

BEFORE THE KPK, SERVICE TRIBUNAL, PESHAWAR

S.A No. 2039/2020

Fahmida Bibi

versus

DEO (F) & Others

REJOINDER**Respectfully Sheweth,****PRELIMINARY OBJECTION**

All the 10 Preliminary Objections are illegal and incorrect. No reason in support of the same is ever given as to why appeal is time barred, without locus standi, unclean hands, not maintainable, to pressurize respondents, against facts, rules and law, estoppel, concealment of material facts, documents tempered by respondents, appointment was quite per the mandate of law, respondents acted against settled law, High Court set aside judgments and decrees of lower courts, she is entitled for all back benefits, civil suit was filed by alien and appellant is entitled for all back benefits, with special cost upon respondents, plea of fake and bogus documents was repelled by the hon'ble court / Tribunal.

ON FACTS

1. Not correct. The para of the appeal is correct regarding appointment of appellant along with 14 other candidates. Allegation of bogus and tempered documents was not only posed against appellant but all of the appointees, yet except appellant, all are serving in the department as such.
2. Not correct. The Para of the appeal is correct regarding assumption of charge at GGPS Toti Abad and preparation of Service Book.

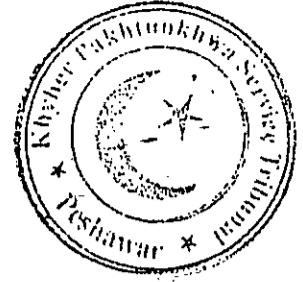
3. Not correct. The para of the appeal is correct. It was not the appellant but the Ex-DEO cheated all the 06 female teachers and terminated their services on the score of bogus documents. Yet all of them except appellant were reinstated into services with all back benefits.
4. Not correct. The para of the appeal is correct. The then DCO being appellate authority decided the appeal holding therein that appellant not only fulfills criteria of qualifications for the post of PST but her certificates were considered as genuine.
5. Admitted correct by the respondents regarding reinstatement of appellant in service with all back benefits.
6. Admitted correct by the respondents regarding filing of suit by co-employee with direction to the department to reinstate Dur-e-Shehwar in service, yet the hon'ble court never directed the department to terminate services of appellant.
7. Not correct. In the judgment, the hon'ble court never directed department to dismiss appellant from service, yet the department dismiss her from service on 04-05-2017 with immediate effect.
8. Needs no comments, yet the appeal of appellant before the District Judge bore no fruit.
9. Not correct. The para of the appeal is correct regarding Revision Petition before High Court which was accepted, set aside the judgments of the courts below which means that appointment of appellant was per the mandate of law.
10. Admitted correct by the respondents regarding reinstatement of appellant in service but with immediate effect instead of date of termination from service i.e. 26-02-2011.
11. Not correct. The para of the appeal is correct regarding representation for reinstatement in service from the date of first termination from service which was rejected by R. No. 02 for no legal reason.

Here it would be not out of place to mention that department had made appointments more than the sanctioned posts which created problem not only in the department but amongst the appointees. On this, the Ex-DEO namely Mir Azam Khan was killed along with his son. The allegations of fake and bogus documents were also leveled against numerous employees which was repelled not only by the hon'ble Tribunal but also by the department herself.

In similar circumstances and as stated earlier, numerous employees were terminated from service on the allegation of fake and bogus documents which A. No. 16435/2020, "Rukhsana Hayat vs DEO (F) & Others" came up for hearing before the hon'ble Tribunal and after scrutiny, the hon'ble Tribunal was pleased to accepted the same vide judgment dated 24-11-2022 with all back benefits. (Copy as annex "R")

GROUND S:

- A. Not correct. Appointment of appellant was made in prescribed manner on 25-02-2011.
- B. Not correct. The ground of the appeal is correct regarding appointments over and above than sanctioned posts on consideration. The documents of appellant were genuine but the then DEO termed the same of others along with appellant as such, however, later on the same contention of the department was repelled.
- C. Not correct. The ground of the appeal is correct. Illegal order of termination was issued by the respondents. The hon'ble High Court set aside the judgments of the lower courts, so respondent was legally bound to reinstate appellant in service from the date of termination with all back benefits.
- D. Not correct. The hon'ble Tribunal directed the respondents to pay monthly salaries and arrears to appellant etc within a period of one month.



BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

Service Appeal No. 16435/2020

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

Rukhsana Hayat D/O Hayatullah Khan, Ex-PTC, GGPS, Textile Mills, Serai Naurang, Lakki Marwat R/O Nar Raza Khan Adam Zai, Lakki Marwat. (Appellant)

Versus

1. District Education Officer (F), Elementary & Secondary Education Lakki Marwat.
2. Director, Directorate of Elementary & Secondary Education, Khyber Pakhtunkhwa, Peshawar.
3. Secretary, Government of Khyber Pakhtunkhwa, Elementary & Secondary Education, Peshawar.
4. District Accounts Officer, Lakki Marwat.
5. Controller of Examination, Board of Intermediate & Secondary Education, Bannu. (Respondents)

Arbab Saif-ul-Kamal,
Advocate

For appellant

Mr. Kabinullah Khattak,
Addl. Advocate General

For respondents

Date of Institution.....18.12.2020


Date of Hearing.....24.11.2022

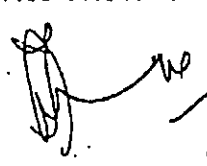
Date of Decision..... 24.11.2022

JUDGEMENT

FAREEHA PAUL, MEMBER (E): The service appeal in hand has been instituted under Section 4 of the Khyber Pakhtunkhwa Service Tribunal

ATTESTED


EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar


SECRETARY
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

Act, 1974 against the order dated 27.07.2012 of respondent No. 1 whereby services of the appellant were terminated and against the order dated 06.11.2019 of respondent No. 2 whereby departmental appeal of the appellant was rejected and against order dated 24.12.2019 of respondent No. 1 whereby appellant was dismissed from service with immediate effect with the prayer that all the orders might be set aside and the appellant be reinstated in service with all consequential benefits with further payer to pay monthly salaries withheld since 25.11.2012 onwards.

2. Facts of the case, as per memorandum of appeal, are that numerous posts of PTC alongwith other disciplines were advertised on 11.05.2010 by respondent No. 3. The appellant, alongwith others, having the requisite qualification applied for the same in prescribed manner through printed form on 21.05.2010 wherein details of the academic qualifications and marks obtained were given. After going through the prescribed procedure of selection, appellant, alongwith others, was appointed as PTC on the recommendations of Departmental Selection Committee vide order dated 25.02.2011 on regular basis and she assumed the charge on 26.02.2011. On 15.06.2012 certificates of appellant, alongwith other female teachers, were termed as fake by the respondents on the ground that the same were verified as fake from the concerned Board. On 27.07.2012, services of the appellant, alongwith other teachers, were terminated on the ground of bogus/fake and tampered documents. On 17.10.2012, the appellant submitted representation

ATTESTED

EXAMINER
 Chapter Substituted
 Service Tribunal
 P.O. No. 1000

[Handwritten signature]

before respondent No. 2, against the order of termination, for reinstatement in service with all back benefits which was accepted on 27.12.2012 by the department with all back benefits but monthly salaries were withheld. On 21.03.2014, appellant preferred an appeal before the Service Tribunal for release of salaries which came up for hearing on 28.02.2018. The appeal, alongwith other appeals, was accepted with the directions to the department to treat those as departmental appeals and remitted the same to the departmental appellate authority for decision through speaking order after examining the relevant record within a period of sixty days positively. The departmental appellate authority was further directed to communicate the said order to the appellants and if any party was aggrieved from the order, the said party reserved the right to file fresh appeal, subject to all just/legal objections (Appeal No. 129/2014 titled Mehnaz Bibi Vs. DEO and others). The respondents failed to implement the order dated 28.02.2018 in letter and spirit, and hence an Execution Petition No. 236/2018 was filed before the Service Tribunal on 18.07.2018 for release of monthly salaries. On 21.01.2019 respondent No. 1 issued office order for the release of pay of the appellant from the date of appointment (i.e. 25.02.2011, but in fact no penny was paid to her. On 12.02.2019 respondent No. 1 issued another order modifying the earlier order of 21.01.2019 for release of pay of the appellant w.e.f. 01.08.2019, instead of date of appointment which was 25.02.2011. On 28.03.2019, respondent No. 4 (District Accounts Officer, Lakki Marwat) wrote a letter to respondent No.1, with a copy to Sub Divisional Education

