

BEFORE THE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL PESHAWAR.
AT CAMP COURT ABBOTTABAD.

Service Appeal No. 1354/2022

Date of Institution ... 19.09.2022

Date of Decision... 24.02.2023

Fazal Wahab S/O Rahimullah, R/O Rashang, Tehsil Allai, District Battagram.

... (Appellant)

VERSUS

Government of Khyber Pakhtunkhwa through Secretary Elementary & Secondary Education Khyber Pakhtunkhwa, Peshawar and 03 others.

... (Respondents)

SYED WAQAS NAQVI,
Advocate

--- For appellant.

MR. MUHAMMAD ADEEL BUTT,
Additional Advocate General

--- For respondents.

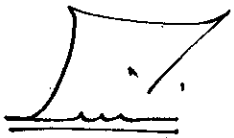
MR. KALIM ARSHAD KHAN
MR. SALAH-UD-DIN

--- CHAIRMAN
--- MEMBER (JUDICIAL)

JUDGMENT:

SALAH-UD-DIN, MEMBER:- Precise averments raised by the appellant in his appeal are that he was appointed as Primary School Teacher vide appointment order dated 06.07.2008; that after serving for more than seven years, the petitioner's appointment order was cancelled by declaring it as fake and bogus vide office order dated 09.12.2016 issued by the District Education Officer (Male) Battagram; that being aggrieved of the aforementioned order dated 09.12.2016, the appellant challenged the same by way of departmental

appeal, however the same was dismissed vide order dated 03.04.2017; that the appellant then preferred service appeal before this Tribunal, which was allowed vide judgment dated 12.04.2018 with the directions to the respondent-department to conduct de-novo inquiry within a period of 90 days; that de-novo inquiry was conducted in the matter, which resulted in exoneration of the appellant from the charges/allegations, therefore, he was reinstated in service; that in respect of the same allegations, a reference bearing No. 7/2017 titled "Ayaz Qureshi and others Versus State" has been filed by the NAB Authorities in the learned Accountability Court-II Peshawar, wherein the appellant has also been arrayed as an accused; that salary of the appellant was again stopped vide order dated 08.11.2018, constraining the appellant to file Writ Petition No. 5893-P/2019 before the august Peshawar High Court, Peshawar, which was allowed vide judgment dated 19.02.2020 and the pay of the appellant was thus released vide order dated 29.04.2020; that the appellant was then transferred against the vacant post of SPST (BPS-14) at GPS Dumrai, Allai; that the District Education Officer (Male) Battagram constituted another inquiry committee, which finalized its report without giving any notice or opportunity of personal hearing to the appellant; that in light of the aforesaid report, the District Education Officer (Male) Battagram referred the matter to Anti-Corruption Establishment for further probe in the matter and stoppage of salary of the appellant was also ordered, constraining the appellant to file another Writ Petition No. 1002-A/2020 before the



august Peshawar High Court; that the said writ petition was disposed of vide order dated 24.11.2020, whereby salaries/arrears of the appellant were ordered to be paid to him; that the District Education Officer (Male) Battagram again issued another show-cause notice to the appellant on 26.11.2020 and declared the appointment order of the appellant as null and void vide order dated 17.05.2022; that the aforementioned order was challenged by the appellant through filing of departmental appeal, however the same was not responded within the statutory period, hence the instant service appeal .

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 Additional 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 have already been heard and record perused.

5. A perusal of the record would show that previously the appointment order of the appellant was declared as null and void vide order dated 09.12.2016 passed by the District Education Officer (Male) Battagram. The aforementioned order was challenged by the appellant

through filing of Service Appeal No. 572/2017 before this Tribunal, which was accepted vide judgment dated 12.04.2018 by reinstating the appellant in service with directions to the respondents to hold de-novo proceedings within a period of 90 days. The appellant was reinstated vide order dated 28.05.2018 and in light of recommendations put forward by the inquiry committee in the de-novo inquiry proceedings, the salary of the appellant was released with all back benefits with effect from 16.01.2015 vide order dated 04.09.2018 passed by the District Education Officer (Male) Battagram. However, letter dated 08.11.2018 was then addressed by District Education Officer (Male) Battagram to The District Accounts Officer Battagram, whereby he declared his own order dated 04.09.2018 as null and void and requested for stoppage of salary of the appellant on the ground that his case alongwith other ghost employees was under trial in Accountability Court Peshawar. The appellant then filed Writ Petition No. 5893-P/2019 before the august Peshawar High Court, Peshawar, which was allowed vide judgment dated 19.02.2020, whereby the order dated 08.11.2018 passed by the District Education Officer (Male) Battagram was set-aside by declaring the same as illegal without lawful authority and the result of undue influence of the NAB Authority. Para-9 of the aforementioned judgment of august Peshawar High Court, Peshawar is reproduced as below:-

“there is no cavil with the proposition that the Departmental proceedings and criminal proceedings can go side by side, however, direct interference of the

respondent-NAB Authorities in forcing the District Education Officer (M), Battagram for the removal of petitioner from service, in no way, could be appreciated or sustained. If there is any charges/allegations against the petitioner regarding his misconduct, he, being employee of the Education Department, can only be proceeded under the Khyber Pakhtunkhwa Efficiency & Disciplinary Rules, 2011; while, for the criminal charges, he can be tried before the learned Accountability Court, where the charges are to be proved or otherwise, as the case may be. In the instant case, petitioner has been proceeded Departmentally and already exonerated from the charges, leveled against him, as such, he was rightly reinstated in service by the Education Department. Thus, the direction of the NAB authorities to the Education Department for cancellation of reinstatement order of the petitioner and recovery of his salaries is uncalled for and stands struck down.”
(Emphasis supplied).

