

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
CAMP COURT, SWAT.

Service Appeal No. 7949/2021

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

Mst. Nergus Begum Daughter of Zain-ul-Abideen, serving as Drawing Master (BPS-15) at Government Girls Middle School Kwaro Mano Banda, Tehsil Samarbagh, resident of Tehsil Khal, District Dir Lower. (*Appellant*)

Versus

1. Government of Khyber Pakhtunkhwa through Secretary Elementary & Secondary Education, Peshawar.
2. Director Elementary & Secondary Education, Government of Khyber Pakhtunkhwa, Peshawar.
3. District Education Officer (Female) Dir Lower.
4. Mst. Qudsia daughter of Manzoor Qadir posted at Government Girls Middle School Khal Koz Kalay, Tehsil Khal, District Dir Lower. (*Respondents*)

Syed Abdul Haq,
Advocate

... For appellant

Mr. Muhammad Jan,
District Attorney

... For official respondents

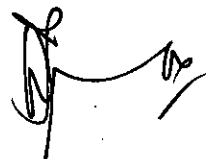
Sardar Muhammad Arif Tajik,
Advocate

... For private respondent
No. 4.

Date of Institution.....17.12.2021
Date of Hearing.....06.03.2023
Date of Decision..... 06.03.2023

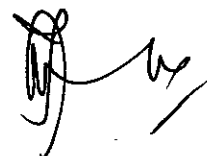
JUDGMENT

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 26.11.2021 vide which departmental appeal of the appellant was rejected. It has been prayed that on acceptance of the appeal, the impugned order dated 26.11.2021 might be set aside and the appellant be adjusted in place of respondent No. 4 or any other nearest station as per law.

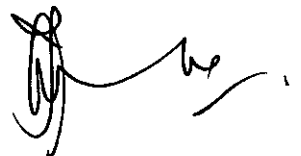
2. Brief facts of the case, as given in the memorandum of appeal, are that the appellant was appointed as Drawing Master at GGMS Babagam, Tehsil Lal Qala, Dir Lower vide order dated 14.03.2015 where-after she was transferred to GGMS Kwaro Mano Banda, Tehsil Balambat, District Dir Lower vide order dated 13.02.2019. The respondent No. 4 was appointed on ad hoc basis under school-based policy as D.M in BPS-15 in Tehsil Lal Qila vide office order dated 21.02.2020. After short span of time, she was again benefited and transferred to GGHS Khal against the vacant post of Senior Drawing Master (BPS-16) vide order dated 29.06.2020. The appellant being entitled under the relevant policy applied via application to the respondent No. 3 as well as respondent No. 2 on 11.09.2020 for adjustment at G.G.M.S Khal against the vacant post of D.M. In spite of her entitlement, the official respondents without any rhyme and reason, transferred respondent No. 4 to GGMS Khal, Koz Kalay and malafidely filled up the vacant post of D.M vide adjustment/transfer order dated 28.01.2021. The appellant repeatedly knocked the door of the relevant authority for redressal of her grievances which remained un-responded. She filed a writ petition bearing No. 733-



M/2021 before the Hon'ble Peshawar High Court, Mingora Bench, which was disposed of and the same was ordered to be treated as departmental appeal by sending it to the respondent No. 2 i.e Director E&SE, with the directions to decide it within one month. Respondent No. 2 entrusted the copy of appeal/writ petition to the respondent No. 3, who rejected the same vide impugned order dated 26.11.2021; hence the present appeal.

3. Respondents were put on notice. Respondents No. 1 to 3 submitted their joint written reply/comments on the appeal while private respondent No. 4 relied on the same. We have heard the learned counsel for the appellant, learned District Attorney for the official respondents and learned counsel for private respondent No. 4 and perused the case file with connected documents in detail.

4. Learned counsel for the appellant presented the details of the case and argued that the appointment of respondent No. 4 was made under the Khyber Pakhtunkhwa (Appointment, Deputation, Posting and Transfer of Teachers, Lecturers, Instructors and Doctors) Regulatory Act, 2011 on contract basis and was adjusted at GGHS Nimazkot. Under the rules no one was to be transferred before completion of normal tenure but the official respondents, in a short span of time, adjusted respondent No. 4 at GGHS Khal against the rules and law on the subject and deprived the appellant from her posting there despite the fact that she was serving in a far-flung area and being female was faced with many problems. He



further argued that in the instant case the authority acted under the political influence and hence the order was liable to be set aside. He requested that the appeal might be accepted as prayed for.

