

BEFORE THE SERVICE TRIBUNAL KHYBER

PAKHTUNKHWA PESHAWAR

E.P NO. 59/AN SERVICE APPEAL NO. 5794/2021

Khyber Pakhtukhwa
Service Tribunal

Diary No. 5669

Dated 30/5/2023

Mst. FaizanullahAppellant

V/s

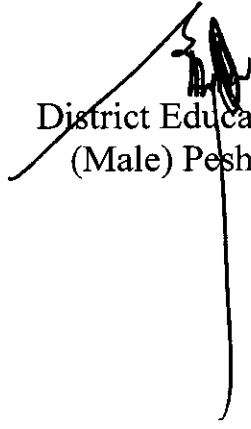
Secretary E&SE Department, Kpk Peshawar & others..... Respondents

INDEX

S. No.	Description of Documents	Annexure	Page No.
1.	Reply	-----	1
2.	Judgment	A	2 - 7
3.	Appeal	B	8 - 11
4.	Implementation Report	C	12
	<i>Authenticity Letters</i>		13

31/5/2023

(S B)


District Education Officer,
(Male) Peshawar

BEFORE THE SERVICE TRIBUNAL KHYBER**PAKHTUNKHWA PESHAWAR****E.P NO./59/IN SERVICE APPEAL NO.5794/2021**

/2023

Mst. FaizanullahAppellant

V/s

Secretary E&SE Department, Kpk Peshawar & others..... Respondents

REPLY ON BEHALF OF RESPONDENTS DEPARTMENT .

Respectively Sheweth:

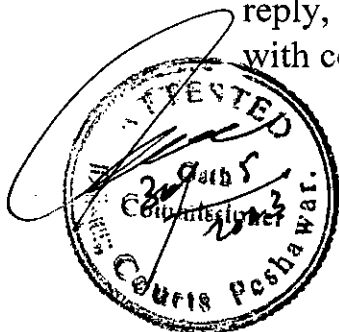
The Respondents submit below:

1. That in reply to Para No.1 it is submitted that the Appellant was wrongly appointment because the said appointment was against the Regularity Act, 2011 Section-3.
2. That when the above reality came into the knowledge of the competent authority, the Respondent Department withdraw the illegally appointment order of the appellant.
3. That in reply to Para No.3 it is submitted that the appellant filed service appeal No.5794/2021 against the withdrawn order dated 12-02-2021 with the prayer "**the order of the respondents may kindly be sets-aside and the appellant may kindly be reinstated in service with all back benefits including pay from taking of charge**" the Hon'ble Service Tribunal decided the appeal of Appellant on dated: 23-06-2022. The Department filed CPLA against the judgment of this Hon'ble Tribunal which is still pending. The Appellant filed Execution Petition No.524/2022 the Department conditionally implemented the said judgment and submitted implementation report to this Hon'ble Service Tribunal thus the same was consigned by this Hon'ble Service Tribunal.

(Judgment, appeal and implementation as Annex-A,B,C).

4. That Para No.4 to 12 is incorrect, misleading and against the facts, while reply to the rest of Para has been already given in Para No.3.
13. That Para No.13 is incorrect, misleading against the facts. The Appellant has already been conditionally reinstated in service and also received his all back benefit.
14. That Para No.14 is incorrect, misleading against the facts the detail reply has been given in the above Para.

It is therefore, very humbly prayed that on acceptance of this reply, the instant Execution Petition may very kindly be dismissed with cost.



**District Education Officer
(Male) Peshawar**

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Amir - (A)

2

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

Service Appeal No. 5794/2021

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

FAIZAN ULLAH S/O MUHIB ULLAH R/O HAMDARD MANZIL, HOUSE NO. 1/39.C
MOHALLAH JOHAR STREET, PESHAWAR CANTT.

