

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
CAMP COURT, SWAT.

Service Appeal No. 7788/2021

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

Hussain Ahmad S/O Muhammad R/O Shah Dara, Watkay,
Mingora, Tehsil Babuzai, Swat. (Appellant)

Versus

1. Government of Khyber Pakhtunkhwa through Secretary Elementary & Secondary Education, Khyber Pakhtunkhwa, Peshawar.
2. Director Elementary & Secondary Education, Government of Khyber Pakhtunkhwa, Peshawar.
3. District Education Officer Swat at Gulkada, Swat.
4. Principal, GHSS Kabal, Swat. (Respondents)

Mr. Aftab Hussain Butt,
Advocate

... For appellant

Mr. Fazal Shah Mohmand,
Additional Advocate General

... For respondents

Date of Institution.....25.11.2021
Date of Hearing.....02.05.2023
Date of Decision..... 02.05.2023

JUDGEMENT

FAREEHA PAUL, MEMBER (E): The service appeal in hand has been instituted under Section 4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974 with the prayer that on acceptance of the service appeal, the impugned order dated 22.01.2018 might be declared as null & void and the respondents might be directed to reinstate the appellant with




all back benefits and any other relief not specifically prayed as deemed proper by the Tribunal might also be granted.

2. Brief facts of the case, as given in the memorandum of appeal, are that the appellant was the bonafide resident of Shah Dara, Watkay Mingora, Tehsil Babuzai, Swat. He was appointed as CT through NTS by securing 119.32 marks and was adjusted at Government Higher Secondary School, Kabal vide order dated 29.05.2017. The appellant took charge on 30.05.2017 and started performing his duty. He was qualified as M.Phil in Genetics and had applied for Ph.D Scholarship in Biomedical Engineering in a Chinese University, namely Xi'an Jiaotong University, before his appointment as CT, which was confirmed in September 2017 and the Ph.D Programme was scheduled to start in July 2018. The appellant was intimated through the admission notice to appear for the Chinese Proficiency in October 2017. As he was already proficient in Chinese language and had already attended Chinese courses, therefore, he requested the Chinese University for exemption of his Chinese Proficiency through E-mail, but it was not satisfactorily responded, therefore, he planned to visit the University personally in order to appear for his Chinese Proficiency Test and to confirm his Ph.D for the year 2018. The appellant put forwarded an application dated 29.09.2017 for study leave and another application dated 03.10.2017 for casual leave before the Principal, GHSS, Kabal, Respondent No. 4, and also discussed his leave application verbally with him, but his applications were kept



pending in the office of respondent No. 4 for approval or otherwise. In the meanwhile, the appellant left for China in order to confirm his Ph.D admission in the Chinese University as the deadline for admission was close. He came to know during his stay in China that the department was going to initiate proceedings against him and so he rushed back in December 2017, and came to his school of duty on 02.01.2018 but respondent No. 4 refused to allow him to join his duty by handing over the letters of explanation for absence from duty dated 04.10.2017 and 14.11.2017. The appellant visited the office of District Education Officer, Swat, respondent No. 3, to inform and inquire about his issue, where he was told verbally to join his duty in order to avoid any adverse action and proceedings against him, but he was refused by the Principal GHSS, Kabal to join his duty as the school was closed due to winter vacation and was told to inquire about his issue after winter vacation. The appellant was waiting for opening of school after winter vacation, when he was served with notification dated 22.01.2018, wherein major penalty of "removal from service" was imposed upon him. Being aggrieved of the actions of the respondents, the appellant time and again asked about the matter from them but was not responded satisfactorily. During the aforementioned period of wait, the appellant was intimated through WeChat from the Chinese University to make sure his attendance, otherwise, his scholarship would be cancelled, therefore, having no other option, he left for China and continued his Ph.D studies. He got back from China in 2020 and again visited the offices of the official



respondents time and again to inquire about the status of his applications but got no response from anywhere as most of the offices were not functional properly due to Covid-19, and during the same period, he also got severely ill due to Covid-19. The appellant, not receiving any fruitful response from the competent authority, preferred a departmental appeal before the respondent No. 2 on 26.07.2021 which was not responded within the statutory period; hence the instant 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 Additional Advocate General for the respondents and perused the case file with connected documents in detail.

