Cont # 1

(5)

BEFORE THE HONORABLE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR CAMP COURT ABBOTTABAD

Appeal No. 206/2023

Rubina Asif.....Appellant

VERSUS

Government of Khyber Pakhtunkhwa & Others..... Respondents

SERVICE APPEAL

JOINT PARA WISE COMMENTS ON BEHALF OF RESPONDENTS NO. 01 TO 03

INDEX

Dated: 20/06/2023

District Education Officer (F)
Abbottabad
(Respondent No.3)

(3) copies submitted before camp court
(1) copy submitted before court.
(1) copy received AAG KPK
(1) copy received to parties.

BEFORE THE HONORABLE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
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Appeal No. 206/2023

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SERVICE APPEAL

JOINT PARA WISE COMMENTS ON BEHALF OF RESPONDENTS NO. 01 TO 03

Respectfully Sheweth:-

Comments on behalf of respondents are submitted as under:

PRELIMINARY OBJECTIONS:-

1. **That the impugned Notification was issued on 24-05-2021 and same was handed over to appellant through Mr. Muhammad Rasheed, Senior Clerk on 10-06-2021 by hand at her home address whereas, appellant filed departmental appeal on 16-11-2021 which is hopelessly time barred hence, instant service appeal is not maintainable in its present form.**
2. **That appellant herself submitted an application on 02-07-2021 to Principal GHSS Richbehn Abbottabad regarding final payment of GP Fund wherein, she categorically admitted that she has been removed from service on 24-05-2021 whereas, as per contents of departmental appeal she contended that Notification of removal from service received on 10-11-2021 which is totally contradictory.**
3. That the appellant has no cause of action to file the instant appeal.
4. That the appellant has no locus standi to file the present appeal.
5. That as per report of DEO (F) Abbottabad, vide 9680 dated 15-12-2020 appellant remain willful absent from duty w.e.f 20-01-2009 to till date.
6. That the appellant did not come to this Honorable Tribunal with clean hands.
7. That the present appeal has been filed to pressurize and blackmail the respondents.

8. That appellant did not prefer departmental appeal against the Notification dated 24-05-2021 as she did not annex the copy of postal receipt alongwith her service appeal.
9. That instant appeal is hopelessly **time barred** hence, liable to be dismissed on this score alone.
10. That the instant appeal is not maintainable in its present form hence, liable to be dismissed.
11. That the appellant has suppressed the material facts from this Honorable Tribunal, hence, not entitled for any relief and appeal is liable to be dismissed without any further proceeding.
12. That impugned order dated 24-05-2021 was issued after observing all the codal formalities hence, the same is liable to be maintained.

Factual Objections:-

1. That the Para No. 1, of the instant service appeal is correct.
2. That the Para No. 2, of the instant service appeal as composed is incorrect hence, denied and not admitted. As per letter No. 721 dated 08-07-2021 of Principal GHSS Richbehn Abbottabad impugned Notification dated 24-05-2021 was handed over to appellant through Mr. Muhammad Rasheed, Senior Clerk on 10-06-2021 by hand at her home address whereas, appellant filed departmental appeal on 16-11-2021 which is hopelessly time barred hence, instant service appeal is not maintainable in its present form. Further submitted that appellant herself submitted an application on 02-07-2021 to Principal GHSS Richbehn Abbottabad regarding final payment of GP Fund wherein, she categorically admitted that she has been removed from service on 24-05-2021 while, as per contents of departmental appeal she contended that Notification of removal from service received on 10-11-2021 which is totally contradictory. (Copy of letter No. 721 dated 08-07-2021 and application regarding final payment of GP Fund are annexed as **Annexure "A" & "B"** respectively)
3. That the Para No. 3, of the instant service appeal as composed is incorrect hence, denied and not admitted as respondent No. 2 nominated District Education Officer (Female) Mansehra as Inquiry officer to probe into the

matter vide Endstt: No. 2659-62 dated 19-01-2021 and inquiry officer submitted inquiry report alongwith supporting documents vide No. 5114 dated 22-04-2021 and as per recommendations of the inquiry report competent authority imposed major penalty of "**Removal from Service**" vide Notification No. 321-25 dated 24-05-2021. (Copy of Inquiry Report and Notification No. 321-25 dated 24-05-2021 annexed as **Annexure "C" & "D"** respectively)

