

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR.

SERVICE APPEAL NO. 50/2019

Date of Institution ... 11.01.2019

Date of Decision ... 17.12.2020

Alia Huma Siddiqui BPS-17, Ex-Lecturer in Physic,
Resident of Flate-1/B-3, Block 6, Gulshan-e-Iqbal,
Karachi, Sindh.

... (Appellant)

VERSUS

The Government of Khyber Pakhtunkhwa through its Chief
Secretary, Civil Secretariat, Peshawar and three other
respondents.

... (Respondents)

MR. BARKAT ULLAH KHAN,
Advocate

--- For appellant.

MR. RIAZ AHMAD PAINDAKHEIL,
Assistant Advocate General,

--- For respondents.

MUHAMMAD JAMAL KHAN
MIAN MUHAMMAD

--- **MEMBER (Judicial)**
--- **MEMBER (Executive)**

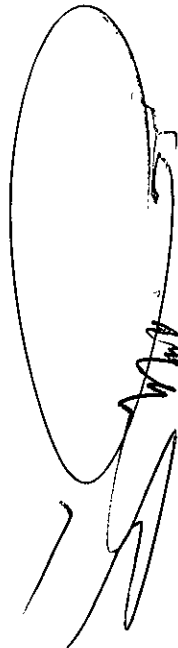
JUDGEMENT:

MUHAMMAD JAMAL KHAN, MEMBER:- Through the
instant service appeal submitted under Section-4 of the Khyber
Pakhtunkhwa Service Tribunal Act, 1974, the ambit of notification
bearing No. SO(C-III)HE/11-04/03/Alia Huma Siddiqui/1184-90
dated 27.09.2018 has been questioned by dent of which penalty
of removal from service was converted into compulsory
retirement.

2. On induction into service in the year 1993 as Lecturer in Physics (BPS-17) appellant performed her duties at various stations putting in concerted efforts in rendition of duties with no complaint or an adverse Annual Confidential Report (ACR). Appellant was removed from service without observance of the legal requirements vide office order dated 26.12.2014 which was assailed in a service appeal no. 1417/2015 before this Tribunal and consequently allowed on 29.08.2017 whereby directions were issued to the respondents to reinstate appellant in service and to conduct de-novo inquiry in accordance with the mandate of law within a period of 90 days with further observations that the issue of back benefits shall be subject to the outcome of de-novo inquiry.

3. In deference thereof appellant submitted her arrival report on 14.09.2017 bearing Diary No. 1323 requesting for post adjustment order however, no heed was paid in this regard neither appellant was reinstated into service nor any post adjustment order was issued or a penny was paid. The de-novo inquiry again resulted into passing of removal from service order of appellant on 03.04.2018 which was assailed before the competent authority in departmental appeal and the appellate authority modified the order of the authority by converting removal from service into compulsory retirement vide order dated 27.09.2018 which was communicated to the appellant on 01.01.2019 thus feeling aggrieved from the aforesaid office order appellant submitted the instant service appeal.

4. Respondents were summoned, in pursuance thereof they attended the Services Tribunal through their legally authorized representative controverting the allegations through the submission of their written reply/comments eliciting certain legal and factual objections inter-alia, non-maintainability of appeal in its present form, cause of action, appellant has not approached



the Tribunal with clean hand, appellant has concealed material facts from the Services Tribunal and estoppel.

5. We have heard arguments of the learned counsel representing appellant as well as the learned Assistant Advocate General namely, Riaz Ahmad Paindakheil, and were able to go through the available record on file with their assistance in view of which our findings are as under.

6. While making reference to the judgement of this Tribunal dated 29.08.2017 the learned counsel representing appellant submitted that three pronged directions were given to respondents firstly, to reinstate the appellant in service secondly, to conduct de-novo inquiry and thirdly the issue of back benefits has to hinge upon the final result of de-novo inquiry. However, none of them was complied with. He submitted that without reinstatement de-novo inquiry cannot be held nevertheless, the reinstatement was made subsequently without making an order of her posting. The moment appellant was reinstated into service a suspension order was to be passed but nothing of the sort was done. That the competent authority in the matter is Chief Secretary and not Secretary Higher Education. While conducting inquiry the set rule of procedure and modalities were not adopted thus violating the law. Different addresses have been quoted, at the first instance, Karachi has been referred to while conducting the first inquiry and later on reference of Peshawar has been given. Neither any notice of show-cause was served on the appellant nor charge sheet bears any date or the statement of allegations. Thus, responsibility cannot be thrust on the shoulders of appellant alone so much so that a single letter was not written by the lending department to the borrowing department in respect of the issue of extension of deputation period or making any reference to the deputation policy in the inquiry report which is deficient in material respects thus not worth entertainable. He submitted that whether borrowing

department was not required legally to have consulted the lending department for obtaining their consent regarding extension in the period of deputation so made from time to time. The impugned order passed on 27.09.2018 was communicated to the appellant on 01.01.2019. Reliance in this regard is placed on 2020 PLC (C.S) 639, 2014 PLC (C.S) 476, 2020 PLC (C.S) 1254 and 2020 PLC (C.S) 815.

7. On the contrary, the learned Assistant Advocate General submitted that the impugned order was passed on 27.09.2018 the copies of which have been marked to a number of officers how could it reach to appellant after a lapse of three months? The departmental appeal moved by the appellant bears no date anywhere nor it has been moved to the competent authority which has to be read in juxtaposition with the plea of appellant while making reference to para-4, 5 of departmental appeal of appellant. The learned Assistant Advocate General submitted that clear admission on the part of appellant is there with respect to initiation of disciplinary proceeding and that ignorance of law is no excuse at all particularly while keeping in view that appellant is a qualified lady holding prestigious post of a Lecturer in Physics which issue has been settled by the previous judgment of this Tribunal. As regards de-novo inquiry he pleaded that all legal requirements have been fulfilled. The competent authority while keeping in view the entreaties of appellant took lenient view of the matter by conversion of her removal from service order into compulsory retirement. Reliance was placed on 2020 PLC (C.S) 905 and 2018 PLC (C.S) 1248.

8. The record on file reflects that the services of appellant were placed at the disposal of Government of Sind Education & Literacy Department on deputation basis initially for a period of three years to be efficacious from 12.03.2005 to 11.03.2008. After the expiry of deputation period a number of letters, reminders were issued on the available address by the Director Higher Education and

Principal Government Frontier College for Women, Peshawar, However, the appellant neither reported for duty nor applied for any extension in deputation period and thus remained absent. A notice with regard to the absence of appellant was published in this regard in two leading newspapers on 30.03.2012 directing appellant to appear and report for duty within a period of fifteen days but to no avail. A show-cause notice bearing signature of the competent authority was therefore, dispatched to the Principal Government Girls Degree College Rustum, Mardan, with the direction to serve the same upon appellant and the Principal accordingly informed the appellant but appellant did not respond.

9. The record reflects that after initiation of de-novo inquiry appointment of inquiry officer was made for inquiring the matter, recording findings and submission of recommendations. The inquiry officer after observance of the codal formalities provided reasonable rather ample opportunities to the appellant to produce any viable evidence of worth credence in her defence but she failed to place before the inquiry officer any piece of documentary evidence of unimpaired credulity justifying her long absence from duty. Appellant was under legal obligation that before venturing on the trodden path she was bound to have sought extension in deputation period from her administrative department as postulated in the deputation policy of the government. However, surprisingly extension in deputation period of appellant was issued by the Sindh Government unilaterally from March 2008 to March 2013 without adherence to the rules of obtaining prior consent and concurrence of the lending department but nothing of the sort was done which is flagrant violation of the law. According to the deputation policy of the government of Khyber Pakhtunkhwa a period of three years is provided initially which can be extended up to five years provided the lending department may express its consent to the borrowing department which is indispensable and *sin-qua-non* and is not the case in the instant appeal. A

deputationist can be recalled back by the lending department from the borrowing department before the expiry of her term if exigency so warrants vide 2018 PLC (C.S) 1248. The record further reflects that in pursuance of disciplinary proceedings charge sheet and statement of allegations were served upon appellant to whom a fair chance of audience was afforded consequently by virtue of order dated 26.12.2014 appellant was removed from service to be efficacious from 12.03.2008. On appeal to the Services Tribunal, appellant was restored in service by making an order for de-novo inquiry which again converged on her removal vide impugned order dated 27.09.2018 which has been questioned before the competent authority in the departmental appeal which was converted into compulsory retirement keeping in view her past services rendered from the year 1993 upto the year 2008. A lenient view has already been taken by the competent authority and a concession has been extended despite considerable lapses, therefore, we deem it appropriate and would not make any interference therein.

10. As regard the competent authority who is having carte blanche in the matter of making orders impugned herein, is the Chief Secretary as provided under Rule-4 (1)(b) of the Khyber Pakhtunkhwa Civil Servants (Appointment, Promotion and Transfer) Rules, 1989 and the Secretary to the Government of Khyber Pakhtunkhwa Higher Education Department and Section Officer can exercise the powers when directed by the competent authority and in this regard a reference has prominently been given in the impugned order dated 26.12.2014, impugned notification bearing no. SO(C-III)HE/11-04/03/Alia Huma Siddiqui dated 3rd April 2018 and notification No. SO(C-III)HE/11-04/03/Alia Huma Siddiqui/1184-90 dated 27th September 2018. No anomaly has thus surfaced while making the impugned orders.

11. While coming to the legal question of limitation, the impugned order was made on 27.09.2018 however, according to

the appellant it was communicated to her on 01.01.2019 whereas the Service Appeal has been instituted on 11.01.2019 which is hopelessly time barred. The appellant was under legal obligation to have proved beyond doubt that the authorities at the helm of affairs were responsible for late communication of the referred to impugned order. After the lapse of period of limitation i.e a month in which she was required to have filed her appeal, appellant has to prove and explain by tendering sufficient cause for each and every day of delay so caused but appellant was unable to prove the late communication through production of evidence of unimpeached character. In the circumstances, Section-5 of the Limitation Act, 1908, becomes applicable in the light of which the delay caused in the institution of appeal has to be explained by showing sufficient cause in application for condonation of delay has to be filed with the service appeal explaining plausible reasons which obviously prevented her to have timely recourse to the Tribunal. Appellant is a qualified lady and has gone through a complete round of litigation during the course of which she must have got conversance and first hand information regarding the law and rules on the subject and their consequent requirements. Thus, Service Appeal is hopelessly time barred and reliance in this regard is placed on the unreported judgement of the Supreme Court of Pakistan **Civil Appeal No. 44-P of 2015 Captioned Government of Khyber Pakhtunkhwa through Secretary (E&S) Education and others Versus Mst. Nasreen Begum and 2012 SCMR 195, PLD 2006 Supreme Court 572, 2010 SCMR 1982, 2007 SCMR 513 and 2009 SCMR 1435.**

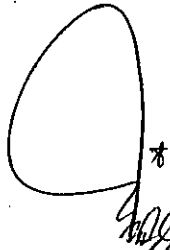
12. The issue for adjudication in the instant appeal is as to whether extension in the period of deputation can be allowed to a deputationist by the borrowing department without the consent and prior approval of the lending department? Whereas in the dictum as laid down in 2020 PLC (C.S) 639 the issue for adjudication was absorption of appointee in the borrowing

department and similar is the issue of withdrawal and absorption of a deputationist in the other department as reported in 2020 PLC (C.S) 815 thus having striking dissimilarities are not applicable to the facts and circumstances of the instant case. The issuance of charge sheet and show-cause notice has unequivocally been admitted by the appellant in para-4, 5 & 6 of her appeal, therefore, no issue of the like nature is pending adjudication before this Tribunal whereas in the case law reported as 2014 PLC (C.S) 476 the point for adjudication was non issuance of charge sheet and show-cause notice, therefore, having distinguishing traits, is not applicable to the facts of the instant appeal. As regard the dictum laid down in 2020 PLC (C.S) 1254 the issue for adjudication before the Hon'ble Sub-ordinate Judiciary Services Tribunal was that mere show-cause notice with regard to ill reputation or living beyond ostensible means was not suffice unless there was some evidence to that effect, the competent authority has power to impose any of the penalties but the same were to commensurate with the gravity of charge in the present appeal regular inquiry was held and her penalty of removal from service was converted into compulsory retirement thus a lenient view was taken of her long absence. It has been held by the Hon'ble Islamabad High Court that the parent department had not issued no objection certification in favour of employees for extension in their deputation period whereas the borrowing department has expressed its unwillingness to extend the deputation period of the employees, absorption or confirmation of any deputationist in the borrowing department was to be according to prescribe procedures, consent of a deputationist for suspension or termination of a lien on his permanent post in the parent department as well as agreement of the parent department was to be obtained, petitioners of borrowing departments have not sought concurrence of parent department for their absorption during the permissible deputation period , the department was

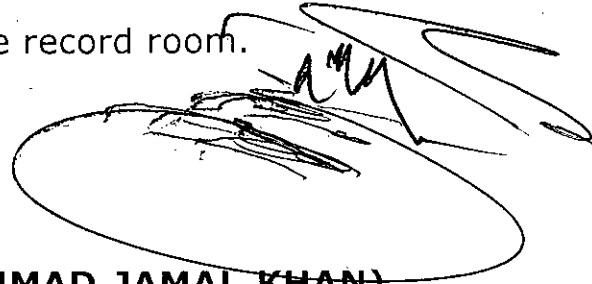
directed not to discriminate deputationist while deciding their cases for repatriation and absorption should be made through competitive process which is not the case in the instant appeal, therefore, the dictum is inapplicable to the facts and circumstance of the instant appeal as enunciated in 2020 PLC (C.S) 905.

13. The concomitant corollary of what has been discussed above is that we find no substance and merit in the instant appeal as no case for interference in the impugned order dated 27.09.2018 has been made out hence, the appeal is dismissed. Parties are left to bear their own costs. File be consigned to the record room.

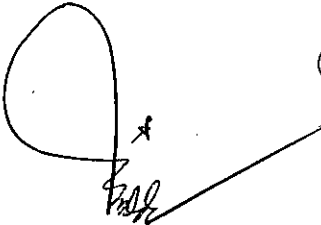
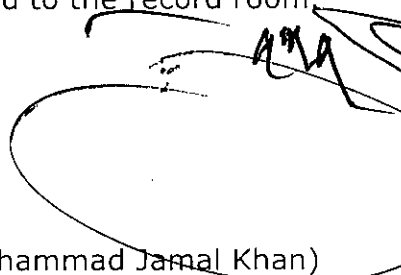
ANNOUNCED
17.12.2020



(MIAN MUHAMMAD)
Member (Executive)



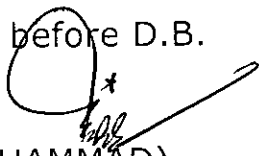
(MUHAMMAD JAMAL KHAN)
Member (Judicial)

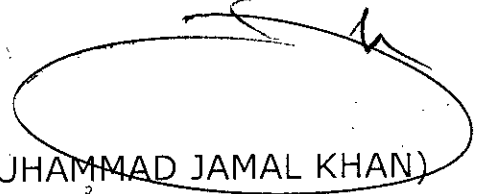
S.No	Date of order/ proceedings	Order or other proceedings with signature of Judge or Magistrate and that of parties where necessary.
1	2	3
	17.12.2020	<p><u>Present.</u></p> <p>Mr. Barkat Ullah Khan, ... For appellant Advocate</p> <p>Mr. Riaz Ahmad Paindakheil, ... For respondents Assistant Advocate General</p> <p>Vide our detailed judgment of today, we find no substance and merit in the instant appeal as no case for interference in the impugned order dated 27.09.2018 has been made out hence, the appeal is dismissed. Parties are left to bear their own costs. File be consigned to the record room.</p> <p><u>ANNOUNCED</u> 17.12.2020</p> <p> (Mian Muhammad) Member (Executive)</p> <p> (Muhammad Jamal Khan) Member (Judicial)</p>

30.11.2020

Counsel for appellant is present. Mr. Riaz Ahmad Paindakheil, Assistant Advocate General, for the respondents are also present.

The learned counsel representing appellant submitted some precedents purportedly on the issues involved in the instant appeal. File to come up for deliberation and order on 17.12.2020 before D.B.

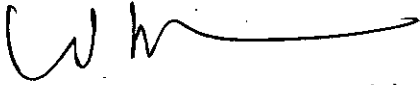

(MIAN MUHAMMAD)
MEMBER (EXECUTIVE)

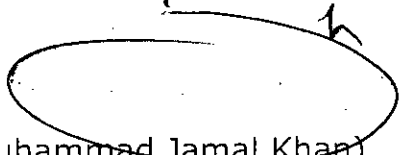

(MUHAMMAD JAMAL KHAN)
MEMBER (JUDICIAL)

15.10.2020

Mr. Sardar Shaheen, Advocate, for appellant is present. Mr. Riaz Ahmad Paindakheil, Assistant Advocate General for the respondents is also present.

Learned counsel submitted that uncle of the counsel namely Sardar Barkat Ullah has died, therefore, copy of the requisite precedents could not be produced. He is seeking time. Time is allowed, directed him to make compliance of the preceding order sheet by submitting of required precedents. Adjourned to 13.11.2020 on which to come up for further proceedings/order before D.B.

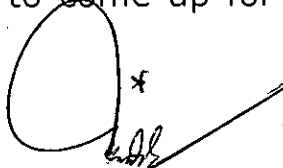

(Atiq-ur-Rehman Wazir)
Member (Executive)

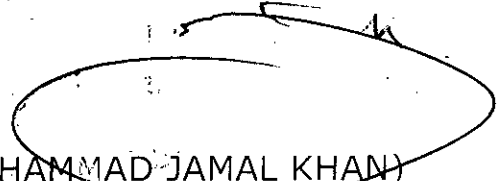

(Muhammad Jamal Khan)
Member (Judicial)

13.11.2020

Counsel for appellant is present. Mr. Riaz Ahmad Paindakheil, Assistant Advocate General, for the respondents are also present.

The requisite precedents on the issue involved have not been produced by the learned counsel representing appellant and he is seeking time for its production on or before the next date of hearing. Adjourned to 30.11.2020 on which to come up for further proceedings/ order before D.B.


(MIAN MUHAMMAD)
MEMBER (EXECUTIVE)

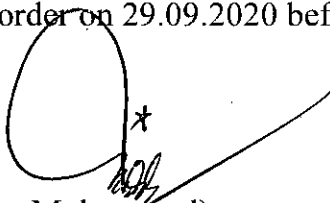

(MUHAMMAD JAMAL KHAN)
MEMBER (JUDICIAL)

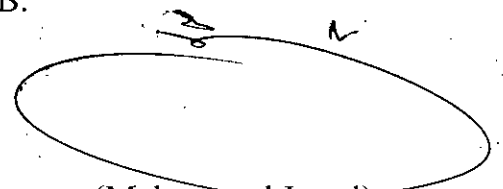
22.09.2020

Mr. Barkat Ullah Khan, Advocate counsel for the appellant is present. Mr. Muhammad Riaz Khan Paindakhel, Assistant Advocate General alongwith Mr. Qazi Ayaz, SO (Litigation) for respondents present.

Arguments on merit of appeal heard, however, learned Assistant Advocate General is seeking time for submission of certain documents for perusal of this bench for the proper order. In this regard time is allowed with the directions to adopt proper procedure permissible under the rules by invariably supplying copies of those documents to the learned counsel for the appellant.

File to come up for the needful/further proceedings and order on 29.09.2020 before D.B.

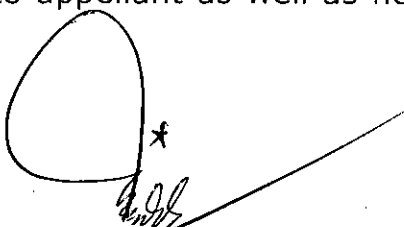

(Mian Muhammad)
Member (E)



(Muhammad Jamal)
Member(J)

29.09.2020

Neither appellant nor her counsel is present. Mr. Riaz Ahmad Paindakheil, Assistant Advocate General alongwith representative of the department Mr. Qazi Ayaz, Section Officer (Litigation) are present.

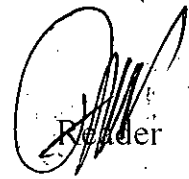
Arguments have been heard. We have gone through the record, appellant has placed reliance on certain precedents, for resolution of the issues involved we required both the learned counsel for appellant as well as the learned counsel representing the respondents to produce precedents containing latest view of the Hon'ble Supreme Court of Pakistan besides the already produced dictum. File to come up for further proceedings/order on 15.10.2020 before D.B. Notice be also issued to appellant as well as her respective counsel for the date fixed.


(Mian Muhammad)
Member (Executive)


(Muhammad Jamal Khan)
Member (Judicial)

30.03.2020

Due to public holidays on account of Covid-19, the case is adjourned. To come up for the same on 25.06.2020 before D.B.



Reader

25.06.2020

Junior to counsel for the appellant and Mr. Kabirullah Khattak learned Addl. AG for the respondents present.

Rejoinder on behalf of appellant has been submitted, which is placed on record. To come up for arguments on 22.09.2020 before D.B.




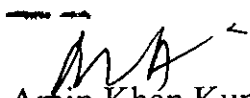
Member



Chairman


21.10.2019 Due to general strike on the call of Khyber Pakhtunkhwa Bar Council learned counsel for the appellant is not in attendance. Mr. Zia Ullah learned Deputy District Attorney for the respondents present Adjourned. To come up for arguments on 30.12.2019 before D.B.


(Hussain Shah)
Member


(M. Amin Khan Kundi)
Member

30.12.2019 None present on behalf of the appellant. Mr. Usman Ghani learned District Attorney for the respondents present. Notice be issued to the appellant and his counsel for attendance. Adjourned. To come up for arguments on 24.02.2020 before D.B.


(Hussain Shah)
Member


(M. Amin Khan Kundi)
Member

24.02.2020 Mr. Riaz Khan Paindakheil learned Assistant Advocate General present. Application received for adjournment on behalf of learned counsel for the appellant. Adjourn. To come up for arguments on 01.04.2020 before D.B.


Member


Member

30.04.2019

Counsel for the appellant and Mr. Usman Ghani District Attorney for the respondents present.


Learned District Attorney requests for adjournment to procure written reply from the respondents.

Adjourned to 20.06.2019 on which date the requisite reply shall positively be submitted.


Chairman

20.06.2019

Counsel for the appellant and Mr. Kabirullah Khattak, Additional AG alongwith Mr. Asif, Assistant Director for the respondents present. Representative of the department submitted joint para-wise comments on behalf of respondent No. 1 to 4. Case to come up for rejoinder and arguments on 07.08.2019 before D.B.


(Muhammad Amin Khan Kundi)
Member

07.08.2019

Junior to counsel for the appellant and Mr. Muhammad Jan learned Deputy District Attorney alongwith Kazi Muhammad Ayaz AD present. Junior to counsel for the appellant seeks adjournment as senior counsel for the appellant is not in attendance. Adjourn. To come up for arguments on 21.10.2019 before D.B.


Member


Member

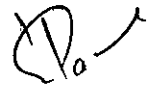
12.02.2019

Learned counsel for the appellant present. Preliminary arguments heard.

The appellant (Ex-Lecturer) has filed the present service appeal against the order dated 29.09.2018 whereby the appellate authority modified the major penalty of removal from service imposed upon the appellant and converted the same into major penalty of compulsory retirement.

Points raised need consideration. The appeal is admitted for regular hearing subject to all legal objections. The appellant is directed to deposit security and process fee within 10 days. Thereafter notices be issued to the respondents for written reply. To come up for written reply/comments on 05.03.2019 before S.B.

Appellant Deposited
Security & Process Fee



Member

05.03.2019

Counsel for the appellant present. Notice be issued to the respondents for written reply/comments for 28.03.2019 before S.B.


(MUHAMMAD AMIN KHAN KUNDI)
MEMBER

28.03.2019

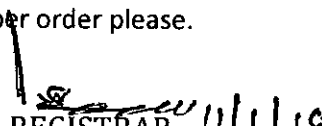
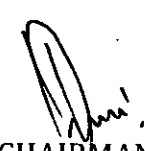
Clerk of counsel for the appellant present. Mr. Kabirullah Khattak, Additional for the respondents present and seeks adjournment for filing of written reply. Adjourned to 30.04.2019 for written reply/comments before S.B.