ATTESTED

CLERK
 Service Tribunal
 Lakki Marwat

- E. Not correct. Appellant was dragged into litigation by alien for no legal reason. The matter was subjudice before the court when in the meanwhile, her services were terminated for no legal reason yet again reinstated with immediate effect instead of from the date of termination with all back benefits.
- F. Not correct. Respondent never acted in accordance with law, so her contention was repelled by the High Court to be illegal and without lawful authority.
- G. Not correct. The ground of the appeal is correct. During stay order, the impugned order was passed for no legal reason.
- H. Not correct. Representation of appellant was illegally rejected by the appellate authority without giving any reason.
- I. Not correct. It was the department who misinterpreted the orders of the hon'ble court by not reinstating appellant in service from the date of termination with all back benefits.

It is, therefore, most humbly prayed that the appeal be accepted as prayed for.

Fahmida Bibi

Appellant

Through

Saadullah Khan Marwat

Saadullah Khan Marwat

Advocate,

Dated: 31-01-2023

AFFIDAVIT

I, Fahmida Bibi, appellant do hereby solemnly affirm and declare that contents of the **Appeal & rejoinder** are true and correct to the best of my knowledge and belief while that of reply of respondents are illegal and incorrect.

Fahmida Bibi

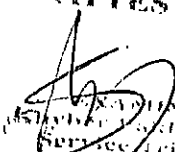
DEPONENT

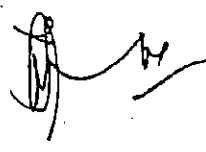
appellant submitted an appeal before respondent No. 2 for her reinstatement in service which was not responded. On 19.11.2020 the Service Tribunal passed its order wherein execution petition of the appellant was decided as per its contents. Feeling aggrieved from the response of respondent department, the appellant submitted the present service appeal on 18.12.2020.

4. Respondents were put on notice who submitted written replies/comments on the appeal. We have heard the learned counsel for the appellant as well as the learned Additional Advocate General for the respondents and perused the case file with connected documents in detail.

5. Learned counsel for the appellant presented the detail of the case and apprised the bench that similarly placed colleagues of the appellant were being paid monthly salaries by the department on regular basis but the same had been refused to the appellant for which she approached the Service Tribunal which was pleased to direct the authority to pay the salaries from the date of her appointment. He invited the attention to the judgments of Superior Courts wherein it had been clearly directed that similarly and equally placed persons be treated similarly and equally to avoid discrimination. On the inquiry conducted by the Provincial Inspection Team the learned counsel clarified that the said inquiry was conducted against respondent No. 1 who made appointments over and above the sanctioned strength of the posts and it was not against the appellant. He further

ATTESTED


MEMBER
Service Tribunal



informed that a case in N.A.B was also pending disposal against respondent No. 1 in the same matter. He requested for acceptance of the appeal as prayed for.

6. Learned Additional Advocate General contended that the appellant applied with bogus S.S.C certificate which was sent for verification from the concerned Board and the same was declared as fake and bogus. He further contended that departmental appeal of the appellant was decided by the competent authority/departmental appellate committee after the facts which were brought to its notice that the appellant's PTC certificate was also bogus. On the matter of inquiry by the Provincial Inspection Team, the learned AAG stated that inquiry was conducted in respect of documents of almost all the concerned appointees alongwith the appellant and in the same report the P.I.T had recommended show cause notice to be served upon the appellant, alongwith other beneficiaries, for fraudulent appointment. He further argued that the appellant obtained the restraining order from the Service Tribunal by referring the execution petition which was also based on mala fide and misrepresentation of the appellant referring therein that the Tribunal had passed the judgment in favour of the appellant. According to him the appellant was aware of the decision of the departmental appellate committee and as per order dated 28.02.2018 of Service Tribunal she was directed to file fresh appeal before the Service Tribunal against the said speaking order of departmental appellate authority but she failed to do so