6. In view of the judgment dated 19.02.2020 passed by august Peshawar High Court, Peshawar, the order dated 04.09.2018 passed by District Education Officer (Male) Battagram stood restored and vide order dated 29.04.2020 passed by the District Education Officer (Male) Battagram, the pay of the appellant was released. Despite the fact that the judgment dated 19.02.2020 of the august Peshawar High Court, Peshawar was in field, the District Education Officer (Male) Battagram constituted another inquiry committee Vide Notification bearing Endorsement No. 4681-85/Est:Pry/dated 09.08.2019 for de-novo inquiry in the matter. The said inquiry committee submitted its

report on 30.06.2020 declaring the appointment order of the appellant as fake and bogus. On the basis of aforementioned inquiry report, show-cause notice bearing Endorsement No. 8401-6 dated 26.11.2020 was issued to the appellant, requiring him to show-cause as to why major penalty of "Removal from service" under Rules 4 (b) (iii) of the Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011 should not be imposed upon him. However, it is astonishing that while passing the impugned order dated 17.05.2022, the competent Authority instead of awarding the punishment mentioned in the show-cause notice, declared the appointment order of the appellant as null and void. It is evident from the record that proceedings against the appellant were allegedly conducted under the Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011 but the show-cause notice dated 26.11.2020 would show that nothing has been mentioned therein that regular inquiry in the matter was dispensed with. In view of Rule-5 of Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011, the competent Authority can dispense with inquiry but reasons are required to be recorded in writing for doing so. While deciding previous service appeal No. 572/2017 of the appellant vide judgment dated 12.04.2018, this Tribunal had observed in para-5 of the judgment as below:-

"5. Whatever has been argued by the learned Deputy District Attorney is based on the findings of the enquiry report and similarly the authority has based

his findings on the basis of enquiry report which is itself a proof of the fact that the issue involved appreciation of factual controversy which could not be decided without holding of formal enquiry. But the Authority neither opted for holding regular enquiry nor dispensed with the formal enquiry. The authority further initiated the proceedings under the disciplinary rules by issuing show cause and then culminated the proceedings by not awarding the penalty under the disciplinary rules but declared the appointment letter as bogus. Such proceedings in the eyes of law cannot be sustained. The Authority should have been clear regarding the proceedings to be conducted under the disciplinary rules or should have withdrawn the appointment order in exercise of powers on the basis of locus-poenitentiae. In case the authority was to exercise his powers under the latter option then this Tribunal could decide the issue on the basis of the stage at which the same power was exercised. However in any event it was incumbent upon the authority to have given full opportunity to the appellant to participate in the enquiry proceedings by giving all rights of due process which has not been done."



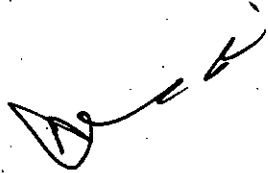
7. Despite the guidance provided to the respondents in above mentioned reproduced para-5 of the judgment dated 12.04.2018 of this Tribunal, the de-novo proceedings against the appellant were conducted in a haphazard manner, which could not in any manner be considered as covered by the relevant provision of Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules,

2011. In our opinion, the impugned order dated 17.05.2022 is not sustainable in the eye of law and is liable to be set-aside.

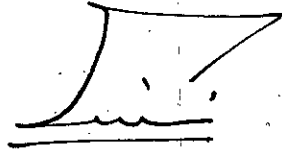
8. In view of the above discussion, the impugned order is set-aside and the appeal in hand is allowed as prayed for. Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCED

24.02.2023



(KALIM ARSHAD KHAN)
CHAIRMAN
CAMP COURT ABBOTTABAD



(SALAH-UD-DIN)
MEMBER (JUDICIAL)
CAMP COURT ABBOTTABAD

ORDER
24.02.2023

Appellant in person present: Mr. Lutf Ullah, Assistant
alongwith Mr. Muhammad Adeel Butt, Additional Advocate General
for the respondents present. Arguments have already been heard and
record perused.

Vide our detailed judgment of today, separately placed on
file, the impugned order is set-aside and the appeal in hand is allowed
as prayed for. Parties are left to bear their own costs. File be
consigned to the record room.

ANNOUNCED
24.02.2023



(Kalim Arshad Khan)
Chairman
Camp Court Abbottabad



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