

**KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR.**

BEFORE: **KALIM ARSHAD KHAN ... CHAIRMAN**
SALAH UD DIN ... MEMBER (Judicial)

Service Appeal No.1646/2022

Date of presentation of appeal17.11.2022
Dates of Hearing.....30.03.2023
Date of Decision.....12.04.2023

Najia Kausar D/O Fazli Karim & W/O Sanauallah R/O Village Thana District Malakand, Subject Specialist Pashto, Government Girls Higher Sceondary School Badwan Lower Dir.

.....(*Appellant*)

Versus

1. **Govt: of Khyber Pakhtunkhwa through Secretary, Elementary & Secondary Education, Khyber Pakhtunkhwa, Peshawar.**

.....(*Respondent*)

Present:

Mr. Nazir Ahmad,
Advocate.....For appellant.

Mr. Muhammad Jan,
District Attorney.....For respondents.

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SERVICE APPEAL UNDER SECTION 4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974 AGAINST THE IMPUGNED OFFICE ORDER DATED 18.08.2022 OF THE RESPONDENT WHEREBY THE APPELLANT IS TRANSFERRED FROM GGHSS BADWAN TO GGHSS PANIKHEL, KOTKAY LOWER DIR AGAINST THE LAW AND POLICY WITH IMMEDIATE EFFECT AND HER APPEAL IS KEPTPENDING TILL TODAY WITHOUT ANY ORDER OVER IT.

JUDGMENT

KALIM ARSHAD KHAN CHAIRMAN: According to the facts gathered from the record the appellant was appointed as SET (G) (BS-16) on

30.08.2005 and posted against the vacant post at Government Girls High School Talash Dir, Lower; that the post of the appellant was upgraded to BS-17 on 1.11.2016 and then she was posted at GGCMS No.1 Tarnaw Dir Lower; that on the recommendation of Departmental Promotion Committee the appellant was promoted to the post of Subject Specialist (BS-17) on 14.11.2017 and was posted at GGHSS Badwan, Dir Lower; that the appellant was transferred to her home district i.e. GGHSS, Allah Dand Dehri Malakand on 19.09.2018 but that very order was withdrawn; that the appellant was again transferred on 18.08.2022 to GGHSS Panikhel Kotkay Dir Lower; that the appellant feeling aggrieved filed representation on 20.08.2022 which was not responded within ninety days, and then she filed the instant service appeal.

2. On receipt of the appeals and admission to full hearing, the respondents were summoned, who, on putting appearance, contested the appeals by filing written replies raising therein numerous legal and factual objections. The defence setup was a total denial of the claim of the appellants.

3. We have heard learned counsel for the appellant and learned District Attorney for the respondents.

4. It is the case of the appellant that the appellant husband is suffering from multiple diseases and the doctors has advised him proper care. The apex court in Pakistan while interpreting the Right to life has held that the female civil servant shall be posted near to her home so that she may take care of her children. Thus the transfer of the appellant too far away from home is against

the judgment of the court and so is violation of Article-5 of the Constitution of Pakistan. New posts are created in the home District of the appellant for which the appellant may be considered by the respondent. It is also on the file that letter No. 961 dated 03.09.2022, wherein Principal, GGHSS Badwan, Lower Dir had requested the Secretary Elementary & Secondary Education Peshawar to cancel the transfer order of the appellant saying that there were already 10 posts vacant at GGHSS Badwan and she was in need of teaching staff as the teaching available at the school was insufficient. Moreover, during the course of arguments, it was pointed that there were no students of the subject of specialty of the appellant whereas there was a number of such students at GGHSS, Badwan. These facts were not controverted by the respondents during the arguments. In such a situation the public interest appears to be retention of the appellant at the school from where she was transferred. Learned counsel for the appellant produced copy of judgment of Hon'ble Lahore High Court reported as 1996 PLC(C.S) 415 citation(e) which is reproduced as under:

"29---Punjab Service Tribunal Act (IX of 1974), S.4--- Transfer of female civil servant to far off places from their residence---Such tendency being violative of the principles of policy as enshrined in the Constitution which enjoins the state to protect family life should be discouraged---Transfer of female civil servant to far-flung area could create problems as regards security of life---Service Tribunal in such matter, has ample jurisdiction to interfere."

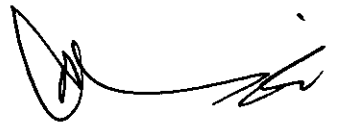
The august Supreme Court of Pakistan in its judgment reported as 2003 PLC (C.S) 983 had held that:

"---S.4---Constitution of Pakistan (1973) , Art.212(3)--- Transfer of civil servant ---jurisdiction of Service

Tribunal ---Female lady teachers were transferred from their home station to a distant station---One of the teachers was unmarried, while husband of the other was employed at the station from where she was transferred--
-On posts against which the teachers were working the Authorities wanted to recruit two teachers on contract basis--- Service Tribunal having come to the conclusion that the transfer was not in public interest, allowed the appeals and transfer orders were set aside.”

5. In view of the above, the instant appeal is allowed and the impugned transfer order 18.08.2022 is set aside. However, in case of future transfer of the appellant, the competent authority shall specify the public interest and also to follow the spouse policy, if possible. In case there is actual public interest involved or there is any exigency, the competent authority would be at liberty to transfer the appellant under Section-10 of the Khyber Pakhtunkhwa Civil Servants Act, 1973. Costs shall follow the event. Consign.

6. *Pronounced in open Court at Peshawar and given under our hands and the seal of the Tribunal on this 12th day of April, 2023.*



KALIM ARSHAD KHAN
Chairman



SALAH UD DIN
Member (Judicial)

Adnan Shah, PA