4. Learned counsel for the appellant presented the details of the case and contended that the appellant had not been treated in accordance with law and the respondents violated his fundamental rights as enshrined in Articles 4, 25 and 27 of the Constitution. He further argued that neither the appellant was served with show cause notice nor proper procedure was adopted by the respondents and the impugned order was passed without providing any opportunity of hearing to the appellant. He further argued that the absence of the appellant was not intentional and that he submitted proper application for casual leave and left the country on verbal assurance by respondent No. 4 regarding sanction of his leave. He requested that the appeal might be accepted as prayed for.



5. The learned Additional Advocate General, while rebutting the arguments of the learned counsel for the appellant, argued that the appellant was appointed as CT on 29.05.2017, purely on temporary and ad hoc basis and his appointment was school-based for a period of one year. He further argued that just after four months of his appointment, the appellant went abroad without any sanction of leave or permission from his competent authority. He informed that when respondent No. 4 submitted report regarding absence of the appellant, the District Education Officer, Swat nominated Mr. Inayatullah Principal, GHSS Shamoza Swat as enquiry officer to probe into the matter. He conducted detailed enquiry and it was concluded that the appellant had violated the rules and regulations and remained absent from duty since 04.10.2017 without any departmental permission and sanctioned leave and recommended initiation of departmental proceedings against him under the rules. The learned AAG contended that a show cause notice was issued to him but he failed to resume his duty. He invited the attention to the terms and conditions of appointment of the appellant which clearly stated that his appointment was temporary and that his services could be terminated at any time, in case his performance was found unsatisfactory and in the light of all the circumstances, he was rightly removed from service. He requested that the appeal might be dismissed.

6. From the arguments and record presented before us, it transpires that the appellant was appointed as C.T on ad hoc, school-based and one



year contract policy of the provincial government on 29.05.2017. Terms and conditions of his appointment clearly state that his appointment was purely temporary and that his services shall be terminated at any time, in case his performance is found unsatisfactory during his service period. The Principal of the school, where the appellant was appointed, submitted report to the District Education Officer, Swat that he was absent from duty since 04.10.2017. The appellant has admitted himself that his Ph.D programme was scheduled to start in July, 2018 for which he proceeded to China in October 2017 for Chinese proficiency test. Although he states that he submitted applications for leave to the Principal of the school where he was serving but a maiden application available on record does not show any evidence that it had been received and processed by the Principal. The official respondents also deny receiving any such application.


7. The appellant, although appointed on temporary basis, was under obligation to inform his high ups about the Ph.D programme in which he had taken admission and get the proper NOC to pursue his studies. The competent authorities could have processed his case under the relevant rules and informed him accordingly. In this case, the appellant not only informed his high ups but failed to get ex-Pakistan leave even for pursuing the Chinese Proficiency Test. He himself admits that he left the country to pursue the Ph.D programme without getting his leave sanctioned and obtaining NOC from the provincial government. Despite being a



temporary employee, he was bound under certain government rules. Violation of those rules resulted in initiating disciplinary action against him. Absence for even a single day without sanction of competent authority is punishable, and in the present case, absence of the appellant was more than three months when the order of removal from service was issued on 22.01.2018. Departmental appeal of 19.07.2021 also indicates that the appellant was not in the country when the order, impugned before us, was issued, otherwise the departmental appeal would have been submitted within 30 days of the receipt of that order.

8. In the light of foregoing, the appeal in hand is dismissed. Parties are left to bear their own costs. Consign.

9. *Pronounced in open court at camp court, Swat and given under our hands and seal of the Tribunal this 02nd day of May, 2023.*


(FAREEHA PAUL)
Member (E)
(Camp Court, Swat)


(ROZINA REHMAN)
Member (J)
(Camp Court, Swat)

Fazle Subhan, P.S