

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

Service Appeal No. 1884/2022

BEFORE: **MR. SALAH-UD-DIN** ... **MEMBER (J)**
MISS FAREEHA PAUL ... **MEMBER (E)**

Mr. Abdul Wahab Afridi, Chowkidar, GPS Mohabat Khel, District, Peshawar. (Appellant)

Versus

1. **The Secretary Elementary & Secondary Education Department, Khyber Pakhtunkhwa, Civil Secretariat, Peshawar.**
2. **The Director Elementary & Secondary Education, Directorate of Education, Khyber Pakhtunkhwa, Peshawar.**
3. **The District Education Officer (Male), Peshawar.**
4. **The Sub-Divisional Education Officer (Male), Hassan Khel Sub-Division near GPS Masjid Mohabat Khan, Peshawar.**
5. **The Head Master, GPS Mohabat Khel Sub Division Hassan Khel, Peshawar..... (Respondents)**

Mr. Taimur Ali Khan,
Advocate ... For appellant

Mr. Asad Ali Khan, ... For respondents
Assistant Advocate General

Date of Institution..... 20.12.2022
Date of Hearing..... 02.06.2023
Date of Decision..... 02.06.2023

JUDGEMENT

FAREEHA PAUL, MEMBER (E): The service appeal in hand has been instituted under Section 4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974 against the impugned action of the respondents of not adjusting the appellant on his post at GPS Mohabat Khel, Peshawar and not allowing him to perform his duty at GPS Mohabat Khel due to threat of the land owner of the concerned school and not releasing his salaries from the date of appointment



i.e. 01.09.2022 till date and against not taking action on the departmental appeal of the appellant within the stipulated period of ninety days. It has been prayed that on acceptance of the appeal, the respondents might be directed to adjust the appellant on his post at GPS Mohabat Khel Peshawar and also release his salaries from the date of appointment i.e. 01.09.2022 onward and any other remedy, which the Tribunal deemed fit and appropriate.

2. Brief facts of the case, as given in the memorandum of appeal, are that the respondent department advertised various posts of Class-IV in Sub Division Hassan Khel Peshawar and the appellant being eligible applied for the said post, however, he was not appointed, on which he filed Writ Petition No. 3649/2021 in the Honorable Peshawar High Court which was disposed of on 18.05.2022 with the direction to respondents to consider the appellant for appointment as Class-IV against any of the vacant posts already advertised as per existing policy and rules. On the basis of judgment dated 18.05.2022, the appellant was appointed as Class-IV on regular basis in BPS-03 and was posted at GPS Mohabat Khel Peshawar vide order dated 01.09.2022. In compliance, he took over the charge on 03.09.2022 at GPS Mohabat Khel, Peshawar but the land owner did not allow him to perform his duty. The appellant submitted application to the high ups on 08.09.2022 in which he mentioned that the land owner of the concerned school did not allow him to perform his duty and threatened him of dire consequences and requested them to resolve the matter by adjusting him in other school or office. Respondent No. 4 forwarded the application of the appellant through letter dated 28.09.2022 to respondent No. 3 for further necessary action, but no action was



taken on the application. Respondent No. 4 verbally directed the appellant to perform duty at his office on temporary basis and in that respect respondent No. 4 also gave a duty certificate w.e.f. 03.09.2022 till 10.10.2022. Respondent No. 5 also endorsed the performance of the duty of the appellant in the office of respondent No. 4 through duty certificate dated 02.10.2022. The appellant filed departmental appeal on 16.09.2022 to respondent No. 2 for adjustment in GPS Mohabat Khel or any school or office. He also requested for release of his salary, which was forwarded to respondent No. 3 through letter dated 20.09.2022 to solve the problem as per rules/policy. On 17.09.2022, the appellant came to school for duty, but the land owner did not allow him to perform his duty at the school, on which he filed application/complaint to high ups which was forwarded by respondent No. 5 to respondent No. 4, which was further forwarded to respondent No. 3 for necessary action. Through letter dated 10.10.2022 respondent No. 4 requested the respondent No. 3 for release pay of the appellant, who, instead of taking action on that request, issued absence notice to the appellant on 16.11.2022 and through letter dated 17.11.2022 directed the appellant to perform his duty at GPS Mohabat Khel. Both the absence notice and letter dated 17.11.2022 were received by the appellant on 25.11.2022, which were replied by him by mentioning the whole facts, with the request to transfer him to some other school so that he could perform his duty, but no action was taken by respondent No. 3 within the statutory period of ninety days; hence the present appeal.

