

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR

Service Appeal No. 1397/2022

BEFORE: KALIM ARSHAD KHAN --- CHAIRMAN
MUHAMMAD AKBAR KHAN--- MEMBER(E)

Niaz Payo Jan S/o Essa Khan R/o Takht Nusrati District
Karak..... (Appellant)

VERSUS

1. Chief Secretary to Government of Khyber Pakhtunkhwa Elementary & Secondary Education Peshawar.
2. Secretary to Government Khyber Pakhtunkhwa Elementary & Secondary Education, Khyber Pakhtunkhwa Peshawar.
3. Director Elementary & Secondary Education Department, Khyber Pakhtunkhwa, Peshawar.
4. Mr. Nazeef Ur Rehman GHS Bangi Karak.....(Respondents)

Present:

ROEEDA KHAN,
Advocate

--- For Appellant

FAZAL SHAH MOHMAND,
Additional Advocate General,

--- For respondents

Date of Institution.....26.09.2022

Date of Hearing.....31.05.2023

Date of Decision.....31.05.2023

JUDGMENT

MUHAMMAD AKBAR KHAN, MEMBER(E):- The instant service appeal has been instituted under Section 4 of the Khyber Pakhtunkhwa Service Tribunal, Act 1974 with the prayer copied as under;

“On acceptance of the instant service appeal the impugned Modification/Transfer order of the appellant dated 15.06.2022 may very kindly be set aside and the

order dated 30.05.2022 of the appellant may kindly be restored in favour of the appellant alongwith all back benefits.”

02. Brief facts of the case are that the appellant is serving in the respondent department as Head Master in Government High School Gumbati Mina Khel since 2017. The appellant submitted an application for his transfer to GHS Bangi Kala Karak and he was transferred to the said school on 30.05.2022. The appellant took over the charge in the said school on 31.05.2022 but respondent No. 2 issued another Notification dated 15.06.2022 whereby the transfer order of the appellant dated 30.05.2022 has been modified and he was retained at his previous school i.e. GHS Gumbati Mina Khel. Feeling aggrieved, the appellant filed departmental appeal on 22.06.2022 which was not responded, hence preferred the instant service appeal on 26.09.2022.

03. Notices were issued to the respondents, who submitted their comments, wherein they refuted the assertions raised by the appellant in his appeal. We have heard arguments of learned counsel for the appellant and learned Additional Advocate General and have gone through the record with their valuable assistance.

04. Learned counsel for the appellant contended that the appellant had not been treated in accordance with law, hence, his rights secured and guaranteed under the Constitution were badly violated; that the impugned order is wrong, illegal, unlawful and is liable to be set aside; that it was cherished principle of law, that where a law required a thing to

be done in a particular manner, then the same was to be done in that manner and not otherwise. She submitted that the respondents have violated the transfer/posting policy as the impugned order was against the law and rules and the same was discrimination as well. Further submitted that the appellant had completed his normal tenure at GHS Gumbati Mina Khel Lakki Marwat. Lastly, she submitted that the appellant was going to be retired after one year and the said School was 50 kilometers away from his native town. Therefore, he requested for restoration of the order dated 30.05.2022 by setting aside the impugned order dated 15.06.2022.

05. Learned Additional Advocate General on behalf of respondents contended that the appellant was treated in accordance with law and no violation of the Constitution of Islamic Republic of Pakistan had been committed by the respondents. Further submitted that the impugned transfer order was according to law and the same was issued by the competent authority under Section-10 of the Khyber Pakhtunkhwa, Civil Servant Act, 1973. Lastly, he submitted that posting/transfer was the part of service and the appellant was bound to obey the orders of superiors in the best public interest.

06. It is admittedly evident from the available record that the appellant has served in his previous station of duty i.e. GHS Gumbati Mina Khel around five years which comes to more than double tenure as per the posting/transfer policy of the Government in vogue. The appellant actualized his posting in the GHS Bangi Kalla on 31.05.2022 in compliance with the order dated 30.05.2022. The stance of the defense

that they have issued corrigendum vide order dated 15.06.2022 by retaining the appellant at his previous school is not tenable. The appellant took over charge of the vacant post of Head Master (BS-17) GHS Bangi Kalla on 31.05.2022 and as such there exist no justifiable reasons to issue any corrigendum order. In fact the so called corrigendum order is a transfer order made just after 16 days of taking over charge by the appellant to make room for another person and thus not sustainable on any ground, which is also against the policy of the Government regarding 2 years tenure.

07. In view of the foregoing the appeal in hand is allowed as prayed for and the impugned order dated 15.06.2022 to the extent of the appellant is set aside. Consign.

08. *Pronounced in open court at Peshawar and given under our hands and seal of the Tribunal this 31st day of May, 2023.*



(KALIM ARSHAD KHAN)
CHAIRMAN



(MUHAMMAD AKBAR KHAN)
MEMBER (E)