA SERVICE TRIBUNAL, PESHAWAR

Appeal No. 527/2019

Service Tribunal

Diary No. 189

Dated	3-1	-2	್ಟಿಂ
5 ala:			

Aneela Iqbal, PST, Government Girls Primary School No. 3, Swabi.

..... $oldsymbol{A}$ PPELLANT

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.

.....RESPONDENTS

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:

Fledto-day
Registrar
03/01/20>0

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 REMAINED OUT OF ANY GAINFUL JOB. ANY OTHER

Registrar

22/01/2020

REMEDY, WHICH THIS AUGUST TRIBUNAL DEEMS FIT AND APPROPRIATE, MAY ALSO BE AWARDED IN FAVOUR OF APPELLANT.

The state of the state of

F_{ACTS} :

Respectfully Sheweth,

Appellant humbly submitted as under:

- 1. That appellant has been appointed as Primary School Teacher (PST) in the education department Khyber Pakhtunkhwa through an appointment order dated 2nd December, 2009 and having commendable service record on her credit.
- 2. That appellant was transferred from Government Girls Primary School, Kohistan to Government Girls Primary School No.1 Dher Gandaf, Swabi vide order dated 7th October, 2010 and rendered her services under the administrative control of DEO(F) Swabi till 31st March, 2016.
- 3. That appellant was illegally removed from service by an incompetent authority i.e. DEO(F), Kohistan vide order dated 21st January, 2016 while posted at Government Girls Primary School No.1 Dher Gandaf, Swabi.
- 4. Subsequently, departmental appeal was filed by an appellant and instituted service appeal No. 716/2016 against the order dated 21.01.2016 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 was 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 EXTRA

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.

Ancela APPELLANT

Through

Fazil Mahmood...

Advocate High Court

Asad Mahmood Advocate High Court

KHYBER PAKHTUNWA SERVICE TRIBUNAL, PESHAWAR

	Appeal No	/2019	
Anila Iqbo	al, PST, Government Gir	ls Primary School I	Vo. 3, Swabi.
			APPELLANT
· .	VERS	US .	:
: Secretary	Education, KPK, Peshav	var and others.	1
		·	? espandents

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.

An ecla Deponent





ANNEX-A

R-06

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUANL, PESHAWAR

Appeal No. 716/2016

Date of Institution ... 04.07.2016

Date of Decision ... 22.03.2019

Aneela Iqbal D/o Iqbal Muhammad, Ex-PST, C/o Huspital Road, Near Saddam Medical Store, Tehsil and District Swabi. (Appellant)

VERSUS

District Education Officer (Female), Kohistan and two others.

(Respondents)

MR. FAZLI MAHMOOD,

Advocate

For appellant,

MR. KABIRULLAH KHATTAK Additional Advocate General

For respondents.

MR. AHMAD HASSAN, MR. HAMID FAROOQ DURRANI

MEMBER(Executive)

JUDGMENT

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

ARGUMENTS

Learned counsel for the appellant argued that she was appointed as PST in the respondent-department vide order dated 02.12.2009. That vide order dated 07.10.2010 issued by respondent no.2, the appellant was transferred from GGPS, Kohistan to GGPS no.1 Dher Gandaf, Swabi against a vacant post. She continued to serve from 07.10.2010 to 31.03.2016 under the administrative control of DEO (F) Swabi and regularly received salary. However, vide impugned order dated 21.01.2016, she was removed from service by the DEO(F), Kohistan with immediate effect. The said order was handed over to the appellant on 04.04.2016. Feeling aggrieved, she filed departmental appeal on 12.04.2016, which remained

to conduct de-novo enquiry within a period of ninety days after the date of receipt of this judgment. 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.

(ÄHMAD HASSAN) MEMBER

(HAMID FAROOQ DURRANI) CHAIRMAN

<u>ANNOUNCED</u> 22.01.2019

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No	_/Dy. DEO (M) KH-L
Dated:/	

To

The Hon/DEO (F) Upper Kohistan.