(MUHAMMAD AMIN KHAN KUNDI)
MEMBER

Form- A
FORM OF ORDER SHEET

Court of _____

Case No. 50/2019

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1-	11/1/2019	<p>The appeal of Mst. Alia Huma Siddiqui presented today by Mr. Barkatullah Khan Advocate, may be entered in the Institution Register and put up to the Worthy Chairman for proper order please.</p> <p style="text-align: right;"> REGISTRAR 11/1/19</p>
2-	16-1-19	<p>This case is entrusted to S. Bench for preliminary hearing to be put up there on <u>12-2-19</u>.</p> <p style="text-align: right;"> CHAIRMAN</p> <p style="text-align: center;">A.J.A</p>

**BEFORE THE HON'BLE SERVICE TRIBUNAL, KHYBER
PAKHTUNKHWA, PESHAWAR.**

Service Appeal # 50 of 2019

ALIA HUMA SIDDIQUI

VERSUS

**THE GOVERNMENT OF KHYBER PAKHTUNKHWA THROUGH ITS
CHIEF SECRETARY & OTHERS**

Sl:#	Particular of documents	Index	Pages
1.	Appeal alongwith affidavit		1-7
2.	Copy of the notification dated 26.12.2014 and copy of judgment of this Hon'ble Court dated 29.08.2017	A & B	8-12
3.	Copy of the arrival report dated 14.09.2017	C	13-14
4.	Copy of the removal order dated 03.04.2018	D	15
5.	Copy of the departmental representation and impugned order dated 27.09.2018	E & F	16-21
6.	Wakalat Nama		22

Aliya
Appellant

Through:

Barkat Ullah Khan
Barkat Ullah Khan
Advocate High Court,
LLM (London)

**BEFORE THE HON'BLE SERVICE TRIBUNAL, KHYBER
PAKHTUNKHWA, PESHAWAR.**

Khyber Pakhtunkhwa
Service Tribunal

Diary No. 50

Dated 11-01-2019

Service Appeal # 50 of 2019

**ALIA HUMA SIDDIQUI BPS-17, LECTURER IN PHYSICS,
RESIDENT OF FLATE-1/B-3, BLOCK 6, GULSHAN E IQBAL,
KARACHI, SINDH.**

.....Appellant

Versus

1. THE GOVERNMENT OF KHYBER PAKHTUNKHWA THROUGH ITS CHIEF SECRETARY, CIVIL SECRETARIAT, PESHAWAR.
2. THE CHIEF SECRETARY, GOVERNMENT OF KHYBER PAKHTUNKHWA, CIVIL SECRETARIAT, PESHAWAR.
3. THE SECRETARY TO GOVERNMENT OF KHYBER PAKHTUNKHWA HIGHER EDUCATION DEPARTMENT, PESHAWAR.
4. THE SECTION OFFICER (COLLEGES-III), GOVERNMENT OF KHYBER PAKHTUNKHWA HIGHER EDUCATION, ACHIEVES & LIBRARIES DEPARTMENT, PESHAWAR.

Filed to-day

.....Respondents

S. A. Khan
Registrar

11/1/19

**APPEAL U/S 4 OF SERVICE TRIBUNAL
ACT, 1974 AGAINST THE NOTIFICATION
NO.SO(C-III)HE/11-04/03/ALIA HUMA
SIDDIQUI/1184-90 DATED 27.09.2018
(SERVED ON THE APPELLANT ON
01.01.2019), WHEREAS, THE
APPELLATE AUTHORITY WAS PLEASED
TO MODIFY THE PENALTY OF SERVICE
INTO COMPULSORY RETIREMENT.**

PRAYER IN APPEAL:

ON ACCEPTANCE OF THIS APPEAL, THE IMPUGNED NOTIFICATION DATED 27.09.2018 MAY KINDLY BE SET ASIDE WITH THE DIRECTION TO THE RESPONDENTS TO RE-INSTATE THE APPELLANT ALONGWITH ALL BACK BENEFITS.

Respectfully Sheweth:

1. That the appellant was serving in **BPS-17** as **lecturer of Physics** & remained posted in different stations and performed duties to the best of her ability & capability without a single **complaint and any adverse ACR**. It is worth to mention that the appellant was **appointed in the year 1993** and having a long standing service coupled with rich teaching experience and remained posted in the high reputed colleges including the **BAMM PECHS Government College for Women Karachi** on deputation.
2. That the appellant was removed from service without fulfilling the codal formalities vide an office order dated **26.12.2014**, against which the appellant filed an appeal before the Hon'ble Service Tribunal, which was allowed on **29.08.2017** by this august Court, wherein, directions were given to the respondents not only to reinstate the appellant in service but to conduct denovo enquiry in accordance with law within a period of 90 days whereas, it was further observed by this Hon'ble Court that the back benefits of the

appellant shall be subject to final outcome of the denovo enquiry.

(Copy of the notification dated 26.12.2014 and copy of judgment of this Hon'ble Court dated 29.08.2017 are annexed as annexure-A & B respectively)

3. That the appellant gave her arrival report on **14.09.2017**, which was diaried on the same date vide **diary No. 1323** with the request for issuance the order of the post adjustment, however, neither the appellant was reinstated nor any post adjustment order was passed by the department. Needless to mention that from the date of serving of the judgment of this Hon'ble Court on the respondents, the respondents did not bother to reinstate the appellant nor paid a single penny till the impugned order.

✓ **(Copy of the arrival report dated 14.09.2017 is annexed as annexure-C)**

4. That the denovo inquiry was commenced and ultimately, the respondent No. 2 once again passed removal order of the appellant on **03.04.2018**.

(Copy of the removal order dated 03.04.2018 is annexed as annexure-D)

5. That felt aggrieved from the said order, the appellant filed a Department representation before the Worthy Chief Minister Khyber Pakhtunkhwa and the Worthy Appellate Authority was pleased by modifying the order of Competent Authority i.e. Chief Secretary dated **03.04.2018** by converting the removal into compulsory retirement vide order dated **27.09.2018**.

(Copy of the departmental representation and impugned order dated 27.09.2018 are annexed as annexure-E & F respectively)

That the impugned order dated 27.09.2018 was served on the appellant on 01.01.2019, feeling aggrieved from the impugned order, the appellant left with no option but to file the instant appeal on the following grounds inter-alia:

GROUND:

1. That the impugned order is perverse, against the law and facts, liable to be set aside as this Hon'ble court in an unequivocal words directed the respondents to first reinstated the appellant and thereafter start denovo enquiry but not reinstating the appellant is nothing but a contemptuous act on the part of respondents, which is actionable wrong.
2. That all the proceedings carried out against the appellant are nullities in the eyes of law as without reinstating the appellant, the proceedings were conducted against the person and not against a civil servant.
3. That the impugned order is also biased on the reasons that this Hon'ble Court clearly directed the respondents that the issue of back benefits will be decided in the denovo enquiry

however, from the plain perusal of the impugned order, nothing is mentioned about the back benefits. ✓

4. That the respondents also failed to comply the judgment of this Hon'ble Court as direction was given to the respondents to conduct the denovo inquiry within a period of **90 days** whereas, the judgment was passed on **29.08.2017** and the final order was passed on **27.09.2018**, served on the appellant on **01.01.2019**, which is also against the judgment of this Hon'ble court by spending more than one year on the inquiry with the sole purpose to agonize the appellant as the respondents were in knowledge that the appellant is residing nowadays in Karachi.
5. That the appellant is in service since **1993** but the respondents did not consider such long period of the appellant and in cursory manner passed the impugned order wherein, the penalty of compulsory retirement was imposed on the appellant.
6. That the impugned order is also vague as the first removal order was made on **26.12.2014** in which the appellant was removed w.e.f. **12.03.2008**.
7. That another malafide on the part of respondents can be depicted from this fact that the impugned order was passed ✓ on **27.09.2018** but the same was served on the appellant on **01.01.2019**, which further strengthened the stance of

the appellant the respondents are bent upon to humiliate the appellant.

8. That the impugned order is not a speaking order and against the law & facts, therefore, the same is not tenable in the eyes of law and needs to be set aside by this Hon'ble Court.
9. That any other points will be agitated during the course of arguments.


PRAYER

It is therefore most humbly prayed that on acceptance of this appeal, the impugned notification dated 27.09.2018 may kindly be set aside with the directions to the respondents to re-instate the appellant alongwith all back benefits.

Any other relief not specifically prayed for and deems fit in the interest of justice may also be granted to the appellant.


Appellant

Through:


Barkat Ullah Khan
Advocate High Court,
LLM (London)

**BEFORE THE HON'BLE SERVICE TRIBUNAL, KHYBER
PAKHTUNKHWA, PESHAWAR.**

Service Appeal # _____ of 2019

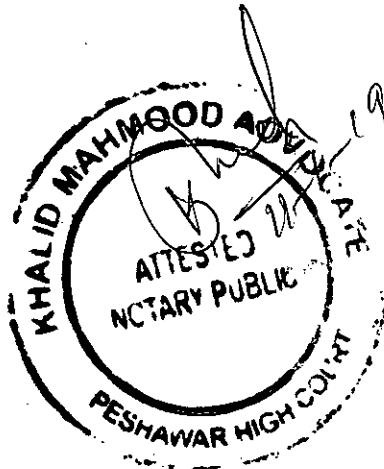
ALIA HUMA SIDDIQUI

VERSUS

**THE GOVERNMENT OF KHYBER PAKHTUNKHWA THROUGH ITS
CHIEF SECRETARY & OTHERS**

Affidavit.

I, **Alia Huma Siddiqui BPS-17, Lecturer in Physics,**
resident of Flate-1/B-3, Block 6, Gulshan E Iqbal, Karachi,
Sindh do hereby affirm & declare on oath that the contents of
accompanying appeal are true & correct to the best of my
knowledge and belief and nothing has been concealed from this
Hon'ble Court.



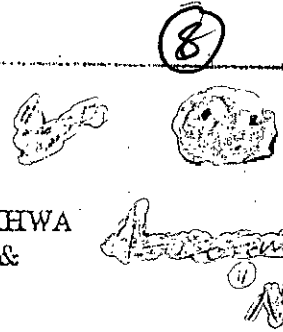
Alia

Deponent.

Annexure - 'A'



GOVERNMENT OF KHYBER PAKHTUNKHWA
HIGHER EDUCATION, ARCHIVES &
LIBRARIES DEPARTMENT



3123-28

Dated Peshawar, 26th December, 2014.

NOTIFICATION

No. SO(C-III)HE/11-04/03/Alia Huma Siddiqui/. The Competent Authority is pleased to remove Ms. Alia Huma Siddiqui, Lecturer in Physics (BS-17), Govt. Girls Degree College, Rustam, Mardan from service with immediate effect due to her willful absence from duties. The absence period w.e.f 12-03-2008 till date may be treated as unauthorized absence from duty (without pay).

SECRETARY TO
GOVT. OF KHYBER PAKHTUNKHWA
HIGHER EDUCATION DEPARTMENT

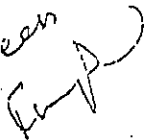
Endst: No. & Date Even

Copy forwarded to the:-

1. Accountant General, Khyber Pakhtunkhwa, Peshawar.
2. Director Higher Education, Khyber Pakhtunkhwa Peshawar.
3. Principal Govt. Girls Degree College, Rustam, Mardan.
4. District Accounts Officer, Mardan.
5. Lady Concerned,

Postal Address: Alia Huma Siddiqui C/O S.Athar, Senior Scale Promotion Officer, Bayar Pakistan (PVT) Ltd (P.O Box No.4641) Bahria Complex 11, 4th Floor M.T.Khan Road, Karachi.


Section Officer(C-III)

Seen



ATTESTED

Answer - 'B'

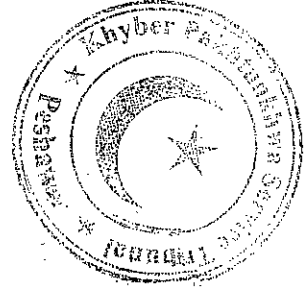
9

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL

Appeal No. 1417/2015

Date of Institution ... 23.12.2015

Date of Decision ... 29.08.2017



Mst. Alia Huma Siddiui BPS-17, Lecturer in Physics, resident of Flate 1/B-3. Block 6. Gulshan Iqbal, Karachi, Sindh. ... (Appellant)

VERSUS

1. The Chief Secretary, Government of Khyber Pakhtunkhwa Peshawar and 2 others. ... (Respondents)

MR. BARKATULLAH KHAN,
Advocate

For appellant.

MR. ZIAULLAH,
Deputy District Attorney.

...

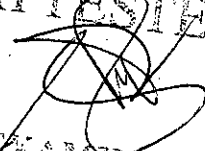
For respondents.

MR. NIAZ MUHAMMAD KHAN,
MR. AHMAD HASSAN

...

...

CHAIRMAN
MEMBER

ATTESTED

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

JUDGMENT

NIAZ MUIHAMMAD KHAN, CHAIRMAN.- Arguments of the learned counsel for the parties heard and record perused.

FACTS

2. The appellant was removed from service through impugned order dated 26.12.2014. She filed departmental appeal on 30.06.2015, which was not responded to and thereafter the present appeal was filed on 15.12.2015 with a delay of about 45/15 days (under different laws) for which she has also filed an application for condonation of delay.


ATTESTED

3. The appellant was sent to Province of Sindh on deputation on 09.06.2005 and then her period of deputation was extended by the Borrowing Department on 29.02.2012. The deputation was cancelled on 10.09.2012 and she was relieved on 24.12.2012 from Sindh. She made her arrival in the parent department on 26.12.2012. Thereafter some correspondence were made by the Principal of the College with the Director, Higher Education Khyber Pakhtunkhwa, Peshawar. The appellant was then adjusted in Government Degree College (Women), Rustam Mardan, where she also submitted arrival report on 16.3.2013. She again applied for leave for certain period about which there is no order of sanction on the record. Nevertheless, she was proceeded against due to willful absence under Rule 9 of the Khyber Pakhtunkhwa Government Servants (E&D) Rules, 2011 by publication in the newspapers and when she appeared before the enquiry officer, the enquiry officer continued her enquiry under Rule 9 and submitted her report by recommending major penalty of reducing pay of the appellant by 3 stages in time scale. However, the authority imposed the penalty of removal from service.

ARGUMENTS

4. The learned counsel for the appellant argued that the appellant never remained absent. That she was on deputation and the Government of Sindh had been extending her deputation period through different notifications and when her deputation was cancelled by the borrowing government, she promptly reported to her parent department. That the proceedings of the department, considering the appellant as absent were illegal. That no proper enquiry was conducted. That no charge sheet was served and no statement of allegations was issued nor any show cause notice was given to the appellant. The learned counsel for the appellant also argued that no limitation runs in case of void orders. In this regard he relied upon a judgment reported as 2002-SCMR-155. He further relied upon a judgment reported

ATTESTED

W. M. Khan
Principal
Government Degree College
(Women)
Rustam Mardan

W. M. Khan
ATTESTED

as 2010-SCMR-1173 by arguing that lenient view should be taken by condoning the delay.

5. On the other hand, the learned Deputy District Attorney argued that the appellant was absent as her deputation was never extended by the parent department. He referred to deputation policy of the Government whereby the deputation can be extended only by the lending department. He also argued that the present appeal is time barred as well as the departmental appeal. He referred to many case laws where under the appellant is to explain each and every day delay in case she seeks condonation of delay. In response to the arguments of the learned counsel for the appellant that no limitation runs against a void order, the learned Deputy District Attorney relied upon a judgment reported as 2016-PTD-296 wherein the distinction between void, illegal and irregular orders has been made. He argued that the present order is not a void order.

CONCLUSION.

6. Though under the deputation policy, in vogue, it is the lending department which could extend the period of limitation and not the borrowing department. However, the borrowing department was under obligation to have not issued a notification of extension without the approval of the lending department. But when such notification was issued by the borrowing department the appellant was under the impression that her deputation period has been extended. Without further dilating on the role of the appellant in the matter of deputation between borrowing and lending departments, this Tribunal shall focus on the procedure adopted by the department against the appellant in the disciplinary proceedings. It appears that the department first followed the procedure under Rule 9 of the Khyber Pakhtunkhwa Government Service (E&D) Rules, 2011 by issuing advertisement in the newspapers but when the appellant got her associated with the enquiry proceedings, the enquiry officer continued the proceedings under Rule 9 which could only be continued

ATTESTED

KUMAR GUPTA
Secty. Tribunal
Patna

ATTESTED

when the appellant had still remained absent and in that case the enquiry officer could recommend removal of the appellant from service. No other penalty could be proposed under Rule 9. But the enquiry officer continued with the enquiry proceedings and instead recommended another penalty within the meanings of Rule 4 of the said rules. The proper course for the authority was to have ordered fresh enquiry when the appellant had appeared before the enquiry officer under Rule 9 and to have given her charge sheet and statement of allegations by appointing another enquiry officer and then to proceed under Rule 5 of the said rules but no such order has been made by the authority rather it has been left to the enquiry officer appointed under Rule 9 to proceed which proceedings are void as the enquiry officer appointed under Rule 9 had no jurisdiction to proceed any further when the appellant had appeared before her. It is settled law that no limitation runs against void order and there is no cavil to the proposition that any order *coram non judice* is a void order.

7. In the light of the above discussion, the appeal is accepted and appellant is reinstated in service with the directions to the department to conduct denovo enquiry in accordance with law within a period of 90 days. The back benefits of the appellant shall be subject to final outcome of the denovo enquiry. Parties are left to bear their own costs. File be consigned to the record room.

Announced
29.08.2017

Self-Niaz Muhammad Khan,
Chairman

Certified to be true copy
Khairpur
Service Tribunal
Keshwar

Self-Ahmad Hassan,
Member

Date of Presentation of Application 05-09-17

Number of Words 1600

Copying Fee 10-

Urgent 2-

Total 12-

Name of Copier [Signature]

Date of Completion of Copy 05-09-17

[Signature]
ATTESTED

The Secretary, Govt. of K. P. K.
Peshawar Higher Education, Peshawar.

Subject: Application for post adjustment / arrival report
of ALIYA HUMA SIDDIQUI, Lecturer in Physics,
as per order of the Honourable Tribunal
dated 29-8-2017.

Respected Sir!

1.

I was removed from the service on
26-12-2014 and felt aggrieved from the
said order, filed an appeal # 1417/2015
before the Hon'ble Service Tribunal Peshawar
on 23.12.2015 which was accepted by
the Hon'ble Service Tribunal Peshawar on
29-08-2017 (Copy of the order is attached
herewith).

2.

I was shifted to Karachi, with my husband
and after the acceptance of the appeal,
now once again I am shifted to Peshawar
to perform the duty with letter in spirit.

3.

I hope that the judgement of the
tribunal will be received to your
good office. I have not been informed
by your office till now, hence the present
application.


ATTESTED

h-2017

4. The order for post adjustment may kindly be issued to comply the court decision and I am ready to join the service

5. This application may kindly be considered as ARRIVAL REPORT.

It is therefore most humbly requested that the post adjustment order in my favour may kindly be issued as per law and decision of the Hon'ble tribunal.

Aliya
ALIYA HUMA SIDDIQUI

Dated: 14-09-2017


ATTESTED



GOVERNMENT OF KHYBER PAKHTUNKHWA
HIGHER EDUCATION, ARCHIVES &
LIBRARIES DEPARTMENT

Dated Peshawar, 03rd April, 2018.

NOTIFICATION

No. SO(C-III)HE/11-04/03/Alia Huma Siddiqui/ WHEREAS the services of Ms. Alia Huma Siddiqui, Lecturer in Physics (BPS-17), Govt. Girls Degree College, Rustam, Mardan were placed at the disposal of Govt. of Sindh, Education & Literacy Department on deputation basis for a period of three (03) years w.e.f. 12.03.2005. On the expiry of the deputation period, she did not report for duty to her parent department. Disciplinary proceedings were initiated against her and she was removed from service vide notification dated 26.12.2014 for her willful absence.

2. **AND WHEREAS**, the lady officer filed an appeal against the order of her removal in the Service Tribunal, Khyber Pakhtunkhwa. The Tribunal ordered her reinstatement in service vide judgement dated 29.08.2017 with directions to the department to conduct a denovo enquiry in accordance with law. She was accordingly reinstated in service vide notification dated November, 10, 2017 for the purpose of denovo enquiry and the enquiry was accordingly ordered.

3. **AND WHEREAS**, the denovo enquiry was accordingly held and submitted to the Competent Authority who was pleased to grant an opportunity of personal hearing to the accused officer, however, the accused officer was unable to prove her innocence.

4. **NOW THEREFORE**, the Competent Authority, in exercise of Powers conferred under the Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules 2011, is pleased to impose the major penalty of "Removal from Service" upon Ms. Alia Huma Siddiqui, Lecturer in Physics (BPS-17), Govt. Girls Degree College, Rustam, Mardan.

SECRETARY TO
GOVT. OF KHYBER PAKHTUNKHWA
HIGHER EDUCATION DEPARTMENT

Endst: No. & Date Even

Copy forwarded to the:-

1. Accountant General, Khyber Pakhtunkhwa.
2. Registrar, Khyber Pakhtunkhwa, Service Tribunal.
3. Director, Higher Education, Khyber Pakhtunkhwa Peshawar.
4. Deputy Director, HEMIS Cell Higher Education Department.
5. Principal, Govt. Girls Degree College, Rustam, Mardan.
6. District Accounts Officer, Mardan.
7. Officer concerned.


ATTESTED


(TAHIR KHAN)
Section Officer (Colleges-III)

BEFORE THE WORTHY THE CHIEF MINISTER,
GOVERNMENT OF KHYBER PAKHTUNKHWA,
CIVIL SECRETARIAT, PESHAWAR.

DEPARTMENTAL APPEAL/REPRESENTATION/
REVIEW U/R 17 OF KPK GOVERNMENT SERVICE
EFFICIENCY AND DISCIPLINE RULES, 2011
AGAINST THE NOTIFICATION # SO(C-III)HE/11-
04/03/ALIA HUMA SIDDIQUI DATED 3.4.2018.

Through: PROPER CHANNEL

**BRIEF FACTS WHICH ARISE TO FILE THE
PRESENT APPEAL/REPRESENTATION/REVIEW.**

1. That the appellant/petitioner was serving in **BPS-17** as **lecturer of physics** & remained posted in different stations and performed duties to the best of her ability & capability without a single **complaint and any adverse ACR**. It is worth to mention that the appellant/petitioner was **appointed in 1993** and having a long standing service coupled with rich teaching experience and remained posted in the high reputed colleges including the BAMB PECHS Government College for Women Karachi on deputation.
2. That the appellant was removed from service without fulfilling the codal formalities vide notification # **SO(C-III)HE/11-04/03/ALIA HUMA SIDDIQUI** dated **26.12.2014**, against which the appellant filed an appeal before the Hon'ble Service Tribunal which was allowed on **29.8.2017** by the service tribunal, however, it was directed by the Tribunal that the denovo enquiry be commenced as per law within period of 90 days, moreover it was direction


ATTESTED

was also given to reinstate the appellant in service. **(Copy of the judgment of the service tribunal is annexure A).**

- 3. That the appellant gave her arrival report on **14.9.2017** with the request for issuing the order of the post adjustment, however, neither the appellant was reinstated nor any post adjustment order was passed by the department. **(Copy of the arrival report is annexure B)**
- 4. ✓ That rather to reinstate the appellant the competent authority i.e Chief Secretary served a charged sheet on the appellant which was duly replied. **(Copy of the charge sheet along with reply are annexure C & D)**
- 5. ✓ That a show cause notice dated **21.1.2018** was received by the appellant which was duly replied in detail by the appellant. **(Copy of the show cause notice & reply are annexure E & F)**
- 6. ✓ That the appellant was surprised by receiving a letter dated **20.2.2018** of personal hearing for **26.2.2018**, however, later on it was telephonically informed that the hearing will be held on **27.2.2018**. **(Copy of the letter dated 20.2.2018 is annexure G)**
- 7. That rather to reinstate the undersigned as per the direction of the Hon'ble tribunal, the competent authority straight away removed the undersigned once again from service without any lawful and cogent reasons vide order dated **3.4.2018**. **(Copy of the removal notification is annexure H)**


ATTESTED

Feeling aggrieved from the same, the appellant files instant appeal for her reinstatement on the following grounds inter -alia:

GROUNDS:

1. That the appellant served for almost 17 years and never remained absent rather was on deputation with the Sindh Government and the Government of Sindh was time and again pleased by extending the deputation period so the appellant was under the impression that she was permitted by the KPK government as the deputation is only allowed when both the department are mutually agreed. So, the appellant can be effected from any inaction or action on the part of the government.
2. That the issue of deputation was thoroughly argued while deciding the appeal before the tribunal so once again removing the appellant on the same ground is nothing but against the law and fact.
3. That the appellant was not reinstated as all the proceeding carried out in the denove inquiry is nothing in the eyes of law as no reinstatement order was given or served on the appellant which can be depicted that no posting order till the finalization of the denovo inquiry was issued by the authority.
4. That no justifiable reasons of removal have been mentioned in the impugned order dated **3.4.2018**, hence, on this ground alone the impugned order is not sustainable in the eyes of law and is liable to be set aside.
5. That the appellant has served the department for almost 17 years, hence, removing the appellant on no good reason is nothing but nullity in the eyes of law.


