

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR
AT CAMP COURT ABBOTTABAD

Service Appeal No. 1233/2022

BEFORE: MR. KALIM ARSHAD KHAN ... CHAIRMAN
MRS. RASHIDA BANO ... MEMBER(J)

Qandeel Ayesha Waheed, Assistant Director, DCTE, Abbottabd.

... (Appellant)

VERSUS

1. Government of Khyber Pakhtunkhwa, Chief Secretary Civil Secretariat Peshawar.
2. Secretary Elementary & Secondary Education Department, Government of Khyber Pakhtunkhwa, Peshawar.
3. Section Officer (Female), Department of Elementary & Secondary Education Peshawar.
4. Mr. Ghulam Wajid Head Master, Government High School Lahoor, Abbotabad. ... (Respondents)

Mr. Ajmad Hassan Tasnoli
Advocate

... For Appellant

Mr. Asif Masood Ali Shah
Deputy District Attorney

... For Respondents

Date of Institution.....19.08.2022
Date of Hearing.....19.06.2023
Date of Decision.....19.06.2023

JUDGMENT

RASHIDA BANO, MEMBER (J): The service appeal in hand has been instituted under Section 4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974, challenging validity of the order/ notification bearing No. (S/F)/E&ESD/4-16/2022 dated 13.05.2022 wherein order /notification bearing No. (S/F)/E&ESD/4-16/2022 dated 28.04.202 was withdrawn by the respondent No. 2. Appellant prayed for setting aside of impugned order dated 13.05.2022 followed by order dated 08.06.2022 by declaring it illegal, unlawful being based on motives other than legal tainted with malafiede

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with an objective to please the political regime of the provincial government against the principle of natural justice, equity, and fair play.

2. Brief facts giving rise to the instant appeal are that appellant Qandeel Ayesha Waheed was transferred and posted against vacant post of DCTE, Abbottabad vide notification bearing No. (S/F)/E&ESD/4-16/2022 dated 05.04.2022 which was withdrawn letter on vide order bearing No. (S/F)/E&ESD/4-16/2022 dated 07.04.2022 and appellant was transferred and posted to Directorate of Professional Development. Appellant on compassionate grounds requested department for withdrawal of order dated 07.04.2022, this request of the appellant was considered by the authority who please to withdraw the subsequent notification vide order bearing No. (S/F)/E&ESD/4-16/2022 dated 28.04.2022, appellant in compliance of her initial transfer order dated 05.04.2022 and order dated 28.04.2022 assumed the charge of the post of Assistant Director in DCTE Abbottabad on 09.05.2022, but again respondents No. 2 being competent authority withdrew the order/notification dated 28.04.2022 vide notification bearing No. (S/F)/E&ESD/4-16/2022 dated 13.05.2022. Appellant feeling aggrieved filed representation on 19.05.2022, which was not responded within 90 days, and then she filed the instant service appeal.

3. Respondents were put on notice who submitted written replies/comments on the appeal. We have heard the learned counsel for the appellant as well as the learned Deputy District Attorney and perused the case file with connected documents in detail.

4. Learned counsel for the appellant argued that impugned order is the respondents of political pressure and it not on merit which is against the settled norms of law & justice, fair play and equity in the eyes of law, therefore, she be declaring null and void.

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5. Conversely, learned Deputy District Attorney argued that the transfer posting is the prerogative of Directorate of the Competent Authority and appellant transfer order is rightly cancelled by the competent authority, therefore, he requested for dismissal of appeal.

6. Perusal of record would reveal that main and only question which requires determination is whether appellant transfer order was cancelled in the best public interest by adopting due process of law, following fair policy and principle of equality or not. Appellant alleged that due to undue pressure and influence of Speaker Provincial Assembly, her transfer and posting to DCTE was cancelled alongwith subsequent order. Perusal of transfer posting dated 05.04.2022 available on this appeal file reveals that Additional Private Secretary to Speaker Provincial Assembly (NWFP) KPK has directed Secretary Education to withdraw this order. In these words "may be withdrawn this notification as per desire of Hon'ble Speaker. From this it is established that transfer/posting order of the appellant was cancelled and withdrawn at instance of political representative and she was frequently transferred for no fault at her part even after five days of assuming charge of the post Assistant Director in DCTE by the appellant which seems to be colorful exercise of authority. The apex court of the country has declared guiding principles in respect of transfer and posting matters of the government servants and discourage all sort of political interference in the process of posting transfer. No doubt transfer/posting is the discretion of competent authority but such discretion must be exercised in the best public interest, in accordance with the principle of equality and fairly without any political consideration and accommodation of one's near and dear, for the accomplishment of consideration which are not permitted by law.


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7. It will not be out of place to mention here that appellant claim to be the only family member to look after and take care of his ailing father and request of the appellant for withdrawal of his transfer/posting cancelling was accepted by the competent authority on compassionate ground to take care and look after of his ailing father being the only unmarried family member but again said order was cancelled. As per verdict of Supreme Court of Pakistan in its judgment reported as 2003 PLC (C.S) 983 had held that:

“---S.4---Constitution of Pakistan (1973), Art 212(3)

Transfer of civil servant –jurisdiction of Service Tribunal

–Female lady teachers were transferred from their home

station to a distant station ---One of the teachers was

unmarried, while husband of the other was employed at

the station from where she was transferred—On posts

against which the teachers were working the Authorities

wanted to recruit two teachers on contract basis--- Service

Tribunal having come to the conclusion that the transfer

was not in public interest, allowed the appeal and transfer

orders were set aside.”

8. What has been discussed above, we allow this appeal and the impugned orders dated 13.05.2022 and 08.06.2022 are set aside. Parties are left to bear their own costs. Consign.

9. *Pronounced in open court at Abbottabad and given under our hands and seal of the Tribunal on this 19th day of June, 2023.*


(RASHIDA BANO)

Member (J)

Camp Court, Abbottabad


(KALIM ARSHAD KHAN)


Chairman


Camp Court, Abbottabad

ORDER

19th June, 2023

1. Learned counsel for the appellant present. Mr. Asif Masood Ali Shah, Deputy District Attorney for the respondents present.
2. Vide our detailed judgement of today placed on file, we allow the appeal and the impugned orders dated 13.05.2022 and 08.06.2022 are set aside. Costs shall follow the event. Consign.
3. *Pronounced in open court at Abbottabad and given under our hands and seal of the Tribunal on this 19th day of June, 2023.*


(RASHIDA BANO)
Member (J)
Camp Court, Abbottabad


(KALIM ARSHAD KHAN)
Chairman
Camp Court, Abbottabad

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