



24.08.2022 and he was reinstated in service, however the absence period was treated as leave without pay. Nothing is mentioned in the aforementioned order dated 24.08.2022 that the allegations of absence from duty stood proved against the appellant. In such a situation, the appellant upon his reinstatement was entitled to back benefits for the intervening period with effect from the date of his removal from service till his reinstatement, particularly when nothing is available on the record, which could show that the appellant had remained gainfully employed in any service during the said period.

7. In view of the above discussion, the order dated 24.08.2022 passed by Director Elementary & Secondary Education Khyber Pakhtunkhwa Peshawar is modified to the extent that the appellant shall be treated as on duty during the intervening period with effect from 23.06.2021 till his reinstatement on 24.08.2022 with all financial and other consequential benefits. The appeal in hand stands allowed in the said terms. Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCED  
18.07.2023


  
(KALIM ARSHAD KHAN)  
MEMBER (JUDICIAL)  
CAMP COURT D.I.KHAN

  
(SALAH-UD-DIN)  
MEMBER (JUDICIAL)  
CAMP COURT D.I.KHAN

08.04.2019. According to the contents of the aforementioned show-cause notice, regular inquiry was dispensed with. The appellant was then awarded major penalty of removal from service vide order dated 23.06.2021 passed by the District Education Officer (Male) Dera Ismail Khan. Interestingly, no date or specific period of absence of the alleged absence of the appellant has been mentioned in the aforementioned order dated 23.06.2021 and the removal of the appellant from service was ordered with effect from the date of show-cause notice dated 12.06.2019 instead of any date of alleged absence of the appellant from duty. The appellant had challenged the order of his removal from service by way of filing departmental appeal before the Director Elementary & Secondary Education Khyber Pakhtunkhwa Peshawar, where-upon comments were sought from the District Education Officer (Male) D.I.Khan. Copy of comments so submitted by District Education Officer (Male) D.I.Khan to the Director Elementary & Secondary Education Khyber Pakhtunkhwa Peshawar vide letter No. 12089/AE-III/C-IV/DEO (M) dated 11.06.2022 would show that it has been mentioned therein that the concerned PSHT had stated that he had told the Education Monitoring Authority (EMA) as well as Disciplinary Action Committee (DAC) that the appellant was on night duty but they did not pay any heed to the request of PSHT. It appears from the comments of the District Education Officer (Male) D.I.Khan that the appellant was in-fact on night duty but was marked absent being not present on duty at day time. The departmental appeal of the appellant was accepted vide order dated

reply/comments, therefore, vide order dated 17.01.2023 their right to file reply was struck off.

3. Learned counsel for the appellant argued that as the appellant was exonerated from the charges leveled against him and he was reinstated in service, therefore, the appellate Authority was legally not justified in treating the absence period as leave without pay. He further argued that the appellant did not remain employed in any gainful service during the period of his wrongful removal from service, therefore, the impugned order dated 24.08.2022 is liable to be modified by treating the appellant on duty during the period during which he remained out of service on account of his wrongful removal.



4. On the other hand, learned District Attorney for the respondents contended that the appellant has though been reinstated in service, however in view of the principle of no work no pay, he is not entitled to any back benefits for the period during which he remained out of service. He further argued that the appellant has already been treated with leniency, therefore, the appeal in hand is liable to be dismissed.

5. We have heard the arguments of learned counsel for the parties and have perused the record.

6. According to the available record, show-cause notice No. 16147 dated 12.06.2019 was issued to the appellant by the District Education Officer (Male) Dera Ismail Khan on the allegations that he had remained absent from duty on

**BEFORE THE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL PESHAWAR**  
**AT CAMP COURT D.I.KHAN**

Service Appeal No. 1460/2022

Date of Institution ... 23.09.2022

Date of Decision... 18.07.2023

Waris Khan, Chowkidar, GPS, Wazirabad, D.I.Khan.

... (Appellant)

**VERSUS**

Government of Khyber Pakhtunkhwa through Chief Secretary Khyber  
Pakhtunkhwa and 03 others. ... (Respondents)

MALIK ZULFIQAR MEHMOOD,  
Advocate

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For appellant.

MR. FARHAJ SIKANDAR,  
District Attorney

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For respondents.

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

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CHAIRMAN  
MEMBER (JUDICIAL)

**JUDGMENT:**

SALAH-UD-DIN, MEMBER:- Precise facts as alleged by the appellant in his appeal are that he while serving as Chowkidar in Government Primary School Wazir Abad D.I.Khan, was removed from service vide order dated 23.06.2021 on the allegations of absence from duty. The appellant filed departmental appeal, which was accepted vide order dated 24.08.2022 and he was reinstated in service vide order, however the absence period was treated as leave without pay. Through instant appeal, the appellant has now challenged the order dated 24.08.2022 to the extent of treating the absence period as leave without pay.

2. On receipt of the appeal and its admission to full hearing, respondents were summoned but the failed to submit