ATTESTED

6. That that no proper personal hearing was given to the appellant, which is against the principal of natural justice and rightly enshrined in the maxim ***Audi Alteram Partem*** (no one should be condemned unheard). The august Supreme Court of Pakistan in a cited judgment **2005 SCMR 678** it was held that not providing an opportunity of personal hearing is enough to even vitiate the most solemn proceedings. Moreover, **Rule 15 of the Khyber Pakhtunkhwa Government Servants (Efficiencies & Discipline) Rules, 2011**, also provides personal hearing which is not the case in hand.
7. That the proper procedure has not been adopted as it as the mandate of law that enshrined in a recent judgment given by the **Supreme Court of Pakistan in 2014 SCMR 147**, it was held that ***“competent authority had to firstly provide opportunity of hearing to accused officer and secondly he had to pass a reasoned order with conscious application of mind.***
8. That under **Rule 5(2) of the Khyber Pakhtunkhwa Government Servants (Efficiencies & Discipline) Rules, 2011**, specifically provides that ***“the charge sheet or statement of allegations or the show cause notice, as the case may be, shall be signed by the competent Authority”*** which is not the case in hand.
9. That the Full Bench of the august Supreme Court of Pakistan in a cited case **2008 SCMR 1369, titled Naseeb Khan versus Divisional Superintendent, Pakistan Railway Lahore & others**, it was held that ***“non holding of departmental enquiry ---violation of principal of Natural Justice---effect---held, in case of imposing major penalty, the principles of natural justice required that a regular enquiry was to be conducted in the manner and opportunity of defence and personal hearing was to be provided to the civil servant proceeded against, otherwise, civil servant***


ATTESTED

would be condemned unheard and major penalty of dismissal from service would be imposed upon him without adopting the required mandatory procedure, resulting in manifest injustice" The order of removal is clear violation of the mentioned precedent ibid.

10. that the Hon'ble Tribunal directed the department to conduct and conclude the de novo inquiry within the period of 90 days, which is not the case in hand and a clear violation of the judgment of the august Tribunal.

11. That the appellant/petitioner being a married woman and also looking after her family was placed in a position which is not only embarrassment for her but also got mental agony to see the removal order as the same is in violative of Article 10-A of the Constitution of the Islamic Republic of Pakistan 1973.

It is therefore most humbly prayed that on acceptance of the Departmental appeal/ representation/review in hand, the order of removal from service of the appellant/petitioner may kindly be set aside and the appellant/petitioner may kindly be re-instated with all back benefits and allow to join her duty, in large interest of justice & fair play.

Alia Huma Siddiqui

Alia Huma Siddiqui
BPS-17, Lecturer in Physics
Residing C/O Mr. Najam Ud
Din, personal computing
service Amin Jan Lane, 21-
Saddar Lane, Peshawar
Cantt.

W. J. Khan
ATTESTED



GOVERNMENT OF KHYBER PAKHTUNKHWA
HIGHER EDUCATION ARCHIVE
LIBRARIES DEPARTMENT

Annexure - F

21

NOTIFICATION

No. SOC/HHHE/11-04/03/Aha Huma Siddiqui
appeal by Ms. Aha Huma Siddiqui, Lecturer in Physics, BPS 17, Government Degree College, Rustam Mardan, Department of Education, Government of Khyber Pakhtunkhwa, dated 17/01/2019, regarding the imposition of 'Compulsory Retirement' service imposed on her, the appellate authority hereby the major portion of 'Compulsory Retirement' service imposed on her is hereby cancelled.

SECRETARY TO
GOVT OF KHYBER PAKHTUNKHWA
HIGHER EDUCATION DEPARTMENT

Endst: No. & Date Even

Copy forwarded to the

- 1. Accountant General, Khyber Pakhtunkhwa
- 2. Registrar, Khyber Pakhtunkhwa Service Tribunal
- 3. Director, Higher Education, Khyber Pakhtunkhwa Peshawar
- 4. Deputy Director, HMIS Cell, Higher Education Department
- 5. Principal, Govt. Girls Degree College, Rustam Mardan
- 6. District Accounts Officer, Mardan
- ✓ 7. Officer concerned

Tahir Khan
(TAHIR KHAN)
Section Officer (Colleges-III)

2-10-019

C/C

Ahija Huma Siddiqui
20/01/2019

[Signature]
ATTESTED

POWER OF ATTORNEY

22

IN THE COURT OF Hon'ble Service Tribunal KPK, Peshawar

Alia Huma Siddique

Plaintiff
Appellant
Petitioner
Complainant

Versus

The Government of KPK through chief secretary etc

Defendant
Respondent
Accused

I/we, the undersigned do hereby nominate and appoint

BARKAT ULLAH KHAN

Advocate, High Court

Masjood-ur-Rahman
Advocate, High Court
bc-14-4726
(Signature)

On behalf of Appellant

Know all to whom these presents shall come that I/We the undersigned appoint:
the above named advocate in District Peshawar in the above mentioned case to do all the
following acts, deeds and things or any these that is to say;

- To act, appear and plead in the above mentioned cause in this Court or any other Court in which the same may be tried or heard in the first instanced or in appeal, re review. Revision or execution or in any other stage of its progress until its final decision.
- To present pleadings, appeal cross objection, or Petition's for execution review, revision, withdrawal, compromise, or other petition or affidavits or other documents as shall be deemed necessary or advisable for the prosecution of the said cause in all its stages.
- To withdraw or compromise the said cause or submit to arbitration any difference or dispute that shall arise touching or in any manner relating to the said cause and to make statement and admissions.
- To employ any other legal practitioner authorizing him to exercise the powers and authoritice hereby conferred on the Advocate wherever he may think fit to do so.

AND I/We hereby agree to ratify whatever the Advocate or his substitute shall do in this behalf. AND I/We hereby agree not to hold the Advocate or his substitute responsible for the result of the case in consequence of his absence from the Court when the said case is called up for hearing.

AND I/We in case of expiry of the said Advocate any full fee or part payment thereof, will not claim in any manner what so ever or in case of disengagement of the said advocate will not make any claim regarding fee.

On this the 10 day of 01 2019
Accepted subject of the terms
& Full Payment of Settled Fee.

Alia
(Signature or thumb impression)
of the executant

Alia Huma Siddique

bc-10-5114
Accepted
Barkat Ullah

Barkat Ullah Khan
Advocate, High Court
LLB, LLM (London)

- _____
- _____
- _____
- _____

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

Service Appeal No. 50/2019

Alia Huma Siddique

.....Appellant

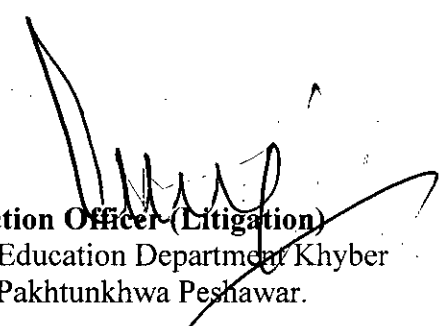
VERSUS

Govt. of Khyber Pakhtunkhwa through Chief Secretary & others

.....Respondents

INDEX

S No.	Description of Documents	Annexure	Pages
1.	Joint Parawise comments		1-3
2.	Affidavit		4
3.	Notification dated 10-11-2017 a/w De-novo enquiry report	Annex-A	5-10
4.	Order dated 27-09-2018	Annex-B	11


Section Officer (Litigation)
Higher Education Department Khyber
Pakhtunkhwa Peshawar.

①

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

Service Appeal No. 50/2019

Alia Huma Siddique

.....Appellant

VERSUS

Govt. of Khyber Pakhtunkhwa through Chief Secretary & others

.....Respondents

JOINT PARAWISE COMMENTS ON BEHALF OF RESPONDENTS NO. 1 TO 4.

RESPECTFULLY SUBMITTED AS:

PRELIMINARY OBJECTIONS:

1. That the instant appeal is not maintained in the present form.
2. That the appellant has no cause of action or locus standi to file the instant service appeal in this Hon'ble Tribunal.
3. That the appellant has not come to this Hon'ble Tribunal with clean hands.
4. That the appellant has concealed material facts from the Hon'ble Khyber Pakhtunkhwa Service Tribunal, Peshawar.
5. That the appellant has been stopped by her own conduct to file the appeal.

ON FACTS:

1. Pertains to record, therefore, needs no comments.
2. The appellant was removed from service after issuance of charge sheet/ statement of allegations based on proper inquiry, recording of statement, personal hearing by inquiry officer. As such all codal formalities have been fulfilled under the rules.
3. Incorrect. She was reinstated for the purpose of de-novo inquiry vide notification dated 10-11-2017 (**Annex-A**). The de-novo inquiry was accordingly held and penalty of "compulsory retirement from service" was imposed after completion of all codal formalities required under the rules.
4. Incorrect, misleading. After fulfillment of all codal formalities strictly in accordance with the spirit of the judgment of the learned Khyber Pakhtunkhwa, Service Tribunal in service appeal No. 1417/2015 Mst. Alia Huma Siddique announced on 29-12-2017, the Competent Authority imposed major penalty of removal from service on the basis of

enquiry report/ findings/ recommendations vide Notification No. SO(C-III)HE/11-04/03 Alia Huma Siddique dated 03-04-2018. Further to mention here that taking lenient view the Competent Authority modified its earlier orders of imposition of major penalty i.e. "removal from service" into major penalty of "compulsory retirement" vide this department Notification dated 27-09-2018. The plea of the appellant is incorrect and baseless because the appellant intentionally concealed the fact of conversion of her removal from service into compulsory retirement.

5. Pertains to record, hence no comments.

On Grounds: -

1. Incorrect, misleading, as elaborated in para-4 on facts. The appellant even herself admitted that the Competent Authority while imposed the major penalty of removal from service but given consideration to her departmental representation, has converted the said into compulsory retirement in itself negating the plea of the appellant in this paragraph.
2. Incorrect, misleading, as elaborated in para-1 on grounds.
3. Incorrect, misleading. The respondent department duly complied with the spirit of the judgment of the learned Khyber Service Tribunal and its finality i.e. imposition of major penalty of compulsory retirement is sufficient proof that all codal formalities have duly been fulfilled as the outcome of the said departmental presentation the Competent Authority by taking lenient view has modified its earlier order of removal from service, converted the said into compulsory retirement. The plea of the appellant in this para is not based on sound footings.
4. Incorrect, misleading, as evident from the original order, wherein, the appellant was removed from service, that order was passed/notified on 03-04-2018, whereas, the appellant is misquoting the modified version of the said order of 27-09-2018 which was passed on her departmental presentation.
5. Incorrect. As elaborated in preceding paras. All codal formalities were fulfilled and the appellant was removed from service on the basis of established charges of willful absence in the de-novo enquiry, therefore, major penalty was accordingly imposed but considering departmental presentation and service at her credit, her penalty was converted into the compulsory retirement being the more appropriate and proper penalty as compared to removal from service.
6. Incorrect. In compliance of the learned Khyber Pakhtunkhwa Service Tribunal judgment the de-novo enquiry process was accordingly completed and formal order passed by the Competent Authority, therefore, the inclusion of former episode at this stage carries no weightage.

7. Incorrect and misleading. The order dated 27-09-2018 was issued (**Annex-B**) to her on address of Govt. Girls Degree College, Rustam (Mardan). The appellant was aware of her case, however, she inquired regarding her departmental appeal after 03 months i.e. on 01-01-2019 on which she was handed over a copy of the order. Receiving of the same can be seen from the letter Annex-B supra.
8. Incorrect. Both the original and its subsequent version i.e. modified order is quite clear and falls within the four walls of law and the plea of the appellant is not based on facts.
9. The respondents seek leave to raise additional ground at the time of arguments.

PRAYER:

In view of the above, it is, therefore, humbly prayed that, on acceptance of the Parawise comments, the instant appeal may graciously be dismissed with costs please.

Secretary to Govt. of Khyber Pakhtunkhwa
Higher Education Department
Respondent No. 3

Govt. of Khyber Pakhtunkhwa
through Chief Secretary
Respondents No. 1 & 2

Section Officer (Colleges-III)
Higher Education Department
Respondent No. 4

BEFORE THE HONOURABLE KHYBER PAKHTUNKHWA PESHAWAR

4

Service Appeal No. 50/2019

Alia Huma Siddique..... (Appellant)

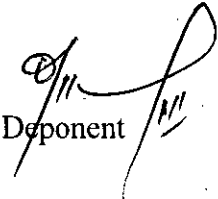
VERSUS

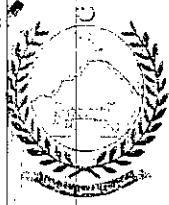
Govt. of Khyber Pakhtunkhwa through Secretary and Director Higher Education,

Peshawar..... (Respondents)

AFFIDAVIT

I, Qazi Muhammad Ayaz, Assistant Director (Litigation), Higher Education Department Government of Khyber Pakhtunkhwa, do hereby declare and affirm on oath, that the contents of the Para-wise Comments are correct to the best of my knowledge and belief and that nothing has been concealed from this Hon'ble Court.


Deponent



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REGISTERED

GOVERNMENT OF KHYBER PAKHTUNKHWA
HIGHER EDUCATION, ARCHIVES &
LIBRARIES DEPARTMENT

Dated Peshawar, 10th November, 2017

NOTIFICATION /1822-25.

No. SO(C-III)HE/11-04/03/Alia Huma Siddiqui/. In continuation of this Department notification of even number dated 26th December 2014, the Competent Authority is pleased to reinstate Ms. Alia Huma Siddiqui, Lecturer in Physics (BPS-17), Govt. Girls Degree College, Rustam, Mardan in Government Service for the purpose of denovo inquiry to be conducted against her under (Efficiency & Discipline) Rules, 2011.

SECRETARY TO
GOVT. OF KHYBER PAKHTUNKHWA
HIGHER EDUCATION DEPARTMENT

Encl: No. & Date Even

Copy forwarded to the:-

1. Secretary Establishment Department, Khyber Pakhtunkhwa.
2. Director, Higher Education, Khyber Pakhtunkhwa Peshawar.
3. Principal, Govt. Girls Degree College, Rustam, Mardan.
4. District Accounts Officer, Mardan.
5. Lady Concerned,

Postal Address: Mst. Alia Huma Siddiqui, resident of Flate 1/B-3, Block 6 Gulshan Iqbal, Karachi, Sindh.


(SHAZIA KHAN)

o/c Section Officer (Colleges-III)

CHARGE SHEET

1. Muhammad Azam Khan Chief Secretary Khyber Pakhtunkhwa, as competent authority, do hereby charge you, Ms. Alia Huma Siddiqui, Lecturer in Physics (BS-17) Govt. Girls Degree College Rustam Mardan, as follows:

That you, while serving this department have committed the following irregularities misconduct:-

- a) That your services were placed at the disposal of Govt. of Sindh Education & Literacy Department on deputation basis for a period of 03-years w.e.f. 12-03-2005 to 11-03-2008.
- b) Despite the fact that after expiry of deputation period repeated letters/reminders were issued on your available address by the Director Higher Education & Principal, Govt. Frontier College for Women Peshawar, but neither you reported for duty nor applied for extension in deputation and remained willfully absent from your duty. ✓
- c) That absence notice was served upon you through two leading News Papers on 30-03-2012, wherein you were directed to report for duty within 15-days but to no avail.
- d) That Show Cause notice duly sign by the Competent Authority was sent to the Principal, Govt. Girls Degree College, Rustam Mardan with the remarks to serve the same upon you and return one copy after obtaining your signature as token of receipt to the Directorate of Higher Education Govt. of Khyber Pakhtunkhwa and the Principal informed you accordingly, but you did not respond. ✓


2. By reason of the above, you appear to be guilty of misconduct under rule 3 of the Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011 and have rendered yourself liable to all or any of the penalties specified in rule 04 of the Rule ibid.

3. You are, therefore, required to submit your written defense within seven days of the receipt of this Charge Sheet to the Enquiry officer/Committee, as the case may be.

4. Your written defence, if any, should reach the inquiry officer/inquiry committee within the specified period, failing which it shall be presumed that you have no defence to put in and in that case ex-parte action will be taken against you.

5. Intimate whether you desire to be heard in person.

6. A statement of allegations is enclosed.


 (Muhammad Azam Khan)
 Chief Secretary
 Khyber Pakhtunkhwa

Ms. Alia Huma Siddiqui, Lecturer in Physics
Govt. Girls Degree College, Rustam Mardan

7

DISCIPLINARY ACTION

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1. Muhammad Azam Khan Chief Secretary Khyber Pakhtunkhwa, as competent authority, am of the opinion that Ms. Alia Huma Siddiqui, Lecturer in Physics (BS-17) Govt. Girls Degree College Rustam Mardan, has rendered herself liable to be proceeded against, as she committed the following acts/omissions, within the meaning of rule 03 of the Khyber Pakhtunkhwa Government Servants (Efficiency and Discipline) Rules, 2011.

STATEMENT OF ALLEGATIONS


- i. That her services were placed at the disposal of Govt. of Sindh Education & Literacy Department on deputation basis for a period of 03-years w.e.f. 12-03-2005 to 11-03-2008.
- ii. Despite the fact that after expiry of deputation period repeated letters/reminders were issued on her available address by the Director Higher Education & Principal, Govt. Frontier College for Women Peshawar, but neither you reported for duty nor applied for extension in deputation and remained willfully absent from her duty.
- iii. That absence notice was served upon her through two leading News Papers on 30-03-2012, wherein she was directed to report for duty within 15-days but to no avail.
- iv. That Show Cause notice duly sign by the Competent Authority was sent to the Principal, Govt. Girls Degree College, Rustam Mardan with the remarks to serve the same upon her and return one copy after obtaining her signature as token of receipt to the Directorate of Higher Education Govt. of Khyber Pakhtunkhwa and the Principal informed her accordingly, but she did not respond.

For the purpose of inquiry against the said accused with reference to the above allegations, an inquiry officer/inquiry committee, consisting of the following, is constituted under rule 10(1)(a) of the ibid rules.

- i. Mrs. Naghmah (PMS BS-18) DMO, MU.
- ii. _____

The inquiry officer/inquiry committee shall, in accordance with the provisions of the ibid rules provide reasonable opportunity of hearing to the accused, record its findings and make, within thirty days of the receipt of this order, recommendations as to punishment or other appropriate action against the accused.

The accused and a well conversant representative of the department shall join the proceedings on the date, time and place fixed by the inquiry officer/inquiry committee.


 (Muhammad Azam Khan)
 Chief Secretary
 Khyber Pakhtunkhwa

Alia Huma Siddiqui, Lecturer in Physics
Govt. Girls Degree College, Rustam Mardan

INQUIRY REPORT

8

Subject: DISCIPLINARY PROCEEDINGS AGAINST MS. ALIA HUMA SIDDIQUI, LECTURER IN PHYSICS (BPS-17) AT GOVT. GIRLS DEGREE COLLEGE, RUSTAM, MARDAN.

1. Background:

Brief background of the case is that earlier a departmental inquiry was conducted in the subject case wherein a major penalty of removal from service was imposed upon the accused Ms. Alia Huma (Lecturer in Physics BPS-17) (**Annex-I**). After then, the accused filed a case in the Service Tribunal Khyber Pakhtunkhwa. The said tribunal in its judgment dated: 29/08/2017 (**Annex-II**) ordered as follow:

"That no proper enquiry was conducted. That no charge sheet was served and no statement of allegations was issued nor any show cause notice was given to the appellant. Hence the appeal is accepted and appellant is reinstated in service with the directions to the department to conduct denovo enquiry in accordance with law within a period of 90 days."

In pursuance of the above mentioned Judgment, the undersigned was appointed as an inquiry officer by the competent authority (**Annex-III**), to conduct a denovo inquiry against Ms. Alia Huma Saddique Lecturer in Physic BS-17 at Govt. Girls Degree College, Rustam, Mardan, for the charges mentioned in the charge sheet (**Annex-IV**) and are reproduced below:

- a) That your services were placed at the disposal of Govt. of Sindh Education & Literacy Department on deputation basis for a period of 03-years w.e.f 12-03-2005 to 11-03-2008.
- b) Despite the fact that after expiry of deputation period repeated letters/reminders were issued on your available address by the Director Higher Education & Principal, Govt. Frontier College for Women Peshawar, but neither you reported for duty nor applied for extension in deputation and remained willfully absent from your duty.
- c) That absence notice was served upon you through two leading News Papers on 30-03-2012, wherein you were directed to report for duty within 15-days but to no avail.
- d) That Show Cause notice duly sign by the Competent Authority was sent to the Principal, Govt. Girls Degree College, Rustam, Mardan with the remarks to serve the same upon you and return one copy after obtaining your signature as token of receipt to the Directorate of Higher Education Govt. of Khyber Pakhtunkhwa and the Principal informed you accordingly, but you did not respond.

3. Response / Comments to the charge sheet

a. Responding to the charge mentioned at point (a), the accused lecturer stated that after expiry of initial three years of deputation period, the Sindh govt. (borrowing department) used to extend her deputation from time to time since March 2008 to March 2013, duly copied to the lending department (Higher Education Department, Khyber Pakhtunkhwa) (Annex-VIII (a)). It is worth mentioning that extension in deputation period is done by the lending deptt. on the request of borrowing deptt. However, in the instant case, the lending deptt. has not been approached for further extension after expiry of the initial three years of deputation period. According to the accused, she was under the impression that her administrative department was in the knowledge of the said extension.

b. Regarding receipt of letters and reminders issued by the Higher Education Department the accused stated that, the letters issued were not received by her, as the address was no more active and her husband had already resigned from that company. Therefore, she remained ignorant of the letters issued to her, hence her absence from the duty was not willful.

c. In response to the show cause notice served upon her in the newspaper, she stated that it was not noticed by her unluckily.

d. In response to the signing of show cause notice of the accused lecturer claimed that she did not sign any show cause letter, which can be ascertained from the letter sent by principal Rustam college, dated 18-09-2014, stating "we are unable to obtain her signature as the token of receipt" (Annexure-X)

4. Findings

1. After expiry of the deputation period of the accused lecturer from March 2005 to March 2008, she did not botherto seek further extension in deputation period from her administrative department as required under the deputation policy. However, extension for deputation of the accused lecturer was given by Sindh Government from March 2008 to March 2013 without concurrence of the lending department. The said lecturer further admitted during her personal hearing, that although her deputation period was extended by the Sindh govt., however, she was under the impression that her administrative department was in knowledge of the said extension as it was duly copied to them.

2. The accused lecturer admitted that she has changed her permanent correspondence address which was recorded with the administrative department in 2007 and the new address was not intimated to the administrative department.

3. Due to the change of correspondence address, the letters and absence notice issued by the Department could not be received by the accused lecturer.

4. The accused lecturer came to know about the initiation of disciplinary proceedings against her when the administrative department approached Sindh govt.

5. Subsequent to issuance of show cause, a charge sheet and statement of allegation were served upon the accused. In pursuance of that, a formal inquiry was held against the accused lecturer wherein a fair chance of personal hearing was given to her. (10)

6. Subsequently, final inquiry report was submitted by inquiry officer Ms. Rozina Rehman (Associate Professor, English GGDC, Nowshera) to the competent authority, wherein a major penalty of removal from service was imposed upon the said lecturer.

7. The accused lecturer filed an appeal against her removal from service which was not approved by the competent authority being time barred.

8. The accused lecturer filed an appeal in the service tribunal on the plea that *no proper inquiry was conducted nor any chargesheet, statement of allegation and show cause was issued/served* prior to imposing a major penalty of removal from service upon her.

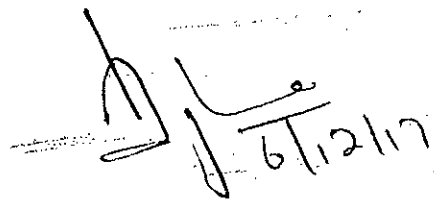
9. The accused was given fair chance of hearing during the previous inquiry as evident from the inquiry report (**Annex-I**).

5. Conclusion

After having gone through the details provided by the administrative department and written statement submitted by the accused in the instant case, it is concluded that after expiry of the initial three years of deputation period w.e.f. March 2005 to March 2008, the accused lecturer remained willfully absent from duty from March 2008 to March 2013 without obtaining extension in her deputation from the administrative department. Hence, all the charges leveled against the accused in the charge sheet stand proved.

Certificate:

It is certified that the instant Inquiry report consists of 04 pages and 10 Annexures and each page has been duly signed by the undersigned.



Handwritten signature and date: 6/12/17

**Ms. Naghmana, DMO Mardan
Independent Monitoring Unit, E&SED /
Inquiry Officer**

2020 P L C (C.S.) 918

[Peshawar High Court]

Before Waqar Ahmad Seth, CJ and Ahmad Ali, J

ATHAR RAHIM

Versus

GOVERNMENT OF KHYBER PAKHTUNKHWA through Secretary Local Government and 3 others

Non-compliance of Directs
of Tribunal is itself illegal
Action of the government

W.P. No.1120-P of 2019, decided on 14th November, 2019.

(a) Khyber Pakhtunkhwa Service Tribunal Act (I of 1974)---

---S.4---Constitution of Pakistan, Arts: 199 & 212---Constitutional petition against disciplinary proceedings---Maintainability---Departmental proceedings---Compulsory retirement---Reinstatement in service---De novo inquiry---Service Tribunal reinstated employee in service with option to the department to conduct de novo inquiry within a specific period---Department having failed to complete de novo inquiry within a period provided by the Service Tribunal---Non-compliance of judgment of Service Tribunal---Effect---Petitioner-employee was reinstated in service by the Service Tribunal and Department was directed to conduct de novo inquiry within a period of ninety days after receipt of judgment---Employee was reinstated in service but de novo inquiry was not completed within a period provided by the Service Tribunal---Contention of petitioner was that no inquiry proceedings could be conducted after expiry of period provided by the Service Tribunal---Validity---Compliance of order of Court in letter and spirit was not only the responsibility of general public but government departments too were required to honour the verdict of the Courts and Tribunals---Sufficient time had been granted to the Department to conduct de novo inquiry but they had adopted dilatory tactics to delay the implementation of judgment of Service Tribunal---Impugned order for de novo inquiry had been passed after expiry of period for completion of inquiry proceedings provided by the Service Tribunal---Inquiry proceedings had become void being violative of judgment of Service Tribunal in circumstances---Departmental action against a civil servant was an executive discretion of the authority and High Court in order to protect the administration of justice could examine and judicially review the said discretion---Acts done by the authority in violation of judgment of Service Tribunal could not be given cover under Art. 212 of the Constitution---Act of non-compliance with the orders of the Court or Tribunal by itself was an illegal act and High Court in its constitutional jurisdiction could review such act of the Executive---Inquiry conducted by the department after expiry of period provided by the Service Tribunal was illegal, contumacious and against rule of law---Departmental proceedings initiated against the petitioner were declared null and void, in circumstances---Constitutional petition was allowed, in circumstances.

