

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 7789/2021

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

Faiza Rehman Wazir, Subject Specialist (BPS-17) GGHSS Landi Arbab,
Peshawar.

.... (*Appellant*)

VERSUS

1. **Chief Secretary** to Government of Khyber Pakhtunkhwa, Peshawar.
2. **Secretary** Elementary & Secondary Education Department Khyber Pakhtunkhwa, Peshawar.
3. **Director** Elementary & Secondary Education Department Khyber Pakhtunkhwa, Peshawar.
4. **District Education Officer**, (Female), Peshawar.

.... (*Respondents*)

Mr. Taimoor Ali Khan
Advocate

... For appellant

Mr. Asif Masood Ali Shah
Deputy District Attorney

... For respondents

Date of Institution.....26.11.2021
Date of Hearing.....06.07.2023
Date of Decision.....06.07.2023

JUDGEMENT

RASHIDA BANO, MEMBER (J): The service appeal in hand has been instituted under Section 4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974, against the notification dated 10.11.2021, whereby the appellant was prematurely transferred from GGHSS Landi Arbab to GGHSS Baghicha Dheri,



Mardan and against not taking action on the departmental appeal of the appellant within the period of 15 days as per posting/transfer policy.

2. Brief facts of the case, as given in the memorandum of appeal, are that the appellant was appointed as Subject Specialist (BPS-17) after recommendation of Khyber Pakhtunkhwa Public Service Commission and posted at GGHSS Shaidu, Nowshera vide notification dated 12.02.2019. The appellant was performing her duty with great devotion and honesty. Then the appellant was transferred from GGHSS Shaidu Nowshera to GGHSS Landi Arbab, Peshawar vide notification dated 02.09.2020, but without completing her normal tenure at GGHSS Landi Arbab, Peshawar the appellant was transferred from GGHSS Landi Arbab, Peshawar to GGHSS Baghicha Dheri, Mardan vide notification dated 10.11.2021. As the husband of the appellant is also Government servant working in Army ACE 11 Corps, Peshawar as Superintendent. The appellant being aggrieved from the notification dated 10.11.2021 filed departmental appeal on 10.11.202, which was not responded, hence, the present 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 contended that the impugned transfer notification dated 10.11.2021 is against the law, facts, premature and norms of justice hence, not tenable and liable to be set aside to the extent of the appellant. He further contended that impugned transfer order was passed in violation of posting/ transfer policy, hence, liable to be set aside. He argued that husband of



the appellant is also government servant who is now a days posted at Peshawar and under spouse policy appellant is entitled to be posted at Peshawar, therefore, he requested for acceptance of the instant service appeal.

5. The learned Deputy District Attorney contended that the appellant has been treated in accordance with law and rules and no right of the appellant has been violated. He further contended that the appellant was posted against vacant post GGHSS Shaidu Nowshera, but due to her request again and again she was adjusted against wrong post of Subject Specialist Islamiat at GGHSS Landi Arbab, Peshawar on humanitarian grounds. The department transfer all the teachers who occupied wrong post, including the appellant as she occupied the post of Subject Specialist Islamiat and was posted/adjusted against her own subject i.e Economics at GGHSS Baghicha Dheri, Mardan.

6. Perusal of record would reveal that the appellant was appointed as Subject Specialist (BPS-17) vide notification dated 12.02.2019 and was posted at GGHSS as Subject Specialist (Economics). Appellant was transferred /posted to GGHSS Landi Arbab vide order dated 02.09.2020. Appellant, in consequence of her transfer, relinquished her charge at GGHSS Shaidu, Nowshera and assumed her duties at GGHSS Landi Arbab, Peshawar but vide impugned notification dated 10.11.2021, appellant was again transferred to GGHSS Baghicha Dheri, Mardan without allowing her to complete normal tenure at GGHSS Landi Arbab, Peshawar. Appellant contended that she, on the basis of spouse policy, was also entitled to be posted at Peshawar because her husband was government servant and was posted as Superintendent in Army ACE II Corps, Peshawar. So appellant brought instance appeal on two grounds, one of premature transfer and second is



of violation of spouse policy. Appellant relied upon transfer/posting policy which deals with Section 10 of Khyber Pakhtunkhwa Civil Servant Act 1973, which reads as under:

"Every civil servant shall be liable to serve anywhere within or outside the Province in any post under the Federal Government, or any Provincial Government or local authority, or a corporation or body set up or established by any such Government."

It means that civil servant has to serve anywhere at the pleasure of the competent authority. The competent authority knows well about the capacity, performance of subordinates, and then assigns duty to subordinate in order to provide best facilitation to general public. Reliance is placed on 2023 PLC (C.S) 292. The respondent mentioned in their reply that appellant was Subject Specialist in the subject of Economics but she was adjusted against wrong post of Subject Specialist Islamiyat at GGHSS Landi Arbab on humanitarian grounds just to facilitate her. In Anita Turab case about tenure posting/transfer of the civil servant, it was held that when ordinary tenure for posting/transfer has been specified or rules made thereunder, such tenure must be respected and cannot be varied except for compelling reasons, which should be recorded in writing and judicially reviewable. In the case of appellant, holding a wrong post of Subject Specialist Islamiyat instead of Subject Specialist Economics is the compelling reason which compelled the respondent to issue impugned order vide which the appellant was posted to relevant post i.e Subject Specialist Economics. So far as violation of spouse policy is concerned no solid proof about posting of her husband is available on record except service card, which alone could not be

sufficient to show that husband of the appellant was posted at Peshawar. Besides when there is no vacancy of Subject Specialist Economics. The field of Specialty of appellant requires that the appellant should be posted at the place where students are available and posting of the appellant on the post of Subject Specialist Islamiat by cancelling impugned order is injustice with students to whom appellant is going to teach and is also thus against public interest. Otherwise too, appellant remained for one year & eight months under the garb of temporary injunction at GGHSS Landi Arbab, Peshawar remained for two years and ten months from the date of her posting/transfer order to GGHSS Landi Arbab, Peshawar dated 02.09.2020. So appellant completed her normal tenure in accordance with the transfer/posting policy.

7. In view of the above discussion, appellant was rightly transferred by the competent authority in the best public interest, therefore, seeing no merit in this appeal, stands dismissed. Costs shall follow the event. Consign.

8. *Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal on this 6th day of July, 2023.*



(RASHIDA BANO)
Member (J)



(KALIM ARSHAD KHAN)
Chairman