

BEFORE THE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL PESHAWAR
AT CAMP COURT ABBOTTABAD.

Service Appeal No. 1972/2019

Date of Institution ... 06.12.2019

Date of Decision ... 24.05.2023

Safia Bibi D/O Gul Zareen PST GGPS Sangabad, Sher Kot Palas Kohistan,
District Kohistan. ... (Appellant)

VERSUS

Government of Khyber Pakhtunkhwa, through Secretary Elementary &
Secondary Education, Peshawar and two others.

... (Respondents)

MR. RAJA ALI SAJJAD,
Advocate

--- For appellant.

MR. ASAD ALI KHAN,
Assistant Advocate General

--- For respondents.

MR. SALAH-UD-DIN
MR. MUHAMMAD AKBAR KHAN

--- MEMBER (JUDICIAL)
--- MEMBER (EXECUTIVE)

JUDGMENT:

SALAH-UD-DIN, MEMBER:- According to the averments raised by the appellant in her appeal, she was appointed as PST on 01.12.2006 and have served the department with devotion and dedication; that the school was closed during winter vacations but on the report of IMU, the appellant was removed from service vide order dated 20.04.2019 on the allegations of absence from duty, which was received by her on 31.07.2019; that the appellant challenged the order of her removal from service through filing of departmental

appeal, however the same was not responded within the statutory period of 90 days, hence the instant service appeal.

2. On receipt of the appeal and admission to full hearing, the respondents were summoned, who, appeared through their representatives and contested the appeal by filing written replies raising therein numerous legal as well as factual objections.

3. Learned counsel for the appellant has argued that the school was already closed on account of winter vacations with effect from 22.10.2018 to 28.02.2019 but on the report of IMU, the appellant was shown absent from duty with effect from 01.01.2019 when the school was already closed on account of winter vacations; that the appellant did not remain absent from duty but she was wrongly and illegally shown as absent from duty; that the appellant was proceeded against on account of willful absence from duty but the procedure prescribed in Rule-9 of Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011 was not at all complied with; that whole of the inquiry proceedings were conducted against the appellant at her back and no prescribed procedure was adopted for associating her in the inquiry proceedings; that the impugned order being wrong and illegal is liable to be set-aside and the appellant may be reinstated in service with all back benefits.

4. On the other hand, learned Assistant Advocate General while controverting the arguments of learned counsel for the

appellant has contended that as per report of the Assistant Sub-Divisional Education Officer (F) Pallas Kohistan and IMU, the appellant was found absent from duty; that show-cause notice was issued to the appellant through registered post, however she did not report for duty, therefore, notices were issued to her through publication in daily "Hazara News" as well as Daily "Akhbaar" Abbottabad on 26.02.2019 and 27.02.2019 respectively but the appellant failed to resume her duty; that the procedure prescribed in Rule-9 of Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011 has been complied with and the appellant has rightly been removed from service.



5. We have heard the arguments of learned counsel for the parties and have perused the record.

6. A perusal of the record would show that the appellant was proceeded against on account of willful absence from duty with effect from 01.01.2019. The procedure to be adopted in case of willful absence has been provided in Rule-9 of Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011, which is reproduced as below:-

"9. Procedure in case of willful absence: Notwithstanding anything to the contrary contained in these rules, in case of willful absence from duty by a government servant for seven or more days, a notice shall be issued by the competent authority through registered acknowledgement on his

home address directing him to resume duty within fifteen days of issuance of the notice. If the same is received back as undelivered or no response is received from the absentee within stipulated time, a notice shall be published in at least two leading newspapers directing him to resume duty within fifteen days of the publication of that notice, failing which an ex-parte decision shall be taken against the absentee. On expiry of the stipulated period given in the notice, major penalty of removal from service may be imposed upon such Government servant”.

7. The record so submitted by the respondents would show that instead of issuing notice to the appellant through registered acknowledgement on her home address directing her to resume her duty, the competent Authority had issued final show-cause notice to the appellant on her school address on 01.02.2019 i.e the date on which the school was already closed on account of winter vacations. Moreover, final show-cause notice issued to the appellant would show that she was found guilty of habitual absence and not willful absence. Furthermore, final show-cause notice is issued to a delinquent officer/official in case he is proceeded against on the allegations of habitual absence. There is no concept of issuing final show-cause notice in case of proceedings against a government servant on account of willful absence from duty. According to the available record, the proceedings against the appellant were conducted in a haphazard manner without complying relevant procedure prescribed under Rule-9 of Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011.

8. Moreover, it has been alleged by learned counsel for the appellant that the appellant has been proceeded against on account of

absence from duty with effect from 01.01.2019, which is the date on which the schools in the region were already closed on account of winter vacations. In this respect, he produced Notification dated 17.12.2018, which has not been denied by learned Assistant Advocate General.

9. In view of the above discussion, the impugned order is set-aside and the appellant is reinstated in service with the directions to the competent Authority to conduct de-novo inquiry in the matter strictly in accordance with the relevant law/rules within a period of 60 days of receipt of copy of this judgment. Needless to mention that the appellant shall be associated with the inquiry proceedings and fair opportunity be provided to her to defend herself. The issue of back benefits shall be subject to outcome of de-novo inquiry. Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCED
24.05.2023



(SALAH-UD-DIN)
MEMBER (JUDICIAL)
CAMP COURT ABBOTTABAD



(MUHAMMAD AKBAR KHAN)
MEMBER (EXECUTIVE)
CAMP COURT ABBOTTABAD