Zahoor-ud-Din Sheikh v. Pakistan Atomic Energy Commission through Chairman, Islamabad 2007 PLC (C.S.) 959; National Bank of Pakistan and others v. Shamoos Khan and others 2010 PLC (C.S.) 608 and Sabir Iqbal v. Cantonment Board, Peshawar through Executive Officer and others PLD 2019 SC 189 rel.

(b) Constitution of Pakistan---

---Art.199---Constitutional jurisdiction of High Court---Scope---Elaborated.

The jurisdiction of High Court under Article 199 of the Constitution is a supervisory and extraordinary original jurisdiction. The High Court under its constitutional jurisdiction can discourage an act which adversely effects the majesty of law or dignity of the courts; and High Court can take every measure to protect the administration of justice from being maligned. In the general interest of the community, it is imperative that the authority of Courts should not be imperilled and there should be no unjustifiable interference in the administration of justice. No such act can be permitted which may have the tendency to shake the public confidence in the fairness and

impartiality of the administration of justice. The government departments are not aloof from the law rather they are comparatively more responsible to follow the dictum of Courts or Tribunals.

Babar Khan Yousufzai for Petitioner.

Wilayat Khan, A.A.G. for Respondents.

Date of hearing: 14th November, 2019.

JUDGMENT

AHMAD ALI, J.----Through the instant constitutional petition, filed under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973, petitioner has prayed for the following relief:

"It is, therefore, respectfully prayed that on acceptance of this Writ Petition, an appropriate writ may please be issued declaring the initiation of departmental proceedings vide letter No.(L-G)3-7 / court/2019 dated 15.01.2019 of respondents as illegal, unlawful, without jurisdiction and violation of judgment and order dated 24.04.2018 of Khyber Pakhtunkhwa Service Tribunal. Therefore, is of no legal affect and liable to be struck down.

Any other remedy deemed appropriate in the circumstances of the instant writ petition may also be granted."

2. The long and short of the present constitutional petition is that the petitioner was serving in the Local Govt. and Rural Development Department, Mardan, and he owing to some departmental proceedings was awarded major penalty of compulsory retirement. However, in the Service Appeal No.805/2014 filed by petitioner against the penalty of compulsory retirement, the petitioner was reinstated into service vide Judgment dated 24.04.2018 and thereby respondents were directed to conduct a de-novo inquiry within a period of 90 days after the receipt of judgment. It was, however, observed that the issue of back benefits will be subject to outcome of the de-novo proceedings. Resultantly, respondents reinstated the petitioner vide Letter No.634/AD LG&RDD Mardan dated 01.08.2018. The petitioner then filed application for implementation of the decision dated 24.04.2018 of the K.P. Service Tribunal to the extent of award of back benefits. Upon this, respondents flexed their muscles against petitioner and the Assistant Director (Litigation) of the Directorate General of Local Government and Rural Development Department vide letter dated 15.01.2019 directed the Deputy Director, Local Govt. Commission, Peshawar to complete de-novo inquiry. Hence, petitioner aggrieved of the conduct of de-novo inquiry has filed present constitutional petition.

3. This court directed respondents to file para-wise comments to the writ petition which have been furnished, wherein, issuance of the desired writ is opposed.

4. We have heard arguments advanced by Mr. Babar Khan Yousufzai, Advocate, for petitioner and Mr. Wilayat Khan. A.A.G. for respondents at length and gone through the record.

5. A threadbare perusal of the record reveals that the petitioner was previously serving as Moharrir in the General Record room of Deputy Commissioner Office Mardan. He was taken to task on the allegation that he along with Moharrir Tameel namely Mushtaq Ali, tempered the entry at Serial No.675 dated 10.08.1974 the register of Karim Khan Stamp Vendor and thereby the rights of one Mst. Faiza were affected adversely. Moreover, a complaint was also filed against the petitioner by Mr. Sher Bahadur Khattak Advocate, Tehsil Court Takht Bhai. Three different inquiries were conducted and inquiry officers recommended major penalty of compulsory retirement for the petitioner and finally, he was awarded a major penalty of compulsory retirement. The petitioner called in question the vires of major penalty through a Service Appeal before Khyber Pakhtunkhwa Service Tribunal. His appeal was succeeded and he was reinstated into service vide judgment dated 24.04.2018 with the direction to respondents to conduct a de-novo inquiry into the matter within a period of 90 days after the receipt of judgment. The issue of back benefits was attached to the fate of de-novo inquiry. Thereafter, the petitioner was reinstated into service vide letter dated 01.08.2018.

6. It is evident from Para No.4 (Page 2) of comments that the judgment of Service Tribunal was received to respondents on 14.05.2018, and as such 90 days after receiving the judgment, were

completed on 12.08.2018. The petitioner was reinstated into service on 01.08.2018 and thereafter vide letter No. Director (LG)3-1/ Establishment/2013/12721 dated 03.10.2018, Mr. Jahangir Khan Assistant Director LG&RDD Swabi was nominated as Inquiry Officer, however, record manifests that no inquiry was conducted by him. After that, another Letter No. Director (LG) 3-7/Court Cases/2019 dated 15.01.2019 was issued whereby the Deputy Director, Local Govt. Commission, Khyber Pakhtunkhwa was asked to complete the inquiry before 28.02.2019.

7. There was no denial of the fact that the letter for the conduct of de-novo inquiry was for the first time issued on 03.10.2018 following by another letter dated 15.01.2019; whereas, 90 days after receiving the Judgment of Service Tribunal were already expired on 12.08.2018. Compliance of the Court orders in the letter and spirit is not only the responsibility of general public but the government departments too are required to honour the verdict of the Courts and Tribunals. Sufficient time was given to respondents to conduct de-novo inquiry but, as is evident from the Para No.4 of comments, they have adopted various dilatory tactics to delay the implementation of the Judgment of Service Tribunal and failed to comply the same in the letter and spirit.

8. Non-compliance with the orders of the Courts or Tribunals shakes the very foundation of our judicial system and undermines the rule of law, which we are bound to honour and protect. It is indispensable to maintain the faith and confidence of the people of this Country in the judiciary. Whenever an act adversely affects the administration of justice or which tends to impede its course or tends to shake public confidence in the judicial institutions, the Courts are not supposed to bear such an act. The jurisdiction of this Court under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973, is a supervisory and extraordinary original jurisdiction. The High Court under its constitutional jurisdiction can discourage an act which adversely effects the majesty of law or dignity of the courts; and this Court can take every measure to protect the administration of justice from being maligned. In the general interest of the community, it is imperative that the authority of Courts should not be imperilled and there should be no unjustifiable interference in the administration of justice. No such act can be permitted which may have the tendency to shake the public confidence in the fairness and impartiality of the administration of justice. The government departments are not aloof from the law rather they are comparatively more responsible to follow the dictum of Courts or Tribunals.

9. As mentioned above, 90 days after receiving the judgment were admittedly completed on 12.08.2018 while letter for the nomination of inquiry office was issued much after that, on 03.10.2018 and then letter dated 15.01.2019 was issued to another officer for the completion of inquiry; thus, both the ibid letters were stale demand. The inquiry being not done within the period given by the K.P. Service Tribunal, both the ibid latter including the inquiry proceedings have become void and being violative of the judgment of service tribunal the same cannot provide any legal backing to respondents.

10. In the case of "Zahoor-ud-Din Sheikh v. Pakistan Atomic Energy Commission through Chairman, Islamabad" 2007 PLC (C.S.) 959 the employee was removed from service and the Federal Service Tribunal vide Judgment dated 16.07.2002 directed respondent-department to reinstate the said employee into service and to hold a fresh inquiry within a period of six months of the judgment. The appeal of the Department before august Supreme Court of Pakistan was dismissed. The department then, after the lapse of six months provided period, proceeded against the said employee and again removed him from service. Failure of department to complete inquiry within six months per judgment dated 16.07.2002 rendered all the proceedings conducted beyond stipulated period six months as null and void; and thereby the Federal Service Tribunal reinstated the employee into service with all back benefits.

11. Besides, the august Supreme Court of Pakistan in the case titled National Bank of Pakistan and others v. Shamoon Khan and others 2010 PLC (C.S.) 608 (Supreme Court) was pleased to hold that the Service Tribunal had given a fair opportunity to bank to initiate inquiry proceedings de novo within a period of three months but nothing could be done for the reasons best known to it. Thereby the Judgment passed by Service Tribunal, as to reinstatement of the employee owing to failure of department to conduct inquiry within stipulated period, was upheld.

12. Although taking a departmental action against a civil servant by authority is an executive discretion of the authority and touches the terms and conditions of service but where, as mentioned in the preceding paras of this judgment, the High Court under its constitutional jurisdiction in order to protect the administration of justice from being maligned and to maintain faith and confidence of the people in the judicial institutions, can examine and judicially review the executive discretion exercised by the authorized officer. Here we deem it necessary to mention that the acts done by the authority in violation of the Judgment of K.P. Service Tribunal cannot be given cover under Article 212 of the Constitution of Islamic Republic of Pakistan, 1973. The act of non-compliance with the orders of the court or tribunal by itself is an illegal act and this Court in its constitutional jurisdiction can perform the judicial review of such an act of the executive branch. Guidance derived from the verdict of august Supreme Court of Pakistan in the case of Sabir Iqbal v. Cantonment Board, Peshawar through Executive Officer and others (PLD 2019 Supreme Court 189)

(b) Constitution of Pakistan---

---Arts.184(3) & 199---Civil Service---Disciplinary proceedings---Executive discretion of authority---Judicial review---Proportionality, suitability and necessity, tests of---Scope---Court could examine and judicially review the executive discretion exercised by the authorized officer on the ground of proportionality---Alongside reasonableness, proportionality was a central standard directing the action of the executive branch---Disproportionate act that infringed upon a human right was an illegal act---Court, which guarded the legality of the acts of the executive branch, performed judicial review over these acts and examined whether they fulfilled the tests of proportionality---Proportionality was a standard that examined the relationship between the objective the executive branch wished to achieve, which had the potential of infringing upon a human right, and the means it had chosen in order to achieve that infringing objective--- Fiduciary duty, from which the administrative duty of fairness and administrative reasonableness were derived, demanded administrative proportionality as well---Courts would quash exercises of discretionary powers in which there was not a reasonable relationship between the objective which was sought to be achieved and the means used to that end, or where punishments imposed by administrative bodies or inferior courts were wholly out of proportion to the relevant misconduct---Administrative measure must not be more drastic than necessary---Standards of proportionality and unreasonableness were inextricably intertwined---Unreasonableness contained two elements of proportionality when it required the weight of relevant considerations to be fairly balanced and when it forbade unduly oppressive decisions---Under the first element, proportionality was a test requiring the decision maker to maintain a fair balance, and under this category the courts evaluated whether manifestly disproportionate weight had been attached to one or other considerations relevant to the decision---Second element was that the courts considered whether there had been a disproportionate interference with the claimants rights or interests---More sophisticated version of proportionality provided for a structured test, where under the courts asked first whether the measure, which was being challenged, was suitable to attaining the identified ends (the test of suitability)---Suitability here included the notion of "rational connection" between the means and ends ---Next step asked whether the measure was necessary and whether a less restrictive or onerous method could have been adopted (the test of necessity - requiring minimum impairment of the rights or interest in question).

13. Thus, we hold that the inquiry conducted by the respondents/department beyond the scope of 90 days as provided by the K.P. Service Tribunal, is squarely illegal, contumacious and against the rule of law. The writ petition is allowed as prayed for and accordingly, departmental proceedings initiated against petitioner being violative of the Judgment of Service Tribunal are declared null and void. No order as to cost.

ZC/44/P

Petition allowed.

MEEZAN BANK LIMITED
6-SADDAR ROAD, PESHAWAR CANTT
STATEMENT OF ACCOUNT

Print Date : 02 MAR 2016

ALIYA HUMA

Old Account No : PK24MEZN00070101099289
Account No : 0101099289
Product : MEEZAN RUPEE CURRENT ACCOUNT
Currency : Pakistan Rupee
From Date : 01 JAN 2013
To Date : 31 DEC 2014

SWABI HOUSE NEAR MADINA MASJID COLO
NY DALAZAK ROAD PESHAWAR
PAKISTAN.03333111323

<= OPENING - BALANCE =>

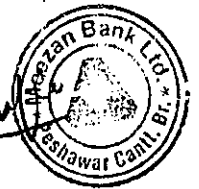
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Date(DD/MM)	Value	Doc.No	Particulars	Debit	Credit	Balance	
05/07/13	05/07/13		Cash Deposit 4184914		1,000.00		
30/07/13	30/07/13		STAN(484847) SADDAR RD. PESH. CANTT	-400.00		1,000.00	
30/07/13	30/07/13		STAN(484847) SADDAR RD. PESH. CANTT	-64.00			
30/10/13	30/10/13		STAN(889537) SADDAR RD. PESH. CANTT	-350.00		536.00	
30/10/13	30/10/13		STAN(889537) SADDAR RD. PESH. CANTT	-56.00			
01/02/14	01/02/14		Internal Transfer SALARY TRANSFER MARDAN BR		440,395.00	130.00	
19/02/14	19/02/14		VISA-ATM Cash Withdrawal STAN (203476) SADDAR RD. PESH. CANTT	-10,000.00		440,525.00	
28/02/14	28/02/14		Internal Transfer SALARY TRANSFER MARDAN BR		70,194.00	430,525.00	
22/05/14	22/05/14		withholding tax on cash Debit S USMAN	-210.58		500,719.00	
22/05/14	22/05/14	32702171	Online Cash Withdrawal S USMAN	-70,194.00			
12/06/14	12/06/14	32702172	Online Cash Withdrawal USMAN	-5,000.00		430,314.42	
20/06/14	20/06/14	32702173	Transfer through Cheque - Dr funds tr GULSHAN CHOWRANGI BR	-400,000.00		425,314.42	
21/06/14	21/06/14		VISA-ATM Cash Withdrawal STAN (460240) SADDAR RD. PESH. CANTT	-10,000.00		25,314.42	
28/07/14	28/07/14		BANK CHARGES STAN(448935) SADDAR RD. PESH. CANTT	-400.00		15,314.42	
28/07/14	28/07/14		BANK CHARGES STAN(448935) SADDAR RD. PESH. CANTT	-64.00			
<= CLOSING - BALANCE =>						14,850.42	

14,850.42

- As per directives of State Bank of Pakistan (SBP), please note your International Bank Account Number (IBAN) for receiving remittances from abroad. You can visit the nearest Meezan Bank Branch or our website www.meezanbank.com for IBAN related information and guidance.
- Please note that as per SBP's Prudential Regulations, business/charity related transactions and/or any activity for the purpose of collection of donations is not allowed in accounts opened and maintained with banks for savings and personal use.
- If your CNIC has expired after opening of your account, kindly provide us an attested copy of the valid CNIC at your earliest. This requirement does not apply to individuals over 65 years of age.
- As per prevailing rules and regulations, any account not operated for one year gets classified as 'Dormant Account'. In order to have your dormant account activated, kindly visit your branch along with original valid CNIC. If any account remains inoperative for a period of 10 years, shall become unclaimed and will be surrendered to SBP as per provision of Banking Companies Ordinance, 1962.
- For any complaints that remain unresolved beyond 45 days, you may write to Banking Mohtasib Pakistan, Shaheen Complex, M.R. Kiyani Road, Karachi or visit www.bankingmohtasib.gov.pk
- Any discrepancy observed in this statement must be reported to pertinent branch of Meezan Bank within 45 days after date of receipt, failing which the statement will be deemed to be correct.

COMPUTER GENERATED DOCUMENT - NO SIGNATURE REQUIRED



MEEZAN BANK LIMITED
8-SADDAR ROAD, PESHAWAR CANTT
STATEMENT OF ACCOUNT

Print Date : 02 MAR 2016

ALIYA HUMA

Old Account No : PK24MEZN007010101099289
Account No : 0101099289
Product : MEEZAN RUPEE CURRENT ACCOUNT
Currency : Pakistan Rupee
From Date : 01 JAN 2013
To Date : 31 DEC 2014

SWABI HOUSE NEAR MADINA MASJID COLO
NY DALAZAK ROAD PESHAWAR.
PAKISTAN.03333111323

« OPENING - BALANCE »

Date (DD/MM)	Value	Doc.No	Particulars	Debit	Credit	Balance
05/07/13	05/07/13		Cash Deposit 4184914		1,000.00	
30/07/13	30/07/13		STAN(484847) SADDAR RD. PESH. CANTT	-400.00		1,000.00
30/07/13	30/07/13		STAN(484847) SADDAR RD. PESH. CANTT	-64.00		
30/10/13	30/10/13		STAN(889537) SADDAR RD. PESH. CANTT	-350.00		536.00
30/10/13	30/10/13		STAN(889537) SADDAR RD. PESH. CANTT	-56.00		
01/02/14	01/02/14		Internal Transfer SALARY TRANSFER MARDAN BR		440,395.00	130.00
18/02/14	18/02/14		VISA-ATM Cash Withdrawal STAN (203476) SADDAR RD. PESH. CANTT	-10,000.00		440,525.00
28/02/14	28/02/14		Internal Transfer SALARY TRANSFER MARDAN BR		70,194.00	430,525.00
22/05/14	22/05/14		withholding tax on cash Debit S USMAN	-210.58		500,719.00
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28/07/14	28/07/14		BANK CHARGES STAN(448935) SADDAR RD. PESH. CANTT	-400.00		15,314.42
28/07/14	28/07/14		BANK CHARGES STAN(448935) SADDAR RD. PESH. CANTT	-64.00		
« CLOSING - BALANCE »						14,850.42

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2. Please note that as per SBP's Prudential Regulations, business/charity related transactions and/or any activity for the purpose of collection of donations is not allowed in accounts opened and maintained with banks for savings and personal use.

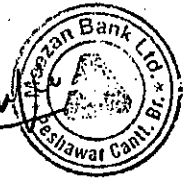
3. If your CNIC has expired after opening of your account, kindly provide us an attested copy of the valid CNIC at your earliest. This requirement does not apply to individuals over 65 years of age.

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14,850.42



MEEZAN BANK LIMITED
8-SADDAR ROAD, PESHAWAR CANTT
STATEMENT OF ACCOUNT

Print Date : 02 MAR 2016

ALIYA HUMA

Old Account No : PK24MEZNO07010101099209
Account No : 0101099289
Product : MEEZAN RUPEE CURRENT ACCOUNT
Currency : Pakistan Rupee
From Date : 01 JAN 2013
To Date : 31 DEC 2014

SWABI HOUSE NEAR MADINA MASJID COLO
NY DALAZAK ROAD PESHAWAR.
PAKISTAN.03333111323

« OPENING - BALANCE »

Date (DD/MM)	Value	Doc.No	Particulars	Debit	Credit	Balance
05/07/13	05/07/13		Cash Deposit 4184914		1,000.00	
30/07/13	30/07/13		STAN(484047) SADDAR RD. PESH. CANTT	-400.00		1,000.00
30/07/13	30/07/13		STAN(484847) SADDAR RD. PESH. CANTT	-64.00		
30/10/13	30/10/13		STAN(889537) SADDAR RD. PESH. CANTT	-350.00		536.00
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28/07/14	28/07/14		BANK CHARGES STAN(448935) SADDAR RD. PESH. CANTT	-400.00		15,314.42
28/07/14	28/07/14		BANK CHARGES STAN(448935) SADDAR RD. PESH. CANTT	-64.00		

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GOVERNMENT OF KHYBER PAKHTUNKHWA
HIGHER EDUCATION, ARCHIVES &
LIBRARIES DEPARTMENT

Dated Peshawar, 27th September, 2018.

NOTIFICATION

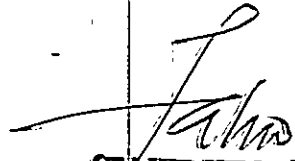
1184-90
No. SD(C-III)HE/11-04/03/Alia Huma Siddiqui/ On submission of departmental appeal by Ms. Alia Huma Siddiqui, Lecturer in Physics (BPS-17), Govt. Girls Degree College, Rustam, Mardan against this department order issued vice notification of even No. dated April 3, 2018, whereby major penalty of "Removal from Service" was imposed on her, the appellate authority is pleased to modify the major penalty of "Removal from Service" imposed on her to major penalty of "Compulsory Retirement".


SECRETARY TO
GOVT. OF KHYBER PAKHTUNKHWA
HIGHER EDUCATION DEPARTMENT

Endst: No. & Date Even

Copy forwarded to the:-

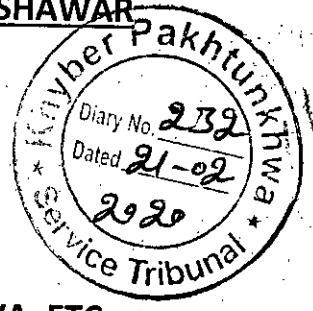
- ✓ 1. Accountant General, Khyber Pakhtunkhwa.
- ✓ 2. Registrar, Khyber Pakhtunkhwa, Service Tribunal.
- ✓ 3. Director, Higher Education, Khyber Pakhtunkhwa Peshawar.
- ✓ 4. Deputy Director, HEMIS Cell Higher Education Department.
- ✓ 5. Principal, Govt. Girls Degree College, Rustam, Mardan.
- ✓ 6. District Accounts Officer, Mardan.
- ✓ 7. Officer concerned.


(TAHIR KHAN)
Section Officer (Colleges-III)


2-10-018

copy no-7 Recd by Aliya Huma Siddiqui
01/01/2019

BEFORE THE HONBLE SERVICE TRIBUNAL, KHYBER PAKHTUNKHWA, PESHAWAR



ALIA HUMA SIDDIQUE

VS

THE CHIEF SECRETARY, GOVERNMENT OF KHYBER PAKHTUNKHWA, ETC

*Ret up to The
Chief Secretary
Government of
K.P. 24/2/20*

APPLICATION FOR ADJOURNMENT

Respectfully Sheweth,

- 1) That the above titled case is pending before this Hon'ble Tribunal, which is fixed for 24.02.2020.
- 2) That the counsel for the appellant will have to leave for Gilgit Baltistan on 22.02.2020 and will come back on 26.02.2020; due to this reason the counsel of the appellant will not be available on 24.02.2020.

It is, therefore, humbly requested that the case may kindly be adjourned to some other date.

Barkat Ullah

**BARKAT ULLAH KHAN
ADVOCATE HIGH COURT
LL.M (LONDON).**

Dated 21.2.2020

Recd

**BEFORE THE HON'BLE SERVICES TRIBUNAL,
KHYBER PAKHTUNKHWA, PESHAWAR.**

Rejoinder

**In
Service Appeal No. 50/2019.**

ALIA HUMA SIDDIQUI

VERSUS

**THE GOVERNMENT OF KHYBER PAKHTUNKHWA
THROUGH CHIEF SECRETARY & OTHERS**

**REJOINDER TO THE PARA-WISE COMMENTS FILED
BY RESPONDENTS.**

Respectfully Sheweth;

PARA-WISE REPLY OF THE PRELIMINARY OBJECTIONS:

- 1) Para No. 1 is incorrect hence, denied. The appeal is well within time against the impugned order dated **27.09.2018** by making compulsory retirement order of the appellant, which was served on the appellant on **01.01.2019** and the instant appeal was filed on **11.01.2019**.
- ✓ 2) Para No. 2 is incorrect hence, denied. As apparent from the final order, the respondent made an order of compulsory

retirement of the appellant against which the proper remedy was to file the present appeal, being the final order.

- 3) Para No.3 is incorrect hence, denied. The conduct of the department is not clean as by not reinstating the appellant and conducted inquiry against the person who was not a civil servant and the proceedings against the appellant was nothing but *corum non judice*
- 4) Para No. 4 is incorrect hence, denied. Nothing has been concealed from this Hon'ble tribunal as nothing new was brought by the respondents, which was concealed by the appellant.
- 5) Para No. 5 is incorrect hence, denied. The appellant left with no alternative remedy instead of filing the instant appeal as laid down in the law of land.

PARA-WISE REPLY ON FACTS.

1. Para No. 1 needs no reply as the same was not rebutted by the respondents.
2. Para No. 2 is incorrect hence, denied. As the previous appeal of the appellant was allowed by this Hon'ble Tribunal by giving direction to the respondents to reinstate the appellant and thereafter, make proper inquiry with further observation that the back benefit will be decided after the final conclusion of the inquiry.

