

**KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
CAMP COURT ABBOTTABAD.**

BEFORE: **KALIM ARSHAD KHAN ...CHAIRMAN**
RASHIDA BANO ...MEMBER (Judicial)

Service Appeal No.1604/2018

Date of presentation of appeal.....10.11.2022
Dates of Hearing.....22.06.2023
Date of Decision.....22.06.2023

**Mst. Shazia Naz PST (BS-12) GGPS Battian Battagram, District
Mansehra.....Appellant**

Versus

1. The District Education Officer (Female) Battagram.
2. **The Secretary**, Secretary & Elementary Education, Government of Khyber Pakhtunkhwa, Civil Secretariat, Peshawar.
3. **The Director** (E&SE), Government of Khyber Pakhtunkhwa, Civil Secretariat, Peshawar.....(**Respondents**)

Present:

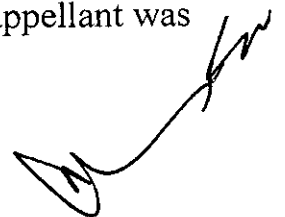
Syed Noman Ali Bukhari, Advocate.....For the appellant.

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

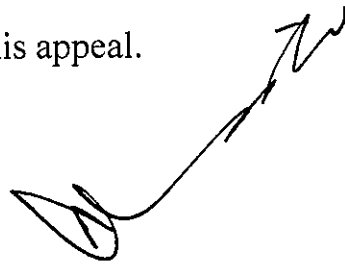
**APPEAL UNDER SECTION 4 OF THE KHYBER
PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974
AGAINST THE LETTER DATED 19.05.2022 AND
ORDER DATED 21.06.2022 WHEREBY THE
APPELLANT HAS BEEN RE-INSTATED INTO
SERVICE FROM THE DATE OF REMOVAL THAT IS
WITH EFFECT FROM 19.10.2015 AND THE
INTERVENING PERIOD IS CONSIDERED AS LEAVE
WITHOUT PAY AND AGAINST NOT TAKING ACTION
ON THE DEPARTMENTAL APPEAL OF THE
APPELLANT WITHIN STATUTORY PERIOD OF
NINETY DAYS.**

JUDGMENT

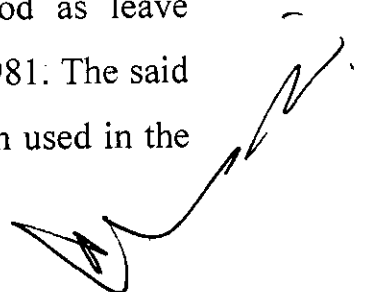
KALIM ARSHAD KHAN CHAIRMAN: The facts gathered from the
the memorandum and grounds of this appeal are that the appellant was



appointed as PST in the respondent/department vide order dated 06.04.2004; that the appellant had been performing duties and marking attendance in the attendance register till 2018, but her salary was stopped in the month of August 2016; that the appellant was verbally informed that her services were terminated in the year 2015 but no order was communicated; that the appellant had applied for order of removal from service which, was provided wherein she was removed from service vide order dated 19.10.2015; that the appellant preferred departmental appeal on the basis of which an enquiry was ordered vide notification dated 23.02.2021; that after conducting enquiry, the enquiry officer had recommended reinstatement of the appellant into service with effect from 19.10.2015; that respondent No.3 (Director Elementary and Secondary Education, Peshawar) had directed respondent No.1 (DEO (F) Battagram) through letter dated 19.05.2022 to reinstate the appellant with effect from the date of removal and intervening period might be considered as leave without pay; that respondent No.1 issued order dated 21.06.2022, wherein the appellant was reinstated into service but intervening period was treated as leave without pay; that the appellant submitted arrival report and filed departmental appeal for back benefits including seniority, promotion and pay but the same was not responded within the statutory period of ninety days, hence, this appeal.



2. On receipt of the appeal and its admission to full hearing, the respondents were summoned. Respondents put appearance and submitted written reply despite raising therein numerous legal and factual objections. The defence setup was a total denial of the claim of the appellant.
3. We have heard learned counsel for the appellant and learned Assistant Advocate General for the respondents.
4. The Learned counsel for the appellant reiterated the facts and grounds detailed in the memo and grounds of the appeal while the learned Assistant Advocate General refuted the arguments of the learned counsel for the appellant and supported the impugned order.
5. The appellant is aggrieved of the order dated 21.06.2022, whereby the appellant, who was earlier removed from service, was reinstated in service w.e.f. 19.10.2015 and intervening period, from 19.10.2015 to 21.06.2022, was treated as leave without pay. He filed departmental appeal against the said order (dated 21.06.2022) but that was not responded. It is urged by the appellant that once the penalty of removal from service was set aside and he was reinstated from the date on which major penalty was imposed upon him; he was entitled to all the consequential benefits. The respondents, in their reply, stated that the Director Elementary and Secondary Education through office letter No.4836/FNo.327/F/APPEAL dated 19.05.2022 advised the DEO (F) Battagram to consider her intervening period as leave without pay under rule 12 of the Revised Leave Rules, 1981. The said letter is perused, which reflects that word 'may' has been used in the



letter which means that it was left upon the DEO(F) that she may consider the absence period as such under the above rule. Rule 12 of the rules is reproduced below:

