

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR.

Service Appeal No. 1348/2019

BEFORE: MRS. ROZINA REHMAN ... MEMBER(J)
MISS FAREEHA PAUL ... MEMBER(E)

Syed Haider Ali Shah S/O Syed Niaz Hussain Shah R/O Ghazikot
Mansehra, Ex-PST, posed at Government Primary School, Village
Datta, Tehsil and District Mansehra. (Appellant)

Versus

1. Government of Khyber Pakhtunkhwa through Secretary
Elementary and Secondary Education, Peshawar.
2. Director Elementary and Secondary Education, Government of
Khyber Pakhtunkhwa.
3. Assistant Director Establishment (Male) Elementary and
Secondary Education, Directorate E&SE, Peshawar.
4. District Education Officer (Male), Mansehra.
5. Head Teacher, Government Primary School Village Datta, Tehsil
and District Mansehra.(Respondents)

Mr. Sultan Ahmad Jamshed,
Advocate

.... For appellant

Mr. Muhammad Jan,
District Attorney

... For respondents

Date of Institution.....07.08.2019

Date of Hearing..... 26.01.2023 (at Camp Court, A/Abad)

Date of Decision..... 02.02.2023 (at Principal Seat Peshawar)

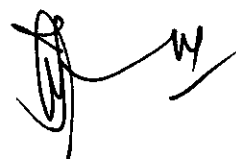
JUDGEMENT

FAREEHA PAUL, MEMBER (E): The service appeal in hand has
been instituted under Section 4 of the Khyber Pakhtunkhwa Service
Tribunal Act, 1974 against the order dated 08.05.2019 passed by



respondent No. 2 vide which departmental appeal of the appellant was rejected. It has been prayed that on acceptance of the appeal, the impugned orders passed by respondents No. 2 & 3 dated 08.05.2019 vide which the departmental appeal of the appellant was rejected and the order dated 03.06.2017 through which the appointment order of appellant was cancelled/withdrawn might be set aside and the appellant be reinstated in service with all back benefits.

2. Brief facts of the case, as given in the memorandum of appeal, are that the appellant was appointed as PST on 02.04.2015 and posted at Government Primary School, Village Datta, Tehsil and District Mansehra. He resumed his duties there. The District Education Officer (M) Mansehra passed the impugned order dated 03.06.2017 vide which his appointment order was cancelled/withdrawn. Feeling aggrieved, the appellant preferred departmental appeal/representation to the respondent No. 2 (Director E&SE, Peshawar) on 22.06.2017 and also applied to respondent No. 4 on 19.06.2017. Being aggrieved, the appellant was constrained to submit Writ Petition No. 63-A/2018, before the Hon'ble Peshawar High Court, Abbottabad Bench which was disposed of on 23.06.2018 with the directions to the appellate authority to decide the appeal preferred by the appellant within a period of thirty days after giving him the right of audience. Respondent No. 2 constituted inquiry on 30.01.2019 and the inquiry officer submitted his report dated 11.03.2019. The respondent No. 2 and his Assistant Director kept the proceedings secret which were never



communicated to the appellant by them, however, he succeeded to get the relevant copies two days prior to filing the instant service appeal. The appellant was made victim of highly disgraceful charges by the local enemies vide FIR No. 140 dated 03.06.2017, U/S 376-511 PPC, however, the learned competent court of Additional Sessions Judge, Mansehra gracefully acquitted him from the alleged charges by accepting the application of appellant u/s 265-K of Cr.PC, vide order dated 22.03.2018.

3. Respondents were put on notice who submitted reply/comments. We have heard the learned counsel for the appellant, the learned District Attorney for the respondents and perused the case file with connected documents in detail.

4. Learned counsel for the appellant presented the details of the case and contended that the impugned orders were void ab-initio and unlawful. He further contended that the competent authority appointed the inquiry officer who conducted the inquiry. It was clearly mentioned in the report that Mr. Javed Hussain, complainant appeared before the inquiry committee and stated at the bar that he had no grievance or complaint against the appellant and the appellant was recommended for reinstatement in service. He requested that the appeal might be accepted as prayed for.

5. The learned District Attorney while rebutting the arguments of the learned counsel for the appellant contended that after telephonic



complaint of Head Teacher, the appellant was charged in immoral activities vide FIR No. 140 dated 31.05.2017 u/s 375/311 PPC. As per report of SDEO (M) Mansehra the appellant showed naked movies to the girl students and kept himself very close to girls, a fact which was admitted by the appellant himself before the DSP and SDEO (M) Mansehra and further that he had taken photographs of girls and uploaded them on the face book and shared on whatsapp also. He further contended that the appellant, being a teacher, was not expected of such activities and his retention in service was neither in the interest of government nor general public. The learned District Attorney invited the attention to the appointment order, according to which the appellant was appointed purely on temporary and contract basis initially for one year and as per condition No. 12 of his appointment order, his services should be terminated at any time, in case his performance was found unsatisfactory and therefore, his appointment order was rightly withdrawn/cancelled.

