

**KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
CAMP COURT ABBOTTABAD.**

BEFORE: **KALIM ARSHAD KHAN ...CHAIRMAN**
SALAH UD DIN ...MEMBER (Judicial)

Service Appeal No.7290/2021

Date of presentation of appeal.....20.08.2021
Dates of Hearing.....20.02.2023
Date of Decision.....20.02.2023

Mst. Jamshid Akhtar, Ex-M.T.T BPS-7 (GGMS Bandi Muneem)
Education, Department (Female) Haripur presently residing Block
No.34-B, Flat No.16, D-19/11, Islamabad.

.....*Appellant*

Versus

1. **Secretary to the Government** of Khyber Pakhtunkhwa Elementary and Secondary Education Khyber Pakhtunkhwa, Peshawar
2. **Director Elementary & Secondary Education, Khyber Pakhtunkhwa, Peshawar.**
3. **District Education Officer (Female), Haripur.**

.....(*Respondents*)

Present:

Mr. Muhammad Aslam Tanoli, Advocate.....For the appellant.

Syed Asif Ali Shah,
Deputy District AttorneyFor respondents

**APPEAL UNDER SECTION 4 OF THE KHYBER
PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974
AGAINST THE ORDER DATED 26.01.2021 OF THE
DEPUTY DIRECTOR (FEMALE) ELEMENTARY AND
SCONDARY EDUCATION AND ORDER DATED
23.04.2016 OF DISTRICT EDUCATION OFFICER
(FEMALE) HARIPUR (COPY OF WHICH WAS NEVER
PROVIDED TO APPELLANT) WHEREBY THE
APPELLANT WAS TERMINATED FROM SERVICE**

.....
JUDGMENT

KALIM ARSHAD KHAN CHAIRMAN: According to the memo and
grounds, while being in service as Trained Teacher BPS-7, the services of

the appellant were borrowed by the Federal Directorate of Education vide letter No.F.4-9/2005(W)FDE dated 21.05.2005 on deputation basis initially for a period of three years with some terms and conditions along with NOC & lien retention certificate; that the then Schools and Literacy Department NWFP, Peshawar, vide its order No.SO(PE)5-2/98/2005 (Mst. Jamshid Akhtar) dated 24.08.2005, placed the services, of the appellant, at the disposal of the Federal Directorate of Education on deputation basis for a period of three years with the condition that pension contribution would be payable according to Appendix-3 of Accounts Code Volume-I and she was relieved to join her new assignment; that similarly, the Federal Directorate of Education, Islamabad allowed the appellant to join her new assignment; that consequent upon relieving, the Federal Directorate of Education, Islamabad allowed the appellant to join her new assignment in FG Girls Model School Presidential Estate against a vacant post vide Office Order No.F-4-9/205(W)FDE dated 17.09.2005; that the period of deputation was extended from time to time till 2010; that the Federal Directorate of Education vide its Office Order No.F.4-9/2005(W) FDE dated 25.05.2012 cancelled/withdrew the repatriation order dated 25.11.2011 till further order and did not relieve the appellant to join parent department; that in the light of approval of Prime Minister, the Federal Directorate of Education vide its letter No.F.2013/PA-Dep/14-16-17(W) FDE dated 12.09.2013 demanded NOC for permanent absorption of appellant from the Section Officer (Primary) Elementary & Secondary Education, Government of Khyber Pakhtunkhwa, Peshawar; that on 17.07.2019 once again the Federal Directorate of Education, Islamabad requested the Elementary & Secondary Education Department Government of Khyber Pakhtunkhwa for NOC to extend the deputation period but the Competent Authority instead repatriated appellant from the Federal