Subject: R/Sir,

Submission of inquiry report in R/O Mst. Anila Iqbai 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: Anila Iqbal was appointed as PTC (Untrained) vide order No: 262-67 dated 02/12/2009 by the then DEO Kohistan. (See page 20 for ready reference Piz).
 - She was posted at GGPS Koz Kohistan. (See page 20 for ready reference Plz).
 - She took over the charge as PST on 08/12/2009 at GGPS Koz vide appointment order NO 262-67.
- Her pay has been drawn under the newly appointee vide letter No. 640 dated 10/06/2010. (See page no 5 of the service book for ready reference Plz)
- Office of the accountant general Khyber Pakhtunkhwa Peshawar pay fix in the revise basic pay scale w.e.f. 01/07/2011 to 01/07/2015. (See page 6 of service book for ready reference Plz).
- Her services verified by the Dy: District Education Officer (F) Topi District Swabi w.e.f. 01/10/2010 to 30/11/2011. (See page7 of the service book for ready reference Plz).
- She has been upgraded to BPS-12 w.e.f. 01/07/2012 by the Govt: of KPK vide notification No. SO(B&A)- (See page 7 of the service book for ready reference Plz).18/E&SE/12 circulated by Director E&SE KPK Vide order No 685-17/9 dated 27/08/2012 and Endorsement by EDO E&SE Swabi vide Endust: No 4739 dated 29/8/2012 duly Endorsement bt the then Dy. DEO (F) Topi Swabi.
- Her Service has been verified w.e.f. 01/12/2011 to 30/11/2012 by SDEO(F) Topi Swabi. (See page? of the service book for ready reference Plz).
- Her service has been verified w.e.f. 01/12/2012 to 26/12/2013 by SDEO (F) Topi Swabi (See pageS of the service book for ready reference Plz)...
- She has been awarded premature increment vide order No. FD No/50/SR/1/2-123/2014 dated 30/5/2014 by the SDEO (F) Topi Swabi. (See page 9 of the service book for ready reference Plz).
- She passed her M.A exam in 2013 under roll No 36889 from University of Peshawar. Entry made in the service book by the SDEO (F) Topi Swabi. (See page 9 of the service book for ready reference Plz).
- Her service verified from 11/12/2014 to 30/11/15 from ACRs and other office record by SDEO (F) Topi Swabi. (See page II of the service book for ready reference Plz).

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- She passed her CT examination in 2012 under roll No AM654689 from AlOU Islam Abad entry made by SDEO (F) Topi Swabi. (See page 8 of the service book for ready reference Plz).
- Her documents verified by BISE Mardan under letter No 172 dated 9/3/2010. (See page 7 for ready reference Plz).
- ❖ On 09-10-2014, Director E&SED: 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 where Anila Iqbal was not mentioned in the procedure finding facts. (See page 02. 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 2) 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 22 for ready reference Plz).
- On 12-04-2016, she submitted her Departmental appeal before the Appellate Authority requesting for her re-instatement. (No record available/provided in this connection.)
- Her Appeal was rejected by the Appellate Authority. (No record available/provided in this connection.)
- On 22-03-2019, Registrar KP Services Tribunal Peshawar sent Decision of the Hon/Services Tribunal Peshawar to the DEO (F) Kohistan vide letter No: 690/Service appeal no 716/2016 date 4/7/2016. (See page 23 for ready reference Plz).
- On 06-5-2019, DEO (F) Kohistan issued REINSTATEMENT ORDER in R/O Mst: Anila Iqbal vide letter No: 1351-58/DEO (F) KH/Lit. (See page 24 for ready reference Plz). PROCEDURE:
 - 1- Consultation with DEO (F) at his office Dassu 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 page 25 for ready reference Plz).
 - $oldsymbol{3}$ 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 that is not under the control of the Inquiry Officer.
- > The person, who has been removed, has served the department for more than 7 years.
- The department said that her appointment was faked and against the merit without availability of post, but in appointment order it is clearly mentioned by the District Education Officer Kohistan that the orders are

A ST

according to the merit policy of E&SE KPK and against the vacant post in public interest (See Page no 20 for ready reference plz.)

- 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 till last.

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. The teacher is well qualified holding Master degree in Arts from University of Peshawar and also CT qualified teacher from AIOU Islam Abad. (See Page No 8 and 9 of service book.)
- 2. It is clearly written in the Appointment Letter that she has been appointed under the rules in the schools noted against each on vacant post with immediate effect in the interest of public service according to the merit policy issued by the Govt: of KPK Elementary & Secondary Education Department (See page 20 for ready reference Plz).
- 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.

(Naseer Ahmad Khan) Dy: DEO (M) Pattan Kohista

Endst No: Dated :____/ 6/ 2019. Copy for info to:

- 1) P.A. to Hon/ Deputy Commissioner K/P Kohistan.
- 2) PA to Deputy Commissioner Lower Kohistan.
- 3) DEO (M) K.P. Kohistan.
- 4) DEO (F) Lower Kohistan.
- 5) Master File.