ATTESTED

SECRETARY
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

ملفوظات عدالت

and therefore, she was alleging wrong facts to cover limitation of her instant time barred appeal. He requested that the appeal of the appellant was time barred and therefore liable to be dismissed. The Additional A.G further contended that the appellant was never reinstated or adjusted on any post after her termination from service on 27.02.2012 nor she had performed any duty in any school. He requested for dismissal of the service appeal.

7. After hearing the arguments and going through the record presented before us, it transpires that the appellam applied for the post of PTC through a printed application form to the EDO Elementary & Secondary Education, District Lakki Marwat. She had clearly mentioned her educational qualification marks in that form according to which she secured 626 marks in Matric and 557 marks in F.A/F.Sc. Her PTC marks have been shown as 563. Two certificates, SSC and Intermediate examinations, have also been attached showing the same marks as mentioned in her application form. After getting appointed, the appellant joined the service by submitting her arrival report and started her attendance in the school where she was posted. One of the conditions of her appointment was that the Executive District Officer (EDO) Elementary & Secondary Education, Lakki Marwat would check and verify the certificates/degrees of the appointed candidates from concerned Board/Universities before the drawl of their pay. Accordingly their educational testimonials were forwarded to the respective institutions for necessary verification. A point noted in the record as well as in the

ATTESTED

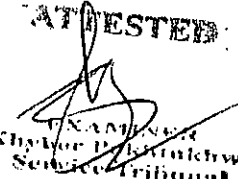
AS
K. S. KHAN
Service Tribunal
Peshawar

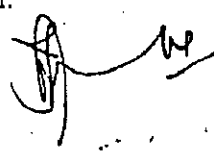
[Handwritten signature]

arguments was that the Secondary School Certificate of the appellant forwarded by the E.D.O, E&SE to the concerned board shows her marks as 780. Similarly a Detailed Marks Certificate of Higher Secondary School Examination indicates her marks obtained as 777. Both these certificates have been declared bogus by the Board of Intermediate and Secondary Education, Bannu. On a question raised by the bench for the learned AAG and departmental representative of Elementary & Secondary Education Department to produce the application form alongwith enclosures, including the educational testimonials, submitted by the appellant, both of them were silent. No such document is attached with the reply also. It is, therefore, hard to understand that from where the two certificates that were forwarded to the BISE Bannu came, as the same were denied by the appellant and it was supported by the application form that she submitted to the respondent department, a copy of which is attached with her appeal also.

8. On the point of reinstatement of the appellant vide order dated 27.12.2012 whereby she was reinstated on the grounds that she possesses the minimum qualification so required for appointment as PST, the respondent department failed to provide the relevant record to ascertain whether she came in the ambit of being appointed on merit or not.

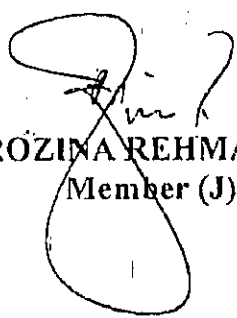
8. In view of the above discussion, the instant service appeal is allowed as prayed for. Parties are left to bear their own costs. Consign.

ATTESTED

 Chairman
 Service Tribunal
 Peshawar



10. Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal this 24th day of November, 2022.


(FARLEHA PAUL)
Member (E)


(ROZINA REHMAN)
Member (J)

Certified to be true copy

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

Date of Presentation of Application 23-1-22
 Number of Legal S-P
 Copying Fee 45/-
 Urgent _____
 Total 45/-
 Name _____
 Date of Completion 24-1-23
 Date of Delivery of Copy 24-1-23