.....(Appellant)

VERSUS

1. Deputy district education officer (M) Peshawar.
2. District Education Officer (M) Peshawar.
3. Director Elementary & Secondary Education, Khyber Pakhtunkhwa.
Peshawar.
4. Govt. Of Khyber Pakhtunkhwa through Secretary Education Civil
Secretariat Peshawar.
5. Mohammad Kaleem Ullah s/o Abdul Manan. Cantonment General
Hospital, flat no. 5. Block-a/2. Peshawar.

..... (Respondents)

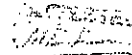
Mr. Muhammad Asif
Advocate

For appellant

SYED NASEER UD DIN SHAH
ASSTT. ADVOCATE GENERAL

For Respondents

Date of institution..... 03-06-2021
Date of Hearing..... 23-06-2022
Date of Decision..... 23-06-2022


SYED NASEER UD DIN SHAH
ASSTT. ADVOCATE GENERAL
Cantonment General Hospital,
Peshawar

JUDGMENT

FAREEHA PAUL, MEMBER (E): The service appeal in hand has been
considered under section IV of the Khyber pakhtunkhwa service tribunal (Act
of 1973) against the impugned order dated 12.02.2021 with the prayer that it may
be set aside and the appellant may be reinstated in service with all back benefits
(including dearness allowance and allowances) w.e.f 19.08.2020, the date of his appointment.



2. Brief facts of the case, as given in the memorandum of appeal, are that the appellant was a permanent resident of Hamdard Manzil, House No. 1/39.C, Mohallah Johar Street, Peshawar Cantt. After passing matriculation examination he obtained domicile certificate of Peshawar. The respondents advertised posts of PST with the conditions for applicants that they should have permanent domicile and CNIC of Peshawar and that they should be permanent residents of that Union Council. Appellant being qualified and permanent resident of Cantonment Board, Peshawar Union Council applied for that post. He appeared in the test and interview and qualified for the post and as posted at GPS Railway Quarter, Peshawar Cantt vide notification dated 19.08.2020. On 26.01.2021 he was given a notice through which he was asked for clarification of actual Union Council and correct permanent address to which he replied on 27.01.2021 alongwith all documentary proof that he was permanent resident of Hamdard Manzil, House No. 1/39.C, Mohallah Johar Street, Peshawar Cantt. and that he was living in Liaqat Bazaar for the last 21 years. He annexed the property papers showing ownership of his family since 1996. He also attached utility bills of that property showing it to be in Peshawar Cantt. He annexed certificate issued by Additional Deputy Commissioner Peshawar regarding confirmation of his domicile. In spite of that appointment order of the appellant was withdrawn vide notification dated 12.02.2021. He filed departmental appeal to respondent No. 3 on 23.02.2021 which was not responded. Hence the service appeal.

3. 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 Assistant Advocate General and perused the case file with connected documents in detail.

ATTESTED

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

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Brief facts of the case, as given in the memorandum of appeal, are that the appellant was a permanent resident of Hamdard Manzil, house no. 1/39.C, Mohalah Johar Street. Peshawar Cantt. After passing matriculation examination he obtained domicile certificate of Peshawar. The respondents advertised posts of PST with the conditions for applicants that they should have permanent domicile and CNIC of Peshawar and that they should be permanent residents of that union council. Appellant being qualified and permanent resident of cantonment board. Peshawar union council applied for that post. He appeared in the test and interview and qualified for the post and was posted at GPS Railway quarter Peshawar cant vide notification dated 19.08.2020. On 26.01.2020 he was given a notice through which he was asked for clarification of actual union council and correct permanent address to which he replied on 27.01.2021 along with all documentary proof that he was permanent resident of HAMDARD MANZIL, HOUSE NO. 1/39 C, Mohalah Johar street Peshawar Cantt and that he was living in Liaqat Bazaar for the last 21 years. He annexed the property papers showing ownership of his family since 1996. He also attached utility bills of that property showing it to be in Peshawar Cantt. He annexed certificate issued by additional commissioner Peshawar regarding confirmation of his domicile. In spite of that appointment order of the appellant was withdrawn vide notification dated 12.02.2021. He filed departmental appeal to respondent No-03 on 23-02-2021 which was not responded hence the service appeal.