GROUNDS:-

a. That ground a, of the instant appeal as composed is incorrect hence, denied. Comprehensive reply has already been given in Para No. 02 & 03 of the factual objections
b. That ground b, of the instant appeal as composed is incorrect hence, denied.
c. That ground c, of the instant appeal as composed is incorrect hence, denied as process was followed by the competent authority.
d. That ground d, of the instant appeal as composed is incorrect hence, denied.
e. That ground e, of the instant appeal as composed is incorrect hence, denied. Inquiry was conducted in a prescribed mode and manners and inquiry officer recommended the major penalty of "**Removal from Service**".
f. That ground f, of the instant appeal as composed is incorrect hence, denied as per inquiry report, after the expiry of Ex-Pakistan leave i.e 20-01-2009 appellant remained absent from duty however, appellant was adjusted at GGHSS Richbehn but as per report of Principal GGHSS Richbehn appellant did not attend the school nor received any pay from the school. (Copy of report of Principal GGHSS Richbehn is annexed as **Annexure "E"**)
g. No comment
h. That the respondents seek leave of this Honorable Tribunal to raise additional points at the time of arguments.

It is, therefore, very humbly prayed that in the light of forgoing comments the service appeal in hand may graciously be dismissed with cost throughout.

Director (E&SE)
KPK, Peshawar
Respondent No. 2

DEO (Female)
Abbottabad
Respondent No. 3

AFFIDAVIT:-

I, Mst. ***Nighat Bibi District Education Officer (Female), Abbottabad*** **(Respondent No.3),** do hereby affirm and declare that the contents of foregoing comments are true and correct to the best of my knowledge and belief and nothing has been suppressed therein.

case pending, neither struck off, nor exparte, ~~neither~~ never. Cost

Through Representative by

ATTESTED
SYED MUZAFFAR AHMED SHAH
NOTARY PUBLIC
No 80(Judl)/HD/ND/2011
(Abbott)/2020/Vol-I
Advocate High Court
22/6/23

DEPONENT

It is therefore humbly prayed that the instant appeal may kindly be dismissed in limine with cost.

It is, therefore, very humbly prayed that in the light of foregoing comments the service appeal in hand may graciously be dismissed with cost throughout.

Director Elementary & Secondary Education
Peshawar
(Respondent No.1)

District Education Officer
(Female) Abbottabad
(Respondent No.3)

(6)

"A"

OFFICE OF THE PRINCIPAL GOVT GIRLS HIGHER SECONDARY SCHOOL RICH BHEN ABBOTTABAD

No. 721

Dated 08/07/2021

To

The District Education Officer
(Female) Abbottabad

Subject: **NOTIFICATION /REMOVAL FROM SERVICE.**

Memo:

In reference to your notification No.5523/EB-I/PF/Rubina Asif SST(G) dated 17-06-2021 with removal from service w.e.f: 20-01-2009 she had already been informed by the undersigned a copy of Notification Removal from service was delivered to Rubina Asif on 10-06-2021 by hand at her home address via S/Clerk Muhammad Rasheed.

In this connection she has also submitted an application regarding GPF Final payment

8/7/21

Principal
Govt Girls Higher Secondary School
Rich Bhen Abbottabad

Principal
Govt Girls Higher Secondary
School Rich Bhen Abbottabad

Attested

(7)

"B"

بخدمت جناب پرنسپل صاحبہ گورنمنٹ گرلز ہائر سیکنڈری سکول ایبٹ آباد

عنوان:- جی پی فنڈ فائنل پے منٹ

جناب عالی! گزارش ہے کہ سائلہ کو مورخہ 24/5/2021 کو نوکری سے برخاست کر دیا گیا۔ جس کی وجہ سے سائلہ کا جی پی فنڈ محکمہ کے پاس پڑا ہوا ہے جو کہ سائلہ کا حق بنتا ہے۔ جی پی فنڈ سائلہ کی ذاتی رقم ہے۔