Directorate of Education Islamabad vide its Order No.SO(PE)/5-2/IPT/Haripur/Mst.Jamshid Akhtar TT/2013 dated 29.08.2019 with immediate effect with a copy endorsed to the District Education Officer (Female) Haripur to adjust the appellant against the vacant post in District Haripur; that through another Order dated 21.07.2020 the Government of Khyber Pakhtunkhwa Elementary & Secondary Education Department directed the District Education Officer (Female) Haripur to adjust the appellant in her home district Haripur on her repatriation from the Federal Directorate of Education, Islamabad; that in accordance with Order dated 06.03.2020 of the Government of Pakistan Federal Directorate of Education Islamabad as well as the Principal Islamabad Model School for Girls (I-X) Colony G-5 Islamabad vide letter No.D-127/2020-202/IMSG(PE) dated 31.08.2020 the appellant was relieved from her borrowing department; that the appellant then reported for duty to the District Education Officer (Female) Haripur but her duty report was rejected and she was not allowed to join duty; that the Deputy Director (Female) Elementary & Secondary Education Khyber Pakhtunkhwa vide letter No.4320/P.File/Jamshid Akhtar TT dated 26.01.2021, in the light of report of District Education Officer Haripur dated 09.10.2020, reported that the appellant had been terminated from service vide Order dated 23.04.2016 and she was no more employee of the department; that aggrieved of the order dated 26.01.2021 the appellant filed departmental appeal dated 10.02.2021 before the Secretary Elementary & Secondary Education Khyber Pakhtunkhwa but no decision was taken till filing of this appeal.

2. On receipt of the appeal and its admission to full hearing, the respondents were summoned. Respondents put appearance and contested the

appeal by filing written reply raising therein numerous legal and factual objections. The defence setup was a total denial of the claim of the appellant. It was mainly contended in the reply that the appellant was on deputation from 21.05.2005 for a period of three years which was extended till 25.08.2010; that according to condition "B", on completion of deputation period, the appellant was to stand repatriated to her parent department without any notice; that the District Education Officer (Female) Haripur received a letter dated 22.05.2015 from the Deputy Director (Female) Elementary & Secondary Education Khyber Pakhtunkhwa, Peshawar to take disciplinary action against the appellant; that the appellant remained absent from her duty for about five years without any intimation to parent department, therefore, respondent No.3 issued publication in Urdu Dailies Aaj and Mashriq; that another notice was served upon the appellant by respondent No.3 on 23.04.2016 but she did not respond; that a letter dated 17.07.2019 was received from the Admin Officer Schools (Female) Federal Directorate of Education Islamabad for extension in NOC of deputation period of the appellant; that a detailed report was sent to the Director Elementary & Secondary Education Peshawar on 12.09.2019; that the appellant did not mention the permission letter after 25.08.2010 for deputation which was issued by the parent department, therefore, she was dismissed.

3. We have heard learned counsel for the appellant and learned Deputy District Attorney for the respondents.

4. The Learned counsel for the appellant reiterated the facts and grounds detailed in the memo and grounds of the appeal while the learned

Assistant District Attorneycontroverted the same by supporting the impugned order(s).

5. There is no denying the fact that in the year 2005 the appellant was allowed to proceed on deputation to the Federal Directorate of Education initially for a period of three years. There is also no denial of the fact that the period of deputation was extended from time to time till 2010. After 2010. The record reflects that vide office order No.F.9-14-Dep/4057-W/FDE dated 25.05.2012, the repatriation order No.F.1-9/91-Dep/MTT(W)/FDE dated 25.11.2011 in respect of the appellant was cancelled/withdrawn with effect from 25.11.2011 till further order. These letters show that the appellant was though repatriated vide letter dated 25.11.2011 but was not allowed vide letter dated 25.05.2012, a cancelation/withdrawal of repatriation letter dated 25.11.2011 till further order. These letters were not denied nor any reply was given by the respondents explaining these. Similarly the Federal Directorate of Education, Government of Pakistan, vide letter No.F.2013/P.A-Dep/14-16-17/(W)/FDE dated 12.09.2013 requested the Government of Khyber Pakhtunkhwa Elementary & Secondary Education, Peshawar for grant of its NOC/consent for permanent absorption of the appellant but no explanation or reply has been made by the respondents regarding this letter. On 17.07.2019 the Federal Directorate of Education, Government of Pakistanwrote a letter (Annexure H page-21, requesting the Government of Khyber Pakhtunkhwa Elementary & Secondary Education, Peshawar that it had not received further NOC for deputation period beyond 25.08.2010 from the Government of Khyber Pakhtunkhwa Elementary & Secondary Education, Peshawar whereas the appellant was still serving on deputation basis under the Federal Directorate of Education, Islamabad. The