For the appellant
 For the respondent
 For the appellant
 For the respondent

3. 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 Assistant Advocate General and perused the case file with connected documents in detail.

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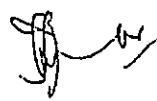
4. Learned counsel for the appellant presented all the documentary evidence of the appellant which was submitted before the respondents also indicating him a permanent resident of Cantonment Board Peshawar. The record included a map of Military Estates Officer also which indicated his house at Johar Street within the limits of Cantonment Board. He invited the attention to judgement of hon'ble Peshawar High in writ petition filed by Muhammad Kaleem Ullah against the appellant in which he had challenged the domicile of the appellant Faizan Ullah by stating that he was not a resident of Peshawar Cantonment area. That writ petition was dismissed by Hon'ble Peshawar High Court being devoid of merits through its judgement dated 24.10.2021.

5. The learned Assistant Advocate General contended that appellant was not resident of Cantonment area Peshawar and relied on the letter of Cantonment Executive Officer, Peshawar dated 31.12.2020 which stated that Hamdard Manzil Mohallah Kotla Mohsin Khan was outside the limit of Cantonment area Peshawar whereas Hamdard Manzil at Johar Street was within the limits of Cantonment.

6. After going through the entire record available before us, it is clear that the appellant is a resident of Hamdard Manzil, 1/39.C, Mohallah Johar Street, Peshawar Cantt and same has been certified by Military Estates Officer and Cantonment Executive Officer Peshawar also. Hence the appeal in hand is allowed and the order dated 12.02.2021 is set aside and respondents are directed to reinstate the appellant in service with all back benefits (pay and allowance) from the date of his appointment i.e 19.08.2020. Parties are left to bear their own costs. Consign.

ATTESTED


 EXAMINER
 Khyber Pakhtunkhwa
 Service Tribunal
 Peshawar

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The learned counsel for the appellant presented all the documentary evidence of the appellant which was submitted before the respondents also indicating him as a permanent resident of cantonment board Peshawar. The record included a map of Military Estates Officer also which indicated his house at Johar Street within the limits of cantonment board. He invited the attention to judgment of hon'ble Peshawar high in writ petition filed by Muhammad kaleem Ullah against the appellant in which he had challenged the domicile of the appellant Faizan Ullah by stating that he was not a resident of Peshawar cantonment area. That writ petition was dismissed by hon'ble Peshawar high court being devoid of merits in its judgment dated 24.05.2022

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6. After going through the entire record available before us. It is clear that the appellant is a resident of Hamdard Manzil. 1/39.C. Mohalah Johar street Peshawar Cantt and same has been certified by Military Estates Officer and Cantonment Executive Officer Peshawar also. Hence the appeal in hand is allowed and the order dated 12.02.2021 is set aside and respondents are directed to reinstate the appellant in service with all back benefits (pay and allowance) from the date of his appointment i.e. 19.08.2020. Parties are left to bear their own costs Consign.

1/11/2023
 M.A. Saeed
 Joint Secretary
 Cantonment Board Peshawar
 Cantonment Executive Officer
 Peshawar



PLEASE DELIVER
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ATTESTED
M. H. Khan
GENERAL-DIRECTOR
Aid to Govt. Secretaries
Sopr. & Cont. Division
For Govt. of K.P.

P-7

Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal on this 23rd day of June, 2022.

[Signature]
(ROZINA REHMAN)
Member (J)

[Signature]
(FAREHA PAUL)
Member (E)

Certified to be true copy

[Signature]
EXAMINER
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

Date of Application 18-08-2022
Number of Copies 2800
Copies 320
Pages _____
Total 320
Name of Copyist *[Signature]*
Date of Collection of Copy 24-08-2022
Date of Delivery of Copy 24-08-2022

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**BEFORE THE KHYBER PAKHTUNKHWA SERVICE
TRIBUNAL, PESHAWAR**



Service Appeal No. 5794/2021

Faizan Ullah son of Mohib Ullah
R/o Hamdani Manzil, House No.1/39-C,
Mohallah Jinnar Street, Peshawar Cantt.