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

(Naseer Ahmad) · 2-Dy:DEO (M)

Pattan, Kohistan Lower,

بعدالت سروی مرببوس پیشاور

مورخه البله الحال عن المراف ا

اوراس کا ساختہ پرداختہ منظور وقبول ہوگا دوران مقدمہ میں جوخرچہ ہرجانہ التوائے مقدمہ کے اوراس کا ساختہ پرداختہ منظور وقبول ہوگا دورہ پر ہویا حدہے باہر ہوتو وکیل صاحب پابند ہول اسب سے وہوگا کوئی تاریخ بیشی مقام دورہ پر ہویا حدے باہر ہوتو وکیل صاحب پابند ہول کے کہ بیروی مذکور کریں۔ لہذا وکالت نام کھدیا کہ سندر ہے۔ کہ بیروی مذکور کریں۔ لہذا وکالت نام کھدیا کہ سندر ہے۔

الرقوم الرقوم

Allested Accepted Assort

BEFORE THE KHYBER PAKHTUNKHWA HONOURABLE SERIVCE TRIBUNAL PESHAWAR.

Service Appeal No: 527/2019

	Mst.	Anila	Iqbal	PST,	Government	Girls	Primary	School	No-03	Swabi	District
Swahi			•	-				Δnn	ellant		,
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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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3	With drawn order	A	07
4	Removal from Service	, B	08-09
5	Office order	C .	10
6	2017 PLC (CS) 177	D	11 - 13
7	Judgment of this tribunal in SA No803/2018	E	14 - 17

DISTRICT EDUCATION OFFICER

District Edu. Officer (Female) Swabi

(I) 64

BEFORE THE KHYBER PAKHTUNKHWA HONOURABLE SERIVCE TRIBUNAL PESHAWAR.

Service	Anneal	No:	527/2019
DOLATOR	Thhear	TIO.	24114017

	Mst	Anilă	Iqbal,	PST,	Government	Girls	Primary	School	No-03	Swabi	District
Swabi.								• • • • • • • • • • • • • • • • • • • •		Appel	lant

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 intitled 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.

(Female) Swabi

- 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.
- 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. Anila Iqbal Begum resident of District Swabi was appointed against Primary School Teacher (PST), in District Kohistan. Her initial 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). She was appointed vide order dated 02-12-2009 and took over charge. In fact, her appointment order which is made in out district i.e. Kohistan while she belongs to District Swabi. Hence her appointment order was illegal and irregular. She was removed from service due to her illegal and irregular appointment.

- 2. That the appellant was transferred from District Kohistan to District Swabi. An inquiry against the appellant was conducted and on the recommendation of the enquiry officer she was removed from service vide order dated:21-01-2016. **Transfer withdrawn order and removal from service order are annexed as A & B.**
 - 3. That the appellant was legally removed from service vide order dated 21 January, 2016 with immediate effect. The competent authority i.e. Director Elementary Secondary Education Khyber Pakhtunkhwa Peshawar, legally removed her from service. The Director Elementary & Secondary Education Khyber Pakhtunkhwa

District Edu. Officer (Female) Swabi

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- shawar is the competent authority for removal of service in the cases where a candidate has been appointed out District. Office order of the competent authority Annex as C.
- That the service appeal No: 716/2016 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 denovo 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 Judgment 2017 PLC (CS) 177 and judgement of this tribunal in SA No803/2018 are annexed as D & E.
- 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

District Zou. Officer (Female) Swabi

4

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.

District Call Officer (Feman) Swabi



- 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 fack/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 ed. Divisor (Female) (Wabi



In-view of the above submissions it in 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

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.

> DISTRICTIED ACATION OFFICER (FEMALE) SWABI

> > District Edu. Officer (Female) Swabl





CTOR OF ELEMENTARY & SECONDARY

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	From District	To District Swabi	Endst;No.
o	Teacher	Kohistan		
1.	Alia Ghafoor PST	GGPS Banjar Yanjool	GGPS Battai No.2	Endst; No. 2511-15 dated 19-10-2011
2.	Rugia PST	GGPS Mada Khel	GGPS Haryan Banda	Et:No.2511-15 dated 19-10-2011
3.	Nuzhat PST	GGPS Banjar Yanjoo!	GGPS Haryan Banda	Endst:No.2527-31 datd 24-11-2010
4	Khushnama PST	GGÇMS Jijal Kohistun	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 Sagio	GGPS Aala Dher	E.No.1599-1605 dated 15-02-2011
3/	Mussarat PST	GGPS Samad Abad Sao	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. 🚉 /F.No.20/(F)Enquiry dated Peshawar the 1/02015 Copy to the:-

District Account Officer Swabi & Kohistan

District Officer (Female) Swabi & Kohistar

Teacher Concerned.

