

BEFORE THE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL PESHAWAR.

Service Appeal No. 186/2022

Date of Institution ... 09.02.2022

Date of Decision... 12.06.2023

Mst. Shaista Begum Ex-Lab Assistant, Elementary & Secondary Education
Department of KPK, R/O Peer Qila Shabqadar, District Charsadda.

... (Appellant)

VERSUS

Government of Khyber Pakhtunkhwa through Secretary Education, Civil
Secretariat, Peshawar and 04 others.

... (Respondents)

MR. ATTIQ-UR-REHMAN,
Advocate

--- For appellant.

MR. ASIF MASOOD ALI SHAH,
Deputy District Attorney

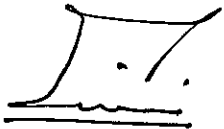
--- For respondents.

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

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

JUDGMENT:

SALAH-UD-DIN, MEMBER:- Precise facts as alleged by
the appellant in her appeal are that she was appointed as Lab
Assistant on 29.10.2009 and was posted at Government Girls High
School Ghallanai; that the appellant took the charge of her post
and was performing her duty with zeal and zest, however vide
order dated 19.02.2013, she was transferred to Government Girls
High School Dab Kor Lower Mohmand; that the said school was



closed due to insurgency in the area and moreover one Mst. Qurat-ul-Ain was already occupying the post of Lab Assistant in the said school, which fact was also brought in the notice of the respondents; that the appellant made various applications to the respondents to adjust her on previous post at Government Girls High School Ghallanai and also to release her salary but in vain; that salary of the appellant was stopped since 2013 and after availing departmental remedy, she filed service appeal before this Tribunal; that it was during the proceedings in the aforementioned previously filed service appeal of the appellant, that the respondents filed reply/comments wherein they alleged that the appellant had already been removed from service vide order dated 03.09.2021; that the appellant challenged the order of her removal from service through filing of departmental appeal, however the same was not decided within the statutory period, hence the instant appeal.



2. On receipt of the appeal and its 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 addressed his arguments supporting the grounds agitated by the appellant in his service appeal. On the other hand, learned Deputy District Attorney for the respondents has controverted the arguments of

learned counsel for the appellant and has supported the comments submitted by the respondents.

4. Arguments have already been heard and record perused.

5. A perusal of the record would show that the appellant was appointed as Lab-Assistant on 29.10.2009 and was posted at Government Girls High School Ghallanai. Vide order dated 19.02.2013, the appellant was transferred from the said school to Government Girls High School Dab Kor Lower Mohmand. It is the contention of the respondents that after her aforementioned transfer order, she did not assume the charge of her post at Government Girls High School Dab Kor Lower Mohmand and remained absent from duty. On the other hand, the appellant had contended that as the post of Lab Assistant at Government Girls High School Dab Kor Lower Mohmand was already occupied by one Mst. Qurat-ul-Ain, therefore, she was not handed over the charge despite her best efforts and in this respect, she wrote so many applications to the high-ups for resolving the issue. In support of her contention, the appellant has annexed copies of the applications addressed by her to the high-ups.

6. The appellant was proceeded against on the allegations of willful absence from duty as is evident from the impugned order dated 03.09.2021 passed by District Education Officer Mohmand, whereby the appellant was removed from service. The procedure as prescribed in Rule-9 of Khyber Pakhtunkhwa

Government Servants (Efficiency & Discipline) Rules, 2011 was thus required to have been adopted by the competent Authority. The available record, however does not show that any show-cause notice as required under Rule-9 of Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011 was sent to the appellant through registered post on her home address, which is a material dent in the inquiry proceedings. The appellant was though issued show-cause notice through publication in Daily "Aaj" and Daily "Mashriq" on 07.08.2020 and 09.09.2020 respectively but in both the notices, the respondents have not mentioned any specific date or period of absence of the appellant from duty. Moreover, the appellant had previously filed Service Appeal No. 1080/2020 before this Tribunal on 23.01.2020 for release of her salary with effect from February 2013. The respondents were on one hand attending proceedings in the aforementioned service appeal and it is interesting that on the other hand they were carrying on absence proceedings against the appellant at her back. The procedure so adopted by the respondents was bereft of any legal sanctity and could not be approved. The impugned order of removal of the appellant from service is thus not sustainable and is liable to be set-aside.

7. 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
12.06.2023



(MUHAMMAD AKBAR KHAN)
MEMBER (EXECUTIVE)



(SALAH-UD-DIN)
MEMBER (JUDICIAL)