

BEFORE THE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL PESHAWAR.

Service Appeal No. 1413/2022

Date of Institution ... 29.09.2022

Date of Decision... 29.05.2023

Mst. Neelam W/o Salman Khan. R/O House No. 1, Subhan Khuwar, Shabqadar District Charsadda. Principal (BS-18) GGHS Subhan Khuwar, District Mohmand.

... (Appellant)

VERSUS

Chief Secretary, Government of Khyber Pakhtunkhwa Civil Secretariat, Peshawar and 03 others.

... (Respondents)

MR. INAYAT ULLAH KHAN,
Advocate

For appellant.

MR. MUHAMMAD JAN,
District Attorney

For official respondents No. 1 to 4.

MR. UMER FAROOQ MOHMAND,
District Attorney

For private respondent No. 5.

MR. KALIM ARSHAD KHAN
MR. SALAH-UD-DIN

CHAIRMAN
MEMBER (JUDICIAL)

JUDGMENT:

SALAH-UD-DIN, MEMBER:- Precise averments raised by the appellant in her appeal are that she was posted as Principal (BS-18) in Government Girls High School Subhan Khwar District Mohmand vide posting/transfer Notification dated 11.01.2022; that after serving for only five months in Government Girls High School Subhan Khwar District Mohmand the appellant was again transferred to Government Girls High School Dab Kor District Mohmand vide impugned posting/transfer Notification dated 29.08.2022; that being aggrieved of the same, the appellant preferred departmental appeal but the same was



also declined vide order dated 19.09.2022, hence the instant 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 their respective written replies raising therein numerous legal and factual objections. The defense setup was a total denial of the claim of the appellant.

3. Learned counsel for the appellant contended that the appellant is performing her duties at Government Girls High School Subhan Khwar District Mohmand with zeal and zest without any complaint against her; that the appellant had served only for about five months at Government Girls High School Subhan Khwar District Mohmand and her premature transfer was neither in the interest of public nor any exigency of service; that the premature transfer of the appellant was made on account of political pressure by private respondent No. 5 to procure desired posting; that the impugned transfer of the appellant is violative of clauses I, II, IV & XIV of the Posting/Transfer Policy of the Provincial Government, therefore, the same is liable to be set-aside.

4. On the other hand, learned District Attorney for official respondents assisted by learned counsel for private respondent No. 5 contended that transfer of the appellant was made by competent Authority in the interest of public and not on account of mala-fide intention towards the appellant; that the appellant being a civil servant is liable to serve anywhere in the province as required under Rule-10 of

Khyber Pakhtunkhwa Civil Servants Act, 1973; that the appellant has filed the appeal only for the purpose of pressurizing the respondents, therefore, the same may be dismissed with cost.

5. Arguments of learned counsel for the parties heard and record perused.


6. A perusal of the record would show that vide posting/transfer Notification dated 11.01.2022, the appellant was transferred from Government Girls High School Dab Kor Mohmand to her present place of posting i.e Government Girls High School Subhan Khwar Mohmand. However, vide impugned posting/transfer Notification dated 29.08.2022, she was transferred back to Government Girls High School Dab Kor District Mohmand, without allowing her to complete her normal tenure of posting. The impugned notification is thus violative of Posting/Transfer Policy of the Government as the appellant has not been allowed to complete her normal tenure. It is also violative of instructions circulated vide letter dated 27.02.2013 pertaining to tenure in posting/transfer. Premature transfer is clear violation of Clauses I & IV of Posting/Transfer Policy as notified by the Provincial Government. When ordinary tenure for posting has been specified in law or rules made there under, such tenure must be respected and cannot be varied, except for compelling reasons, which should be recorded in writing and are judicially reviewable.

7. As a sequel to the above, the impugned posting/transfer order dated 29.08.2022 is set-aside with the direction to the respondents to

allow the appellant to complete her normal tenure. Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCED
29.05.2023


(KALIM ARSHAD KHAN)
CHAIRMAN


(SALAH-UD-DIN)
MEMBER (JUDICIAL)