

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

Service Appeal No. 75/2023

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

Mr. Abdul Ghaffar S/O Abdul Jabbar, SST (G), GHS Kirrhosam, Tehsil Lachi, District, Kohat. (*Appellant*)

Versus

1. The Government of Khyber Pakhtunkhwa, through Secretary Elementary & Secondary Education, Peshawar.
2. The Director Elementary & Secondary Education, Peshawar.
3. The District Education Officer (Male), Kohat.
4. Mr. Shaheryar SST (G), GHISS Shakardara, District Kohat. ..(Respondents)

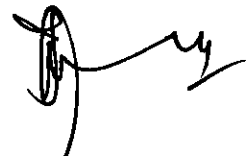
Mr. Noor Muhammad Khattak ... For appellant
Advocate

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

Date of Institution..... 05.01.2023
Date of Hearing..... 27.07.2023
Date of Decision..... 27.07.2023

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 inaction of the respondents by not transferring the appellant from GHS Kirrhosam, Kohat to GHISS Shakardara, Kohat and against not taking action by the respondents on the departmental appeal of the appellant within the statutory period of ninety days. It has been prayed that on acceptance of the appeal, the impugned order dated 31.08.2022 might be set aside and the respondents be directed to transfer and post the appellant against the post of SST (G) at GHISS Shakardara Kohat alongwith other relief which this Tribunal deemed appropriate.



2. Brief facts of the case, as given in the memorandum of appeal, are that the appellant was serving as SST (G) in GHS Kirrhosam (Kohat) since 2016. He had been performing his duties in far flung areas and only five years were left in his retirement. One, Subhan-ud-Din SST (G) serving in GHSS Shakardara, Kohat, was going to retire on 01.09.2022 and therefore the appellant submitted an application dated 26.07.2022 to District Education Officer (M) for his transfer to GHSS Shakardara, Kohat, who assured the appellant that he would be transferred when the seat became vacant. However, instead of him, private respondent No. 4 was transferred as a stop-gap-arrangement from GMS Braghzi Khalan Kohat to GHSS Shakardara Kohat vide impugned notification dated 31.08.2022. Feeling aggrieved from the impugned order, the appellant filed departmental appeal. He also filed Writ Petition No. 3660-P/2022 before the Honourable Peshawar High Court Peshawar which was dismissed on 18.10.2023 being not maintainable with the direction to the respondents to decide his departmental appeal; hence the present appeal.

3. Respondents were put on notice. Official respondents No. 1 to 3 submitted written replies/comments on the appeal. Private respondents No.4 was placed ex-parte vide order dated 08.06.2023. 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 private respondent No. 4 was initially appointed against the post of



SST (G) on school based and contract basis, therefore, he would have to serve at the place of posting and his service was not transferrable to any other station. He further argued that the appellant had not been treated in accordance with law and rules on the subject and was discriminated by not transferring him to GHSS Shakardara, Kohat and that the treatment meted out to him was a clear violation of his fundamental rights. 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 all the teaching staff inducted on school based policy was regularized, including respondent No. 4, and that services of respondent No. 4 were placed at GHSS Shakardara Kohat against the SST post as stop gap arrangement by the competent authority under the provisions of Section 10 of the Khyber Pakhtunkhwa Civil Servants Act, 1973. According to him no departmental appeal against the notification dated 31.08.2022 was filed by the appellant. He requested that the appeal might be dismissed.

6. Through this service appeal, the appellant has impugned an order dated 31.08.2022 through which Mr. Shaheryar SST(G) (respondent No. 4) has been posted at GHSS Shakardara Kohat. He has prayed that the respondents be directed to post him at that position, instead of respondent No. 4. Under Section 10 of the Khyber Pakhtunkhwa Civil Servants Act 1973, it is abundantly clear that posting/transfer is the prerogative of the provincial government. No civil servant can stress upon his competent authority to post him at a specific position and the government is fully empowered to post any



civil servant at any position in the province in the best public interest. It is not understandable why the appellant wants a particular position/posting by un-lodging the incumbent occupying that post?

7. From the arguments and record presented before us, the appeal in hand seems groundless and is, therefore, dismissed with cost. Consign.

8. *Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal on this 27th day of July, 2023.*



(FAREEHA PAUL)
Member (E)

Fazle Subhan, P.S



(KALIM ARSHAD KHAN)
Chairman