

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

Service Appeal No. 572/2022

BEFORE: **MRS RASHIDA BANO** ... **MEMBER (J)**
MISS FAREEHA PAUL ... **MEMBER (E)**
Sheikh Fareen son of Abdul Mateen, Ex-Cook Technical College Buner,
resident of Kalpani, Buner..... (*Appellant*)

Versus

1. Chief Secretary Government of Khyber Pakhtunkhwa, Peshawar.
2. Secretary Industries Commerce & Technical Education Department,
Government of Khyber Pakhtunkhwa, Peshawar.
3. Secretary Establishment, Government of Khyber Pakhtunkhwa, Peshawar.
4. Director General Technical Education & Manpower Training Khyber
Pakhtunkhwa, Peshawar.
5. Principal Technical College District Buner. (*Respondents*)

Mr. Manzoor Khan Khalil
Advocate ... For appellant

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

Date of Institution..... 18.04.2022
Date of Hearing..... 19.07.2023
Date of Decision..... 19.07.2023

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 impugned final order dated 25.03.2022 passed by respondent No. 2 whereby the appeal/representation filed by the appellant against the impugned order dated 20.06.2013 was rejected. It has been prayed that on acceptance of the appeal, both the impugned orders dated 25.03.2022 and 20.06.2013 might be set aside and the appellant might be reinstated in service as cook with all back benefits.

2 Brief facts of the case, as given in the memorandum of appeal, are that the appellant was appointed as cook in the respondent department vide order



dated 28.07.2007. He was charged by his opponent in a false criminal case vide FIR No. 723, dated 16.08.2012 u/s 302/324/337-D/34 PPC, Police Station Gagra District Buner. The respondent No. 5/Principal Technical College District Buner conveyed the information of the police to respondent No. 4 through office letter dated 12.09.2012 for necessary action. Respondent No. 4 vide order dated 20.06.2013, removed the appellant from service with effect from 17.08.2012 due to his willful absence from duty, while the intervening period from 17.08.2012 onward was treated as un-authorized absence from duty. The appellant surrendered himself before the competent court of law and after conclusion of trial, the learned Additional Sessions Judge-II, Buner acquitted him from the charge vide judgment dated 14.02.2020. The appellant, soon after his acquittal, conveyed the judgment of the learned trial court to respondents through written representation for reinstatement in service on 18.02.2020, which was rejected vide office order dated 25.03.2022; hence the present appeal.

3. Respondents were put on notice who submitted written replies/comments on the appeal. We heard the learned counsel for the appellant as well as the learned Additional Advocate General for the 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 illegal, against the law, facts, natural justice, fundamental rights and record available on the file, hence not tenable in the eyes of law and liable to be set aside. He further argued that no reasonable opportunity of show cause was afforded to the appellant nor opportunity of hearing was given to him and no proper enquiry was conducted to arrive at



correct conclusion. He informed that in a case of similar nature, one Gul Naiz Junior Clerk, was reinstated in service with all back benefits by the administrative department vide office order dated 15.01.2018. Similarly the case of one Sher Hassan, who was reinstated through office order dated 01.01.2005, was also highlighted by the learned counsel with the argument that the appellant had been discriminated. 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 appellant was supposed to surrender himself before the Police authority forth-with after the incident but he remained absconder for a long time and surrendered himself after lapse of more than 07 years. Though the appellant was acquitted by the competent court of law vide judgment dated 14.02.2020, but the department had already removed him from service because of his willful absence from duty on 20.06.2013, the learned AAG contended. He requested that the appeal might be dismissed.

6. Arguments and record presented before us indicate that the appellant, while serving as Cook in the respondent department, was charged in FIR No. 723 u/s 302/324/337-D/34 PPC dated 16.08.2012 at P.S Gagra, District Buner. The Principal of the Institution came to know about the FIR through S.P Investigation Buner and informed the Director General, Technical Education and Manpower Training through his letter dated 12.09.2012. Through that letter, the Principal informed the D.G that the appellant was absent from his duty since 17.08.2012 and that the District Accounts Office had been requested to stop his salary. The D.G, through the impugned order dated 20.06.2013,




removed the appellant from service on the ground of willful absence from duty. When asked about the date of arrest, the learned counsel for the appellant informed very frankly that he remained absconder for seven years and presented himself for arrest in 2019.

7. In the instant case, it is clear beyond any shadow of doubt that the office of the appellant was aware of the fact that he was nominated in FIR and was an absconder. It is further clear from the record that when the appellant surrendered and the trial was concluded, he was acquitted from the charges leveled against him in the FIR. It is a well established principle that every acquittal is certainly honourable. As the appellant was removed from service on the ground of willful absence, knowing the fact that he was absconder after being involved in FIR, and after his acquittal the very basis on which he was removed from service no longer existed, therefore, his competent authority should have considered his appeal for reinstatement.

8. In view of the above discussion, the instant service appeal is allowed as prayed for with the directions to the respondents to consider the period from 16.08.2012, the date when FIR was registered till the date he surrendered before law as leave without pay and the period from his surrender to his acquittal on 14.02.2020 as under suspension in the light of CSR 194. Costs shall follow the event. Cosign.

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


(FAREEHA PAUL)
Member (I)

Fazle Subhan, P.S


(RASHIDA BANO)
Member (J)