Government of Khyber Pakhtunkhwa Elementary & Secondary Education, Peshawar was requested to furnish the Federal Directorate of Education, Islamabad with NOC for regularization of deputation period of the appellant beyond 25.08.2010 till the date of issuance of letter and further extension for a period of two years till 16.07.2021. it was also added that in case the services of the appellant were required by the Elementary and Secondary Education, Government of Khyber Pakhtunkhwa being the lending department that might be clearly communicated to the Federal Directorate of Education, Islamabad so that the appellant might be repatriated accordingly. In response to this letter the Government of Khyber Pakhtunkhwa Elementary & Secondary Education, Peshawar, vide order No.SO(PE)/5-2/IPT/Haripur/Mst. Jamshid Akhtar TT/2013 dated 29.08.2019, ordered repatriation of the appellant to her parent department i.e. Elementary & Secondary Education Khyber Pakhtunkhwa, District Haripur, with immediate effect. Copy of this order was endorsed to the District Education Officer (Female) Haripur, with the request to adjust the appellant against the vacant post in Haripur. Though the letter dated 17.07.2019 was mentioned in the reply of the respondents but there is no mention of the order dated 29.08.2019 of the respondents. The repatriation order dated 29.08.2019 is neither withdrawn nor cancelled as there is nothing of the sort stated in the reply. Similarly, the repatriation of the appellant vide order dated 29.08.2019 has not only validated the alleged period of absence and performance of duties by the appellant at the Federal Directorate of Education, Islamabad till her repatriation on 29.08.2019 but has also invalidated the impugned dismissal order passed by the subordinate officer (DEO). Non-mentioning of the repatriation letter in the reply is an admission on the part of the respondents. Following the repatriation order passed by the Elementary &

Secondary Education, Government of Khyber Pakhtunkhwa, the Federal Directorate of Education, Islamabad issued officer order No.F.1-9/91-MTT(D)FDE dated 06.03.2020, repatriating the appellant to her parent department i.e. Elementary & Secondary Education Khyber Pakhtunkhwa. On receipt of the above letter from the Federal Directorate of Education, Islamabad, the Government of Khyber Pakhtunkhwa Elementary & Secondary Education, Peshawar vide letter No.SO(PE)5-2/IPT/Haripur/Mrs.Jamshid Akhtar TT/2013 dated 21.07.2020, addressed to the District Education Officer (Female) Haripur, requested for adjustment of the appellant in her home District Haripur on repatriation from the Federal Directorate of Education, Islamabad immediately. The record also reveals that the appellant was relieved vide relieving report dated 31.08.2020 (Annexure-L page 25) and she submitted joining report to the Section Officer (Primary) Elementary & Secondary Education, Government of Khyber Pakhtunkhwa, Peshawar the same day. In the entire episode there appears no fault on the part of the appellant. She had admittedly been performing her duties until her repatriation by the Government of Khyber Pakhtunkhwa Elementary & Secondary Education and formal relieving by the Federal Directorate of Education, Islamabad on 31.08.2020. The stance of the respondents that the appellant had not reported back after expiry of deputation period and had absented from duties, has no force because the District Education Officer (Female) did never issue a single letter to the Elementary and Secondary Education Khyber Pakhtunkhwa or for that matter the Federal Directorate of Education, Islamabad or even to the appellant, while the appellant could not come back of her own without being properly relieved by the borrowing department i.e. the Federal Directorate of Education, Islamabad. And, as aforesaid, the repatriation order passed by the

Secretary to Government of Khyber Pakhtunkhwa Elementary & Secondary Peshawar had not only validated the presence of the appellant at the Federal Directorate of Education, Islamabad but has also annulled the impugned dismissal order passed by a subordinate officer (District Education Officer) to the highest in rank officer of the department (Secretary), whose orders would be considered to be those passed by the Government of Khyber Pakhtunkhwa. Therefore, there appears no misconduct on the part of the appellant.

6. The upshot of the above discussion is that this appeal succeeds and the impugned orders dated 26.01.2021 passed by the Deputy Director (Female) Elementary & Secondary Education Khyber Pakhtunkhwa and dated 23.04.2016 passed by the District Education Officer (Female) Haripur are set aside thereby reinstating the appellant in service with all back benefits. Costs to follow the event. Consign.

