

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Appeal No. 1604/2022

Mst Shazia NazAppellant

VERSUS

Govt of Khyber Pakhtunkhwa through Secretary Education and
others..... Respondents

S.NO	Description/Documents	Annexure	Pages
1	Comments	1,2,3
2	Affidavit	4
3	Showcase Notice	A	5
4	Report of circle ASDEO	A	6
5	Showcase Notice in news paper	B	7
6	Inquiry Report	C	8

~~Respondent~~

BEFORE THE HONORABLE SERVICE TRIBUNAL PESHAWAR

Appeal NO. 1604 /2022

Mstt: Shazia Naz PST.....Appellant

Versus

**Government of Khyber Pakhtunkhwa through Secretary
(E&SE) Peshawar and others _____ Respondents.**

**Para-wise comments /reply on behalf of
Respondents 1 to 3.**

Respectfully sheweth

Preliminary objections.

1. That the appellant has no cause of action/ locus standi to file the present appeal.
2. That the appellant has concealed the material facts from the honorable court.
3. That the appellant has not come to this honorable Service Tribunal with clean hands.
4. That the appellant has filed the instant appeal on malafide grounds.
5. That the appeal is against the prevailing law /rules.
6. That the appellant is estopped by his own conduct to file instant appeal.
7. That the instant appeal is not maintainable in its present circumstances of the issue.
8. That the appellant has been removed from service due to her long willful absence from her duty of concerned school vide this office Notification No. 1748-52 Dated 19-10-2015. Hence the instant appeal bearing no cause of action may be dismissed without any further proceedings.
9. That the appeal is barred by law and limitation.
10. That this honorable court has got no jurisdiction to entertained the present appeal.

ON FACTS

- 1 Para No 1 pertains to record.
- 2 Para No 2 is incorrect the appellant was not performing her duties and has been willfully absent from duty. A show cause notice was also served upon by the DEO (F) office Endstt; No 1144-46 Dated 08/08/2015. The SDEO (F) Allai also submitted a written statement of bogus attendance of the appellant to the DEO (F) office Battagram. A show cause notice and the written statement of ASDEO (F) Allai attached as annexure. A
- 3 Para No 3 is Incorrect. Final notice to the appellant was served through newspaper which was published in Daily Aji dated 05/09/2015 wherein she

(2)

was directed to attend the office of DEO (F) for personal hearing within 15 days of the publication of noticed but the appellant did not appear to the DEO (F) office nor given any written reply. Upon failure in joining duty and willfully absent from duty, the exercise of power under section IV of the Khyber Pakhtunkhwa Government Servant Removal Service (E&D) 2011 was imposed as a major penalty (removal from service). A show cause notice of newspaper as annexure B.

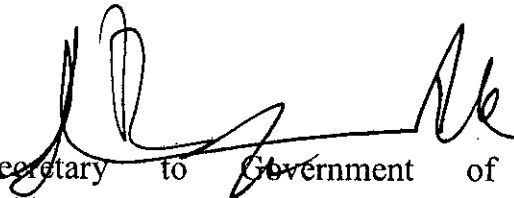
- 4 Para no 4 is incorrect: The Director Elementary and Secondary Education through office Letter No. 4836/.FNo.327/F/APPEAL Battagram Dated 19/05/2022 clearly advice to DEO (F) Battagram to consider her intervening period as leave without pay under (Rules-12) of the revised leave rules 1981. Letter as Annexure C.
- 5 Para No 5 is Incorrect reply given in para 4.
- 6 Pertains to record.

GROUNDS

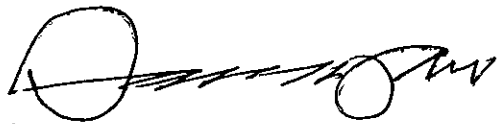
- A. Ground "a" is Incorrect: That the appellant remained absent from school, which is supported by the written statement of ASDEO (F) Allai, followed by serving show case notice to appellant on 08/06/2015. The appellant neither personal appeared nor given any written statement in response. The final show case notice was served through newspaper which was published in Daily Ajj dated 05/09/2015. The appellant in response failed to appear personally or give any written statement in defense which was followed by exercising power vested to the competent authority under section IV of the Khyber Pakhtunkhwa Government Servant Removal Service (E&D 2011) from removal of services. The Director Elementary and Secondary Education order to DEO (F) Battagram through letter No 4836/.FNo.327/F/APPEAL Dated 19/05/2022 for considering intervening period as leave without pay.
- B. Ground "b" is incorrect: Reply is given in ground A.
- C. Ground "c" is incorrect: Reply is given in ground A.
- D. Ground "d" is incorrect: reply is given in para No 4.
- E. Ground "e" is incorrect: reply is given in para No 2
- F. Ground "f" is incorrect: No comments.
- G. Ground "g" is incorrect: reply is given ground a.
- H. Pertains to record.
- I. Pertains to record.
- J. In the ground J respondent also seek permission of this honorable service tribunal to agitate further points at the time of arguments.

