

BEFORE THE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL PESHAWAR.

Service Appeal No. 2039/2020

Date of Institution ... 25.02.2020

Date of Decision... 15.03.2023

Fahmida Bibi D/O Amin Khan, PST, Government Girls Primary School
Hindal Langer Khel, Lakki Marwat.

... (Appellant)

VERSUS

District Education Officer (Female) Lakki Marwat and three others.

... (Respondents)

MR. ARBAB SAIF-UL-KAMAL,
Advocate

--- For appellant.

MR. ASIF MASOOD ALI SHAH,
Deputy District Attorney

--- For respondents.

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

--- CHAIRMAN
--- MEMBER (JUDICIAL)

JUDGMENT:

SALAH-UD-DIN, MEMBER:- Precise facts forming the background of the instant service appeal are that appellant was appointed as PST on 25.02.2011; that the appellant assumed the charge of her post at GGPS Toti Abad, Lakki Marwat on 26.02.2011; that the appellant while performing her duties was terminated from service on 27.07.2012 by respondent No.1 alongwith her other colleagues; that later on other colleagues of the appellant were reinstated in service with all back benefits but the appellant was not reinstated; that the appellant challenged the



order of her termination through filing of departmental appeal, which was allowed vide order dated 26.12.2012 and vide order dated 28.12.2012, passed by Executive District Officer (E&SE) Lakki Marwat, the appellant was reinstated with all back benefits; that one Mst. Dur-e-Shehwar then filed Civil Suit in the court of learned Senior Civil Judge Lakki Marwat, challenging the appointment order of the appellant as well as one Mst. Jamshaid Bibi; that the civil suit of Mst. Durr-e-Shahwar was decreed vide judgment dated 27.04.2017 passed by the then Civil Judge-VI Lakki Marwat and in consequence thereof the appellant was dismissed from service vide order dated 04.05.2017; that the judgment dated 27.04.2017 passed by the then Civil Judge-VI Lakki Marwat was challenged by the appellant through filing of appeal before the District Judge Lakki Marwat, however the same was dismissed vide judgment dated 31.05.2017, constraining the appellant to file Civil Revision before august Peshawar High Court, Bannu Bench, which was allowed vide judgment dated 26.09.2018 and the appellant was reinstated vide office order dated 24.11.2018 but with immediate effect; that the appellant then preferred departmental appeal, challenging the order dated 24.11.2018 and sought its modification to the effect that the appellant may be reinstated in service from the date of her dismissal with all back benefits; that the departmental appeal of the appellant was rejected vide order dated 21.08.2019 passed by



Deputy Director Female (E&SE) Khyber Pakhtunkhwa, 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 Deputy District Attorney 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. A perusal of the record would show that in consequence of judgment and decree dated 27.04.2017 passed in favour of one Mst. Durr-e-Shahwar by the then learned Civil Judge-VI Lakki Marwat, the appellant was dismissed from service vide order dated 04.05.2017 passed by the District Education Officer (Female) Lakki Marwat. The civil appeal filed by the appellant against the judgment and decree dated 27.04.2017 was dismissed by the then District Judge Lakki Marwat, however Civil Revision of the appellant was accepted by Hon'ble Peshawar High Court, Bannu Bench vide judgment dated 26.09.2018. In view of

the judgment dated 26.09.2018 of the august Peshawar High Court, Bannu Bench, the appellant was reinstated in service with immediate effect vide order dated 24.11.2018 passed by the District Education Officer (Female) Lakki Marwat and it was also held that she was not entitled to any back benefits. Vide the aforementioned order dated 24.11.2018 the appellant was reinstated in service with immediate effect without clarifying as to how the intervening period of her dismissal with effect from 04.05.2017 till 23.11.2018 has been treated. In absence of such clarification, the order dated 24.11.2018 passed by the District Education Officer (Female) Lakki Marwat is having lacuna for the reason that the same has created service gap in service of the appellant. Moreover, the absence of the appellant from duty was not on account of any fault on her part rather the same was on account of her wrongful dismissal from service vide order dated 04.05.2017. Nothing is available on the record, which could show that the appellant remained gainfully employed in any service during the period of her dismissal. In such a situation, the appellant was entitled to reinstatement in service with effect from the date of her dismissal i.e 04.05.2017 with all back benefits.

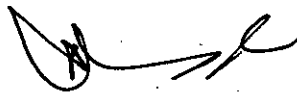
6. According to the note given in the impugned order dated 24.11.2018, the judgment dated 26.09.2018 passed by august Peshawar High Court, Bannu Bench has been assailed through filing of CPLA before the august Supreme Court of Pakistan, however representative of the respondents as well as learned

Deputy District Attorney stated at the bar that the said CPLA has been dismissed by worthy apex court.

7. In view of the above discussion, the appeal in hand is allowed and it is directed that the reinstatement of the appellant shall be considered with effect from 04.05.2017 and she is held entitled to all back benefits for the intervening period with effect from 04.05.2017 till 23.11.2018. Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCED

15.03.2023



(KALIM ARSHAD KHAN)
CHAIRMAN



(SALAH-UD-DIN)
MEMBER (JUDICIAL)

ORDER
15.03.2023

Appellant alongwith his counsel present. Mr. Muhammad Nazir, SST alongwith Mr. Asif Masood Ali Shah, Deputy District Attorney 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 it is directed that the reinstatement of the appellant shall be considered with effect from 04.05.2017 and she is held entitled to all back benefits for the intervening period with effect from 04.05.2017 till 23.11.2018. Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCED
15.03.2023



(Kalim Arshad Khan)
Chairman



(Salah-Ud-Din)
Member (Judicial)