"Rule-12 Extraordinary Leave (Leave without Pay).---(1)

Extraordinary leave may be granted on any ground upto a maximum period of five years at a time; provided that the civil servant to whom such leave is granted has been in continuous service for a period of not less than ten years. In case a civil servant has not completed ten years of continuous service, extraordinary leave without pay for a maximum period of two years may be granted at the discretion of the leave sanctioning authority. This leave can be granted irrespective of the fact whether a civil servant is a permanent or temporary employee.

(2) The maximum period of extraordinary leave without pay combined with leave on full pay and leave on half pay shall be subject to the limit of 5 years prescribed in FR-18, i.e. the maximum period of extraordinary leave without pay that would be admissible to a civil servant who has rendered continuous service for a period of not less than 10 years shall be 5 years less the period of leave on full pay and leave on half pay so combined.

[(3) Extraordinary leave may be granted retrospectively in lieu of absence without leave.]"

The stance of the respondents is not worth consideration nor tenable because the penalty of the appellant was set aside as the appellant was found to be innocent during the enquiry proceedings and the enquiry officer recommended reinstatement of the appellant from the date of her removal i.e. 19.10.2015. The appellant was accordingly reinstated into service vide order dated 21.06.2022 with effect from 19.10.2015



i.e. from the date of removal of the appellant from service, so when once she was declared innocent and was reinstated into service from the date of removal, she ought to get her entire due considering her to be in service throughout as her proved innocence during the enquiry showed that she was penalized for none of her fault.

6. The Supreme Court of Pakistan in a case reported as 2021 SCMR 962 titled "*Muhammad Sharif and others versus Inspector General of Police, Punjab, Lahore and others*" has dealt with the question of grant of back benefits in detail. The detailed discussion of the Supreme Court of Pakistan is as under:

"Back Benefits

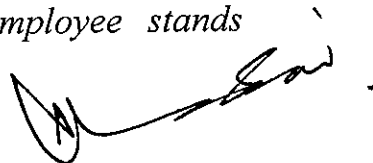
7. *At the very outset, it is important to underline that the term back benefits has not been mentioned in the service laws of Punjab or Pakistan, however, the term has a wide usage in the sub-continental jurisprudence, including ours, for a longtime. According to Black's Law Dictionary, Back Pay is the salary that an employee should have received but did not because of an employer's unlawful action. Back Pay Award is a judicial decision that an employee or ex-employee is entitled to an accrued but uncollected salary or benefits. The purpose of a back pay award is to make the employee whole i.e., restore the economic status quo that would have obtained but for the wrongdoing on the part of the employer. Back pay is a compensation for the tangible economic loss resulting from an unlawful employment practice. Back pay*



largely translates into back benefits under our jurisprudence. "Back benefits" are, therefore, retroactive payments. Even though the term back benefits is wider than back pay as it includes other benefits but for the purposes of this case we restrict the meaning of back benefits to arrears of pay or back pay.

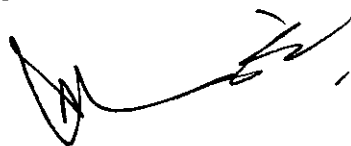
8. Reinstatement in service means to place again in a former state or position from which the person had been removed. Reinstatement is effected from the date of dismissal with back pay from that date. A reinstated employee is to be treated as if he had not been dismissed and is therefore entitled to recover any benefits (such as arrears of pay) that he has lost during his period of unemployment. However, pay in lieu of notice, ex gratia payments by the employer, or supplementary benefits, and other sums he has received because of his dismissal or any subsequent unemployment will be taken into account.