It is therefore, humbly prayed that on acceptance of above para wise comments, the service appeal of appellant may graciously be dismissed.

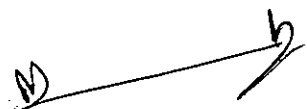
Respondent No. 01


Secretary to Government of Khyber
Pakhtunkhwa (E&SE) Department.

Respondent No. 02.


Director (E&SE) Khyber Pakhtunkhwa
Peshawar.

Respondent No. 03.


District Education Officer (F) Battagram

BEFORE THE HONORABLE SERVICE TRIBUNAL PESHAWAR

Appeal NO., 1604/2022

Mstt: Shazia Naz PST

Versus

**Government of Khyber Pakhtunkhwa through Secretary E&SE
Peshawar and other _____ Respondents**

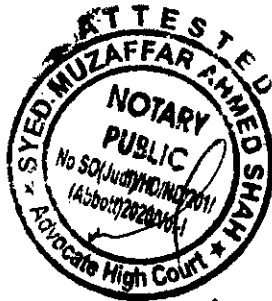
AFFIDAVIT

1, REHANA YASMIN ABASI District Education Officer (Female)
Battagram, do here by affirm and declared on the oath that contents of
accompanying para wise comments on behalf of responding No 3 are true and
correct to the best of my knowledge and belief that nothing has been concealed
from this honorable service tribunal Peshawar.

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DEFENDANT:

CNIC 1330203836012



27/03/23

(5)

Annexure (A) (1)

(16)

فائنل شوکاز نوٹس بابت غیر حاضری

مندرجہ ذیل لیڈی ٹیچرز غیر معیاریت سے سکولوں سے غیر حاضر ہیں اس سے پہلے بھی آپ کو دو عد شوکاز نوٹس گھر کے پتے پر ارسال کیے گئے تھے۔ برادر تاریخ نام کے سامنے درج ہیں۔ بیان آپ کی طرف سے کوئی جواب موصول نہیں ہوا آپ کو بذریعہ نوٹس ہذا آخری بار مطلع کیا جاتا ہے کہ آپ کی اشاعت کے پندرہ (15) دن کے اندر اندر دفتر بذریعہ دستخطی میں ذاتی طور پر حاضر ہو کر اپنی غیر حاضری کی وجہ بتائیں بصورت دیگر آپ کے خلاف رفقہ کاروائی عمل میں لائے گئے آپ کو ملازمت سے برخواست کیا جائے گا جس کی تمام ترمذ داری آپ پر عائد ہوگی۔

نمبر شمار	نام ٹیچر	نام سکول	شوکار نمبر بمقتاریخ
1	PST ناہید	GGPS یقوب آباد	098/07/2014 مورخہ 2031-34
2	✓ نصرت PST	GGPS ترنگڑ	14/05/2015 مورخہ 1124-26
3	کشمیری بی بی PST	GGPS ترنگڑ	14/05/2015 مورخہ 1124-26
4	✓ زکیہ بی بی PST	GGPS مندر والی	29/02/2014 مورخہ 661
5	✓ شمیم نسیم PST	GGPS کولنی بیہ موڑی	11/05/2015 مورخہ 1104، 11/06/2015 مورخہ 1161
6	ہما اقبال PET	GGMS گیدڑی خیر آباد	07/01/2015 مورخہ 32-35، 01/12/2014 مورخہ 3190-93
7	رقیہ شفیق AT	GGMS لکری خرابی	17/06/2015 مورخہ 1303، 10/11/2013 مورخہ 198-201
8	صائقہ PST	GGPS کولنی بیہ موڑی	11/05/2015 مورخہ 1106، 12/06/2015 مورخہ 1162
9	دانشاؤشیم PST	GGPS چمکات	11/06/2015 مورخہ 1173
10	نسیم اختر PST	GGPS جوز	11/06/2015 مورخہ 1173
11	PST بیلا	GGPS محلہ جھانگیر	31/07/2014 مورخہ 2031-34
12	PST فوزیہ	GGPS بازار گے	1377-79، 11/06/2015 مورخہ 1173
13	PST رحمانہ	GGPS درپ قلات	08/06/2015 مورخہ 1144-46
14	PST شازیہ	GGPS سکول قے (برسول)	08/06/2015 مورخہ 1144-46
15	PST یاسین	GGPS کٹنی	08/06/2015 مورخہ 1144-46
16	شاہ منصور چوکیدار	GGPS یقوب آباد	09/07/2014 مورخہ 2031-34