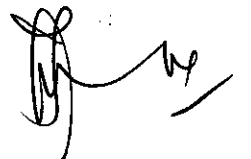
5. The learned District Attorney while rebutting the arguments of learned counsel for the appellant argued that the appellant was appointed as Drawing Master on contract/adhoc basis and posted at GGMS Babagam vide order dated 14.03.2015 but after regularization of her service, she filed application for her transfer to GGMS Kwaro Mano Banda and on her own request, she was transferred there. He further argued that respondent No. 4 was appointed as D.M (BPS15) and posted at GGHS Namaz Kot, Lal Qilla, Maidan vide order dated 21.02.2020 but when she went there for assumption of charge, the said post was found already filled by transfer, hence she was re-adjusted against a wrong post of Senior Drawing Master (BPS-16) at GGHS Khal vide order dated 29.06.2020, as no post of D.M (BPS-15) was available at that time. He informed that at a later stage when a post of BS-15 fell vacant, as a result of promotion of the incumbent, respondent No. 4 was re-adjusted on that post at GGHS Khal Koz Kalay on 28.01.2021. He, therefore, requested that the appeal might be dismissed. Learned counsel for private respondent No. 4 relied on the arguments advanced by learned District Attorney.

6. Perusal of record and arguments presented before us transpire that the appellant was appointed as Drawing Master (BPS-15) and posted at



GGMS Babagan, Tehsil Lalqala, Dir Lower in the year 2015. She was transferred in 2019 to GGMS Kowaro, Mano Banda, Tehsil Balambat in Dir Lower. Later on in the year 2020, respondent No. 4, Qudisia, was appointed as Drawing Master (BPS-15) in GGHS Nimazkot but that order was modified and a corrigendum was issued according to which she was adjusted in GGHS Khall. When it came to the notice of DEO (F) Dir Lower that there was no vacant post in Khal for Qudisia, she was adjusted at GGHS Khall Paycen. It appeared from the record presented before us that the respondent No. 4, Qudisia, was adjusted on some BS-16 post as a stop gap arrangement and was later posted and adjusted on a BS-15 post when it became vacant as a result of promotion of one Mst. Faiza Faiz from BS-15 to BS-16. The appellant, on the other hand claims that she submitted an application in 2020 to the DEO (F) Dir Lower for her adjustment at GGMS Khal against a vacant post of D.M but no such application is available with the appeal as well as the record of the respondent department. However a document attached with the service appeal and referred by the appellant is a complaint submitted by one Dr. Zaheerud Din, which the appellant claims to be her brother. It is a complaint against respondent No. 4, Qudisia, who was adjusted against BS-16 post for some time till a BS-15 post became available for her.


7. From the above discussion, it becomes evident that it was Qudisia who was made a rolling stone by the department since her appointment till her final adjustment against the post of Drawing Master (BS-15). No



application for adjustment or posting of appellant is available on record to indicate that she was aggrieved of her posting at Mano Banda, Tehsil Balambat. As far as the impugned order is concerned, the DEO (F) Dir Lower has clarified the entire case in that order and implemented the order of PHIC Mingora Bench.

8. After going through the entire proceedings, this service appeal is dismissed. Parties are left to bear their own costs. Consign.

9). *Pronounced in open court at camp court, Swat and given under our hands and seal of the Tribunal this 06th day of March, 2023.*


(FAREEHA PAUL)
Member (E)
(Camp Court, Swat)


(ROZINA REHMAN)
Member (J)
(Camp Court, Swat)


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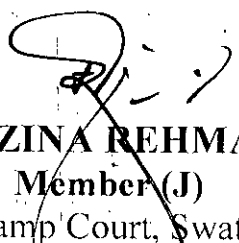
06th Mar. 2023

Syed Abdul Haq, Advocate for the appellant present. Mr. Muhammad Jan, District Attorney for the respondents present. Arguments heard and record perused.

2. Vide our detailed judgment consisting of 06 pages, this service appeal is dismissed. Parties are left to bear their own costs. Consign.

3. *Pronounced in open court at camp court, Swat and given under our hands and seal of the Tribunal this 06th day of March, 2023.*


(FAREEHA PAUL)
Member (E)
(Camp Court, Swat)


(ROZINA REHMAN)
Member (J)
(Camp Court, Swat)