

BEFORE THE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL PESHAWAR.

Service Appeal No. 7474/2021

Date of Institution ... 24.09.2021

Date of Decision... 08.05.2023

Mr. Raees Khan S/O Mir Sahib Khan, SPET (BPS-16), Office of District Education Officer, District North Waziristan. R/O Nawaz Khan House, Pishtakhara Bala Bara Road, P.O Islamia College, Tehsil & District Peshawar.

... (Appellant)

VERSUS

The Government of Khyber Pakhtunkhwa through Secretary (E&SE) Department, Khyber Pakhtunkhwa, Civil Secretariat, Peshawar and 03 others.

... (Respondents)

MR. NOOR MUHAMMAD KHATTAK,
Advocate

--- For appellant.

MR. ASIF MASOOD ALI SHAH,
Deputy District Attorney

--- For official respondents.

MR. KALIM ARSHAD KHAN
MR. SALAH-UD-DIN


--- CHAIRMAN
--- MEMBER (JUDICIAL)

JUDGMENT:

SALAH-UD-DIN, MEMBER:- Precise averments raised by the appellant in his appeal are that he was serving as Senior Physical Education Teacher (BPS-16) in the Education Department; that vide posting/transfer Notification dated 04.03.2021, the appellant was transferred from GHS Gul Jan Kot North Waziristan to the post of Physical Supervisor (BPS-16) in the office of District Education Officer North Waziristan in place of private respondent No. 4 namely Rasool Mar Jan; that the appellant submitted his arrival report in the office of District Education Officer North Waziristan on



08.03.2021 and started performing of his duty; that in the meanwhile posting/transfer Notification dated 04.03.2021 was withdrawn/cancelled to the extent of private respondent No. 4 namely Rasool Mar Jan vide order dated 24.03.2021, while the appellant was not transferred to any other post; that the appellant being aggrieved of the order dated 24.03.2021, preferred departmental appeal, however the same was not decided within the stipulated period, therefore, the appellant filed Writ Petition No. 352-D/2021 before the august Peshawar High Court, Dera Ismail Khan Bench, which was dismissed in limine due to lack of jurisdiction; that the appellant then approached this Tribunal by way of filing instant appeal for redressal of his grievance.



2. On admission of the appeal for regular hearing, notices were issued to the respondents. Official respondents contested the appeal by way of filing of comments, wherein they refuted the assertions raised by the appellant in his appeal, while private respondent No. 4 was placed ex-parte vide order dated 18.01.2022.

3. Learned counsel for the appellant contended that vide Notification dated 04.03.2021, the appellant was transferred to the post of Physical Supervisor (BPS-16) in the office of District Education Officer North Waziristan, while services of private respondent No. 4 were placed at the disposal of Director Elementary & Secondary Education Khyber Pakhtunkhwa for further posting but vide the impugned Notification dated 24.03.2021, the transfer order to the extent of private respondent No. 4 was withdrawn/cancelled

without any legal justification; that the appellant was not allowed to complete his normal tenure on the post of Physical Supervisor (BPS-16) and the impugned Notification dated 24.03.2021 was issued in violation of Clauses I, IV & XI of Posting/Transfer Policy of Provincial Government; that the impugned order was the result of nepotism and was issued only for accommodating private respondent No. 4; that the impugned Notification dated 24.03.2021 was neither passed in the interest of public nor in exigency of service, therefore, the same is liable to be set-aside.

4. On the other hand, learned Deputy District Attorney for official respondents has argued that Notification dated 04.03.2021 was issued incorrectly to the extent of appellant and private respondent No. 4, therefore, the transfer order of private respondent No. 4 was withdrawn/cancelled vide Notification dated 24.03.2021; that vide Notification bearing No. SO(PE)/E&SED/9-2/Up-gradation of Physical Supervisor/2021-22 dated 24.02.2022 the post of Physical supervisor in the Elementary & Secondary Education Department has been abolished and private respondent No. 4 has been up-graded to the post of IPE (BS-17), therefore, the impugned Notification dated 24.03.2021 cannot be considered as outcome of any ulterior motive or mala-fide; that the competent Authority has issued the impugned Notification dated 24.03.2021 by exercising his legal Authority in exigency of service and no mala-fide or ulterior motives could be pointed out on his part. In the



last, he requested that the impugned Notification dated 24.03.2021 may be kept intact and the appeal in hand may be dismissed.

5. Arguments have already been heard and record perused.

6. A perusal of the record would show that vide Notification dated 04.03.2021, the appellant was transferred and posted as Physical Supervisor in the office of District Education Officer North Waziristan vice Private respondent No. 4 Rasool Mar Jan, Physical Supervisor in the said office, whose services were placed at the disposal of Director E&SE Khyber Pakhtunkhwa for further posting. The afore-mentioned posting/transfer Notification dated 04.03.2021 to the extent of transfer of respondent No. 4 Rasool Mar Jan was later on withdrawn/cancelled vide the impugned Notification dated 24.03.2021. The official respondents have alleged in their comments that the posting/transfer Notification dated 04.03.2021 was issued incorrectly to the extent of appellant and private respondent No. 4, therefore, the same was later on withdrawn/cancelled vide the impugned Notification dated 24.03.2021. The respondents have strengthened their stance by annexing copy of Notification bearing No. SO(PE)/E&SED/9-2/Up-gradation of Physical Supervisor/2021-22 dated 24.02.2022, whereby private respondent No. 4 as well as two other Physical Supervisors had been up-graded to the post of IPE (BPS-17) conditionally, subject to outcome of CPLA filed in the august Supreme Court of Pakistan. It has also been mentioned in the afore-mentioned Notification that the posts of Physical Supervisors

in Elementary and Secondary Education Department, merged Districts Khyber Pakhtunkhwa may be declared as dying cadre and subsequently shall be abolished upon up-gradation of the incumbents. The fore-mentioned Notification dated 24.02.2022 has though been issued during the pendency of the instant appeal, however keeping in view the same, it would not be appropriate to set-aside the impugned Notification dated 24.03.2021. However, as transfer of the appellant and private respondent No. 4 Rasool Mar Jan was made vice-versa but in view of the withdrawal/cancellation of transfer of the appellant vide subsequent Notification dated 24.03.2021, the appellant was left in a state of limbo as no specific order of his transfer is available on the record.

7. Consequently, the impugned Notification dated 24.03.2021 is kept intact, however it is directed that the appellant may be posted on any post of his cadre according to his entitlement, if not already posted. The appeal in hand is disposed of accordingly. Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCED
08.05.2023



(KALIM ARSHAD KHAN)
CHAIRMAN



(SALAH-UD-DIN)
MEMBER (JUDICIAL)