ریاستہائے سندھ
ڈسٹرکٹ ایجوکیشن آفیسر (رٹائرڈ)
سکرٹری

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حضرت جناب رکن DEoF صاحبہ صلیع مگر

Annexure (A) جناب عالیہ

گزارش ہے کہ میں نے ASDFoF میں رہتے ہی
اقرار کرتی ہوں کہ میں نے اس مشاوریہ ناز کو

Glaps BarHudal میں نہ لکھیں دیکھا تھا اس نے
کچھ بعد میں بوس Attendance لکھائی جو کچھ
نے لکھیں اسے نہیں دیکھا

اس کا کوئی وجود نہیں تھا اور نہ میں کوئی ٹرانسفر
ارڈر میرے ساتھ Share ہوا تھا اسلئے میں
نے اسکا کوئی Absent نہیں دی -
Report

میں آپ کی نکتہ نظر ہاں میں اس نے یہ
رجسٹر بعد میں اس کے ذریعے Sign کیا ہے
یہ Bagus Attendance ہے -

آپ کی تاحدار
Raj Bab
ASDFoF
Atta
8/3/23

Attested
Divisional Education
Bhatnagar
8/3/2023

(2)

اساتذہ کی ملازمتوں کے لئے فراہم کردہ معلومات

آپ سندھ پبلیک ایڈیو کیٹیگریز میں خدمات سے کنوں سے لیکر مقررہ سال سے پیشگی آپ کو فراہم کیا گیا ہے تاکہ آپ اس سے استفادہ کر سکیں۔ اس میں جن کے نمبر اور تاریخ نام کے ساتھ درج ذیل ہیں جن میں آپ کی طرف سے کوئی جواب موصول نہیں ہوا ہے۔ بذریعہ نوٹس پبلائیڈ فرم کیا جاتا ہے کہ آپ اس نوٹس کی اشاعت کے بعد (5) دن کے اندر اپنی درخواستیں جمع کروانے کے لئے تیار رہیں۔
 طور پر مقررہ نوٹس پبلائیڈ فرم مقررہ سال کی بجائے صورت دیگر آپ کے خلاف کنٹرول کارروائی میں ملانے سے آپ کو مطلع سے درخواست کیا جائے گا جس کی فراہم شدہ ساری آپ پر نام لگائی۔

نمبر شمار	نام پیکر	پوزیشن	تاریخ	نمبر شمار
1	پست	GGPS	09/07/2014	2031-34
2	نصرت	GGPS	15/05/2015	1124-26
3	کنوینینس	GGPS	14/05/2015	1124-26
4	ڈپٹی ایس ایس ٹی	GGPS	29/02/2014	661
5	پست	GGPS	11/08/2015	1161
6	پست	GGMS	01/12/2014	3190-93
7	پست	GGMS	10/11/2013	195-201
8	پست	GGPS	17/05/2015	1303
9	پست	GGPS	12/08/2015	1162
10	پست	GGPS	11/05/2015	1106
11	پست	GGPS	11/06/2015	1173
12	پست	GGPS	11/06/2015	1173
13	پست	GGPS	31/07/2015	2031-34
14	پست	GGPS	1377-79	11/06/2015
15	پست	GGPS	03/06/2015	1144-46
16	پست	GGPS	08/05/2015	1144-46
		GGPS	08/06/2015	1144-46
		GGPS	09/07/2014	2031-34

اساتذہ کی ملازمتوں کے لئے فراہم کردہ معلومات

Annexure (C)