6. Perusal of record and arguments presented before us reveal that the appellant was appointed against the post of PST (BS-12) on 02.04.2015 on adhoc basis on contract for a period of one year. His appointment order was withdrawn/cancelled on 03.06.2017 on the allegations of his involvement in immoral activities at the school. A letter dated 11.03.2019 from the Principal, GHS, Sec # 4 Khalabat Township Haripur, addressed to the Director E&SE, Khyber Pakhtunkhwa available with the appeal indicates that the Departmental appeal for reinstatement in service by the



appellant was forwarded to the Principal GHS for inquiry. The Principal GHS in his report has identified the following points:-

- (i) *FIR was lodged against Syed Haider Ali Shah on the charges of committing immoral activities with the girl students of 4th grade.*
- (ii) *Inquiry was conducted by the SDEO (M) Mansehra who recommended that the accused may be suspended from service.*
- (iii) *The DEO, Mansehra withdrew the appointment order of the accused.*
- (iv) *DPO, Mansehra submitted report to Director E&SE with the recommendation of removal from service of the accused.*
- (v) *Additional Sessions Judge Mansehra acquitted the accused, of the charges leveled against him, vide order dated 22.03.2018.*
- (vi) *Javed Hussain, complainant in FIR, stated that he had not lodged any complaint against the said teacher. On hearing hue & cry on that day, he rushed to the site where large number of locals had gathered. There, the police asked him to sign a paper, which he did without knowing the statement written on it.*

Based on the above points, the Principal GHS has concluded in his letter that procedure under the E&D Rules, 2011 had not been adopted and stated as follows:-

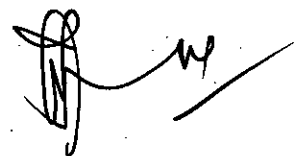
- i. The appointment of Mr. Haider Ali Shah PST GPS Datta was withdrawn simply on the basis of FIR lodged against him.*
- ii. Head Teacher, Parent teachers Council and parents concerned did not submit any complaint against him to the authorities concerned.*



- iii. *Neither proper enquiry committee was constituted nor was he suspended according to the E&D Rules. No Show Cause Notice/charge sheet was served to the accused teacher.*
- iv. *The complainant was not given any opportunity of personal hearing under the rules."*

He has concluded in his letter that the accused may be reinstated according to rules and regulations and he may be transferred from his station of appointment to any feasible primary school.

7. It has been noted that the DPO Mansehra through a letter dated 20.06.2017 addressed to Director Elementary and Secondary Education, Peshawar recommended removal of the appellant from Education Department. A question that arises here is that was it in the competency of the DPO Mansehra to give such a recommendation to the Director Elementary & Secondary Education? Was it not mandatory for the Director Elementary and Secondary Education Department to initiate inquiry into the matter to ascertain the facts before passing any order in haste? But the facts of the matter are that the Elementary & Secondary Education Department acted in an arbitrary manner and cancelled the appointment order without any second thought. Record further shows acquittal of the appellant from the charges levelled against him by the Honourable Additional Sessions Judge-I, Mansehra vide his judgment dated 22.03.2018. Terms and conditions of the appointment order dated 02.04.2015 need to be highlighted here when they state in Sr. No. 11 and 12 as follows:-



- “11. He will be governed by such rules and regulations as may be issued from time to time by the Govt.
12. His services shall be terminated at any time, in case his performance is found unsatisfactory during his contract period. In case of misconduct, he shall be proceeded under the rules framed from time to time.”

The above terms of service indicate that the appellant had to be proceeded against under the rules that were in place and they were none other than the Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011. It is, therefore, mandatory to fulfill the conditions and follow the procedure as laid down in those rules. No Inquiry report of the SDEO(M) has been attached with the comments to ascertain whether it was conducted under the E&D Rules 2011?

8. In the light of above discussion the appellant is reinstated in service for the purpose of denovo inquiry with the direction to the respondent department to involve the appellant in the inquiry and complete the procedure within sixty days of the receipt of this judgment. Parties are left to bear their own costs. Consign.

9. Pronounced in open court at Peshawar and given under our hands and seal of the Tribunal this 02nd day of February, 2023.


(FARZEHA PAUL)
Member (E)

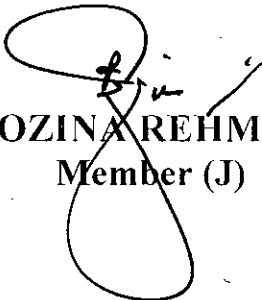

(ROZINA REHMAN)
Member (J)

02nd Feb. 2023 Mr. Sultan Ahmad Jamshed, Advocate for appellant present. Mr. Muhammad Jan, District Attorney for the respondents present. Arguments heard and record perused.

2. Vide our detailed judgement containing 07 pages, the appellant is reinstated in service for the purpose of denovo inquiry with the direction to the respondent department to involve the appellant in the inquiry and complete the procedure within sixty days of the receipt of the judgment. Parties are left to bear their own costs. Consign.

3. *Pronounced in open court at Peshawar and given under our hands and seal of the Tribunal this 02nd day of February, 2023.*


(FAREEHA PAUL)
Member (E)


(ROZINA REHMAN)
Member (J)