

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

Service Appeal No. 423/2023

BEFORE: **KALIM ARSHAD KHAN** ... **CHAIRMAN**
MISS FAREEHA PAUL ... **MEMBER (E)**

Mst. Abrisheema, DM (BPS-15), GGMS Kandaro under transfer to GGMS Aladher, District Swabi. (*Appellant*)

Versus

1. The Government of Khyber Pakhtunkhwa through Secretary, Elementary & Secondary Education Department, Peshawar.
2. The Director Elementary & Secondary Education, Khyber Pakhtunkhwa, Peshawar.
3. The District Education Officer (F), Swabi.
4. Mst. Nafesa SDM (BPS-16) GGIIS Lahore Shari, under transfer to GGHS Maneri Bala, District Swabi.
5. Mst. Zainab DM (NBPS-16) GGMS Maneri Bala, under transfer to GGMS Kandaro, Swabi. (*Respondents*)

Mr. Noor Muhammad Khattak ... For appellant
Advocate

Mr. Fazal Shah Mohmand, ... For official respondents
Additional Advocate General

Date of Institution..... 28.02.2023
Date of Hearing..... 24.07.2023
Date of Decision..... 24.07.2023

JUDGEMENT

FAREEHA PAUL, MEMBER (E): The service appeal in hand has been instituted under Section 4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974 against the appellate order dated 31.01.2023 and against subsequent order dated 21.02.2023 whereby the transfer order dated 21.01.2023 was cancelled. It has been prayed that on acceptance of the appeal, the impugned appellate order dated 31.01.2023 and subsequent order dated 21.02.2023 might be set aside and the respondents be directed not to transfer the appellant from



GGMS Kandaro, alongwith any other remedy which the Tribunal deemed fit and appropriate.

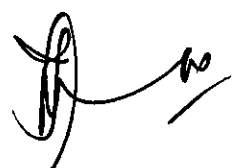
2. Brief facts of the case, as given in the memorandum of appeal, are that the appellant was appointed as DM (BPS-15) vide order dated 31.12.2018. The post of the appellant was non-transferable but she was transferred from GGMS Aladher to GGMS Kandaro and the private respondent No. 5 was transferred from GGHS Kandaro to GGHS Maneri Bala vide order dated 21.01.2023. In compliance to the transfer order dated 21.01.2023, the appellant took over the charge of her post at GGMS Kandaro on 23.01.2023. Private respondent No. 4 was transferred from GGHS Lahor Shari to GGHS Maneri Bala vide order dated 12.01.2023, however, the said order was withdrawn vide order dated 16.01.2023 and on 21.01.2023, the post at GGHS Maneri was vacant. Private respondent No. 4 assailed the order dated 16.01.2023 before the appellate authority who while accepting the departmental appeal through order dated 31.01.2023, set aside the order dated 16.01.2023 and in pursuance to which the transfer order dated 21.01.2023 was cancelled to the extent of appellant and the private respondent No. 5. The order dated 31.01.2023 was appellate order and having no other remedy, the appellant filed instant appeal for redressal of her grievance.

3. Respondents were put on notice. Official respondents No. 1 to 3 submitted written replies/comments on the appeal. Private respondents No.4 and 5 were placed ex-parte vide order dated 17.05.2023. We heard the learned counsel for the appellant as well as the learned Additional Advocate General for the official respondents and perused the case file with connected documents in detail.



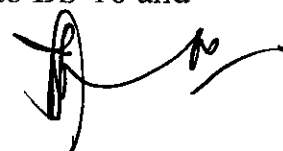
4. Learned counsel for the appellant, after presenting the case in detail, argued that the impugned orders were against the law, facts, norms of natural justice and the respondents violated Article 4 & 25 of the Constitution of Islamic Republic of Pakistan, 1973. He further argued that the appellant had not completed her normal tenure and the subsequent order dated 21.02.2023 was against clause-IV of the Posting/Transfer Policy of the Provincial Government. Learned counsel further added that the appellant was un-married and as per posting/transfer policy of the provincial government, the authorities were bound to facilitate her and post her at the station of the residence of her parents and that she belonged to Kandaro and after spending four years away from her home, she had every right to be posted at Kandaro. He requested that the appeal might be accepted as prayed for.

5. Learned Additional Advocate General, while rebutting the arguments of learned counsel for the appellant, argued that the post at GGHS Maneri Bala was SDM (Gazetted) post, while the posts at GGMS Aladher and GGMS Kandaro were DM (Non-gazetted). The private respondent No. 4 was SDM (Gazetted) and she was rightly transferred to GGHS Maneri Bala vide order dated 12.01.2023. He informed that the withdrawal of order dated 12.01.2023 by order dated 16.01.2023 was a clerical/erroneous mistake, therefore, all the mistakes were corrected by the order dated 21.02.2023. He argued that the transfer order of private respondent No. 5 and the appellant dated 21.01.2023 was against the wrong post. The private respondent No. 4 was rightly restored on her original post vide order dated 21.02.2023, due to which transfer order dated 21.01.2023 was declared invalid to the extent of Serial No. 1 & 2 i.e



private respondent No. 5 and the appellant. He requested that the appeal might be dismissed.


6. After hearing the arguments from both the sides and going through the record presented before us, it is found that the appellant, after her appointment as Drawing Master (BS-15), served at Aladher, Swabi for four years after which she was transferred to Kandaro on 21.01.2023. That order was acted upon by her on 23.01.2023. The transfer order dated 21.01.2023 was cancelled on 21.02.2023 in the light of an appeal by private respondent No. 4 and the same has been impugned before us. Vide this Tribunal's order dated 08.03.2023, status quo has been maintained and the appellant is in Kandaro at the moment. The departmental representative clarified that the post of DM at Aladher and Kandaro is non-gazetted whereas that of Maneri Bala is a gazetted post. According to him, the appellant and private respondent No. 5 were posted against gazetted posts which was a wrong posting and hence adjustments were made. As a result of that the private respondent No. 4 was posted on the gazetted post at Maneri Bala and the appellant and private respondent No. 5 were adjusted at non-gazetted posts. He was asked that as the status quo had been maintained, and the appellant was retained at Kandaro, what was the status of private respondent No. 5, to which he replied that she was also posted at Kandaro. When further enquired about the number of posts of D.M at Kandaro and payment of salaries, he clarified that there is one post but the salary of DM is maintained and paid at district level, therefore there is no issue of payment of salary to both of them. He further clarified that the meeting of Departmental Promotion Committee has already been held and its minutes are awaited, after which private respondent No. 5 would be promoted to BS-16 and



transferred to some BS-16 post. At that juncture, the post at Kandaro would be vacant and the appellant would be posted/adjusted there regularly. The bench, on that, raised a query as to why not adjust the appellant now as she was already posted there and status quo had also been maintained, to which he had no objection.

7. In the light of above, the appeal in hand is allowed and the respondent department is directed to post and adjust the appellant at Kandaro. 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 24th day of July, 2023.*


(FAREEHA PAUL)
Member (I)

Fazle Subhan, P.S


(KALIM ARSHAD KHAN)
Chairman