7. *Pronounced in open Court at Abbottabad and given under our hands and the seal of the Tribunal on this 20th day of February, 2023.*

KALIM ARSHAD KHAN
Chairman
Camp Court Abbottabad

SALAH UD DIN
Member (Judicial)
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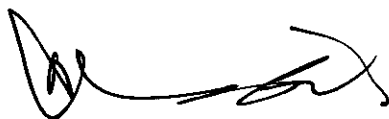
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APPEAL UNDER SECTION 4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974 AGAINST THE ORDER DATED 26.01.2021 OF THE DEPUTY DIRECTOR (FEMALE) ELEMENTARY AND SCONDARY EDUCATION, KHYEBR PAKHTUNHWA PESHAWAR AND ORDER DATED 23.04.2016 OF DISTRICT EDUCATION OFFICER (FEMALE) HARIPUR (COPY OF WHICH WAS NEVER PROVIDED TO APPELLANT) WHEREBY THE APPELLANT HAS BEEN TERMINATED FROM SERVICE ILLEGALLY, UNLAWFULLY, CONTRARY TO THE DEPARTMENTAL RULES AND REGULATIONS IN A WHIMSICAL AND ARBITRARY MANNER WITHOUT ANY PROOF.

.....

requested the Elementary & Secondary Education Department Government of Khyber Pakhtunkhwa for NOC to extend the deputation period but the Competent Authority instead repatriated appellant from the Federal Directorate of Education Islamabad vide its Order No.SO(PE)/5-2/IPT/Haripur/Mst.Jamshid Akhtar TT/2013 dated 29.08.2019 with immediate effect with a copy endorsed to the District Education Officer (Female) Haripur to adjust the appellant against the vacant post in District Haripur; that through another Order dated 21.07.2020 the Government of Khyber Pakhtunkhwa Elementary & Secondary Education Department directed the District Education Officer (Female) Haripur to adjust the appellant in her home district Haripur on her repatriation from the Federal Directorate of Education, Islamabad; that in accordance with Order dated 06.03.2020 of the Government of Pakistan Federal Directorate of Education Islamabad as well as the Principal Islamabad Model School for Girls (I-X) Colony G-5 Islamabad vide letter No.D-127/2020-202/IMSG(PE) dated 31.08.2020 the appellant was relieved from her borrowing department; that the appellant then reported for duty to the District Education Officer (Female) Haripur but her duty report was rejected and she was not allowed to join duty; that the Deputy Director (Female) Elementary & Secondary Education Khyber Pakhtunkhwa vide letter No.4320/P.File/Jamshid Akhtar TT dated 26.01.2021, in the light of report of District Education Officer Haripur dated 09.10.2020, reported that the appellant had been terminated from service vide Order dated 23.04.2016 and she was no more employee of the department; that aggrieved of the order dated 26.01.2021 the appellant filed departmental appeal dated 10.02.2021 before the Secretary Elementary & Secondary Education Khyber Pakhtunkhwa but no decision was taken till filing of this appeal.



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6. The upshot of the above discussion is that this appeal succeeds and the impugned orders dated 26.01.2021 passed by the Deputy Director (Female) Elementary & Secondary Education Khyber Pakhtunkhwa and dated 23.04.2016 passed by the District Education Officer (Female) Haripur are set aside thereby reinstating the appellant in service with all back benefits. Costs to follow the event. Consign.

7. *Pronounced in open Court at Abbottabad and given under our hands and the seal of the Tribunal on this 20th day of February, 2023.*



KALIM ARSHAD KHAN
Chairman
Camp Court Abbottabad



SALAH UD DIN
Member (Judicial)
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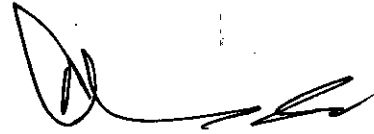
ORDER

20th Feb, 2023

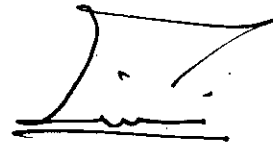
1. Learned counsel for the appellant present. Mr. Asif Masood Ali Shah, Deputy District Attorney alongwith Miss. Sadia Aziz, DEO(F) for respondents present.

2. Vide our detailed judgement of today placed on file, this appeal succeeds and the impugned orders dated 26.01.2021 passed by the Deputy Director (Female) Elementary & Secondary Education Khyber Pakhtunkhwa and dated 23.04.2016 passed by the District Education Officer (Female) Haripur are set aside thereby reinstating the appellant in service with all back benefits. Costs shall follow the event. Consign.

3. *Pronounced in open court at Abbottabad and given under our hands and seal of the Tribunal on this 20th day of February, 2023.*



(Kalim Arshad Khan)
Chairman
Camp Court Abbottabad



(Salah Ud Din)
Member(Judicial)
Camp Court Abbottabad