

20th Feb, 2023

Learned counsel for the appellant and Mr. Asif Masood Ali Shah,
Deputy District Attorney for the respondents present.

2. At the very outset, it was pointed out that Appeal bearing No. 5793/2020 titled "Khani Zaman Versus Secretary, Elementary & Secondary Education Department Peshawar and 02 others", had been decided by this bench of the Tribunal in the following manner:-

A perusal of the record would show that a scrutiny committee was constituted for scrutinizing the documents of the appellants as well as others for determining of their eligibility for appointment in light of the Sacked Employees Act, 2012. The scrutiny committee recommended the appellants for their appointment and has mentioned in its report that the scrutiny committee checked the record of all the candidates one by one. A meeting of the District Selection Committee was then held under the Chairmanship of DEO (Male) Mansehra, wherein the appellants were recommended for appointment on their respective posts and thus their appointment Notifications were issued by the competent Authority. The minutes of Departmental Selection Committee are available on the record, wherein it is mentioned that the committee had made thorough deliberations and had perused the record minutely. The appellants were, however later on issued show-cause notices on the ground that upon verification, fake and fabricated documents were found in their service record. Final show-cause notices were then issued to the appellants without mentioning therein that

regular inquiry was dispensed with. It appears that the main allegations against the appellants were that their names had been inserted in the respective termination orders by way of tempering. The question of tempering being factual in nature was required to have been ascertained through a regular inquiry but the same has not been done. The departmental Authority was required to have adduced evidence in support of the allegations against the appellants by providing them opportunity of cross-examination. Although it is mentioned in the impugned Notifications that proceedings were conducted under the Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011 but the mandatory provisions of the same were not complied with. In these circumstances, conducting of de-novo inquiry in the matter is necessary for reaching a just and right conclusion.

In view of the above discussion, the appeal in hand as well as connected Service Appeal bearing No. 5892/2020 titled "Ejaz Ahmad Versus Secretary, Elementary and Secondary Education Department Peshawar and two others", Service Appeal bearing No. 8634/2020 titled "Rafaqat Ali Versus Secretary, Elementary and Secondary Education Department Peshawar and two others" and Service Appeal bearing No. 8635/2020 titled "Zardad Khan Versus Secretary, Elementary and Secondary Education Department Peshawar and two others" are allowed by setting-aside the impugned orders and the appellants are reinstated in service for the purpose of de-novo

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inquiry. The departmental Authority shall conduct de-novo inquiry strictly in accordance with the relevant law/rules within a period of 90 days of receipt of copy of this judgment and the result be intimated to this Tribunal through Registrar. Needless to mention that the appellants shall be associated with the inquiry proceedings and fair opportunity be provided to them to defend themselves. Keeping in view peculiar facts and circumstances of the cases, the issue of salary and back benefits shall be subject to outcome of de-novo inquiry. Parties are left to bear their own costs. File be consigned to the record room.

3. This appeal being no different with the fact of the above stated appeal is also decided in the same manner. Disposed of accordingly. Consign.
4. *Pronounced in open court in Abbottabad and given under our hands and seal of the Tribunal on this 20th day of February, 2023.*



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



(Kalim Arshad Khan)
Chairman
Camp Court Abbottabad