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8



**DIRECTORATE OF ELEMENTARY & SECONDARY EDUCATION
KHYBER PAKHTUNKHWA PESHAWAR**

No. 4836 /FNo.327/F/Appeal Battagram

Dated Peshawar the 19/05 /2022

To

The District Education Officer,
(Female) **Battagram**

Subject:- **INQUIRY REPORT**

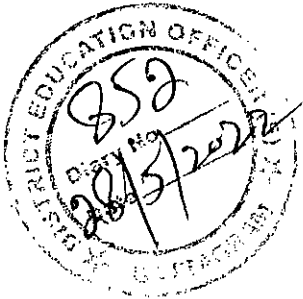
Memo:

I am directed to refer to the subject cited above and to enclose herewith a copy of enquiry report carried out by Muhammad Shoukat B-19 DEO (Male) Abbottabad against Mst. Shazia Naz Ex-PST GGPS, Batkool Killi Distric Battagram and to ask you to implement the recommendations of the enquiry officer, as well as her intervening period may be considered leave without pay under (Rules-12) of the revised leave rules 1981 under intimation to this office.

Endst No. _____ /

[Signature] 19/5/2022
Assistant Director (Female)
E&SE Khyber Pakhtunkhwa,

- Copy of the above is forwarded to the:
1. PA to Director E&SE KPK Peshawar.



D/Zubair/Munawar/Appeals 21 Docx

[Handwritten signature]
ADDO B/P

Assistant Director (Female)
E&SE Khyber Pakhtunkhwa,

[Handwritten signature]
D/A
Please do as
require. B
ADDO
21/5/2022

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR.

Appeal No. _____/2022

Mst. Shazia Naz PST (BS-12)
GGPS Battian Battgram, District Mansehra.

APPELLANT

VERSUS

1. The District Education Officer (Female) Battagram.
2. The Secretary E&SE, Deptt., Govt. Of KP, Peshawar.
3. The Director Education E&SE Deptt, KP, Peshawar.

RESPONDENTS

.....

APPEAL UNDER SECTION-4 OF THE KHYBER
PAKHTUNKHWA, SERVICE TRIBUNAL ACT, 1974
AGAINST THE LETTER DATED 19/05/2022 AND
ORDER DATED 21-06-2022 WHEREBY THE
APPELLANT HAS BEEN RE-INSTATED INTO
SERVICE FROM THE DATE OF REMOVAL
W.E.FROM 19-10-2015 AND INTERVENING PERIOD
IS CONSIDERED AS LEAVE WITHOUT PAY AND
AGAINST NOT TAKING ACTION ON THE
DEPARTMENTAL APPEAL OF THE APPELLANT
WITHIN STATUTORY PERIOD OF 90 DAYS.

.....

PRAYER:

THAT ON ACCEPTANCE OF THIS APPEAL:

- (1) THE ORDER DATED 19/05/2022 AND 21/06/2022
MAY PLEASE BE MODIFIED TO THE EXTENT
THAT INTERVENING PERIOD W.E.FROM
AUGUST 2016 TO JUNE 2022 MAY PLEASE BE
TREATED AS FULL PAY WITH ALL BACK AND
CONSEQUENTIAL BENEFIT I.E SENIORITY
PROMOTION AND MONTHLY PAY.

(II) THE RESPONDENT MAY FURTHER BE DIRECTED TO PAY MONTHLY SALARY TO THE APPELLANT W.E.FROM AUGUST 2016 TILL DATE AND ONWARD.

(III) ANY OTHER REMEDY, WHICH THIS AUGUST TRIBUNAL DEEMS FIT AND APPROPRIATE THAT, MAY ALSO BE AWARDED IN FAVOR OF APPELLANT.

RESPECTFULLY SHEWETH:

FACTS:

1. That the appellant was appointed as PST in Education Deptt vide order dated 06.04.2004 and also has a good service record throughout and unblemished service career of 18 years. Copy of appointment order is attached as annexure-A.
2. That the appellant properly performing her duties and marks attendance in the attendance register till April 2018. But salary of the appellant was stopped in the month of August of 2016. Copy of attendance register is attached as annexure-B.
3. That in the year 2018 appellant verbally told that you are already terminated in the year 2015 but no order was communicated, this all facts were evident from the inquiry report. The Appellant applied through RTI for Documentation of removal etc, which was provided to the appellant. So after obtaining order of removal the appellant comes to know that the appellant was removed from the service in year 2015 vide order dated 19/10/2015 without providing any chance of defense. The pay stoppage order was also communicated to the appellant with the impugned order. Copy of the RTI letter, removal order and pay stoppage are attached as annexure-C, D & E.
4. That appellant preferred department appeal on the basis of which inquiry was order vide notification date 23/02/2021. The inquiry was conducted and the inquiry officer submitted his report but the Director education vide letter dated 04.04.2022 directed the inquiry officer to submit clear cut recommendations. Thereafter revised inquiry was submitted wherein the appellant was declared innocent and also gave recommendation for re-instatement into service w.e.from 19/10/2015. On the basis of inquiry report the Director Education wrote letter dated 19/05/2022 to DEO (f) Battagram for re-instatement of appellant w.e.from the date of removal and the intervening period may be considered as leave without pay. On the basis of which the respondent no.1 issued order dated 21/06/2022

