

**KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR.**

**BEFORE: KALIM ARSHAD KHAN ... CHAIRMAN
FAREEHA PAUL ... MEMBER (Executive)**

Service Appeal No.14226/2020

Date of presentation of Appeal.....13.11.2020

Date of Hearing.....25.05.2023

Date of Decision.....25.05.2023

**Sumaira Naseem, Primary School Teacher (BPS-12) Government
Girls School Kalan No. 2, Mamoon District Bajaur, R/O House No.
618 Mohalla, Kucha Malak Wazir, New Kakshal Peshawar.**

.....*Appellant*

Versus

1. **The Secretary, Elementary & Secondary Education, Government Of
Khyber Pakhtunkhwa, Peshawar.**
2. **The Director, Elementary & Secondary Education, Khyber
Pakhtunkhwa, Peshawar.**
3. **The District Education Officer (Female), Bajaur.**
4. **The District Education Officer (Female), Peshawar.**

.....*(Respondents)*

Present:

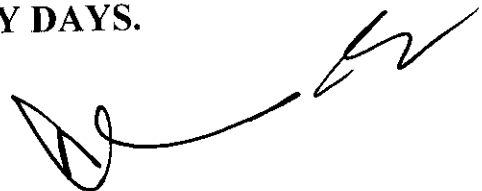
Mir Zaman Safi ,

Advocate.....For the appellant

Mr. Muhammad Jan,

District AttorneyFor respondents.

**APPEAL UNDER SECTION 4 OF THE KHYBER
PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974
FOR DIRECTING THE RESPONDENTS TO TRANSFER
THE APPELLANT FROM DISTRICT BAJAUR TO
DISTRICT PESHAWAR AS PER SPOUSE POLICY FOR
WHICH DEPARTMENTAL APPEAL OF THE
APPELLANT HAS NOT BEEN RESPONDED SO FAR
DESPITE THE LAPSE OF MORE THAN THE
STATUORY PERIOD OF NINETY DAYS.**



JUDGMENT

KALIM ARSHAD KHAN CHAIRMAN: Brief facts of the case are that appellant is bonafide resident of district Peshawar and is presently posted as Primary School Teacher (BPS-12), who during her service has been transferred time and again and is posted to Government Girls School Kalan No. 2, Mamoond District Bajaur. That since long the appellant is making requests to the respondents that as besides her marriage to District Peshawar, her husband is serving as Junior Trade Instructor since 13.02.2007 in Government College of Technology Peshawar and also owns a home along with her husband but to no avail. The appellant filed departmental appeal on 28.07.2020, which was not responded to, hence, the present service appeal.

2. On receipt of the appeal and its admission to full hearing, the respondents were summoned. Respondents put appearance and contested the appeal by filing written reply raising therein numerous legal and factual objections. The defense setup was a total denial of the claim of the appellant.

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

4. Learned counsel for appellant contended that inaction of the respondents is illegal and void ab-initio as the appellant is serving at the District Bajaur, while her husband is serving at Peshawar, thus as per spouse policy the appellant is entitled to be posted at Peshawar. He further contended that the appellant is the permanent resident of

District Peshawar since her marriage and also own a house jointly with her husband as such is entitled to be transferred at Peshawar, he, therefore, requested for acceptance of the instant appeal.

5. As against that learned District Attorney argued that the appellant is the permanent resident of District Bajaur, because she got her appointment on her permanent address of her domicile on PST post. He further argued that the appellant was treated according to law and rules, therefore, he requested for dismissal of the instant service appeal.

6. After hearing arguments of both the sides and perusal of the file specially Para-1 of the reply of the respondents is reproduced below for ready reference:

"That the appellant is the permanent resident of District Bajaur, therefore, she got appointment against PST post at District Bajaur. Because PST post is District cadre post and according to Regularity Act 2011 chapter APT Rules Section 3 of the Khyber Pakhtunkhwa Appointment, Deputation, Posting and Transfer of teachers, lecturers, instructors and doctors Regularity Act of 2011, the vacancy of Primary School Teacher shall be filled from the candidates belonging to the Union Council of the permanent residence mentioned in their Computerized National Identity Card and Domicile on merit and if no eligible candidate in that union council is available where the school is situated, such appointment shall be made on merit from amongst eligible candidates belonging to the adjacent union councils".

7. The learned counsel for the appellant when confronted with the above, could not make out a case to get the desired relief, because of the bar contained in the relevant law mentioned in the above para of

Service Appeal No.14226/2020 titled "Sumaira Naseem -vs- The Government of Khyber Pakhtunkhwa through Secretary Elementary & Secondary Education Khyber Pakhtunkhwa and others", decided on 25.05.2023 by Division Bench comprising of Mr. Kalim Arshad Khan, Chairman, and Ms. Fareeha Paul, Member Executive, Khyber Pakhtunkhwa Service Tribunal, Peshawar.

the reply, therefore, this appeal has no merits and is dismissed with costs. Consign.

8. ***Pronounced in open Court at Peshawar and given under our hands and seal of the Tribunal on this 25th day of May, 2023.***



KALIM ARSHAD KHAN
Chairman



FAREEHA PAUL
Member (Executive)

Kaleemullah