.....Appellant

VERSUS

- 1) Deputy District Education Officer, District Education Officer (M), Peshawar.
 - 2) District Education Officer, District Education Officer (M), Peshawar.
 - 3) Director Elementary & Secondary Education, Directorate of Elementary & Secondary Education, KPK, Peshawar. Adjacent to Govt. High School No.1, G.T Road, Peshawar.
 - 4) Govt. of Khyber Pakhtunkhwa through Secretary Education, Civil Secretariat, Peshawar.
- Mohammad Kaleem Ullah S/o Abdul Manan, Cantonment General Hospital, Flat No.5, Block-A/2, Peshawar Cantt.

..... Respondents

**APPEAL U/S 4 OF THE SERVICE
TRIBUNAL ACT, 1974 AGAINST THE
ORDER DATED 12.02.2021, WHEREBY
APPOINTMENT ORDER DATED
19.08.2020 OF APPELLANT HAS BEEN
WITHDRAWN AND APPEAL FILED BY
APPELLANT HAS NOT SINCE BEEN
DECIDED INSIDE OF THE FACT THAT
STATUTORY PERIOD OF 3 MONTHS
HAVE BEEN EXPIRED.**

REGISTERED

REGISTRAR
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

PRAYER:

On acceptance of this appeal, the orders of respondents may kindly be set-aside and the appellant may kindly be reinstated in service with all back benefits including pay from taking of charge.

Respectfully Sheweth;

Appellant submits as under:-

- 1) That appellant was born and is permanent resident of Hamdard Munzil, House No.1/39-C, Johar Street, Peshawar Cantt.
- 2) That appellant after passing his matriculation examination obtained domicile certificate for taking admission in College. (Copy of Matric Certificate is Annex "A", while copy of Domicile Certificate is Annex "B")
- 3) That the respondents advertised some posts of PST and conditions for application were (i) permanent domicile and CNIC of District Peshawar (ii) for the post of PST candidate should be permanent resident of that Union Council (iii) If candidate of concerned Union Council is not available then"

(Copy of advertisement is Annex "C")
- 4) That appellant being qualified and resident of Cantonment Board, Peshawar Union Council applied for


Shahid

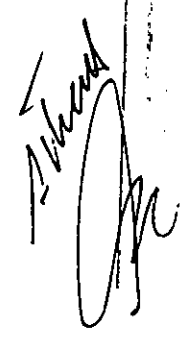
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the post of PST vacant in Govt. Primary School, Railway Quarter, Peshawar Cantt.

- 5) That appellant appeared in the test and interview and qualified for the post and was appointment vide notification No.13216/13410 dated 19.08.2020. (Copy of appointment letter is Annex "D")
- 6) That appellant on 20.08.2020 took the charge of the post of PST and started teaching students daily regularly. (Copy of charge report is Annex "E")
- 7) That appellant was performing his duty of teaching the students without any complaint, that all of a sudden appellant received a notice dated 26.01.2021 in which it was asked from the appellant for clarification of his actual Union Council and correct permanent address. (Copy of notice is Annex "F")
- 8) That appellant filed reply on 27.01.2021 giving full detail regarding his permanent residence alongwith documentary proof. (Copy of reply is Annex "G" while property documents is Annex "H")
- 9) That appellant alongwith reply also annexed the certificate issued by Additional Deputy Commissioner, Peshawar regarding conformation of domicile issued in the year 2002. (Copy of certificate is Annex "I")
- 10) That appellant also obtained certificate from Cantonment Board Peshawar regarding permanent

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 EXAMINER
 Peshawar Cantt.