3. Para No. 3 is incorrect hence, denied. This fact is fair enough that if suppose, the appellant was reinstated then why the department had not paid a single penny to the appellant in shape of her salary. Moreover, there is no order in respect of her suspension or postings/transfers, which speaks volume of malafide on the part of respondents with the mindset to remove the appellant from service in order to defeat the earlier order of this Hon'ble Tribunal as the respondents remained failed to annex a single document with regard to payment of salary to the appellant as well as posting/transfer order, from which one can draw an inference that she was reinstated and paid any salary.
4. Para No. 4 is incorrect hence, denied. As apparent from the charge sheet as well as statement of allegation neither the date has been mentioned nor the receiving of the appellant has been cited as the alleged inquiry was conducted on **06.12.2017** then how the compulsory order was made on **27.09.2018** after a lapse of **almost 09 months**, which prima-facie suggest that once again the department has committed illegalities/irregularities with mindset not to reinstate the appellant with the purpose to defeat the previous order of this Hon'ble Tribunal. Moreover, the respondents concealed the department appeal/representation of the appellant on which basis the removal order was converted into compulsory retirement, which is a

final order. Needless to mention that if the appellant was reinstated then why she was not paid for nine months.

5. Para No.5 is admitted, therefore, needs no reply.

REJOINDER TO THE PARA-WISE COMMENTS ON GROUNDS.

1. Para No. 1 is incorrect hence, denied. As the department did not comply the direction of this Hon'ble Tribunal to first reinstate the appellant and then conducted the inquiry, which is not the case in hand.
2. Para No. 2 is incorrect hence, denied. Already explained in the preceding paras.
3. Para No. 3 is incorrect hence, denied. Already explained that proceedings carried out against the person and not again the civil servant as the appellant was not reinstated at all during the inquiry proceedings.
4. Para No. 4 is incorrect hence, denied. As the direction of this Hon'ble Tribunal was to conduct the de-novo inquiry within a period of **90 days** but the department intentionally linger on the matter one way or the other.
5. Para No. 5 is incorrect hence, denied. The proceedings initiated against the appellant was *corum non judice*.

6. Para No. 6 is incorrect hence, denied. The malafide of the respondents can be seen from the previous conduct by passing removal order dated **26.12.2014** w.e.f. **12.03.2008**.
7. Para No. 7 is incorrect hence, denied and a pack of lie as no posting/transfer order was issued by the department, which cannot make any sense by sending the removal order to Rustam College, Mardan as the appellant was not reinstated by the respondents nor any posting order of the appellant, if there was any order, why the same was not annexed with the reply.
8. Para No. 8 is incorrect hence, denied. Already explained.
9. Para No. 9 needs no reply and the appellant will also raise further objection at the time of arguments.

Prayer

It is humbly requested that by accepting this Rejoinder, the service appeal of the appellant may kindly be allowed as prayed for.

Any other relief not specifically prayed for but deemed proper by this honorable court in the circumstances of the case may also be granted.

Appellant

Through:



Barkat Ullah Khan
Advocate High Court
LLM London

BEFORE THE HON'BLE SERVICES TRIBUNAL,
KHYBER PAKHTUNKHWA, PESHAWAR.

Rejoinder

In
Service Appeal No. 50/2019.


ALIA HUMA SIDDIQUI

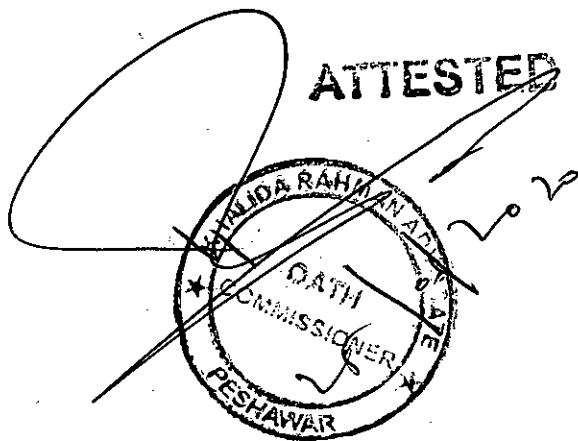
V
ERSUS

THE GOVERNMENT OF KHYBER PAKHTUNKHWA
THROUGH CHIEF SECRETARY & OTHERS

AFFIDAVIT.

I, **Barkatullah Advocate** as per instruction and information of my client do hereby solemnly affirm and declare on oath that the contents of the rejoinder are true and correct to the best of my knowledge and belief and nothing has been concealed from this Hon'ble Court.


Deponent



Appellant in person.

Khalid Rehman for Respondent.

Date of hearing: 13th April, 2019.

JUDGMENT

IJAZ ANWAR, J.---Appellant, Syed Asghar Shah, Ex-Additional District and Sessions Judge, through instant appeal under section 5 of the Khyber Pakhtunkhwa Subordinate Judiciary Service Tribunal Act, 1991, has impugned Notification No.242-J dated 29.10.2010, whereby major penalty of compulsory retirement from service has been imposed upon him by the Hon'ble Chief Justice, Peshawar High Court, Peshawar being the competent authority. The appellant formulated his prayer as follow:-

"On acceptance of service appeal, the impugned order of Authority, findings of the Authorized Officer and Notification of compulsory retirement dated 29.10.2010 and suspension order dated 21.10.2010 issued by the office of the Registrar, Peshawar High Court be declared null and void and inoperative upon the rights of the appellant. Further appellant be restored to his post and designation as he enjoyed on 29.10.2010 with all back benefits."

2. Brief facts leading to filing the instant appeal are that the appellant was serving as Additional District and Sessions Judge / OSD at Peshawar High Court, Peshawar, when he was served with a show-cause notice dated 02.10.2010 issued by Authorized Officer, within the meaning of sub-rule (3) of Rule 5 of Khyber Pakhtunkhwa Government Servants (Efficiency and Discipline) Rules, 1973, levelling therein the allegations of ill-reputation and adverse entries in his PERs qua integrity of the appellant; that the appellant submitted his reply to the show-cause notice, wherein, he denied the allegations and charges; however, the appellant was served with final show-cause notice dated 21.10.2010, wherein, major penalty of compulsory retirement was proposed by the Authorized Officer against the appellant; that the appellant submitted his reply to the Final show-cause notice and also appeared before the Authorized Officer on 29.10.2010 for personal hearing, he again denied the charges levelled against him, however, vide impugned notification dated 29.10.2010, the appellant was awarded major penalty of compulsory retirement from service. Hence, the instant appeal.

3. Learned counsel for the appellant argued that Honourable the Chief Justice has got no powers to departmentally proceed against the appellant and pass the order of his compulsory retirement and he argued that under Rule 4 of Khyber Pakhtunkhwa Judicial Service Rules, 2001, only the High Court is declared as the appointing authority, and according to him in accordance with the recent judgment of august Supreme Court of Pakistan reported as PLD 2015 SC 360, only the Administration Committee of the High Court is empowered to proceed against the appellant; he further argued that in the absence of regular inquiry no charge of misconduct can be proved summarily; he also questioned the decision of the learned Authorized Officer to dispense with regular inquiry on the ground that no such admitted sufficient incriminating evidence was available on record to justify such order.

4. Learned counsel representing respondent High Court argued that record of the appellant is replete of adverse entries in ACRs/PERs; he also argued that where the adverse entries carrying remarks regarding the integrity, it cannot be ignored.

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

6. The objection regarding the incompetency of departmental proceedings against the appellant has been mainly argued as such, we would take up this objection first. Perusal of record transpires that the appellant has been proceeded against under the Khyber Pakhtunkhwa Government Servants (Efficiency and Discipline) Rules, 1973 (hereinafter to be referred as E&D Rules, 1973). The E&D Rules, 1973 define 'authority' and 'authorized officer' under Rule 2 sub-clauses 'b' and 'c', as follows:

"2. Definition:-----In these rules, unless the context otherwise requires, the following expressions shall have the meanings hereby respectively assigned to them, that is to say:--

- (a)
- (b) "authority" means the Governor or an officer or authority designated by him to exercise the powers of the authority under these rules;
- (c) "authorized officer" means an officer authorized by the authority to perform functions of an authorized officer under these rules.
- (d)"

In accordance with scheme of E&D Rules, 1973, it is the authority, who can initiate and finalize the departmental proceedings against the delinquent civil servant. Similarly, the Authority can appoint authorized officer who has either to proceed and adopt shorter procedure or to go for regular inquiry keeping in view the facts and circumstances of the case. In the instant case, the decision of initiating the departmental inquiry was taken by Honourable the Chief Justice when a report regarding conduct of different judicial officers was placed before him. Thus, on 23.09.2010 Honourable the Chief Justice decided to initiate departmental proceedings against different judicial officers. Relevant Paras are reproduced below:

"1. Having been conferred the trust of heading the Institution and taking oath under the Constitution, I deem it my earnest duty to cleanse the District Judiciary from all those elements who have corrupted the judiciary and have brought bad name to it. The National Judicial Policy, 2009, also mandates action against all those Judicial Officers who carry persistent reputation of being corrupt and have a life style beyond their ostensible means of income.

2. With the background I direct the Registrar to put the cases of the following District and Sessions Judges and Additional District and Sessions Judges, in a first stage, as they fall within the category mentioned in N/1 above.

- i.
- ii.
- iii.
- iv.
- v.
- vi.
- vii.
- viii.
- ix.
- x. Syed Asghar Shah, Additional District and Sessions Judge."

Similarly, the Registrar, Peshawar High Court on 27.09.2010 submitted the report regarding the service career of the appellant in the following words:-

"The record of the officer at S. No. x shows that he is having a reputation of being corrupt and living beyond his means. There are number of complaints against him."

Hon'ble the Chief Justice after perusing the report of the appellant including other delinquent Judicial Officers appointed Mr. Justice Miftah-ud-Din Khan as Authorized Officer to proceed against the appellant under E&D Rules, 1973 and formal order to this effect was issued on 28.09.2010. The Authorized Officer on the basis of available record decided to adopt shorter procedure and dispensed with regular inquiry, accordingly served the appellant with show-cause notice dated 02-10-2010 containing the following allegations:-

"That you have persistent reputation of being corrupt throughout;

That your record speaks volumes about your ill reputation which includes adverse entries in your PERs regarding your integrity during your service career;

That your life style shows that you are living beyond your ostensible legal means."

After the receipt of reply to the show-cause notice, the Authorized Officer considered the record of the appellant and on the basis thereof, he formed an opinion that the accused/officer deserves to be awarded major penalty of compulsory retirement from service, he recommended it as such. Accordingly, Hon'ble the Chief Justice while exercising his powers as envisaged in Rule 4(1)(b)(ii) of E&D Rules, 1973 imposed the major penalty of compulsory retirement from service upon the appellant.

7. The reliance of the learned counsel for the appellant on the case of 'Registrar Peshawar High Court and others v. Shafiq Ahmad Tanoli and others' reported in PLD 2015 SC 360 is misplaced, because reported judgment goes against the appellant. Relevant Para-21 of the said judgment is reproduced below for ready reference:-

"21. On separation of the Judiciary from the Executive pursuant to the mandate of Article 175 of the Constitution, the authority under the Efficiency and Discipline Rules was conferred on the Chief Justice vide Notification No. SORII(S&GAD)5/(29)/86 dated 16th of January 1992. The said notification along with the table reads as under:-

"POWER OF CHIEF JUSTICE AS AUTHORITY UNDER NWFP GOVERNMENT SERVANTS (E&D) RULES, 1973.

NOTIFICATION

PESHAWAR, DATED 16TH, JANUARY, 1992.

No.SORII(S&GAD)5(29)/ 86:- In exercise of the powers conferred by clauses (b) and (c) of Rule 2 of the North-West Frontier Province (Efficiently and Discipline) Rules, 1973, and in supersession of this department's Notification No. SOSIII(S&GAD)1-80/ 73, dated the 28th January, 1975, the Governor of the North- West Frontier Province is pleased to direct that the officers specified in columns 3 and 4 of the table below shall respectively be the "Authority" and "Authorized Officer" for the purpose of the said rules in respect of civil servants specified against each in column 2 of the said table.-

S.No.	Basic Pay Scale of Government Servant	Authority	Authorised Officer
1	2	3	4
1
2.	Officer of former Provincial Civil Service (Judicial Branch) in Basic Pay Scale 17 and above.	Chief Justice	As Authorized by the authority.

According to this notification, the Chief Justice could exercise all the powers conferred on the Governor of the Province without the approval of the latter at initial or final stage."

It is clear from definition given in section 2(b) of E&D Rules, 1973, that the 'authority' means the Governor or an officer or authority designated by him to exercise the powers of the authority under these rules. The Hon'ble Supreme Court quite rightly referred to Notification No. SORII(S&GAD)5(29)/86 dated 16.01.1992, whereby, the Governor has designated Hon'ble the Chief Justice as 'authority' for the officers of former provincial civil service (Judicial Branch) in BPS 17 to 21. Thus, the objection on the competency of the Hon'ble the Chief Justice to proceed against the appellant is misplaced and is accordingly repelled. Under E&D Rules, 1973, Hon'ble the Chief Justice was declared as 'authority' and it has got a stamp of approval from the apex Court in Shafiq Ahmad Tanoli's case.

8. The main factor behind initiation of departmental proceedings against the appellant is an order in Bail Petition No.160/2010, when the appellant granted bail to one Mian Nisar Gul Kakakhail, in

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2014 P L C (C.S.) 476

[Peshawar High Court]

Before Nisar Hussain Khan and Musarrat Hilali, JJ

AMJAD KHAN

Versus

Wafaqi Mohtasib (Ombudsman)' Secretariat through Secretary, Islamabad and another

Writ Petition No.1394-P of 2012, decided on 13th August, 2013.

(a) Constitution of Pakistan---

---Art. 199---Constitutional petition---Civil service---Termination from service--- No show-cause notice--- Non-issuance of charge sheet---Effect---Petitioner's services were terminated without assigning any reason or giving any show-cause notice---Validity---Demand of statutory law was that before proceeding against any civil servant, who had been appointed/selected after due process of law, proper inquiry such as issuing charge sheet/statement of allegations and show cause notice should be conducted---Record of the present case was silent about adopting of any procedure, which was violative of law---Petitioner was re-instated into service with all back benefits---Constitutional petition was allowed.

(b) Constitution of Pakistan---

---Art. 199---Constitutional petition---Civil service---Appointment---Irregularities committed by department in appointment---Termination from service of employee---Scope---Petitioner being fully eligible/ qualified was appointed by the Competent Authority after due process of selection---Petitioner took over the charge of post and started performing his duties---After the lapse of some time the department realized that proceedings for recruitment were illegal due to non-conformity with rules---Competent authority declared the appointment of petitioner void and terminated his service---Validity---Any irregularity, in appointment, if committed by the department itself, the appointee could not be harmed, damaged or condemned subsequently when it occurred to the department that it had itself committed some irregularities qua any appointment---Termination order of petitioner/employee was set aside---Petitioner was re-instated into service with all back-benefits---Constitutional petition was allowed.

Collector of Customs and Central Excise Peshawar and 2 others v. Abdul Waheed and 7 others 2004 SCMR 303 and District Coordination Officer District Dir Lower and others v. Rozi Khan and others 2009 SCMR 663 rel.

Ijaz Anwar for Petitioner.

Muhammad Farooq Shah, D.A.-G. for Respondents.

ORDER

MUSARRAT HILALI, J.--- This petition is with the prayer for declaring the impugned orders 29-10-2010 and 13-10-2010 as illegal, unlawful, void ab initio and of no legal effect and reinstatement of the petitioner as Upper Division Clerk in BPS-9 with all back benefits and wages.

2. Precisely, facts of the case are that respondent No.2 advertised certain posts including the post of Upper Division Clerk in the Daily Frontier Post in its issue dated 2-4-2010 inviting applications for the same. The petitioner also finds himself eligible applied for the subject post along with others. As a result of Test and Interview conducted on 17-4-2010, the petitioner was appointed/selected vide office memorandum dated 29th April, 2010 issued by the respondents. The petitioner took over the charge and drew his monthly salary till October, 2010 when all of a sudden through the impugned order dated 29-10-2010 issued by respondent No.2 on the directives of respondent No.1's letter dated 13-10-2010 whereby petitioner's services were dispensed with. Feeling aggrieved, petitioner filed appeal, which was not entertained vide letter dated 8th March, 2012, hence necessitated the filing of constitutional petition in hand.

3. Learned counsel for petitioner contended that the petitioner has been selected after due process of law but the respondents without any justifiable reason and adopting proper course dispensed with his services, hence the impugned orders are based on mala fide, which require to be struck down.

4. Comments were sought from respondents, which have been received, wherein, it is mainly contended that proceedings for recruitment were illegal due to non-conformity with rules, hence the competent authority declared the appointments void and without legal effect.

We have heard learned counsel for the parties and gone through the record appended with this petition.

5. The record transpires that certain posts including the post of Upper Division Clerk were advertised by respondents inviting applications from the desirous candidates. The petitioner feeling himself eligible and qualified applied for the post of Upper Division Clerk. The competent authority constituted a Committee for conducting Test and Interview of the candidates. As a result of this process, the petitioner was selected on 29th April, 2010, however, he was shocked when informed that his services have been terminated by the respondents without assigning any reason much less plausible. The plea prevailed with the respondents is noted in their comments, which has been mentioned in the upper part of this judgment.

6. It is the demand of statutory law that before proceeding against any civil servant, who has been appointed/selected after due process of law, proper inquiry such as issuing of charge sheet/statement of allegations and show-cause notice shall be conducted. In the instant case the record is silent about adopting of this procedure, which is violative of law on the subject. Moreover, it is settled principle of law that for any irregularity whatsoever, if committed by the department itself, the appointee cannot be harmed, damaged or condemned subsequently when it occurs to the department that it had itself committed some irregularities qua any appointment. This view was taken in the case of Collector of Customs and Central Excise Peshawar and 2 others v. Abdul Waheed and 7 others (2004 SCMR 303), which was reaffirmed in 2009 SCMR 663 (District Coordination Officer District Dir Lower and others v. Rozi Khan and others).

7. As no proper inquiry such as issuing of charge sheet/statement of allegations, show-cause notice has been issued to the petitioner, therefore, keeping in view the law on the subject as well as the view taken by the Hon'ble Supreme Court in above referred cases, while accepting this petition, we set aside the impugned orders declaring the same as illegal, unlawful, void ab initio and direct the respondents to reinstate the petitioner with all back-benefits.

JJK/483/P

Petition accepted.

2020 P L C (C.S.) 1254

[Subordinate Judiciary Service Tribunal]

Before Lal Jan Khattak and Ijaz Anwar, JJ

Syed ASGHAR SHAH, AD&SJ

Versus

PESHAWAR HIGH COURT, PESHAWAR through Registrar

Service Appeal No.53-P of 2011, decided on 4th May, 2019.

Khyber Pakhtunkhwa Subordinate Judiciary Service Tribunal Act (VIII of 1991)---

---S.5---Khyber Pakhtunkhwa Government Servants (Efficiency and Discipline) Rules, 1973, Rr. 2 (b)(c), 4 (1)(b)(ii) & 5(3)---Additional District and Sessions Judge---Allegation of ill-reputation---Adverse entries recorded in the Annual Confidential Report---Persistent reputation of being corrupt---Dispensing with regular inquiry---Compulsory retirement from service---Competent authority to initiate departmental proceedings---Adverse entries were recorded in the Annual Confidential Report of Judicial Officer---Competent authority issued show-cause notice to the employee while dispensing with regular inquiry and he was compulsorily retired from service---Chief Justice, High Court, decided to initiate departmental inquiry when a report with regard to conduct of Judicial Officer was placed before him and he appointed authorized officer to proceed against the employee---Authorized officer decided to dispense with regular inquiry and issued show cause notice to the Judicial Officer who submitted his reply against the said notice---Chief Justice imposed major penalty of compulsory retirement upon the employee on the basis of report of authorized officer---Contention of employee (Judicial Officer) was that without regular inquiry no charge of misconduct could be proved---Validity---Competent authority could initiate and finalize the departmental proceedings against delinquent civil servant---Authority had power to appoint authorized officer who could dispense with regular inquiry or conduct a regular inquiry keeping in view facts and circumstances of the case---Chief Justice, High Court, had been declared as 'authority' under Khyber Pakhtunkhwa Government Servants (Efficiency and Discipline) Rules, 1973---No record with regard to corruption of Judicial Officer was available---Adverse remarks recorded in Annual Confidential Report of the officer were communicated after his retirement---Said remarks could not be used against the Judicial Officer in the present matter---Nothing was on record with regard to ill-reputation of employee except one expunged adverse Annual Confidential Report---Repeated adverse entries or malignant service record should exist for the term 'persistent reputation of being corrupt'---Even no evidence was available that employee was living beyond ostensible means---Mere show-cause notice with regard to ill-reputation or living beyond ostensible means was not suffice unless there was some evidence to that effect---Competent authority had power to impose any of the penalties but same were to commensurate with the gravity of charge---Allegations against the employee were not of such a nature to impose penalty of compulsory retirement from service---High Court observed that punishment imposed upon the Judicial Officer was extremely harsh---Punishment was converted into the reduction of judicial officer to the post of Senior Civil Judge for a period of three years---Judicial Officer was to be restored to his original seniority on completion of said period of reduction to the post---Period of compulsory retirement was directed to be treated as leave of the kind due and countable towards length of service---Appeal was allowed, in accordingly.

Registrar Peshawar High Court and other v. Shafiq Ahmad Tanoli and others PLD 2015 SC 360; Auditor General of Pakistan v. Muhammad Ali 2006 SCMR 60; G.M. Pak Railways v. Muhammad Rafique 2013 SCMR 372; Muhammad Ali S. Bukhari v. Federation of Pakistan 2008 SCMR 214; Syed Fida Hussain Kazmi v. IGP Punjab 2008 SCMR 1513; Secretary to Government of the Punjab Food Department Lahore v. Javed Iqbal 2007 PLC (C.S.) 692; Maqbool Ahmad v. Chief Executive, FESCO 2004 SCMR 637 and Commissioner, Punjab ESSI v. Jamal Butt 2004 SCMR 186 rel.

2020 P L C (C.S.) 639

[Peshawar High Court]

Before Lal Jan Khattak and Ahmad Ali, JJ

NOOR-UL-WAHAB

Versus

FEDERATION OF PAKISTAN through Secretary Ministry of Interior Government of Pakistan and 3 others

Writ Petition No.4966-P of 2019, decided on 25th September, 2019.

Civil service---

----Appointment on deputation---Such appointee sought absorption in the borrowing department---Validity---Deputation was an administrative arrangement between borrowing and lending authorities for utilizing the service of an employee in the public interest and exigency of services against a particular post---Deputationist had no right to remain in borrowing department for ever and even he could not challenge order for his repatriation to his parent department---Competent authority could repatriate a deputationist as and when the exigencies of service required---Civil servant had no vested right to ask for his absorption in the borrowing department---Deputationist could not be treated as an aggrieved person provided he had been placed in the same grade and status in borrowing cadre which he was enjoying before his status of deputationist in the parent department---Constitutional petition was not maintainable which was dismissed, in circumstances.

Pakistan v. Fazal Rehman Khundkar and another PLD 1959 SC 82; Dr. Shafi-ur-Rehman Afridi v. CDA, Islamabad 2010 SCMR 378; Mst. Robia Ayub v. Federation of Pakistan 2013 PLC (C.S.) 915; Abdul Majeed v. Chief Secretary, Punjab 2015 PLC (C.S.) 1381; Lal Khan v. Employees Old Age Benefit Institution 2010 PLC (C.S.) 1377; 2018 PLC (C.S.) 1248; Zain Yar Khan v. Chief Engineer 1998 SCMR 2419, Aslam Warraich v. Secretary, Planning and Development Division 1991 SCMR 2330, Sheikh Abdul Rahim's case PLD 1964 Lah. 376; Abdul Khaliq Anjum v. Secretary Education 1998 PLC (C.S.) 839; Prof. M. Ashraf Khan Niazi v. Chairman Board of Governors, Allama Iqbal Medical College 2003 PLC (C.S.) 243; Pakistan v. Moazzam Hussain Khan and another PLD 1959 SC 13; Abdul Qayyum v. Nasrullah Khan Draishak and others 1975 SCMR 320; Ala-ud-Din Akhtar v. Government of Punjab and another 1982 CLC 515; Ch. Muhammad Bakhsh v. Government of Punjab PLD 1989 Lah. 175; Ayyaz Anjum v. Government of Punjab and others 1997 PLC (C.S.) 123; 1997 SCMR 169; Rafique Ahmad Chaudhry v. Ahmad Nawaz Malik and others 1997 PLC (C.S.) 124; 1997 SCMR 170; Hafiz Hamdullah v. Saifullah Khan and others PLD 2007 SC 52; Daniel v. State 1968 AIR Mad. 349 and Government of East Pakistan v. Federation of Pakistan PLD 1962 Kar. 353 rel.

Arab Shabbir Ahmad for Petitioner.

Respondent in motion.

Date of hearing: 25th September, 2019.