لہٰذا

آپ سے التماس ہے کہ سائلہ کو جی پی فنڈ لینے کا حکم صادر فرمایا جائے تاکہ سائلہ کی مشکلات حل ہو سکے۔ سائلہ آپ کے لیے ہمیشہ دعاگو رہے گی۔

آپ کی عین نوازش ہوگی

العارض
SST

2/7/21

Principal
Govt. Girls Higher Secondary
School Rich Bhen Abbottabad

Attested

(8)

"C" 87

DISTRICT EDUCATION OFFICE (FEMALE)
MANSEHRA

@ deofmansehra@yahoo.com ☎

KPESED

No. 5144 Dated: 22/04/2021

To

The Director
Elementary & Secondary Education Department Peshawar.

57 27.4.21 1234 27/4

DDE Relal 27/4/21

SUBJECT:- **INQUIRY REPORT**

Respected Sir

Reference your notification No. 2659-62/A-17/PF/Robina Asif/SST/Abbottabad Dated Peshawar the 19/01/2021 regarding fact finding inquiry in the light of the report of District Education Officer (F) Abbottabad in respect of Mst: Robina Asif Ex-SST GGHSS Rich Bhen Abbottabad.

27/4/2021

1. Place of Inquiry:- DISTRICT EDUCATION OFFICE (FEMALE) ABBOTTABAD

2. Background:-

Mst: Robina Asif Ex-SET GGHSS Rich Bhen was on Ex-Pakistan leave and after adjustment she has not joined her school and applied for retirement on medical ground. During the process of case she proceeded to abroad (USA) without any information to the concerned authority. Now she is requesting to finalize the medical board case after (9 years).

3. Procedure:-

After receiving the letter of nomination as inquiry officer, the undersigned dispatched a letter to District Education Officer (Female) Abbottabad vide No. 1491 Dated 25/01/2021 with the request to make all the concerned officers/officials available in her office on 26/01/2021 along with the relevant record to inquire the matter .The inquiry proceedings were initiated on 26/01/2021 at the office of DEO (F) Office Abbottabad. The following officers/officials were found present:-

1. Rehana Yasmeen District Education Officer (Female) Abbottabad.
2. Dealing Assistant
3. Incharge Principal GGHSS Rich Bhen
4. Robina Asif Ex-SET

4. Findings:

1. Mst: Robina Asif Ex-SET was appointed as per service book against CT post on 08/10/1984 & promoted against SET post on 29/01/1991.
2. Mst: Robina Asif Ex-SET applied for Ex-Pakistan leave which was sanctioned by Director Elementary Education NWFP Peshawar vide No. 4003-8 Dated 07/11/2008, for the period of 22/09/2008 to 19/01/2009 (120 days) without pay. (Annexure-I)
3. After expiry of leave i.e. 20/1/2009, she remained absent from duty, however she was adjusted after lapsing of 11 months at GGHSS Rich Bhen against vacant post vide Executive District Officer E&SE Abbottabad vide No. 22364-69 Dated 08/12/2009. (Annexure-II)
4. Mst: Robina Asif Ex-SET submitted her arrival on 09/12/2009, whereas the principal and present in-charge of GGHSS Rich Bhen stated that as per school record she did neither attend the school nor received any pay from the school. (Annexure-III)
5. Having been absent from duty and apply for retirement on medical ground the then Head Mistress of the school sent her case to Executive District Officer E&SE Abbottabad vide No. 841 Dated 08/01/2010 for retirement on medical ground. (Annexure-IV)
6. The Executive District Officer (E&SE) Abbottabad had sent her case to Director E&SE KPK Peshawar for further process vide No. 1756 Dated 12/02/2010 and also directed the concerned SST through Head Mistress to continue her service till the decision of the Standing Medical Board. (Annexure-V)
7. The Director E&SE NWFP Peshawar forwarded her case to Director General Health NWFP for further process and her copy for information was sent to DEO (F) Abbottabad & Head Mistress GGHS Rich Bhen (Annexure-VI)
8. After the issuance of letter from Director E&SE NWFP Peshawar no correspondence has been issued from office of the Director General Health NWFP & the file remained silent.
9. During the same period Mst: Robina Asif Ex-SET has left the country for USA without any information to school as well as to DEO(F) office Abbottabad and consequently never tried to peruse about standing medical board. Moreover, the Ex-dealing Assistant who has been now retired from service stated that no reply received from

Attested

Health department and neither absent report was received from concerned school nor the teacher concerned or her close relative approached the office to know the position of the case.

