

ORDER
28.08.2023


Appellant alongwith his counsel present. Mr. Muhammad Jan, District Attorney for official respondents No. 1 & 2 present. Private respondents No. 3 & 4 alongwith their respective counsel also present.

Private respondent No. 4 was proceeded against ex-parte vide order dated 18.07.2023, however she alongwith her counsel appeared today and submitted an application for setting-aside ex-parte proceedings initiated against her. Learned counsel for the appellant is having no objection on setting-aside of ex-parte proceedings initiated against private respondent No. 4. Moreover, law also favour adjudication on merit by avoiding technicalities, therefore, application for setting-aside ex-parte proceeding initiated against private respondent No. 4 is accepted and she is allowed to join the proceedings in the instant appeal. Learned counsel for private respondent No. 4 stated that he relies on the reply/comments already submitted by official respondents as well as private respondent No.3. Arguments on main appeal heard and record perused.

Vide our detailed judgment of today, separately placed on file, the appeal in hand stands dismissed. Parties are left to bear their own cots. File be consigned to the record room.

ANNOUNCED
28.08.2023


(Kalim Arshad Khan)
Chairman


(Salah-Ud-Din)
Member (Judicial)


Officials up to BPS-16 at the time of issuance of the impugned transfer/posting order.

9. Consequently, the appeal in hand stands dismissed. Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCED
28.08.2023



(KALIM ARSHAD KHAN)
CHAIRMAN



(SALAH-UD-DIN)
MEMBER (JUDICIAL)

Moulvi Ameer Shah Memorial Hospital Peshawar on the ground of her illness and rush of work. The application of the appellant was forwarded to the competent Authority through proper channel, which was accepted and she was transferred from Moulvi Ameer Shah Memorial Hospital Peshawar to DHQ Hospital Hangu vide impugned transfer/posting order dated 22.03.2023.

7. Furthermore, in view of Section-10 of Khyber Pakhtunkhwa Civil Servants Act, 1973, the appellant is legally bound to serve anywhere in the province and the same is reproduced as below for ready reference:-

"10. Posting and transfers.--- 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:

Provided that nothing contained in this section shall apply to a civil servant recruited specifically to serve in a particular area or region:

Provided further that where a civil servant is required to serve in a post outside his service or cadre, his terms and conditions of service as to his pay shall not be less favourable than those to which he would have been entitled if he had not been so required to serve."

8. The contention of learned counsel for the appellant that the impugned posting/posting notification was issued in violation of Notification dated 22.01.2023 of the Election Commission of Pakistan is misconceived for the reason that in view of letter No. F.10(1)/2023-Elec-II dated 28th February 2023 of the Election Commission of Pakistan, there was no ban on transfer/posting of

competent Authority through proper channel and it was upon the acceptance of her request that she was transferred from Moulvi Ameer Shah Memorial Hospital Peshawar to DHQ Hospital Hangu; that prior to the impugned transfer/posting order dated 22.03.2023, the appellant had already served for more than 06 years in Moulvi Ameer Shah Memorial Hospital Peshawar and her stance of premature transfer is wrong and baseless; that Election Commission of Pakistan had imposed ban on transfer posting of Public Officer above the rank of BPS-17, while the appellant and private respondents are serving in BPS-16 and thus there was no ban at the time of issuance of impugned transfer/posting order dated 22.03.2023; that even otherwise too, in view of Section-10 of Khyber Pakhtunkhwa Civil Servants Act, 1973, the appellant is legally bound to serve anywhere in the province.



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


6. A perusal of the record would show that vide order dated 24.04.2017, the appellant was transferred to Moulvi Ameer Shah Memorial Hospital Peshawar and she had already served there for about 06 years prior to issuance of the impugned transfer/posting order i.e 22.03.2023. The appellant had thus spent more period than the normal tenure of 02 years as prescribed under posting/transfer policy of the Provincial Government. Moreover, the appellant had herself submitted an application to the Director General Health Services Khyber Pakhtunkhwa Peshawar for her transfer from

submitted an application for setting-aside of the ex-parte proceedings.