JUDGMENT

AHMAD ALI, J.----Through the instant Writ Petition, filed under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973, the petitioner has prayed for the following relief:

"On acceptance of this writ petition an appropriate writ may please be issued declaring the petitioner fit and eligible to be absorbed in respondents department/FIA, the petitioner is discriminated in the matter of absorption as his similarly placed colleagues were allowed permanent absorption, the reluctance on the part of the respondent department (FIA), is

illegal, unlawful, without lawful authority and of no legal effect, the petitioner having every right to be absorbed in the FIA and order has taken its effect, the petitioner has every right to continue his service as Constable in FIA and respondents Nos.1 to 3 may also be directed to induct/absorb the petitioner permanently in the department and he may be given the same relief which had been given to the employees absorbed in FIA or

Any other remedy deemed proper may also be allowed".

2. In essence, grievance of the petitioner is that his services were transferred to the Federal Investigation Agency ("FIA") on deputation basis initially for a period of three years, which were later on given extension for several times in the said Agency. According to the petitioner, certain officials, who were working as such in the FIA, were absorbed therein, but when the petitioner applied for his permanent absorption in line with the said other absorbed officials, no fruitful result of his application dated 30.01.2018 was come-out and his application for absorption is still pending before the competent authority, hence the instant writ petition.

3. Arguments heard and record gone through.

4. Without dilating upon the merit of the cases, suffice it to say that by now it is settled law that deputationist has no right to remain in borrowing department for ever. He has also no right to challenge order of his repatriation to his parent department as it has been held by the superior courts in different judgments.

5. In case of transfer on deputation, no vested right accrued to a deputationist to continue for the period of deputation. The competent authority was empowered to repatriate a deputationist as and when the exigencies of service required. Some of the cases in which this view has been taken are mentioned herein below:--

- (i) In the case of *Pakistan v. Fazal Rehman Khundkar* and another reported as PLD 1959 Supreme Court (Pak.) 82, it has been held by the Hon'ble Supreme Court of Pakistan that it is a matter of practice and common experience, that officers of the Provincial cadres deputed for service at the Centre are frequently recalled by their Province, by the Provincial Government, in the exigencies of the public service. Against such a recall they have no right of any kind to object, being substantively officers of the Provincial Government and only on deputation to the Centre. The mere fact that they may be holding at the Centre a post higher in rank than that to which their place in the Provincial cadre entitles them in the Provincial service does not constitute the least bar to the making of an order by the Central Government at the request of the Provincial Government, replacing the services of such an officer at the disposal of his parent Government.
- (ii) (ii) In the case of *Dr. Shafi-ur-Rehman Afridi v. CDA, Islamabad* reported as 2010 SCMR 378, it has been held by the Hon'ble Supreme Court of Pakistan that the provisions of Civil Servants Act, 1973, and rules made thereunder, as well as Esta Code were silent about the fact that a deputationist must serve his entire period of deputation and such omission seemed deliberate enabling the competent authority to utilize service of an employee in the manner as it might deem fit and proper. Period of deputation could at the best be equated to that of an expression of maximum period which could be curtailed or extended by competent authority and no legal or vested rights were available to a deputationist to serve his entire period of deputation in borrowing department.
- (iii) (iii) In the case of *Mst. Robia Ayub v. Federation of Pakistan* reported as 2013 PLC (C.S.) 915, it has been held by this Court that a deputationist cannot remain on deputation for an indefinite period or stipulated period in accordance with his/her own whims and wishes. Civil servant has no vested right to complete the deputation period as it is a matter relating to the terms and conditions of service. Competent authority of borrowing department having sole discretion to decide fate of deputationist could repatriate him at any time to parent department.
- (iv) (iv) In case of *Abdul Majeed v. Chief Secretary, Punjab* reported as 2015 PLC (C.S.) 1381, it has been held by the Hon'ble Lahore High Court that a deputationist did not have any vested

right to remain on the post as deputationist forever or for a stipulated period. A deputationist could be ordered to be repatriated to his parent department at any time without assigning any reason. Parent department of appellant-employee was not bound to assign reason for his repatriation.

- (v) (v) In case of Lal Khan v. Employees Old Age Benefit Institution reported as 2010 PLC (C.S.) 1377 (Karachi), it has been held by the Hon'ble High Court of Sindh that a deputationist had no vested right to remain on post forever or for a stipulated period. A deputationist could not challenge order of his repatriation as he could be repatriated back to parent department at any time.

In this regard reference can also be made to a judgment reported in 2018 PLC (C.S.) 1248.

6. We may mention here that the deputationist by no stretch of imagination and in absence of any specific provision of law can ask to serve rest of his service in the borrowing department, he can be repatriated being a deputationist by the Competent Authority in the interest of public and exigency of service as and when so desired and such order of the competent authority cannot be questioned. The Civil Servants Act, 1973 and rules made there under as well as ESTACODE are silent about the fact that a deputationist must serve his entire period of deputation and this omission seems deliberate enabling the Competent Authority to utilize the service of an employee in the manner as it may deem fit and proper. The period of deputation can at the best be equated to that of an expression of maximum period which can be curtailed or extended by the Competent Authority and no legal or vested rights whatsoever are available to a deputationist to serve his entire period of deputation in the borrowing Department. In this regard we are fortified by the dictum laid down in the following judgments:-

Zain Yar Khan v. Chief Engineer 1998 SCMR 2419, Aslam Warraich v. Secretary, Planning and Development Division 1991 SCMR 2330, Pakistan v. Fazal-ur-Rehman PLD 1959 SC (Pak.) 82, Sheikh Abdul Rahim's case PLD 1964 Lah. 376, Abdul Khaliq Anjum's case 1998 PLC (C.S.) 839, Government of Pakistan v. Prof. M.A. Saeed C.P.No.427-L of 1991, Prof. M. Ashraf Khan Niazi v. Chairman Board of Governors, Allama Iqbal Medical College 2003 PLC (C.S.) 243.

7. We have also examined the controversy from another angle that as to whether the Constitutional petition is maintainable or not? when a civil servant has no vested right to ask for his absorption in the borrowing department as the matter relates to the terms and conditions of service, the Constitutional jurisdiction as conferred upon High Court under Article 199 of the Constitution of Islamic Republic of Pakistan cannot be invoked. In this regard reference can be made to the dictum laid down in the following cases:

Pakistan v. Moazzam Hussain Khan and another PLD 1959 SC 13, PLD 1964 (W.P.) Lah. 376, Abdul Qayyum v. Nasrullah Khan Draishak and others 1975 SCMR 320, Ala-ud-Din Akhtar v. Government of Punjab and another 1982 CLC 515, Ch. Muhammad Bakhsh v. Government of Punjab PLD 1989 Lah. 175, Ayyaz Anjum v. Government of Punjab and others 1997 PLC (C.S.) 123, 1997 SCMR 169, Rafique Ahmad Chaudhry v. Ahmad Nawaz Malik and others 1997 PLC (C.S.) 124, 1997 SCMR 170 and Abdul Khaliq Anjum v. Secretary Education 1998 PLC (C.S.) 839.

8. It is also worth to mention here that a deputationist could not be treated as an aggrieved person provided he had been placed in the same grade and status in borrowing cadre which he was enjoying before his status of deputationist in the parent department. In the case of Hafiz Hamdullah v. Saifullah Khan and others, reported in PLD 2007 Supreme Court 52, it was held as under:-

(a) Constitution of Pakistan (1973)----

----Art.199(1)(a)-----Constitutional jurisdiction of High Court---Scope--- "Aggrieved person"---Connotation--- Constitutional jurisdiction of High Court, under Art. 199(1)(a) of the Constitution, can be invoked by an aggrieved person, which denotes a person who has suffered a legal grievance, against whom a decision has been pronounced which has

wrongfully deprived him or wrongfully refused to him something which he was legally entitled to--- Further requirement is that the person invoking Constitutional jurisdiction under Art.199 of the Constitution has to establish that any of his legal or fundamental rights guaranteed under the Constitution has been violated resulting in legal loss".

9. More so, it may not be out of place to mention here that a deputationist has no vested legal right to remain on a post as deputationist forever and repatriation of petitioner to his parent department delegates no legal right to him to challenge it by way of writ petition.

10. The term "legal right" was also discussed in case titled Daniel v. State 1968 AIR Mad. 349 with the following observations:---

"(1) In its strict sense is one which is an ascertainable claim, enforceable before Courts and administrative agencies; (2) In its wider sense, a legal right has to be understood as any advantage or benefit conferred upon a person by a rule of law; (3) There are legal rights which are not enforceable, though recognized by the law; (4) There are rights recognized by International Court, granted by International Law, but not enforceable; and (5) A legal right is a capacity of asserting a secured interest rather than a claim that could be asserted in the Courts."

11. The term "legal rights" was also examined in case titled Government of East Pakistan v. Federation of Pakistan PLD 1962 Kar. 353 as under:

"The term "legal right" obviously means a right recognized by law and capable of being enforced by the power of the State, but not necessarily in a Court of law. It is a right of a party recognized and protected by a rule of law, the violation of which would be a legal wrong done to his interest and respect for which is a legal duty, even though no action may actually lie."

12. On the touchstone of the criterion as discussed hereinabove the case of petitioner has been examined and we are of the considered opinion that petitioner has no legal right whatsoever and therefore, the question of its recognition or enforcement does not arise. We have no hesitation in our mind to hold that deputation can be defined as an administrative arrangement between borrowing and lending Authorities for utilizing the services of an employee in the public interest and exigency of services against a particular post and the deputationist cannot remain on deputation for an indefinite period or stipulated period in accordance with his own whims and wishes.

13. The question as to whether any valuable right whatsoever is accrued in favour of petitioner as deputationist, the answer is "NO".

14. In view of what has been discussed herein above, the instant petition, being devoid of merits is dismissed.

ZC/82/P

Petition dismissed.

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2020 P L C (C.S.) 815

[Lahore High Court (Multan Bench)]

Before Ch. Muhammad Iqbal, J

Syed IMRAN QADIR GILANI

Versus

FEDERATION OF PAKISTAN through Ministry of Communications, Pakistan Secretariat, Islamabad and 5 others

W.P. No.5975 of 2015, decided on 20th May, 2019.

Civil service---

---Appointment on deputation---Withdrawal of---Scope---Employee did not have any vested right to remain on the post as deputationist for an indefinite period or to get absorption in the other department---Parent department at any time without assigning any reason could pass orders with regard to repatriation of its employee---Constitutional petition was dismissed, in circumstances.

S. Masood Abbas Rizvi v. Federation of Pakistan and others 2014 SCMR 799; Dr. Shafi ur Rehman Afridi v. C.D.A., Islamabad through Chairman and others 2010 SCMR 378; Ghansham Das v. Federation of Pakistan through Secretary Establishment Division and others 2017 PLC (C.S) 191; Aziz Ul Allah and others v. Government of Balochistan through Chief Secretary, Quetta and another 2018 SCMR 5; Rafiq Ahmed and others v. Government of Balochistan through Chief Secretary, Quetta and others 2018 SCMR 48 and Muhammad Sharif Tareen, Chief of Section (Acting) (BPS-19), Planning and Development Department, Government of Balochistan, Civil Secretariat v. Government of Balochistan through Chief Secretary and another 2018 SCMR 54 rel.

Muhammad Ali Siddiqui for Petitioner.

Syed Muhammad Najam-us-Saqib, Assistant Attorney General, Malik Muhammad Tariq Rajwana for Respondents Nos.2 to 5.

Date of hearing: 20th May, 2019.

JUDGMENT

CH. MUHAMMAD IQBAL, J.----Through this single judgment, I intend to decide the captioned writ petition along with connected W.P.No.11371/2013 and W.P.No. 7111/ 2014, as common questions of law and facts are involved in all these petitions.

2. Through this writ petition, the petitioner has challenged the order dated 13.03.2014, passed by General Manager (P&A), Pakistan Tourism Development Corporation ("PTDC") whereby the permanent induction of the petitioner in National Highway Authority ("NHA") has been cancelled/withdrawn, the order dated 08.05.2014, passed by the Assistant Director (Personal-I), NHA in respect of the pay and allowances of the petitioner (ex-Director Admin BS-19 Punjab-South NHA Multan) and the petitioner was directed to join his parent department (PTDC), the order dated 16.05.2014, passed by General Manager (Punjab-South), NHA in respect of the pay and allowances of the petitioner and the order dated 19.05.2014, passed by the Dy. Director (Accounts), NHA in respect of the clearance certificate for issuance of Last Pay Certificate to the petitioner.

3. Brief facts of the case are that the petitioner was appointed in PTDC in February, 1994 and promoted in BS-19 on 02.06.2009 vide Notification No.FNO 4(5)/2010 Roads dated 04.02.2011. The services of the petitioner were placed at the disposal of the NHA on deputation basis for two years which was extended till 09.02.2014. The petitioner obtained NOC for absorption in NHA which was issued and the petitioner was allowed to permanently absorb in NHA on 02.03.2012 and finally on 06.08.2012, the petitioner was absorbed in NHA. The Executive Board Committee of NHA was

convened who was requested to review its earlier order in respect of absorption of the petitioner in NHA. In the said meeting, it was recommended that the petitioner be repatriated to his parent department forthwith. The PTDC also requested the NHA to repatriate the petitioner through letter dated 13.03.2014 and on their request, the impugned orders were passed. Hence, this writ petition.

4. Learned counsel for the petitioner submits that petitioner has permanently been absorbed in NHA, as such, the impugned orders/letters are illegal; that PTDC has been abolished through 18th amendment in the Constitution and the petitioner was rightly absorbed in NHA.

5. Learned counsel for the respondents raised objection that the writ petition is not maintainable; that the petitioner has no right to assail the order for repatriating the petitioner to PTDC; that the NHA as well as PTDC are ready to repatriate the petitioner, as such, no illegality has been committed by the respondent-departments.

6. Heard.

7. Admittedly the petitioner was appointed in the year 1994 in PTDC department which is still working and he was posted / transferred to the NHA on deputation basis on 04.02.2011 and his period was extended till 09.02.2014 whereafter, his deputation period was not further extended. The Committee of NHA Executive Board convened its meeting and decided the repatriation of the petitioner. Item No.16 of the proposal of agenda of the said meeting is reproduced as under:

"Agenda Item 16

Withdrawal of Induction/Absorption of Syed Imran Qadir Gilani as Director (Admin, BS-19) in NHA

Proposal

18.1 The NHA Executive Board is requested to review their earlier decision given in its 217th meeting held on June 4, 2012 to avoid the legal complications/implications. The office may be treated to be on deputation in NHA as before the decision of his absorption referred to above and he may be repatriated to his parent department forthwith."

8. The PTDC on 13.03.2014 and 16.06.2014 also requested the NHA Department to withdraw the permanent absorption of the petitioner in NHA and repatriate him to PTDC whereupon the permanent induction of the petitioner was withdrawn and he is no more an employee of NHA after expiry of period of deputation on 09.02.2014. The orders under challenge are in respect of repatriation of the petitioner and under the law laid down by the Hon'ble Supreme Court of Pakistan, this Court has no jurisdiction to interfere such like matter. The petitioner does not have any vested right to remain on the post as deputationist for an indefinite period or to get absorption in the other department. The parent department at any time without assigning any reason can pass orders in respect of repatriation of its employee. Reliance is placed on the case reported as S. Masood Abbas Rizvi v. Federation of Pakistan and others (2014 SCMR 799). Relevant portion of the judgment (supra) is reproduced as under:-

"4. We have heard the petitioner and have perused the record. It is settled principle that a deputationist does not have any vested right to remain on the post as deputationist forever or for a stipulated period, he could be ordered to be repatriated to the parent Department at any time without assigning any reason. This issue was raised in the case of Dr. Shafi-ur-Rehman Afridi v. C.D.A. Islamabad through Chairman and others (2010 SCMR 378) wherein this Court has held that a deputationist does not have vested right to continue for the stipulated period. We are of the considered view that petitioner being deputationist has no vested right to remain on a post as deputationist or otherwise and can be ordered to be repatriated and or relieved at any time. Moreover, in terms of section 2(b)(i) of Civil Servants Act, 1973 such person even loses his status as "Civil Servant" during the period he is on deputation. The parent Department of the petitioner is not obliged in law, to assign reasons for his repatriation. The learned High Court while dismissing the petition of the petitioner has rightly held that the parent Department of the petitioner was competent to issue the Notification dated 22nd July,

2013; for which the Department was not required to assign reasons as the petitioner was holding regular/ substantive post with the Department of Auditor-General of Pakistan".

Another reliance is placed on the case reported as Dr. Shafi ur Rehman Afridi v. C.D.A., Islamabad and others (2010 SCMR 378), relevant portion whereof is reproduced as under:-

"8. We have also examined the controversy from another angle that as to whether the Constitutional petition was maintainable or otherwise? As mentioned hereinabove it is well settled by now that a civil servant has no vested right to complete the deputation period and matter relating to the terms and conditions of service, the Constitutional Jurisdiction as conferred upon High Court under Article 199 of the Constitution of Islamic Republic of Pakistan cannot be invoked. In this regard reference can be made to the dictum laid down in the following cases:-

Pakistan v. Moazzam Hussain Khan and another PLD 1959 SC 13, PLD 1964 (W.P.) Lah. 376, Abdul Qayyum v. Nasrullah Khan Draishak and others 1975 SCMR 320, Ala-ud-Din Akhtar v. Government of Punjab and another 1982 CLC 515, Ch. Muhammad Bakhsh v. Government of Punjab PLD 1989 Lah. 175, Ayyaz Anjum v. Government of Punjab and others 1997 PLC (C.S.) 123, 1997 SCMR 169, Rafique Ahmad Chaudhry v. Ahmad Nawaz Malik and others 1997 PLC (C.S.) 124, 1997 SCMR 170 and Abdul Khaliq Anjum v. Secretary Education 1998 PLC (C.S.) 839.

9. It is worth mentioning that a deputationist could not be treated as an aggrieved person provided he had been placed in the same grade and status in borrowing cadre which he was enjoying before his status of deputationist. It may not be out of place to mention here that a deputationist has no vested right to remain on a post as deputationist forever or for a stipulated period as mentioned in the notification and can be repatriated at any time. In this regard reference can be made the case titled Muhammad Rafique v. Secretary, Wafaqi Mohtasib's Secretariat, Islamabad and 2 others 1998 SCMR 2631.

The learned Division Bench of Islamabad High Court in a case titled as Ghansham Das v. Federation of Pakistan through Secretary Establishment Division and others (2017 PLC (C.S) 191) observed that deputation being matter related to terms and conditions of service and constitutional petition by deputationist for his continuation on deputation is not maintainable. Reliance can also be placed on the cases titled as Aziz Ul Allah and others v. Government of Balochistan through Chief Secretary, Quetta and another (2018 SCMR 5), Rafiq Ahmed and others v. Government of Balochistan through Chief Secretary, Quetta and others (2018 SCMR 48) and Muhammad Sharif Tareen, Chief of Section (Acting) (BPS-19), Planning and Development Department, Government of Balochistan, Civil Secretariat v. Government of Balochistan through Chief Secretary and another (2018 SCMR 54).

9. In view of above, this writ petition is dismissed being not maintainable.

ZC/I-14/L

Petition dismissed.

2020 PLC (C.S.) 905

[Islamabad High Court]

Before Miangul Hassan Aurangzeb, J

Mst. SAMAN NAZ

Versus

FEDERATION OF PAKISTAN through Secretary Ministry of Federal Education and Profession Training Islamabad and 4 others

Writ Petitions Nos.3503, 1700 of 2019 and 3143 of 2018, decided on 19th November, 2019.

Civil Servants (Appointment, Promotion and Transfer) Rules, 1973---

---R.20-A---Office Memorandum No.1(28)/75-D.II dated 06-03-1975---Appointment on deputation---Withdrawal of---Wedlock policy---Effect---Contention of employees (constitutional petitions) was that the orders for their repatriation to the parent departments were against law---Validity---Deputationist was not entitled to complete the tenure of deputation---Competent authority had power to repatriate a deputationist without assigning any reason---No vested right accrued to a deputationist to continue for the period of deputation---Competent authority was empowered to repatriate a deputationist as and when exigencies of service required---Employees had no grievance against their repatriation to parent departments by the borrowing departments---No legal or vested right was available to a deputationist to serve in the borrowing departments for an indefinite period---Provisions of R.20-A of Civil Servants (Appointment, Promotion and Transfer) Rules, 1973 could not be interpreted to provide for an indefinite period to an appointment on deputation---Parent department had not issued No Objection Certificate in favour of employees for an extension in their deputation period---Borrowing departments had expressed its unwillingness to extend the deputation period of employees---Absorption or confirmation of any deputationist in the borrowing department was to be according to prescribed procedure---Consent of deputationist for suspension or termination of lien on his permanent post in the parent department as well as agreement of the parent department was to be obtained---Petitioners' borrowing departments had not sought concurrence of parent department for their absorption during permissible deputation period---Department was directed not to discriminate the deputationist while deciding their cases for repatriation and absorption should be made through competitive process---Constitutional petition was dismissed, in circumstances.

Pakistan v. Fazal Rehman Khundkar PLD 1959 SC 82; Dr. Shafi-ur-Rehman Afridi v. CDA, Islamabad 2010 SCMR 378; Mst. Robia Ayub v. Federation of Pakistan 2013 PLC (C.S.) 915; Abdul Majeed v. Chief Secretary, Punjab 2015 PLC (C.S.) 1381; Lal Khan v. Employees Old Age Benefit Institution 2010 PLC (C.S.) 1377; Asma Shaheen v. Federation of Pakistan 2013 PLC (C.S.) 391; Senate Secretariat v. Faiqa Abdul Hayee 2014 SCMR 522; Rasheed Tareen v. Chairman Works Welfare Board 2012 PLC (C.S.) 54 and Sudhir Ahmed v. Speaker Balochistan Provincial Assembly 2017 SCMR 2051 rel.

Kashif Ali Malik and Muhammad Asif Gujjar for Petitioner.

Arshid Mehmood Kiani, Learned Deputy Attorney-General for Respondents.

S.M. Rehan Naqvi, Assistant Director (Legal) F.D.E.

Date of hearing: 23rd October, 2019.

JUDGMENT

MIANGUL HASSAN AURANGZEB, J.---Through this judgment, I propose to decide Writ Petitions Nos.3503/2019, 1700/2019 and 3143/2018 since they entail common questions of law and fact.

2. Through Writ Petition No.3503/2019, the petitioner, Mst. Saman Naz, impugns the notification dated 26.09.2019 issued by the Federal Directorate of Education, Islamabad ("F.D.E."), whereby she was repatriated to her parent department, i.e. Workers Welfare Board, Government of Khyber Pakhtunkhwa ("K.P.K").

3. Through Writ Petition No.3143/2018, the petitioner, Ms. Faheem Begum, impugns the order dated 27.07.2018 issued by the F.D.E., whereby she was repatriated to her parent department, i.e. Elementary and Secondary Education Department, Government of K.P.K.

4. Through Writ Petition No.1700/2019, the petitioner, Ms. Naveeda Ejaz, seeks a direction to the F.D.E. to issue her absorption order with effect from March 2013 on the basis of the decision taken by the Prime Minister to absorb deputationists serving in the F.D.E. under the wedlock policy. Furthermore, the petitioner seeks the benefit of upgradation to BS-16 with effect from 01.07.2016.

5. Messrs Muhammad Asif Gujjar and Kashif Ali Malik, Advocates, learned counsel for the petitioners, submitted that the petitioners' husbands were gainfully employed in Islamabad; that the petitioners have a right to serve as a deputationists in the F.D.E. until their husbands are serving in Islamabad; that the petitioners' repatriation to their parent departments would be most inconvenient for them and their families; that presently there are 44 deputationists in BS-16 serving in the F.D.E.; that the respondents have adopted a policy of pick and choose based on favouritism in issuing repatriation orders; and that under the Establishment Division's Office Memorandum dated 13.05.1998, the petitioners should be permitted to continue working on deputation basis at the F.D.E.

6. Learned counsel for the petitioners further submitted that the petitioners should be given the benefit of permanent absorption in the borrowing department/F.D.E. under the wedlock policy; that letter dated 11.11.2014 from the Capital Administration and Development Division ("C.A.&D.D.") shows that the Prime Minister had approved the absorption of 11 female teachers (including the petitioners in Writ Petitions Nos.1700/2019 and 3143/2018) serving as deputationists in the said Division; that on 24.03.2012, the Prime Minister had approved amendment in Rule 20A of the Civil Servants (Appointment, Promotion and Transfer) Rules, 1973 ("the 1973 Rules") so that the serving husbands and wives are posted at the same station; that thereafter a proviso was inserted to Rule 20A of the said Rules; and that after the insertion of the said proviso, the maximum deputation period of five years does not apply to a husband and wife posted at the same station. Learned counsel for the petitioner prayed for the writ petition to be allowed in terms of the relief sought therein.

7. On the other hand, the learned Deputy Attorney-General submitted that the petitioners had served as deputationists in the F.D.E. for more than five years; that the petitioners' parent departments has not issued No Objection Certificate ("N.O.C.") for a further extension in the petitioners' deputation period; that a deputationist has no vested right to be absorbed in the borrowing department without the concurrence of the parent department; and that at no material stage has the petitioners' parent departments issued N.O.C. for the petitioners' permanent absorption in F.D.E. Learned Deputy Attorney-General prayed for the writ petitions to be dismissed.

8. I have heard the contentions of the learned counsel for the petitioners as well as the

learned Deputy Attorney-General and have perused the record with their able assistance.