9. An employee, i.e. civil servant in this case, whose wrongful dismissal or removal has been set-aside goes back to his service as if he were never dismissed or removed from service. The restitution of employee, in this context, means that there has been no discontinuance in his service and for all purposes he had never left his post. He is therefore entitled to arrears of pay for the period he was kept out of service for no fault of his own. No different is the position where an employee has been served with a penalty like reduction in rank or withholding of increment(s) or forfeiture of service, etc. and the penalty has been set-aside. The employee stands



restored to his post with all his perks and benefits intact and will be entitled to arrears of pay as would have accrued to him had the penalty not been imposed on him. This general principle of restitution fully meets the constitutional requirements of fair trial and due process (Articles 4 and 10-A11) besides the right to life (Article 912) which includes the right to livelihood ensuring all lawful economic benefits that come with the post. Reinstating an employee but not allowing him to enjoy the same terms and conditions of service as his colleagues is also discriminatory (Article 2513). All this snowballs into offending the right to dignity (Article 1414) of an employee for being treated as a lesser employee inspite of being reinstated or restored into service.

10. The "concept of reinstatement into service with original seniority and back benefits" is based on the established principle of jurisprudence that "if an illegal action/wrong is struck down by the Court, as a consequence, it is also to be ensured that no undue harm is caused to any individual due to such illegality/wrong or as a result of delay in the redress of his grievance." If by virtue of a declaration given by the Court a civil servant is to be treated as being still in service, he should also be given the consequential relief of the back benefits (including salary) for the period he was kept out of service as if he were actually performing duties. A civil servant once exonerated from the charges would stand restored in service as if he were never out of it and would be entitled to back benefits. A five Member Bench of this Court in Inspector-General of Police,

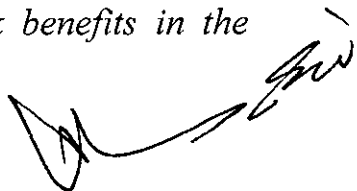


Punjab v. Tariq Mahmood¹⁸ authoritatively reiterated:

"[T]he grant of back benefits to an employee who was reinstated by a Court/Tribunal or the department is a rule and denial of such benefit is an exception on the proof of that such a person had remained gainfully employed during such period."

11. It follows that where the order of dismissal, removal or reduction in rank is set aside unconditionally, back benefits are to be paid necessarily. The grant of back benefits to an employee who has been illegally kept away from his employment is a rule and denial of service benefits to such reinstated employee is an exception. When a civil servant is reinstated in service and his dismissal from service is held to be illegal and for no fault of his, then his reinstatement in service would mean that he has always been in service and as a consequence be paid salary from the day he was illegally removed or dismissed from service. One of the exceptions of not granting full back benefits is that if the reinstated employee had accepted another employment or engaged in any profitable business during the intervening period; in such a case, the said amount would be set off against the salary. This is now available as an instruction under Sl. No. 155, Vol-II, Esta Code, 2007 edition.

12. This principle of restitution and payment of back benefits also finds its presence under the second proviso to section 16 of the Punjab Civil Servants Act, 1974 ("Act") which deals with back benefits in the



shape of arrears of pay in the event that the order of dismissal or removal or reduction in rank is set-aside in the following manner:-

Provided further that where a civil servant has been dismissed or removed from service or reduced in rank, he shall, in the event of the order of dismissal, removal from service or reduction in rank being set aside, be entitled to such arrears of pay as the authority setting aside the order may determine.

13. In the past, the concept of arrears of pay was dealt with by Fundamental Rule 54 ("FR") and Civil Service Rule (Punjab) 7.3 ("CSR") issued by the Federal Government and the Punjab Government, respectively. The said Rules provide as follows;

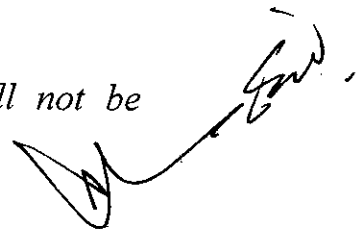
F.R. 54.-Where a Government Servant has been dismissed or removed is reinstated, the revising or appellate authority may grant to him for the period of his absence from duty:-

(a) if he is honourably acquitted, the full pay to which he would have been entitled if he had not been dismissed or removed and, by an order to be separately recorded, any allowance of which he was in receipt prior to his dismissal or removal; or

(b) if otherwise, such portion of such pay and allowances as the revising or appellate authority may prescribe.

In a case falling under clause (a), the period of absence from duty will be treated as a period spent on duty.

In a case falling under clause (b), it will not be



treated as a period spent on duty unless the revising or appellate authority so directs.

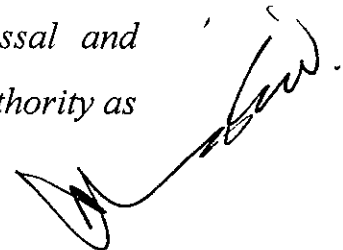
Explanation:-In this rule, "revising authority" means the "authority" or "authorised Officer" as defined in the Government Servants (Efficiency and Discipline) Rules, 1973, who passes the final order on the case and not the authority who passes an order on appeal.

