

BEFORE THE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL PESHAWAR.

Service Appeal No. 893/2022

Date of Institution ... 26.05.2022

Date of Decision ... 06.03.2023

Mashal Khan S/O Saleh Khan, R/O Aghzar Khel. Ex-Primary School Head Teacher, GPS No. 1, Aghzar Khel, Lakki Marwat.

... (Appellant)

VERSUS

District Education Officer (M), Lakki Marwat and 02 others.

... (Respondents)

MR. ARBAB SAIF-UL-KAMAL,
Advocate

--- For appellant.

MR. MUHAMMAD RIAZ KHAN PAINDAKHEL,
Assistant Advocate General

--- For respondents.

MR. KALIM ARSHAD KHAN
MR. SALAH-UD-DIN

--- CHAIRMAN
--- MEMBER (JUDICIAL)

JUDGMENT:

SALAH-UD-DIN, MEMBER:- Precisely stating the facts of the case are that the appellant, while serving as PSHT Government Primary School No. 1 Aghzar Khel Lakki Marwat, was proceeded against departmentally on the allegations of misconduct, inefficiency etc and he was awarded major penalty of compulsory retirement from service vide order dated 06.10.2021 passed by the District Education Officer (Male) Lakki Marwat. The appellant challenged the penalty through filing of departmental appeal, which was disposed of vide order dated 04.04.2022 passed by the Director Elementary & Secondary Education Khyber

Pakhtunkhwa, Peshawar, whereby the penalty of compulsory retirement was converted into pre-mature retirement. The appellant has now approached this Tribunal by way of filing the instant appeal for redressal of his grievance.

2. On admission of the appeal for regular hearing, notices were issued to the respondents, who contested the appeal by way of filing of reply, wherein they refuted the assertion raised by the appellant in his appeal.

3. Learned counsel for the appellant has addressed his arguments supporting the grounds agitated by the appellant in his service appeal. On the other hand, learned Assistant Advocate General for the respondents has controverted the arguments of learned counsel for the appellant and has supported the comments submitted by the respondents.

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

5. The appellant was proceeded against on the allegations of misconduct and inefficiency etc. The District Education Officer proceeded against the appellant under Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011 through issuing of show-cause notice under Rule-7 of the afore-mentioned rules by dispensing with inquiry. The competent Authority is legally empowered to dispense with inquiry, however reasons are required to be recorded by the competent Authority in this respect. While going through the show-cause notice, we have observed that no reason was recorded by the competent Authority for

dispensing with inquiry. Moreover, as per show-cause notice issued to him, the appellant was held liable to have committed acts/omissions of lack of school affairs, misconduct and inefficiency. However, while going through the Notification dated 06.10.2021 passed by District Education Officer (Male) Lakki Marwat regarding compulsory retirement of the appellant from service, we have observed that it has been mentioned therein that the appellant was proceeded against on the allegations of habitual absence. It is strange enough that the absence period or any specific date of absence of the appellant from duty has not at all been mentioned in the show-cause notice issued to him. Similarly, in para-3rd of the aforementioned Notification dated 06.10.2021, it has been mentioned that the notification was issued in exercise of powers conferred upon the competent Authority under Rule-9 of Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011, which is quite astonishing for the reason that Rule-9 of the *ibid* rules pertains to procedure in case of willful absence and not habitual absence. It is thus evident that the inquiry proceedings so taken against the appellant by the competent Authority are not in conformity with the relevant rules provided in Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011.

6. The departmental appeal of the appellant was accepted by the Director Elementary & Secondary Education Khyber Pakhtunkhwa, Peshawar in the terms reproduced as below:-

*“Now THEREFORE, in exercise of power
conferred upon by the Director Elementary &*

Secondary Education Khyber Pakhtunkhwa Peshawar after having examined the evidence on record is pleased to accept the appeal under Rules (17)(2)(c) of E&D 2011 being appellate authority and convert his major penalty of "Compulsory Retirement" with the direction to apply for pre-mature Retirement of E&D Rules-2011."

7. The above-mentioned order of the appellate Authority is novel in nature for the reason that there exist no provision in Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011, whereby Authority could issue directions to an employee to apply for pre-mature retirement as punishment. While going through the record, we have observed that the whole of the proceedings were conducted in haphazard manner and the impugned order of the appellate Authority is bereft of any legal sanctity, therefore, liable to be set-aside.

8. Consequently, the appeal in hand is allowed and the appellant stands reinstated in service with all back benefits. Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCED
06.03.2023



(SALAH-UD-DIN)
MEMBER (JUDICIAL)



(KALIM ARSHAD KHAN)
CHAIRMAN

ORDER
06.03.2023

Appellant alongwith his counsel present. Mr. Muhammad Riaz Khan Paindakhel, Assistant Advocate General for the respondents present. Arguments heard and record perused.

Vide our detailed judgment of today, separately placed on file, the appeal in hand is allowed and the appellant stands reinstated in service with all back benefits. Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCED
06.03.2023



(Kalim Arshad Khan)
Chairman



(Salah-Ud-Din)
Member (Judicial)