wherein appellant was reinstated in to service but the intervening period was treated as leave without pay without any reason.. Copy of departmental appeal covering letter, inquiry report, letter, revised inquiry report, impugned letter dated 19/05/2022 and impugned order are attached as Annexure-F, G, H, I, J and K.

5. That thereafter, the appellant gave arrival report and filed departmental appeal for back benefits including Seniority, promotion and Pay but the same was not responded within statutory Period of 90 days.. (Copy of arrival report and departmental appeal are attached as Annexure-L & m).
6. That the appellant having no other remedy and constrained to file service appeal to this Honorable Tribunal on the following grounds amongst the others.

GROUND:

- A) That the impugned dated 19/05/22 and 21/06/2022 and not paying monthly salaried to the appellant despite that performance of her duties is against the law, facts, norms of justice and material on record, therefore, not tenable and liable to be modified to the extent of intervening period w.e. from AUGUST 2016 TO JUNE 2022 may please be treated as full pay with all back and consequential benefits.
- B) That neither the appellant was associated with the inquiry proceedings nor any statement of the witnesses have been recorded but despite that the appellant was dismissed from service without any fault on her part as evident from the inquiry report.
- C) That in denovo inquiry appellant was declared innocent therefore appellant was re-instated in service but the intervening period treated as leave without pay which is unjust and liable to be modified.
- D) That it is pertinent to mentioned here that appellant regularly performed her duties till 2018 evident from the attendance register and inquiry report, so the appellant never remained absent from duty. so if the performance of duties is concerned after 2018 it is due to illegal dismissal order of the department the appellant not performed duties, so the appellant cannot be suffered for the fault of others.
- E) That the Allegation leveled against the appellant was not proved in inquiry, but despite that the appellant is deprive from his salaries in fanciful manner and without law full justification.

- F) That the appellant cannot be held responsible for the lapse/irregularities committed by the department and in such case the Hon'able Supreme Court of Pakistan has held the department responsible not the appellants.
- G) That the relevant authorities restrain the appellant from performance of duty due to there improper exercise of official power, therefore, the appellant cannot be deprived from his legal right of salary
- H) That the appellant is not deprived from the back benefits for the period which they remained out of service without any fault from their side, that According to judgment of Supreme Court reported as 2007 PLC Supreme Court-184 as mentioned below:

“the salaried of civil servant would not be withheld for the intervening period when they remained out of service due to whimsical and arbitrary actions of the functionaries. Civil servant had every right to recover their arrears”

So, in the light of Supreme Court Judgment the appellant is also legally entitled for their salaries.

- I) That the appellant was not remained gain full employee during the period out of service and the appellant is legally entitled to pay benefits w.e. from AUGUST 2016 TO OCTOBER 2022. according to judgment of Supreme Court Reported as 07 SCMR-855(b), in respect of matter of gainful employment during period remained out of service, so the appellant is legally entitled for salaries for a such period.
- J) That the appellant seeks permission to advance others grounds and proofs at the time of hearing.

*Appellant has no cause of action
Respondent seek permission of this honorable
court to raise other legal and factual points
during the course of argument*

It is, therefore, most humbly prayed that the appeal of the appellant maybe accepted as prayed for.

Shazia Naz
APPELLANT
Shazia Naz

THROUGH:

Shazia Naz
SYED NOMAN ALI BUKHARI
ADVOCATE, High Court PESHAWAR

CERTIFICATE:

It is certified that no other service appeal earlier has been filed between the present parties in this Tribunal, except the present one.


DEPONENT

LIT OF BOOKS:

1. Constitution of the Islamic Republic of Pakistan, 1973.
2. The ESTA CODE.
3. Any other case law as per need.


(SYED NOMAN ALI BUKHARI)
ADVOCATE HIGH COURT