3. Learned counsel for the appellant contended that vide Notification dated 22.01.2023, the Election Commission of Pakistan had imposed ban on all kinds of transfer/posting without prior approval in writing of the Election Commission of Pakistan but even then the transfer/posting order was issued, which is in violation of afore-mentioned Notification dated 22.01.2023 issued by Election Commission of Pakistan; that the appellant is a permanent resident of District Peshawar, while private respondents 4 & 5 are permanent residents of District Chitral but despite that the appellant has been transferred to Hangu, while private respondents No. 4 & 5 have been transferred/posted in District Peshawar; that the respondent-department has violated the Posting/Transfer Policy of the Provincial Government and the impugned transfer/posting order has been issued in violation of rights of the appellant as guaranteed under Articles 4 & 25 of the Constitution of Islamic Republic of Pakistan.

4. On the other hand, learned District Attorney for official respondents No. 1 & 2 assisted by respective learned counsel for private respondents No. 3 & 4 has argued that the appellant had herself submitted an application to the Director General Health Services Khyber Pakhtunkhwa Peshawar for her transfer from Moulvi Ameer Shah Memorial Hospital Peshawar on the ground of her illness as well as rush of work, which was forwarded to the

Medical Superintendent Category-D Hospital Akora Khattak for duty; that Election Commission of Pakistan vide its Notification dated 22.01.2023 had banned all kinds of transfer/posting in the Province of Khyber Pakhtunkhwa and Punjab but despite that the appellant was prematurely transferred vide impugned order dated 22.03.2023 by violating the aforementioned notification; that the appellant being aggrieved of the order dated 22.03.2023, challenged the same by way of filing departmental appeal, however the same was not responded, constraining the appellant to file Writ Petition before the august Peshawar High Court, Peshawar, which was disposed of with the direction to decide the departmental appeal of the appellant according to Posting/Transfer Policy of the Provincial Government, however the said direction was not complied with by respondent No. 2, constraining the appellant to file Contempt of Court Petition followed by filling of instant service appeal before this Tribunal.



2. On receipt of the appeal and its admission to regular hearing, respondents were summoned, official respondents as well as private respondent No. 3 put appearance through their representative and contested the appeal by way of filing written reply raising therein numerous legal and factual objections. Private respondent No. 4 relied on the comments already submitted by official respondents as well as private respondent No. 3. Private respondent No. 4 was placed ex-parte vide order dated 03.08.2023, however she alongwith her counsel appeared before the Tribunal today and

BEFORE THE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL PESHAWAR.

Service Appeal No. 1415/2023

Date of Institution ... 26.06.2023

Date of Decision... 28.08.2023

Mst. Naheed Begum, Registered Nurse Officer (BPS-16), Moulvi Ameer Shah Memorial Hospital, Peshawar under transfer to DHQ Hospital, Hangu.
... (Appellant)

VERSUS

Government of Khyber Pakhtunkhwa through Secretary Health, Khyber Pakhtunkhwa, Peshawar and 03 others.
... (Respondents)

MR. NOOR MUHAMMAD KHATTAK,
Advocate

--- For appellant.

MR. MUHAMMAD JAN,
District Attorney

--- For official respondents.

MR. WASEEM-UD-DIN KHATTAK,
Advocate

--- For private respondent No.3.

MR. MUHIB ULLAH TARICHVI,
Advocate

--- For private respondent No.4.

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

--- CHAIRMAN
--- MEMBER (JUDICIAL)

JUDGMENT:

SALAH-UD-DIN, MEMBER:- Precise averments as raised by the appellant in her appeal are that she is serving as Registered Nurse Officer (BPS-16) in Health Department; that private respondents No. 3 & 4 were transferred to DHQ Hospital Dir Upper vide order dated 06.12.2022, however vide another office order, their services were placed at the disposal of DHO Nowshera for further posting and vide letter dated 16.01.2023 they were directed to report to