10. Mst: Robina Asif Ex-SST has routed her applications about medical board with laps of 5 years dated 14/8/2015. (Annexure-VII)
11. In response of the letter issued from DEO (F) Abbottabad No. 7359 Dated 18/10/2018 for detail report, the concerned principal submitted detail report vide No. 416 Dated 04/12/2018, in which she has reported that Mst: Robina Asif Ex-SET has not joined school for a single day. (Annexure-VIII)
12. The DEO (F) office Abbottabad again issued letter to Principal GGHSS Rich Bhen vide No. 9325 Dated 27/12/2018 & 2551 Dated 29/03/21019 & reminder for actual position of attendance along with proof, but reply is not submitted.
13. Currently DEO (F) Abbottabad constituted the inquiry committee for detail report vide No. 9956-59 Dated 19/12/2020.
14. Her data of birth as per service book is 15/03/1959.

On analyzing the documents on record it appeared that:

Mst: Robina Asif Ex-SET remained on Ex-Pakistan leave which was sanctioned by Director Elementary Education NWFP Peshawar vide No. 4003-8 Dated 07/11/2008, for the period of 22/09/2008 to 19/01/2009 (120 days) without pay. After the expiry of leave i.e. 20/1/2009, she has not joined the school & remained absent from duty. The Executive District Officer E&SE Abbottabad has adjusted her after lapsing of (11 months) at GGHSS Rich Bhen against vacant post vide No. 22364-69 Dated 08/12/2009. She has submitted her arrival report only one day on 09/12/2009 at the home of Ex-Principal. The principal and present incharge of school stated that she did neither attend the school nor received any pay from the school. She has applied for retirement on medical ground and her case was sent to Director Elementary & Secondary Education Peshawar by the then Executive District Officer (E&SE) Abbottabad vide No. 1756 Dated 12/02/2010 with the intimation to Head Mistress of the school. The Director E&SE NWFP Peshawar forwarded her case to Director General Health NWFP for further process and her copy for information was sent to DEO (F) Abbottabad & Head Mistress GGHS Rich Bhen. After the issuance of letter from Director E&SE NWFP Peshawar no correspondence has been issued from office of the Director General Health NWFP & the file/teacher concerned remained silent. The teacher concerned has left the country for USA without any information to school as well as to DEO (Female) office Abbottabad and consequently never tried to persue about standing medical board. She has again routed her applications about medical board with laps of 5 years dated 14/8/2015. Her date of birth is 15/03/1959 & is entitled for retirement from service on superannuation ground w.e.f. 14/03/2019.

5. Recommendations

After going through the documents on record & detailed discussions, the undersigned has come up with the following recommendations:-

After expiry of her leave w.e.f. 20/01/2009, the teacher concerned has not joined her duty at school and remained absent from duty up to 07/12/2009. The department had given her chance and re-adjusted after lapsing of (11 months) period, but the teacher concerned has again failed to avail the opportunity & once after submitted arrival report left the country without any information to the head of school as well as DEO (Female) office. It appeared that she never took her job seriously and just dropped a few applications to linger her case on till the time she could get benefits of retirement, in doing so she wasted precious time of education department as well as local District Education Office, hence the undersigned has recommended to impose major plenty of removal from service w.e.f. the date of her absence from duty i.e. 20/01/2009.

