

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

Service Appeal No. 1222/2021

BEFORE: MR. SALAH-UD-DIN ... MEMBER (J)
MISS FAREEHA PAUL ... MEMBER (E)

Muhammad Ali Khan S/O Khalil Khan R/O village Budhni Tehsil and District, Peshawar. (Appellant)

Versus

1. **Government of Khyber Pakhtunkhwa through Secretary Elementary and Secondary Education, Peshawar.**
2. **Director Elementary and Secondary Education, Khyber Pakhtunkhwa Peshawar.**
3. **District Education Officer (M) Peshawar. (Respondents)**


Mr. Zartaj Ahwar,
Advocate ... For appellant

Mr. Muhammad Riaz Khan Paindakhel, ... For respondents
Assistant Advocate General

Date of Institution..... 19.01.2021
Date of Hearing..... 31.01.2023
Date of Decision..... 31.01.2023

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 07.10.2020 whereby the suspension period of the appellant was declared as extra-ordinary leave without pay and against which the departmental appeal dated 22.10.2020 was rejected/turned down vide order dated 05.01.2021. It has been prayed that on acceptance of the appeal, impugned orders might be set aside and the salary/arrear of the



appellant be released w.e.f 11.01.2015 to 05.04.2017 and the appellant to be treated under suspension.

2. Brief facts of the case, as given in the memorandum of appeal, are that the appellant was serving as SCT at GTISS Gulbahar Peshawar and since his appointment, he performed his duties with devotion without any complaint against him. He was falsely and malafidely charged in a criminal case vide FIR No. 19 dated 11.01.2015 u/s 302/324/34-PPC of P.S Chamkani, Peshawar. He was suspended from service w.e.f. 11.01.2015 vide order dated 24.08.2015, however on release on bail, he was adjusted against a vacant post and his pay was released from the date of grant of bail i.e 17.03.2017. The suspension period of the appellant w.e.f 11.01.2015 was kept undecided till the final judgment of the learned trial court. The learned Additional Session Judge/Model Criminal Trial Court honourably acquitted the appellant in the above noted criminal case vide order/judgment dated 05.03.2020. After the acquittal, the appellant was re-instated in service w.e.f. 11.01.2015 vide order dated 19.08.2020. The opposite party challenged the acquittal order of the appellant in appeal before the Honourable Peshawar High Court, Peshawar, which was dismissed vide judgment dated 11.09.2020 by the Honourable Court. In the light of the reinstatement order, when the appellant applied for his release of salaries/arrears of his suspension period, he was surprised with the impugned order dated 07.10.2020, according to which his suspension period w.e.f. 11.01.2015 to 05.04.2017 was declared as extra-ordinary leave without pay. Feeling



aggrieved from the impugned order, the appellant submitted departmental appeal on 22.10.2020, which was rejected on 05.01.2021; hence the present service appeal.

3. Respondents were put on notice who submitted written replies/comments on the appeal. We have heard the learned counsel for the appellant as well as the learned Assistant Advocate General for the respondents and perused the case file with connected documents in detail.

4. Learned counsel for the appellant, after presenting the case in detail, contended that on charging in a criminal case, the appellant was placed under suspension and on his honorable acquittal by the competent court of law he could not be denied the back benefits of service to which he would have been entitled had he been in service and referred to CSR 194 and Section 6 of the Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011. He further contended that the appellant had never committed any act or omission which could be termed as misconduct and his absence from duty was not willful but it was due to his false implication in the criminal case. According to him, the appellant never remained in gainful employment during the intervening period and was entitled to all back benefits. He requested that the appeal might be accepted as prayed for.

5. Learned Assistant Advocate General, while rebutting the arguments of learned counsel for the appellant, contended that the appellant was charged in FIR under Section 302/324/34 PPC dated 11.01.2015, the competent authority suspended him on 24.02.2015 w.e.f. 11.01.2015 under the rules.



Furthermore, on his release on bail, he was adjusted from 12.01.2015 and based on a report of the concerned school Head Master about the appellant, he was not entitled for the salaries of absence period. He further contended that the appellant was absconder and absented himself from his duty w.e.f. 11.01.2015 to 05.07.2017, therefore, he was not entitled to salaries of that period under the rules. He argued that the impugned order dated 07.10.2020 was in accordance with law/rules and requested that the appeal might be dismissed.

6. Perusal of the record and arguments presented before us reveal that the appellant was nominated in a criminal case and FIR was registered against him under Section 302, 324,34 PPC. The District Education Officer (Male) Peshawar placed him under suspension from the date of registration of FIR dated 11.01.2015. However, when he was released on bail by the ASJ-II, Peshawar he was adjusted against vacant post and allowed subsistence grant from that date till the final judgment of the honourable court. Finally vide judgment of ASJ/MCTC Peshawar dated 05.03.2020 he was acquitted of the charges leveled against him in the FIR. He was reinstated in service with effect from the date of his suspension. According to F.R 53, a Government servant under suspension is entitled to full amount of his salary and all other benefits and facilities provided to him under the contract of service, during the period of his suspension. Learned counsel invited the attention to judgment of Service Tribunal dated 31.01.2022 in Service Appeal No. 14445/2020 of Ashfaq Ahmad Khan, who was a co-




accused in the same FIR in which the appellant was accused and was acquitted in the similar way. That service appeal was accepted as prayed for and Ashfaq Ahmad Khan was reinstated with all back benefits.

7. The notification dated 19.08.2020 vide which the appellant had been reinstated in service, after his acquittal, w.e.f. the date of FIR/suspension was enough for reinstatement with all back benefits. The appellant was under suspension from the date of registration of FIR against him, therefore, there was no question of denying all the service benefits to him. The judgment of this Tribunal dated 31.01.2022 in service appeal No. 14445/2020 is worth mention here where the service appeal was accepted and the appellant was reinstated in service with all back benefits. Moreover CSR 194, read with F.R 53, also supports the appellant.

8. In view of the foregoing, this bench has no hesitation in accepting the instant appeal as prayed for. Parties are left to bear their own costs. Consign.

9. *Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal this 31st day of January, 2023.*


(FAREHA PAUL)
Member (E)


(SALAH-UD-DIN)
Member (J)