P.A to Director Local Office

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

OFFICE OF THE DISTRICT EDUCATION OFFICER (FEMALE) SWABI.

3040-4 /DA-I (Estab) Dated Swabi the //// /2015

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

Sub-Divisional Education Officer (Female) Lahor, Swabi and Topf

2. District Accounts Officer Swabi.

DISTRICT EDUCATION OFFICE

(FEMALE) SWABI office of The Sub-Dinesimal Education of for 155

No. 916 1 sales 13/11/ 2015 Formathed a ongoing to the Hand misting ESCATS. Maleb Bonda for totherwood

District E (Female/

Annexuse R LAYC EDUCATION OF FICER, (F)KOHISTAN.

OFFICE OF THI

OFFICE ORDER

in compligace with the Director, Elementary & Secondar / Education Khyber Pakhtunkhiwa Peshawar leiter No.3081/P.No.20 (F) enquiry dated 16/03/2012, Reminder No. 2200/F No.20/(F) enquiry dated 20/04/20/3/, No. 3530/F No.20/(F) enquiry dated 22/05/2015, and No.3696/F No.20/(F) enquiry Dated 24/05/2015 and In light of recommendation of enquiry officer, vide letter No. 214/dated 18/1/2016 the list; Anila Ighal PST is hereby removed from a vice with immediate effect.

striot Education Officer (Fernale) Kohistan

/DEO (F) Kill dated 2///

Copy of the above is forwarded to

The District Education Officer (F) District Swabi, for necessary action at her end as the above teachers are now posted in District Swabi.

The District Accounts Officer, Swabi.

The District Accounts Officer, Kohlstan.
The Sub Divisional Education Officer (P) kohlstan.

Office record.

District Education Officer (Female) Kohistan

(Fem le) Wabi





DISTRICT EDUCATION OFFICE (FEMALE) SWABI

(Office phone Fax No 0938280339, emis(swabi@yahoo.com) Swabi No_5_3_1

The Sub-Divisional Education Officer (Female) Topi.

REMOVAL FROM SERVICE NOTIFICATION

Enclosed find herewith removal from service notification in respect of Mst. Anila Iqbl, PST GGPS No.1 Dhero Gandaf of your Sub-Division issued by D.E.O (Female) Kohistan vide Endst: No.384-89/DEO (F) KH dated 21-01-2016 may be handed over to the concerned.

Encl: - As above

DISTRICT EDUCATION OFFICER (FEMALE) SWABI

33 /Dated Swabi the

Copy of the above is forwarded for information to: -

J. The Director, Elementary and Secondary Education Khyber Pakhtunkhwa Peshawar.

The District Education Officer (F) Kohistan.

DISTRICT EDUCATION OFFICER (FEMALE) SWABI

District E (Femzle) Swabi

Annexure-C



MENTARY & SECONDART EDUCATION KHYBER AKHTUNKHWA. <u>PESHAWAR</u>

OFFICE ORDER

Consequent upon Judgment of the Honourable Khyber Pakhtunkhwa Service Tribunal announced on dated 22/1/2019 in the Service Appeal No.716/2016, the transfer cancellarion in respect of Mst. Anila Iqbal PST BS-12 GGPS Sher Muhammad Koty Swabi issued vide this office Endst: No.3887-89 dated 22/10/2015 (copy attached) is hereby set aside in the light of the said judgment.

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

DIRECTOR

Elementary & Secondary Education Khyber Pakhtunkhwa

Endst:No3653-56/F.No.20/F/Inquiry

Dated Peshawar the 2

Copy forwarded for information to the:-

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.

District Education Officer (F) Kohistan. 2.

District Account Officer Swabi & Kohistan

Sub Divisional Education Officer (Female) concerned.

Teacher concerned.

6. PA to Director Elementary & Secondary Education Khyber Pakhtunkhwa.

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

M.Zahir

Endst No 4353 I stated 8 30/8/2019

Formarded for Information to the

SDEO(F) with The direction to Prysiply a Surable.

PST. Vacant Past for adjustment of Prysiply a Surable.

trict Edu. Officer 12 (Female) Swabi

(Fernale) Swabi

District Edu! Officer

agencies during the period he remained absent from duty.

7. In nutshell the appellant has not been able to make out his case for the grant of back benefits of the absence period/out of service period. Consequently the present service appeal is dismissed. No order as to costs. File be consigned to the record room.

(Mian Muhammad) Member (Muhammad Hamid Mughal) Member

18-02-2020

ANNOUNCED 18.02.2020

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Service Fribunal

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