Writ Petition No.3503/2019 (Mst. Saman Naz v. Federation of Pakistan and others):-

9. The record shows that the petitioner was appointed on contract basis as a Teacher in Folks Grammar Higher Secondary School, Hattar (Female), District Haripur, K.P.K. under the Workers Welfare Board, Government of K.P.K. Vide notification dated 08.02.2011, the K.P.K. Workers Welfare Board regularized her services. Vide office order dated 19.09.2013, the petitioner was promoted from BS-14 to BS-16.

10. Since the petitioner's father was serving as an Assistant Incharge (BS-15) in the C.A.&D.D. and her husband was working for Wi-tribe Pakistan Limited at Islamabad, the petitioner, on 30.05.2012, applied to be sent on deputation to the F.D.E. On 30.04.2014, the petitioner was released from duties at the Folks Grammar Higher Secondary School so that she could join her duties as a deputationist at the F.D.E.

11. Vide office order dated 05.05.2014 issued by the F.D.E., the petitioner was taken on deputation for a period of one year (i.e. 30.04.2014 to 29.04.2015) and posted in the Islamabad Model School, F-7/2, Islamabad. Vide letter dated 15.05.2015, an extension for a period of two years (i.e. from 30.04.2015 to 29.04.2017) in the petitioner's deputation period was approved by the Sectary, C.A.&D.D. Vide notification dated 21.05.2015 issued by the F.D.E., the petitioner's deputation period was further extended for a period of two years (i.e. 30.04.2015 to 29.04.2017). Vide notification dated 19.04.2017 issued by the C.A.&D.D., the petitioner's deputation period was extended under the wedlock policy from 30.04.2017 to 29.04.2019.

12. Vide letter dated 14.05.2019, the F.D.E. requested the Workers Welfare Board, Government of K.P.K. for the issuance of N.O.C. so that the petitioner's deputation period is extended to 29.04.2020. There is nothing on the record to show that the Workers Welfare Board, Government of K.P.K. had issued N.O.C. for an extension in the petitioner's deputation period beyond five years. Vide impugned notification dated 26.09.2019 issued by the F.D.E., the petitioner has been repatriated to her parent department.

Writ Petition No. 3143/2018 (Faheem Begum v. Federation of Pakistan and others):-

13. The record shows that in 2008, the petitioner was serving as a teacher in Government Girls Primary School, Ghareeb Abad, Takht Bhai, District Mardan. The petitioner's husband is serving as a Trained Graduate Teacher at the Islamabad Model College for Boys, I-10/1, Islamabad. The petitioner had applied to be sent on deputation to the F.D.E. Vide letter dated 19.11.2008, the F.D.E. requested the School and Literacy Department, Government of K.P.K. to send the petitioner on deputation to the F.D.E. for the period of three years. Vide letter dated 14.02.2009, the Elementary and Secondary Education Department, Government of K.P.K. placed the petitioner's services at the disposal of the F.D.E. on deputation basis for an initial period of three years. Vide office order dated 14.03.2009, the petitioner was posted/transferred to the Federal Government Junior Model School No.40, I-10/1, Islamabad. There is nothing on the record to show that the petitioner's deputation period was extended.

14. On 03.04.2018, the F.D.E. requested the Elementary and Secondary Education Department, Government of K.P.K. for an extension in the petitioner's deputation period with effect from 17.02.2014. Vide letter dated 06.07.2018, the Elementary and Secondary Education Department, Government of K.P.K. regretted F.D.E.'s request for an extension in the petitioner's deputation period. In the said letter dated 06.07.2018, the petitioner's parent department had noted that if the petitioner's fails to join her duty in the parent department, she shall be proceeded

against on account of unauthorized stay/misused of deputation period beyond 15.02.2012. Furthermore, the petitioner's parent department requested the F.D.E. to relieve her immediately so that she could report back to her parent department. Consequently, vide office order dated 27.07.2018, the petitioner was repatriated to her parent department. The said office order has been assailed by the petitioner in the instant writ petition. The petitioner also asserts that the Prime Minister had approved the petitioner's absorption in F.D.E. as reflected in letter dated 11.11.2014 issued by the C.A.&D.D.

Writ Petition No.1700/2019 (Naveeda Ejaz v. Federation of Pakistan and others):-

15. The record shows that in 2008, the petitioner was serving in the Government Girls High School, Rustom, Mardan, K.P.K. On 13.11.2008, the petitioner was sent on deputation to the F.D.E. for a period of three years, i.e. up to 12.11.2011. Office order dated 01.12.2008 issued by the F.D.E. clearly provides that on the expiry of the petitioner's deputation period, "she will automatically stand repatriated to her parent department." The petitioner's husband is living in Islamabad and is presently serving as Upper Division Clerk at Islamabad Model College for Girls, G-7/2, Islamabad.

16. Written comments filed on behalf of the F.D.E. shows that the petitioner's deputation period was extended up to 11.11.2013. She completed her five-year deputation period on 12.09.2013. It has also been pleaded that the petitioner's parent department regretted the issuance of N.O.C. for further extension in the petitioner's deputation period, and had requested for her to be repatriated. The said written comments also show that the petitioner has been repatriated with effect from 03.05.2019.

17. On 29.04.2019, the petitioner filed the instant writ petition. Along with the said petition, the petitioner filed an application for interim injunction praying for the respondents to be restrained from passing an adverse order against her. Vide interim order dated 30.04.2019, this Court restrained the respondents from repatriating the petitioner.

WHETHER A DEPUTATIONIST HAS A VESTED RIGHT TO COMPLETE THE DEPUTATION PERIOD:-

18. It is settled law that a deputationist may not necessarily complete the tenure for which he was sent on deputation and the power vested with the competent authority to repatriate a deputationist without assigning any reason. In case of transfer on deputation, no vested right accrued to a deputationist to continue for the period of deputation. The competent authority was empowered to repatriate a deputationist as and when the exigencies of service required. Some of the cases in which this view has been taken are mentioned herein below:-

- (i) In the case of *Pakistan v. Fazal Rehman Khundkar* (PLD 1959 Supreme Court (Pak.) 82), it has been held by the Hon'ble Supreme Court of Pakistan that it is a matter of practice and common experience, that officers of the Provincial cadres deputed for service at the Centre are frequently recalled by their Province, by the Provincial Government, in the exigencies of the public service. Against such a recall they have no right of any kind to object being substantively officers of the Provincial Government and only on deputation to the Centre. The mere fact that they may be holding at the Centre a post higher in rank than that to which their place in the Provincial cadre entitles them in the Provincial service does not constitute the least bar to the making of an order by the Central Government at the request of the Provincial Government, re-placing the services of such an officer at the disposal of his parent Government.

- (ii) In the case of Dr. Shafi-ur-Rehman Afridi v. CDA, Islamabad (2010 SCMR 378), it has been held by the Hon'ble Supreme Court of Pakistan that the provisions of the 1973 Rules, and rules made thereunder as well as Esta Code were silent about the fact that a deputationist must serve his entire period of deputation and such omission seemed deliberate enabling the competent authority to utilize service of an employee in the manner as it might deem fit and proper. Period of deputation could at the best be equated to that of an expression of maximum period which could be curtailed or extended by competent authority and no legal or vested rights were available to a deputationist to serve his entire period of deputation in borrowing department.
- (iii) In the case of Mst. Robia Ayub v. Federation of Pakistan (2013 PLC (C.S.) 915), it has been held by this Court that a deputationist cannot remain on deputation for an indefinite period or stipulated period in accordance with his/her own whims and wishes. Civil servant has no vested right to complete the deputation period as it is a matter relating to the terms and conditions of service. Competent authority of borrowing department having sole discretion to decide fate of deputationist could repatriate him at any time to parent department.
- (iv) In case of Abdul Majeed v. Chief Secretary, Punjab (2015 PLC (C.S.) 1381), it has been held by the Hon'ble Lahore High Court that a deputationist did not have any vested right to remain on the post as deputationist forever or for a stipulated period. A deputationist could be ordered to be repatriated to his parent department at any time without assigning any reason. Parent department of appellant-employee was not bound to assign reason for his repatriation.
- (v) In case of Lal Khan v. Employees Old Age Benefit Institution (2010 PLC (C.S.) 1377), it has been held by the Hon'ble High Court of Sindh that a deputationist had no vested right to remain on post forever or for a stipulated period. A deputationist could not challenge order of his repatriation as he could be repatriated to parent department at any time.

19. On account of the above referred trite law, the petitioner could not have any grievance against her repatriation by the borrowing department to her parent department. Another vital question that needs to be answered is whether the petitioners could have invoked the Constitutional jurisdiction of this Court to prevent their repatriation to their parent department. The law in this regard is also well settled. In the case of Dr. Shafi-ur-Rehman Afridi v. CDA, Islamabad (2010 SCMR 378), it has been held by the Hon'ble Supreme Court of Pakistan that a deputationist cannot be treated as an 'aggrieved person' because he/she has no vested right to remain on a post as deputationist forever or for a stipulated period as mentioned in notification and can be repatriated at any time. At no material stage, had the petitioners been absorbed in the borrowing department.

WHETHER A DEPUTATIONIST HAS A VESTED RIGHT TO CONTINUE SERVING AS SUCH UNTIL HIS/HER SPOUSE IS EMPLOYED AT THE STATION WHERE THE BORROWING DEPARTMENT IS LOCATED:-

20. Another question that needs to be determined is whether a person posted on deputation at a particular station can claim to remain so posted for all the period during which his or her spouse remains employed at such a station. It is indeed not pleasant for a husband and wife to be working at different stations but the law cannot be circumvented to bring them to the same station. To hold in favour of such a deputationist would be tantamount to disregarding the innumerable authorities from the Superior Courts holding that no legal or vested rights were available to a deputationist to serve as in the borrowing department for an indefinite period. In the case of Mst. Robia Ayub v.

Federation of Pakistan (2013 PLC (C.S.) 915), the petitioner had challenged the repatriation to the parent department on the ground that it was contrary to inter alia the wedlock policy. The petitioner in that case had also prayed for a direction to the borrowing department to absorb her. This Court dismissed the writ petition by inter alia holding that the petitioner's claim on the basis of the wedlock policy was not justifiable. Furthermore, it was held as follows:-

"10. The law on the subject is very much clear. The petitioner is a civil servant and remained on deputation for a fixed term and was returned to her parent department in consequence of terms and conditions of her deputation. A deputationist cannot remain on deputation for an indefinite period or stipulated period in accordance with his/her own whims and wishes. While taking this view, I am fortified by a judgment rendered by the Hon'ble Apex Court in the case of Dr. Shafi-ur-Rehman Afridi v. CDA Islamabad through Chairman and others (2010 SCMR 378)."

21. Additionally, in the case of Asma Shaheen v. Federation of Pakistan (2013 PLC (C.S.) 391), this Court spurned the plea that a deputationist cannot be repatriated due to the wedlock policy. At paragraph 13 of the said judgment, it has been held as follows:-

"13. From the plain reading of above said wedlock policy, it is obvious that the word "may" has been used in the said letters and not "shall". It has never been stressed that all the deputationists whose spouses are working at Islamabad shall must be absorbed or will continue to serve at Islamabad. As regards the contention that some of deputationists have been absorbed, the same cannot be taken into consideration, for the simple reason that it was the discretion of the competent authority to absorb some of deputationists according to requirement of department, capabilities, know how, performance, qualification, general reputation and on the basis of annual confidential reports. The others cannot claim the same treatment as of right. The deputation is a contract and if borrowing department does not need the services of a deputationist, he or she must go back to parent department and thus no fundamental rights of the petitioners have been infringed and no provisions of Constitution have been violated. Learned counsel for the petitioners have failed to rebut the contention of learned Deputy Attorney-General that at present no deputationist is being absorbed. There appears no political element with regard to repatriation of the petitioners to their parent departments."

22. As regards the contention of the learned counsel for the petitioner that by virtue of the proviso of Rule 20A to the 1973 Rules, the petitioner is entitled to continue serving as a deputationist until her husband is gainfully employed in Islamabad, it may be noted that the said proviso exempts the application of Rule 20A of the said Rules to posting of (i) serving husband and wife at the same station, (ii) unmarried female government servants at the place of residence of their parents/family, and (iii) married female government servants at the place of residence/posting of their husbands who are not in government employment. Rule 20A of the said Rules sets out the eligibility for appointment on deputation and the maximum period for which an appointment on deputation can be made. Therefore, by virtue of the said proviso, the maximum period for appointment on deputation may not apply to the three categories of persons referred to in the proviso to Rule 20A of the 1973 Rules. The said proviso cannot be interpreted to provide for an indefinite period for an appointment on deputation. The said proviso cannot come to the aid of a deputationist where N.O.C. for an extension in the deputation period is not given by the parent department or where the borrowing department is unwilling to extend the deputation period. It is an admitted position that in the cases at hand, the petitioners' parent departments have not issued N.O.C. for an extension in their deputation period. By issuing reparation orders, the

F.D.E. (borrowing department) has expressed its unwillingness to extend the petitioners' deputation period.

WHETHER THE PETITIONERS HAVE A VESTED RIGHT TO BE ABSORBED IN THE F.D.E. (BORROWING DEPARTMENT):-

23. As regards the contention of the learned counsel for the petitioners that the petitioners have a right to be absorbed in the F.D.E. on the basis of the Prime Minister's decision reflected in the C.A.&D.D.'s letter dated 11.11.2014, suffice it to say that for the absorption or confirmation of any deputationist in the borrowing department, the ESTA CODE prescribes a procedure. Till date formal orders for the petitioners' absorption have not been passed. Establishment Division's Office Memorandum No.1(28)/75-D.II, dated 06.03.1975, provides that where there is an intention to permanently absorb a deputationist in the cadre or department where he is serving on deputation and the recruitment rules for the post provide for such a course, in such cases the consent of the deputationist to the suspension or termination of lien on his permanent post in the parent department, as well as the agreement of the parent department, should be obtained. With the completion of these formalities, the deputationist will be treated as a regular member of the establishment of the borrowing department. As early as 1952, it was stated in the Ministry of Finance's letter No.600-R.III/52, dated 06.03.1952 that permanent officers belonging to a Department or Government, while on deputation to another Department or Government, should not be confirmed in the latter without the prior formal concurrence of the former and the consent of the officer concerned. This instruction has been formally recognized in Establishment Division's Office Memorandum No.8/7/64-F.I, dated 19.10.1964. The absorption of a deputationist made in derogation of the said policy would be shorn of legality.

24. At no material stage has the petitioners' borrowing department sought the formal concurrence of the parent departments for their absorption during the permissible deputation period. Since the very process for the petitioners' absorption has not been initiated in accordance with the applicable law, the petitioners' desire for absorption in the borrowing department is not a valid ground for assailing the repatriation order. In case of *Senate Secretariat v. Faiqa Abdul Hayee* (2014 SCMR 522), it has been held by the Hon'ble Supreme Court of Pakistan that absorption was not a vested right of an employee and the employer had the right and authority to terminate the deputation period or repatriate the employee back to his/her parent department. In case of *Mst. Robia Ayub v. Federation of Pakistan* (2013 PLC (C.S.) 915), it has been held by this Court that a deputation being a contract, a deputationist would have no vested right to remain/continue on deputation or his permanent absorption. A deputation is an administrative agreement between borrowing and lending authorities for utilizing the services of an employee in the public interest and exigency of services against a particular post against which the deputationists cannot claim any right of permanent absorption. Additionally, in case of *Rasheed Tareen v. Chairman Works Welfare Board* (2012 PLC (C.S.) 54), it has been held by the Hon'ble Balochistan High Court that a deputationist through Constitutional petition could not claim permanent absorption in borrowing department as it was the prerogative of borrowing department to determine tenure of deputation to revert/return a deputationist or to absorb a deputationist permanently. It was also held that due to the borrowing department's refusal for the petitioner's permanent absorption, the petitioner could not be termed as an aggrieved person.

25. In view of the above, I find the instant petitions to be without merit and the same are accordingly dismissed with no order as to costs.

26. Before parting with this judgment, it may be observed that the F.D.E. must not discriminate while deciding to repatriate deputationists who have completed the permissible

deputation period or whose parent departments have not given N.O.C. for an extension in their deputation period. Furthermore, since there is a growing propensity for deputationists from Provinces to be absorbed in the borrowing departments at Islamabad, the absorption of such deputationists must be made through a competitive process. Instead of appointing deputationists against posts in the F.D.E., regular appointments ought to be made against the posts vacated as a result of repatriation of deputationists. In the case of *Sudhir Ahmed v. Speaker Balochistan Provincial Assembly* (2017 SCMR 2051), it was held that where rules required a post to be filled by initial recruitment or promotion, a deviation from the legal course should not be adopted by making appointment by absorption.

ZC/171/Isl.

Petitions dismissed.

2018 P L C (C.S.) 1248

[Peshawar High Court]

*SA 50/18 Alia Humna Siddiq vs Higher Education
Judgment From Official Reporter*

Before Mohammad Ghazanfar Khan and Ijaz Anwar, JJ

MUHAMMAD AZEEM KHAN AFRIDI, CHAIRMAN, KHYBER PAKHTUNKHWA,
SERVICE TRIBUNAL

Versus

REGISTRAR OF THE PESHAWAR HIGH COURT and 4 others

W.P. No.2466-P of 2017, decided on 12th June, 2017.

(a) Khyber Pakhtunkhwa Service Tribunal Act (I of 1974)---

---Ss.3 & 3-B, [as amended by Khyber Pakhtunkhwa Service Tribunal (Amendment) Act, (XXII of 2013)], Ss.3 & 3-B---General Clauses Act (X of 1897), S.21---District and Sessions Judge---Appointment as Chairman, Service Tribunal---Repatriation before completion of tenure period---Appointment on ex-cadre posts---Deputationist---Scope---Petitioner was appointed as Chairman, Service Tribunal for a period of three years or till attaining the age of sixty years---Provincial Government with the consultation of the Chief Justice of the High Court repatriated the services of petitioner-employee---Employee filed reference against the repatriation order but same was rejected by the competent authority---Validity---Chief Justice of the High Court had been given the meaningful consultative powers in appointment of Members and Chairman of Service Tribunal---Appointments on ex-cadre posts were considered to be on deputation as period was required to be specified for such posting---Chairman, Service Tribunal was nominated by the Chief Justice for his appointment for specific period of three years or until he attained the age of sixty years whichever was earlier---Officer while posting under the Provincial Government remained under the administrative powers of Chief Justice---Authority to appoint and to hold the post of Chairman, Service Tribunal would remain with the Chief Justice of the High Court---Where authority had the power to appoint an individual then it had the power to remove also---Deputationist was at the consent of lending and borrowing departments and incumbent of the post had no right whatsoever to ask for completion of the tenure or have any right to remain as such---Lending department could require the services of its officer by repatriating him and similar would be the case with borrowing department---Borrowing department could relieve or spare the deputationist as no longer required---Mere posting of Chairman, Service Tribunal for three years could not be considered sacrosanct and same was subject to modification/curtailment at the exigencies of service---Deputationist did not have any right to remain on the post for ever or for a stipulated period---Deputationist could be ordered to be repatriated to the parent department at any time without assigning any reason---High Court was not obliged to assign any reason for repatriation of employee---Administration Committee of High Court had rightly regretted the reference of petitioner---Constitutional petition was dismissed in circumstances.

PLD 2013 SC 501 and PLD 2016 SC 961 ref.

2011 SCMR 1688; 2014 SCMR 799, 822 and 2010 SCMR 378-618 ref.

(b) Civil service---

---Deputationist---Scope---Deputationist did not have any right to remain on the post for ever or for a stipulated period---Deputationist could be ordered to be repatriated to the parent department at any time without assigning any reason.

Muhammad Muazzam Butt for Petitioner.

Nemo. for Respondents.

Date of hearing: 12th June, 2017.

JUDGMENT

IJAZ ANWAR, J.---Through this petition, the petitioner has called in question his repatriation order dated 9.5.2017 and claimed the following prayer:-

"It is therefore humbly prayed that this Hon'ble Court may decide as under:-

A. The Chairman, Khyber Pakhtunkhwa is entitled to complete three years of his tenure as provided in section 3(b) in KPK Service Tribunal (Amendment Act, 2013 and in view of Articles 4, 5 of the Constitution and decision of Supreme Court reported as PLD 2013 SC 501 whereby the question of law as involved in the case under consideration has been decided requiring obedience in terms of Article 189 and Article 190 in the Constitution of Pakistan.

B. The impugned order of repatriation dated May 9, 2017 issued by provincial government is unlawful being in conflict with section 3(b) of the above mentioned KPK Service Tribunal (Amendment) Act, 2013.

C. The decision of the Administration Committee of Peshawar High Court referred to the letter issued by the Registrar of Peshawar High Court dated 03.06.2017, being a executive, consultative and administrative authority is subject to judicial review, requiring the findings of the Administration Committee to be brought in consonance with the constitutional provisions laid down in Articles 189 and 190 of Constitution of Pakistan to be read with the judgment of Supreme Court reported as PLD 2013 SC 501.

D. Consequently, the impugned notification of repatriation of petitioner issued by provincial government may be declared as unlawful and ineffective against petitioner and the petitioner may therefore be allowed to complete his tenure of three years since his appointment as the Chairman of the Tribunal, in pursuance of the notification of the appointment issued by the Provincial Government of Khyber Pakhtunkhwa as Annexed A.

2. The facts as narrated in this petition are that vide Notification No. SO (E.I) E&AD/9-126/2015 dated January 5, 2015, Government of Khyber Pakhtunkhwa Establishment and Administration Department has appointed the petitioner as Chairman, Khyber Pakhtunkhwa Service Tribunal for a period of three years or till attaining the age of Sixty years with effect from 05/01/2015. Through the impugned notification dated 9.5.2017, the Provincial Government has with the consultation of the Hon'ble Chief Justice of Peshawar High Court, repatriated the services of the petitioner. The petitioner claimed to have submitted a letter No.1310-1315/ST, dated 12/05/2017 for the withdrawal of the notification in respect of his repatriation, that was followed by a reminder dated 19.5.2017. The petitioner then submitted a Reference to the Administration Committee of this Court against the same repatriation order, which was regretted by the Administration Committee of this Court, the order was

conveyed to him vide letter No.10039/Admn, dated 03/06/2017 communicating the following reasons:-

"While considering the representation against repatriation of Mr. Muhammad Azeem Khan Afridi, Chairman, Khyber Pakhtunkhwa Service Tribunal to High Court, the Administration Committee held that the repatriation of judicial officers is the prerogative of Hon'ble the Chief Justice which he has exercised in the case of Mr. Muhammad Azeem Khan Afridi. The Committee endorsed the same and directed that he should report immediately to High Court".

3. The learned counsel for the petitioner was heard in motion. He contended that the appointment of the petitioner as Chairman, Khyber Pakhtunkhwa Service Tribunal is a tenure posting and governed under section 3 (b) of the Khyber Pakhtunkhwa Service Tribunal Act, 1974, where under the petitioner has to complete a period of three years and before completion of the tenure period; the order of repatriation is legally not tenable. The learned counsel for the petitioner argued that by virtue of the reported judgments of the Apex Court PLD 2013 SC 501, the Khyber Pakhtunkhwa Service Tribunal was given independent status to uphold the separation of judiciary from the executive, thus the laws relating to the establishment of Services Tribunal was amended pursuant to the above judgment of the Apex Court. Learned counsel for the petitioner has also questioned the decision of the Administration Committee of this Court whereby the reason of repatriation has not been disclosed but considered it to be the prerogative of the Hon'ble Chief Justice. He argued that where the law provides posting/appointment for a specific tenure period, the Hon'ble Chief Justice was left with no prerogative. The learned counsel for the petitioner further argued that in view of the latest pronouncement of the Apex Court reported in PLD 2016 SC 961, every such administrative order of the High Court that violate any of the provision of law is questionable before this Court in constitutional jurisdiction.

4. To appreciate and consider the arguments of the learned counsel for the petitioner, we may refer to the amended provision of Service Tribunal Act, 1974, whereby appointments of the Chairman are made in the Khyber Pakhtunkhwa Service Tribunal. This amendment was inserted vide Khyber Pakhtunkhwa Act No.X of 2013. Section 3 is reproduced for convenience:-

3.Tribunal:--(1) The Governor may, by notification in the official gazette, establish one or more Service Tribunals and, where there are established more than one Tribunal, the Governor shall specify in the notification the class or classes of civil servants in respect of whom or the territorial limits within which, each such Tribunal shall exercise jurisdiction under this Act.

(2)----

(3)- A Tribunal shall consist of---

(a)- a Chairman, being a person who [is], has been, or is qualified to be, Judge of High Court; and

(b)- four members, two of whom shall be from amongst District and Sessions Judges and two from amongst the civil servants in BPS-20 and above]

(4)-The Chairman and members of a Tribunal shall be appointed by the Governor in consultation with the Chief Justice of the Peshawar High Court.]

(5)---

(6)---

3A.----

Section 3-B is also reproduced, which relates to tenure and other terms and conditions.

3-B. Tenure, terms and conditions of service of Chairman and members.---(1) The Chairman and a member shall hold office for a period of three years or until he attains the age of sixty years, whichever is earlier, and shall not be eligible for reappointment:

Provided that if a judge of the High Court is appointed as Chairman, he shall hold office for a period of three years or until he attains the age of superannuation as judge of the High Court whichever is earlier.