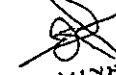



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the post of PST vacant in Govt. Primary School, Railway Quarter, Peshawar Cantt.

- 5) That appellant appeared in the test and interview and qualified for the post and was appointment vide notification No.13216/13410 dated 19.08.2020. (Copy of appointment letter is Annex "D")
- 6) That appellant on 20.08.2020 took the charge of the post of PST and started teaching students daily regularly. (Copy of charge report is Annex "E")
- 7) That appellant was performing his duty of teaching the students without any complaint, that all of a sudden appellant received a notice dated 26.01.2021 in which it was asked from the appellant for clarification of his actual Union Council and correct permanent address. (Copy of notice is Annex "F")
- 8) That appellant filed reply on 27.01.2021 giving full detail regarding his permanent residence alongwith documentary proof. (Copy of reply is Annex "G" while property documents is Annex "H")
- 9) That appellant alongwith reply also annexed the certificate issued by Additional Deputy Commissioner, Peshawar regarding conformation of domicile issued in the year 2002. (Copy of certificate is Annex "I")
- 10) That appellant also obtained certificate from Cantonment Board Peshawar regarding permanent

ATTESTED

 EXAMINER
 Peshawar
 Cantonment Board



resident and produced to respondents. (Copy of Cantonment Board Certificate is Annex "J")

- 11) That vide Notification No.1528-35 dated 12.02.2021, appointment order of appellant was illegally withdrawn. (Copy of the order is Annex "K")
- 12) That appellant on 23.02.2021 filed departmental appeal to respondent No.3, which is still pending. (Copy of departmental appeal is Annex "L")
- 13) That on the appeal filed by the appellant Assistant Director (Establishment) has asked for comments from respondent No.2 vide letter dated 10.03.2021. (Copy of letter is Annex "M")
- 14) That appellant use to visit the office of respondent No.3 for obtaining reply, but every time they informed the appellant that appeal has not been decided till yet.
- 15) That on the other hand statutory period of three months have elapsed and thus appellant has come before this hon'ble Tribunal on the following grounds amongst others:-

GROUNDS

A. That the order of withdrawal of appointment dated 12.02.2021 and not deciding the appeal within statutory period is against law and facts, hence untenable in the eyes of law.

12.03.2021
 TRIBUNAL
 PUNJAB
 CHANDIGARH

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**OFFICE OF THE DISTRICT EDUCATION OFFICER
(MALE) PESHAWAR**

Phone # 091-9225458, Email: emispeshawar@gmail.com
Address: Opposite Sarhad Chamber of Commerce & Industry,
Hashtanagri Peshawar City



OFFICE ORDER

In compliance of order dated 24th Oct, 2022 passed by the worthy Khyber Pakhtunkhwa Service Tribunal Peshawar in execution petition No.524/2022 in service appeal No.5794/2021 titled Faizan Ullah VS Education Department Mr.Faizan Ullah PST, GPS Railway Quarters Peshawar is hereby conditionally re-instated in service with effect from 12-02-2021 with all back benefit as per judgment of Khyber Pakhtunkhwa Service Tribunal Peshawar.

Note:


- i. This re-instatement order is subject to the final decision of the August Supreme Court of Pakistan in CP No.711/2022.

District Education Officer,
(Male) Peshawar

Enst: No. 4404-ES/Appeal File/P.F Dated Peshawar the 16/11/2022


Copy of the above is forwarded for information to the:

- 1. PA to Director E & SE Khyber Pakhtunkhwa, Peshawar
- 2. All Committee Members


Dy: District Education Officer,
(Male) Peshawar

AUTHORITY LETTER

Mr. Arshad Ali, ADEO (Litigation) office of the District Education Officer (Male) Peshawar is hereby authorized to submit Para Wise comment on behalf of the Education Department (E &SE) KP Peshawar in EP No. 159/2021 in Service Appeal No.5794/2021 Faizan Ullah VS Govt: KP & others.


District Education Officer
(Male) Peshawar