CSR 7.3. When a Government Servant who was dismissed or removed from service, is reinstated, the revising or appellate authority may grant to him for the period of his absence from duty:

- a) If he is honourably acquitted, the full pay to which he would have been entitled if he had not be dismissed or removed and by an order to be separately recorded any allowances of which he was in receipt prior to his dismissal or removal; or*
- b) If otherwise, such proportion of such pay and allowances as the revising or appellate authority may prescribed"*

In a case falling under clause (a) the period of absence from duty will be treated as a period spent on duty. In a case falling under clause (b) it will not be treated as period spent on duty unless the revising or appellate authority so directs.

Note 1.--This rule is absolute and unconditional and so the question of lien does not arise in the case of Government Servant who is dismissed from service and reinstated on appeal when the period of unemployment between the date of dismissal and reinstatement is declared by the appellate authority as



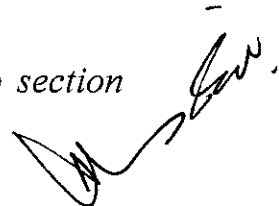
duty.

Administrative Instruction.--Post vacated by a dismissed Government Servant may be filled substantively subject to the condition that the arrangements thus made will be reverse if the dismissed Government Servant is reinstated on appeal.

Note 2.-The term 'revising authority' as used in this rule includes an authority revising its own orders.

14. FR and CSR predate the Constitution and the Act. After the promulgation of the Constitution in 1973, FR and CSR were given protection under Article 241 of the Constitution, albeit subject to their consistency with the Constitution and till such time that a law was made under Article 240 by the appropriate legislature. Further, section 23(2) of the Act provided that any rules, orders or instructions already in force before the commencement of the Act shall in so far as they were not inconsistent with the provisions of the Act, be deemed to be the Rules made under the Act. Thus, the position emerging post 1973 is that Fundamental Rules, Civil Service Rules (Punjab) and other orders or instructions in respect of terms and conditions of service shall remain subject to the Act and in case of any inconsistency, the provisions of the Act shall prevail. Therefore, for the purposes of back benefits, we give primacy to the proviso to section 16 of the Act and examine and interpret it keeping the spirit and wisdom of FR 54 and CSR 7.3 in view.

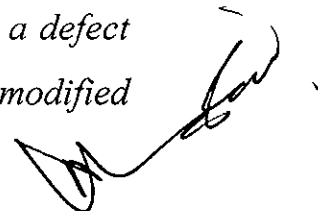
15. Coming back to the second proviso to section



16 of the Act, it is important to structure the discretion to be exercised by the authority or court in granting arrears of pay after the order of dismissal, removal or reduction in rank has been set-aside. This discretion is to be structured keeping in mind the constitutional provisions discussed above, the wisdom handed down by the jurisprudence evolved till date and the administrative and financial oversight envisaged under FR, CSR and the Esta Code. The reinstatement or restoration of an employee to the post may be due to the following different reasons: (a) purely on merits; (b) on technical grounds without touching the actual merits of the case and (c) on the ground of leniency where the actual order is either converted into a lesser penalty or totally set-aside.

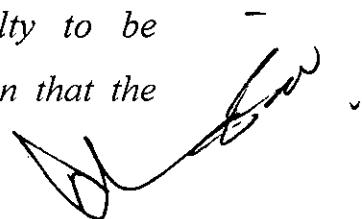
16. An employee on reinstatement on merits cannot be deprived of back benefits. Any such deprivation would be against the constitutional rights (discussed above) guaranteed to an employee. Besides, CSR 7.3 (a) also points in this direction. In case of reinstatement or restoration to a post on merits, the employee is entitled to full back benefits and there is no discontinuity of service, thus the question of intervening period does not arise in such a case. The discretion under the second proviso to section 16 of the Act is to be exercised in favour of the employee by granting him all the back benefits.

17. However, the above principle of grant of back benefits is qualified by a situation where the order of reinstatement is conditional; either civil servant's dismissal from service is declared illegal for a defect in disciplinary proceedings or the penalty is modified



to be on the lower side with the result that the civil servant is reinstated. In the former situation, the merits of the case and the determination of the fault of the employee go untouched, even though he stands reinstated. Here, an inquiry could still be made into the employee's conduct or his conduct may be considered such as to call for a departmental inquiry. The de novo proceedings could be initiated from the stage where the defect had crept in. In such a situation, the entitlement with regard to back benefits is put off till the final determination with regard to the civil servant's conduct. If he is found at fault, the competent authority could justifiably deny him part of the back benefits. And, in the latter situation, the civil servant is not declared blameless; rather, his penalty is reduced and, therefore, part of back benefits, as necessitated by the implications of reduced penalty, may justifiably be denied to him.