(2)-In case, a retired judge of the High Court is appointed as Chairman under clause (a) of subsection (3) of section 3, he shall hold office for a period of three years and shall not be eligible for re-appointment.

(3)-The other terms and conditions of service of the Chairman and members shall be such as may be determined by the Governor.

5. Admittedly, the petitioner is an officer of the status of District and Sessions Judge (BS-21) and has his seniority amongst other Judicial Officers of the Subordinate Judiciary. It is pertinent to mention here that in the appointment of the Members and Chairman of the Tribunal, the Chief Justice Peshawar High Court has been given the meaningful consultative powers because under the unamended subsection (4) of section 3 of the Service Tribunal Act, 1974 no such authority was expressly given. The unamended provision was:-

"The Chairman and Members of a Tribunal shall be appointed by the Governor on such terms and conditions as he may determine".

6. It is a matter of record that every appointment on these Ex-cadre posts are considered to be on deputation, because for every such posting, period is required to be specified. Similar is the case of Chairman of the Service Tribunal, who is in fact nominated by the Hon'ble Chief Justice for his appointment for specific period of three years or until he attains the age of Sixty years whichever is earlier. Moreover, the officer while posted under the Provincial Government remained under the administrative powers of the Hon'ble Chief Justice, because for his work and conduct, he remained answerable to the High Court. Though, it has not been specified in the amended section 3B of the Service Tribunal Act, 1974, how to repatriate or cut short the tenure of the Chairman of the Service Tribunal. But the fact remains that the authority, to appoint and to hold the post of Chairman Service Tribunal remains with the Hon'ble Chief Justice, suppose the officer is to be proceeded departmentally for any of his misconduct; the High Court would still wait for the completion of his tenure or to allow him to retire on superannuation. Section 21 of the General Clauses Act, 1897 will come into play, where an authority has the power to appoint an individual he has the power to remove also.

7. Apart from this fact, all these Ex-cadre posts are considered as on deputation to the Provincial Government, the main scheme of the concept of deputation is that it is at the consent of lending and borrowing departments and the incumbent of the post have no right, whatsoever, to ask for completion of the tenure or have any right to remain as such. At any time, the lending department can require the services of its officer by repatriating him and similar is the case with borrowing department; they can

relieve or spare him as no longer required.

8. The Hon'ble Supreme Court of Pakistan has in a number of judgments considered the posting of officers on deputation. In an identical case reported in 2011 SCMR 1688, the Apex Court dismissed the petition filed under Article 184 (3) by a Special Judge whose services were repatriated and who claimed that his tenure posting as Special Judge for three years could not be curtailed by Hon'ble Chief Justice Lahore High Court. The Apex Court refused to interfere in the repatriation of the Special Judge and held as:-

"On the touchstone of the criterion as mentioned herein above, we have examined the question as to whether in this case the provisions as enumerated in Article 184 (3) of the Constitution can be invoked?. The answer would be in negative for the simple reason that for all practical purposes the petitioner is under the administrative control of Lahore High Court Lahore and besides that now he has got no lien against the post of Special Judge Central, Rawalpindi being deputationist and his services have already been repatriated. By no stretch of imagination the learned Lahore High Court Lahore can be directed to refrain from initiation of any disciplinary action as this aspect of the matter exclusively falls within its domain of jurisdiction".

9. In order to appreciate the amended provision of section 3B, it will be necessary to go into the background of the amendment. What we gathered from the relevant paras of the reported judgment PLD 2013 SC 501. The intension of specifying 3 years was because of the fact that previously contract appointments of the Retd. Judges were extended repeatedly from time to time. Thus the Hon'ble Supreme Court restricted that tenure to only 03 years and that too was subjected to the consultation of the respective Chief justice of the Province.

10. Mere posting under section 3B of a Chairman for 03-years cannot be considered sacrosanct, and that is subject to modification/curtailment at the exigencies of service.

11. The consistent view of the Superior Court on the tenure of the deputationist are that deputationist did not have any vested right to remain on the post for ever or for a stipulated period. The deputationist could be ordered to be repatriated to the parent department at any time without assigning any reason. Similarly, the parent department is not obliged under the law, to assign any reasons for his repatriation. Thus, the Hon'ble Administrative Committee of this Court has rightly regretted the reference of the petition, by holding the repatriation as prerogative of the Hon'ble Chief Justice.

12. In expressing the above view, we are fortified by the judgments of the Apex Court reported in 2014 SCMR 799, 822, 2011 SCMR 1688, 2010 SCMR 378 = 618.

13. For the above stated reasons, this petition being misconceived and have no merit, is dismissed accordingly.

ZC/213/P

Petition dismissed.



GOVERNMENT OF KHYBER PAKHTUNKHWA
HIGHER EDUCATION, ARCHIVES &
LIBRARIES DEPARTMENT

SUMMARY FOR CHIEF MINISTER,
KHYBER PAKHTUNKHWA

10
For Response to
Alia Huma

Subject: DISCIPLINARY PROCEEDINGS AGAINST MS. ALIA HUMA SIDDIQI, EX-LECTURER IN PHYSICS (BPS-17) AT GOVT. GIRLS DEGREE COLLEGE, RUSTAM, MARDAN.

The services of Ms. Alia Huma Siddiqi, Ex-Lecturer in Physics (BS-17) Higher Education Department were placed at the disposal of Govt. of Sindh, Education & Literacy Department on deputation basis for a period of three years vide notification dated 12-03-2005 (F/A). After expiry of deputation period, the lady concerned neither applied for extension in deputation nor reported for duty to her parent department.

2. Government of Sindh informed this Department through Notification dated 29-02-2012 (F/B) that the deputation of lady concerned is extended for two years w.e.f. 28-03-2011 to 27-03-2013 ignoring the intervening period. This extension is contrary to the deputation policy of Government of Khyber Pakhtunkhwa and may be considered as unauthorized extension. Meanwhile absence notice published in two daily newspapers "Express and Mashriq" on 30-03-2012 (F/C).

3. As a result of disciplinary proceedings major penalty (removal from service) was imposed by Chief Secretary, Khyber Pakhtunkhwa in respect of Ms. Alia Huma Siddiqi, Lecturer in Physics (BS-17) under rule 4(b)(iii) of the Khyber Pakhtunkhwa (Efficiency & Discipline) Rules, 2011 (F/D). Show Cause notice was served upon the accused officer at various addresses and after exhausting all the avenues to get her reply and which was of no avail at all, Rule-9 of the Khyber Pakhtunkhwa (Efficiency & Discipline) Rules, 2011 was evoked and consequently the competent authority exercised the powers of removal from service under Rule.4(b)(iii) (F/E).

11

4. While hearing the appeal filed by Ms. Alia Huma Siddiqui, Ex-Lecturer in Physics at Govt. Girls Degree College, Rustam-Mardan, the Khyber Pakhtunkhwa Service Tribunal, Peshawar passed the following verdict on 29.08.2017 (F/F):-

“The appeal is accepted and appellant is reinstated in service with the directions to the department to conduct denovo enquiry in accordance with law within a period of 90 days. The back benefits of the appellant shall be subject to final outcome of the denovo enquiry”

5. In pursuance of the judgment Khyber Pakhtunkhwa Service Tribunal, Peshawar, the ex-officer was reinstated in service for the purpose of denovo inquiry. The denovo inquiry was conducted and the inquiry officer concluded the following (F/G):-

“After expiry of the initial three years of deputation period w.e.f. March 2005 to March 2008, the accused lecturer remained willfully absent from duty from March 2008 to March 2013 without obtaining extension in her deputation from Higher Education Department. Hence, all the charges leveled against the accused in the charge sheet stand proved”

6. Show Cause Notice was accordingly served on the Ex-officer tentatively proposing imposition of major penalty of Removal from Service to which she submitted reply (F/H,I). An opportunity of personal hearing was granted to the accused officer, however, she could not prove her innocence and major penalty of Removal from Service was imposed on her ((F/J). The ex-officer has now submitted departmental appeal against the order of her removal from service (F/K) advancing the following grounds for relief:-

“that she served the department for almost 17 years and never remained absent rather was on deputation with the Sindh Government and the Government of Sindh was time and again pleased by extending the deputation period so the appellant was under the impression that she was permitted by the KPK government as the deputation is only allowed when both the departments are mutually agreed. So, she can be effected from any inaction on the part of the government”.

7. Departmental appeal of the Ex-Officer is submitted for perusal and orders of the Chief Minister, Khyber Pakhtunkhwa, please.

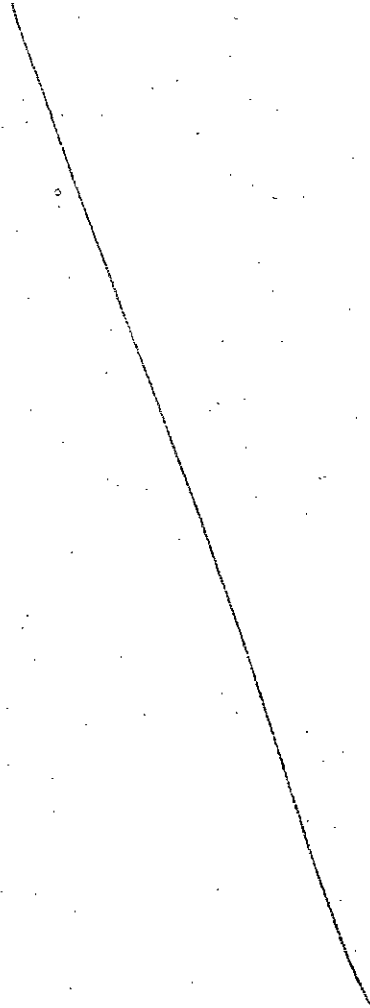


Secretary
Higher Education Department

~~Secretary
Establishment Department~~

Chief Secretary,
Khyber Pakhtunkhwa

Chief Minister,
Khyber Pakhtunkhwa




P. T. D

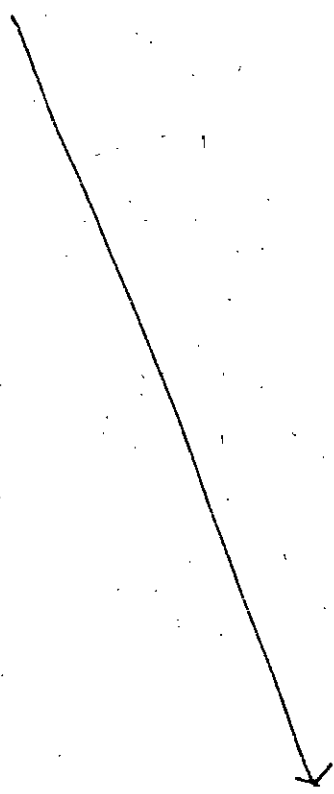
8. Summary for Chief Minister moved by Higher Education Department regarding departmental appeal of **Mst. Alia Huma Siddiqui**, Lecturer in Physics (BS-17), Govt. Degree College Rustam Mardan, against the order dated 03/04/2018 (F/J) whereby the appellant has been awarded a major penalty of "Removal from Service".

9. The case has been examined. It is observed that the Administrative Department has simply forward the appeal of the accused officer without ^{any} comment on the points raised by the accused in her appeal. The Administrative Department is required to share its considered view point on the appeal and make clear case for approval of the appellate authority.

10. The summary is therefore, returned to the Administrative Department to re-examine the case and submit a clear proposal for approval of the competent authority.


(Arshad Majeed)
Secretary Establishment
June 7, 2018

Secretary, Higher Education



REFERENCE PARA 10 OF THE SUMMARY.

11. The disciplinary case of the appellant, Ms. Alia Huma Siddiqui, Ex-Lecturer in Physics was processed in accordance with E&D Rule, 2011 and no law/rule has been violated as alleged by the appellant. A proper personal hearing was granted to the ex-lecturer, however, she could not put forth anything substantial in her defence except that she has 17 years' service at her credit.

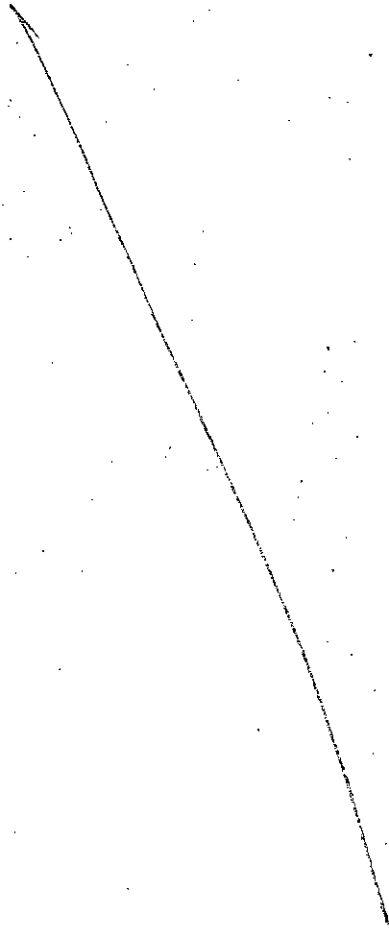
12. Since the appellant has served the public for 17 years, the Appellate Authority (Chief Minister, Khyber Pakhtunkhwa) might modify major penalty of Removal from Service into major penalty of Compulsory Retirement.

Secretary
Higher Education Department

~~Secretary
Establishment Department~~

Chief Secretary,
Khyber Pakhtunkhwa

Chief Minister,
Khyber Pakhtunkhwa



N. P. P


13- Summary for Chief Minister moved by Higher Education Department regarding departmental appeal of Mst. Alia Huma Siddiqui, Lecturer in Physics (BS-17), Govt. Degree College Rustam Mardan, against the order dated 03/04/2018 (F/J) whereby the appellant has been awarded a major penalty of "Removal from Service" has been examined and the summary was returned to the Administrative Department vide Para-8 to 10 for adding its comments on the appeal. In response the Administrative Department vide Para-11 of the summary has proposed penalty of "Compulsory Retirement" instead of "Removal from Service" in view of her 17 years' service vide Para-11 & 12 thereof.

14- In terms of Pension Rule-3.5 (ii) a retiring Pension is granted to a Government servant, who not being eligible for Superannuation Pension and is compulsorily retired from service by authority competent to remove him/her from service on grounds of inefficiency, misconduct or corruption.

15- In terms of provisions contained in Rule-17 (1) of Khyber Pakhtunkhwa Govt. Servants (E&D) Rules, 2011, an accused who has been awarded any penalty under these rules may, within thirty (30) days from the date of communication of the order, prefer departmental appeal to the appellate authority (F/AA). Therefore, appeal of the appellant is within stipulated period.

16- Forgoing in view, Para-6 of the Summary is submitted for orders of the Chief Minister Khyber Pakhtunkhwa being appellate authority in terms of Rule-17(1) of Khyber Pakhtunkhwa Government Servant (E&D) Rules-2011 to pass orders under Rule-17 (2) of the rules *ibid* (F/AA) as deemed appropriate.

17- Before submitting the case for approval of the appellate authority, Finance Department may add its views en-route on the points as to whether a civil servant having rendered less than 20 years' service can be compulsorily retired from service and would he/she be eligible for full pensionary benefit as per Pension Rule-3.5 (ii) as referred to Para-15 above read with (F/BB).


(Arshad Majeed)
Secretary Establishment
July 23, 2018

Finance Secretary

N.P.P

Subject: DISCIPLINARY PROCEEDINGS AGAINST MR. ALIA HUMA SIDDIQUI, EX-LECTURER IN PHYSICS (BS-17) AT GOVERNMENT GIRLS DEGREE COLLEGE, RUSTAM, MARDAN

18. Conversion of major penalty of "removal from service" into "Compulsory Retirement" or otherwise, is the prerogative of the Appellate Authority. To respond the query at para-17 of the summary, it is clarified that a civil servant having less than 20 years service, can be compulsory retired to remove him from service on grounds of inefficiency, misconduct or corruption under Chapter-III - Rule 3.5 (ii) (Flag-CC) of the Khyber Pakhtunkhwa Civil Servants Pension Rules and is eligible to retiring pension as per the prescribed limits given under Chapter-IV Rule 4.4 (1) (Flag-DD) of the Rules ibid.

Shakeel Qadir Khan
30.8.18

Shakeel Qadir Khan
Secretary, Finance Department

Chief Secretary

Para 12/11 - may be approved

Nawaz
30/8/18
CHIEF SECRETARY
Govt. Of Khyber Pakhtunkhwa

Chief Minister

Para 12 is approved

4.3.2018
Chief Minister
Khyber Pakhtunkhwa

Secy Higher/Edu:

Nawaz
Chief Secretary
Govt. Of Khyber Pakhtunkhwa

DS (Colleges)

05/9/2018

کتاب خانہ
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10-11-18



Far Responderets
Alia Huma 10

GOVERNMENT OF KHYBER PAKHTUNKHWA
HIGHER EDUCATION, ARCHIVES &
LIBRARIES DEPARTMENT

SUMMARY FOR CHIEF MINISTER,
KHYBER PAKHTUNKHWA

Subject: DISCIPLINARY PROCEEDINGS AGAINST MS. ALIA HUMA SIDDIQI, EX-LECTURER IN PHYSICS (BPS-17) AT GOVT. GIRLS DEGREE COLLEGE, RUSTAM, MARDAN.

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3. As a result of disciplinary proceedings major penalty (removal from service) was imposed by Chief Secretary, Khyber Pakhtunkhwa in respect of Ms. Alia Huma Siddiqi, Lecturer in Physics (BS-17) under rule 4(b)(iii) of the Khyber Pakhtunkhwa (Efficiency & Discipline) Rules, 2011 (F/D). Show Cause notice was served upon the accused officer at various addresses and after exhausting all the avenues to get her reply and which was of no avail at all, Rule-9 of the Khyber Pakhtunkhwa (Efficiency & Discipline) Rules, 2011 was evoked and consequently the competent authority exercised the powers of removal from service under Rule 4(b)(iii) (F/E).

4. While hearing the appeal filed by Ms. Alia Huma Siddiqui, Ex-Lecturer in Physics at Govt. Girls Degree College, Rustam Mardan, the Khyber Pakhtunkhwa Service Tribunal, Peshawar passed the following verdict on 29.08.2017 (F/F):-

“The appeal is accepted and appellant is reinstated in service with the directions to the department to conduct denovo enquiry in accordance with law within a period of 90 days. The back benefits of the appellant shall be subject to final outcome of the denovo enquiry”

5. In pursuance of the judgment Khyber Pakhtunkhwa Service Tribunal, Peshawar, the ex-officer was reinstated in service for the purpose of denovo inquiry. The denovo inquiry was conducted and the inquiry officer concluded the following (F/G):-

“After expiry of the initial three years of deputation period w.e.f. March 2005 to March 2008, the accused lecturer remained willfully absent from duty from March 2008 to March 2013 without obtaining extension in her deputation from Higher Education Department. Hence, all the charges leveled against the accused in the charge sheet stand proved”

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7. Departmental appeal of the Ex-Officer is submitted for perusal and orders of the Chief Minister, Khyber Pakhtunkhwa, please.

Secretary
Higher Education Department

Secretary
Establishment Department

Chief Secretary,
Khyber Pakhtunkhwa


Chief Minister,
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P.T.O

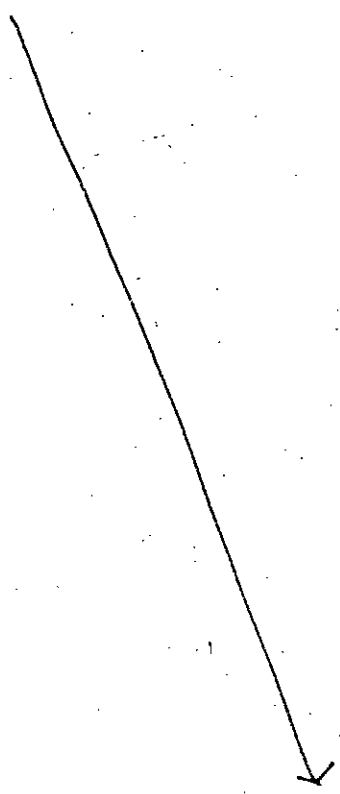
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10. The summary is therefore, returned to the Administrative Department to re-examine the case and submit a clear proposal for approval of the competent authority.


(Arshad Majeed)
Secretary Establishment
June 7, 2018

Secretary, Higher Education



REFERENCE PARA 10 OF THE SUMMARY.

11. The disciplinary case of the appellant, Ms. Alia Huma Siddiqui, Ex-Lecturer in Physics was processed in accordance with E&D Rule, 2011 and no law/rule has been violated as alleged by the appellant. A proper personal hearing was granted to the ex-lecturer, however, she could not put forth anything substantial in her defence except that she has 17 years' service at her credit.

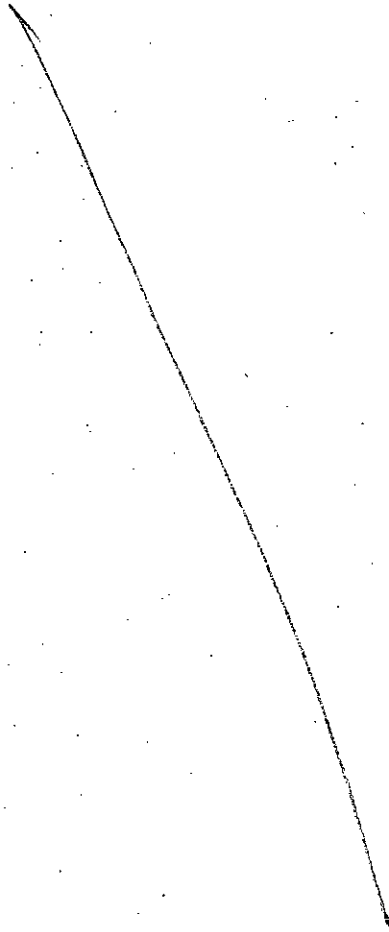
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Secretary
Higher Education Department

~~Secretary
Establishment Department~~

Chief Secretary,
Khyber Pakhtunkhwa

Chief Minister,
Khyber Pakhtunkhwa



N. P. P


15
7
13- Summary for Chief Minister moved by Higher Education Department regarding departmental appeal of **Mst. Alia-Huma Siddiqui**, Lecturer in Physics (BS-17), Govt. Degree College Rustam Mardan, against the order dated 03/04/2018 (F/J) whereby the appellant has been awarded a major penalty of "Removal from Service" has been examined and the summary was returned to the Administrative Department vide Para-8 to 10 for adding its comments on the appeal. In response the Administrative Department vide Para-11 of the summary has proposed penalty of "Compulsory Retirement" instead of "Removal from Service" in view of her 17 years' service vide Para-11 & 12 thereof.

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15- In terms of provisions contained in Rule-17 (1) of Khyber Pakhtunkhwa Govt. Servants (E&D) Rules, 2011, an accused who has been awarded any penalty under these rules may, within thirty (30) days from the date of communication of the order, prefer departmental appeal to the appellate authority (F/AA). Therefore, appeal of the appellant is within stipulated period.

16- Forgoing in view, Para-6 of the Summary is submitted for orders of the Chief Minister Khyber Pakhtunkhwa being appellate authority in terms of Rule-17(1) of Khyber Pakhtunkhwa Government Servant (E&D) Rules-2011 to pass orders under Rule-17 (2) of the rules *ibid* (F/AA) as deemed appropriate.

17- Before submitting the case for approval of the appellate authority, Finance Department may add its views en-route on the points as to whether a civil servant having rendered less than 20 years' service can be compulsorily retired from service and would he/she be eligible for full pensionary benefit as per Pension Rule-3.5 (ii) as referred to Para-15 above read with (F/BB).


(Arshad Majeed)
Secretary Establishment
July 23, 2018

~~Finance Secretary~~

N.P.P

Subject: DISCIPLINARY PROCEEDINGS AGAINST MR. ALIA HUMA SIDDIQUI, EX-LECTURER IN PHYSICS (BS-17) AT GOVERNMENT GIRLS DEGREE COLLEGE, RUSTAM, MARDAN

18. Conversion of major penalty of "removal from service" into "Compulsory Retirement" or otherwise, is the prerogative of the Appellate Authority. To respond the query at para-17 of the summary, it is clarified that a civil servant having less than 20 years service, can be compulsory retired to remove him from service on grounds of inefficiency, misconduct or corruption under Chapter-III - Rule 3.5 (ii) (Flag-CC) of the Khyber Pakhtunkhwa Civil Servants Pension Rules and is eligible to retiring pension as per the prescribed limits given under Chapter-IV Rule 4.4 (1) (Flag-DD) of the Rules ibid.

Shakeel Qadir Khan
30.8.18

Shakeel Qadir Khan
Secretary, Finance Department

Chief Secretary

Para 12/11 - may be approved

Nawaz
30/8/18
CHIEF SECRETARY
Govt. Of Khyber Pakhtunkhwa

Chief Minister

Para 12 is approved

4.9.2018
Chief Minister
Khyber Pakhtunkhwa

Secy Higher/Edu:

Nawaz
Chief Secretary
Govt. Of Khyber Pakhtunkhwa

DS (colleges)

06/9/2018

کتاب خانہ
وزارت تعلیم
راولپنڈی