3. Respondents were put on notice who submitted written replies/comments on the appeal. We heard the learned counsel for the appellant

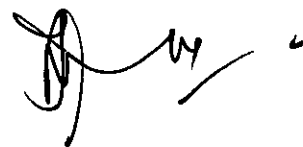


as well as the learned Assistant Advocate General for the respondents and perused the case file with connected documents in detail.

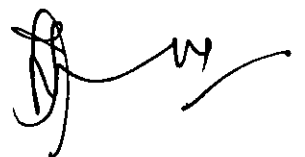
4. Learned counsel for the appellant, after presenting the case in detail, contended that the appellant, time and again, requested his high ups through different applications to resolve the issue of his posting in GPS Mohabat Khel or adjust him in any other school or at the level of office but his high ups, especially respondent No. 3, being the competent authority of the appellant, did not resolve the issue of posting and adjustment of the appellant. He further argued that respondent No. 4 verbally directed the appellant to perform his duty in his office on which he did so and which was evident from the certificates of the SDEO and Head Teacher of the concerned school, which indicated that the appellant was ready to perform duty at any place, but the respondents did not adjust the appellant. He further argued that the appellant should not be made to suffer for the fault of his high ups by not adjusting him on his post so that he could perform his duty. He requested that the appeal might be accepted as prayed for.

5. Learned Assistant Advocate General, while rebutting the arguments of learned counsel for the appellant, argued that the appellant was willfully absent from his duty, therefore, the respondent department proceeded against him under the rules and disciplinary action was initiated against him. He requested that the appeal might be dismissed.

6. Arguments and record presented before us reveal that the appellant was appointed as Chowkidar (BPS-3) in the Elementary & Secondary Education



Department and posted at GPS Mohabat Khel, Peshawar. He took over the charge in that school but the land owner on whose land that school was built did not allow him to perform his duties there. The appellant brought the matter into the notice of his high ups i.e. the Headmaster of the school and the Sub-Divisional Education Officer (Male) Hassan Khel Sub-Division, through different applications requesting them to intervene in the matter and resolve it so that he could perform his duty or to adjust him in some other school or in the office. Two certificates, one from the SDEO (M) Hassan Khel Sub Division and the other from the Headmaster of GPS Mohabat Khel, are available with the appeal, which indicate that given the entire situation, he performed his duties from 03.09.2022 to 10.10.2022 in the office of SDEO (M). The Head Master went to the extent of stating in his certificate that he performed his duties in the office of SDEO (M) due to threats given by the land owner. All the official correspondence available with the appeal indicates that the Directorate of Elementary and Secondary Education as well as the office of District Education Officer were aware of the entire situation, but instead of resolving the matter the office of District Education Officer issued an absence notice to the appellant. When the learned Assistant Advocate General was asked to present any report based on such a notice was issued, he could not provide or present any such report. The departmental representative was also silent on the question. Their attention was invited to the correspondence of the Headmaster of GPS Mohabat Khel which was in favour of the appellant and the SDEO (M) who had brought the matter to the knowledge of DEO (M) Peshawar many times. It has been noted that instead of



resolving the matter, the office of DEO (M) Peshawar stopped the salary of the appellant and later issued notice of absence also, which indicates their indifferent and inhuman approach to the problem faced by the appellant.

7. In view of the above, the appeal in hand is allowed as prayed for. Costs shall follow the event. Consign.

8. *Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal this 02nd June, 2023.*


(FAREEHA PAUL)
Member (E)


(SALAH-UD-DIN)
Member (J)