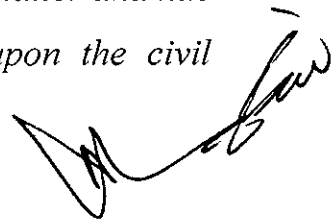
18. We also feel inclined to underscore that a civil servant cannot be burdened with the loss of service benefits without attributing any charge to him. Appellate authorities, without saying a word about the charge, often, as in two of these petitions, reinstate a civil servant taking a lenient view or on compassionate ground or on the ground of proportionality. This view usually becomes the ground to deny back benefits to the reinstated civil servant. It is underlined for the sake of clarity that the matter of 'leniency' or 'compassion' or 'proportionality' does not erode the charge rather it does not consider the award of penalty to be appropriate in the case. It may so happen that the



charge stands established yet the authority or the court, applying leniency or compassion or proportionality as standard, feels inclined to extend concession of reinstatement to the civil servant. Notably the civil servant in such a case is not reinstated unconditionally and, therefore, he may be denied a portion of pay - while maintaining a proportion between the gravity of the fault of the civil servant and special/extenuating circumstances of the case - he would otherwise get on reinstatement. It would be in step with the second proviso to section 16 of the Act and would also be consistent with the spirit of FR 54(b) and CSR 7.3(b). If an employee is reinstated in such an eventuality, the authority or the court needs to clearly state that though the charge ascribed to the employee stood proved, concession is being shown to him to avoid the rigors of major penalty, which would otherwise be unwarranted in view of peculiar circumstances of the case.

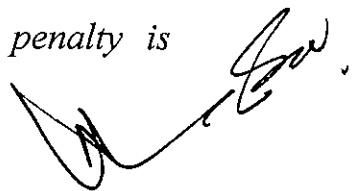
Leave without pay or leave of the kind due

19. In case back benefits as of right are not awarded to the civil servant and he is served with any other penalty after reinstatement in service, the intervening period has to be counted for, otherwise the interruption in the service of a civil servant may entail forfeiture of his service²⁶, therefore, the intervening period has to be regularized by treating it as an extra ordinary leave without pay or leave of the kind due or leave without pay, as the case may be. It is pointed out that the regularization of the intervening period is a totally separate matter and has no bearing on the penalty imposed upon the civil



servant. The competent authority may condone interruptions in service provided that the gaps are not due to any fault or willful act of the employee. The service gaps are usually regularized as extraordinary leave without pay or leave of the kind due. Terming absence period as extraordinary leave without pay is not a punishment, rather, a treatment given to regularize the period spent away from duty. Nor could a concession given to a civil servant that his absence from duty be treated as extraordinary leave without pay mean that major penalty imposed in the same order is wiped off. Nevertheless the powers given to treat the period of absence as extraordinary leave without pay or leave of the kind due are to be exercised after due application of mind and considering the facts and circumstances of a case.

20. We, therefore, hold that a civil servant on unconditional reinstatement in service is to be given all back benefits and the only exception justifying part withholding of back benefits could be that he accepted gainful employment/engaged in profitable business during the intervening period. In case, the dismissal/removal of a civil servant is declared illegal for a defect in disciplinary proceedings without attending to the merits of the case, the entitlement to back benefits may be put off till the inquiry is conducted in the matter finally determining the fault of the civil servant. In case, where there is some fault of the civil servant, including a situation where concession of reinstatement is extended to the civil servant while applying leniency or compassion or proportionality as standard and where penalty is



modified but not wiped off in a way that the civil servant is restored to his position, the back benefits will be paid as determined by the authority/court in the manner discussed above in this judgment. We, however, reiterate that "gainful employment/profitable business" creates an overarching exception that would cover all cases involving the question of back benefits."

7. Deriving wisdom from the above pronouncement we hold that, since the appellant was kept away from service because of none of her fault and there is nothing on the record that during the intervening period the appellant remained engaged in any gainful employment/profitable business, therefore, she is held entitled for the back benefits for the intervening period. We thus allow this appeal as prayed for. Costs shall follow the event. Consign.

6. ***Pronounced in open Court at Abbottabad and given under our hands and the seal of the Tribunal on this 22nd day of June, 2023.***



KALIM ARSHAD KHAN
Chairman
Camp Court Abbottabad



RASHIDA BANO
Member (Judicial)
Camp Court Abbottabad