NAGHMANA SARDAR
DISTRICT EDUCATION OFFICER (FEMALE)
MANSEHRA/ INQUIRY OFFICER

Attested

Registered

(10)

(63)

DIRECTORATE OF ELEMENARY & SECONDARY EDUCATION KHYBER PAKHTUNKHWA PESHAWAR

NOTIFICATION

1. **WHEREAS,** Mst. Robina Asif SST GGHSS Rich Bhen Abbottabad was proceeded-against under the Khyber Pakhtunkhwa Government Servants (Efficiency and Discipline) Rules, 2011 for unauthorized absence.
2. **AND WHEREAS,** Mst. Robina Asif SST GGHSS Rich Bhen Abbottabad was remained absent from 20-01-2009 till date as per report of the DEO (F) Abbottabad vide No.9680 dated: 15-12-2020.
3. **AND WHEREAS**, this office has nominated Miss Naghmana Sardar District education Officer (F) Mansehra as an inquiry officer to probe into the matter vide this office Endst:No.2659-62 dated: 19-01-2021.
4. **AND WHEREAS,** the inquiry officer submitted the inquiry report along with the supporting documents vide No. 5114 dated:22-04-2021 and recommended to impose major penalty of Removal from service in respect of Mst. Robina Asif SST GGHSS Rich Bhen Abbottabad.
5. **NOW THEREFORE**, in exercise of powers conferred under the Khyber Pakhtunkhwa Government Servants (Efficiency and Discipline) Rules, 2011, the Director E&SE Khyber Pakhtunkhwa as the Competent Authority is pleased to impose the major penalty of "**Removal from service**" upon Mst. Robina Asif SST GGHSS Rich Bhen Abbottabad, as specified in Rule-4 (b) (iii) of the above-mentioned Rules with effect from 20-01-2009 and in the interest of public service.

DIRECTOR
Elementary & Secondary Education
Khyber Pakhtunkhwa, Peshawar

Endst: No. 321—25 / A-17/PF/Robina Asif/SST/A.Abad. Dated: 24 / 5 /2021.
Copy forwarded for information and necessary action to the: -

1. District Education Officer (F) Abbottabad with the direction that salaries if paid during the period of absence may be recovered and deposited into the Government Treasury.
2. District Accounts Officer Abbottabad.
3. Principal of GGHS Rich Bhen Abbottabad.
4. Mst.Robina Asif SST GGHSS Rich Bhen Abbottabad.
5. Master file.

Attested

EB-I
EB-I
for n/a p/2
5/6/2021

2043
5/6/2021

For **Deputy Director Establishment (F)**
Elementary & Secondary Education
Khyber Pakhtunkhwa Peshawar

21/5/21

(11)

Annexure-H "E"

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(10)

جناب عالیہ

گزارش ہے کہ میں روبینہ آصف بطور SET مورخہ 08-12-2009 کو گورنمنٹ گرلز ہائیر سیکنڈری سکول رحمہ بن میں ایڈجسٹمنٹ کی گئیں۔ مذکورہ معلمہ نے سکول ہذا میں حاضری کرنے کے بجائے اس وقت تعینات ہیڈ مسٹریس صاحبہ سے اپنا میڈیا سرٹیفکیٹ on Medical Ground دستخط کروالیا۔ جس کا حتمی فیصلہ ہونے تک بغیر ہی مذکورہ معلمہ نے سکول آنا چھوڑ دیا۔ مزید برآں کہ مذکورہ معلمہ کی نہ ہی حاضری کا کوئی ریکارڈ موجود ہے اور نہ ہی سکول ہذا سے انہیں تنخواہ کی ادائیگی کی گئی ہے۔

اصولاً اور قانوناً معلمہ کا اپنی میڈیا سرٹیفکیٹ کے قابل حتمی فیصلے تک اپنی ڈیوٹی پر حاضر رہنا ضروری تھا لیکن مذکورہ معلمہ نے ان تمام نکات کو بالائے طاق رکھتے ہوئے سکول ہذا میں ایک دن بھی حاضری نہیں کی۔

Attested

Principal
Govt Girls Higher Secondary
School Rich Bhen Abbottabad

OFFICE OF THE DISTRICT EDUCATION OFFICER (FEMALE) ABBOTTABAD

No. 8277 /

Dated: 16/9 /2015

0992-342533, 0992-342314

Deofemale.abbottabad@gmail.com

AUTHORITY LETTER

SYED HAJJAJ SHAH
MRS LALA RUKH

Memo:

Legal representatives of undr sign is hereby authorized to attend the following case title Mst: Rubina Asif vs Govt of Kpk Education department in service appeal no 206/2023 IN HONORABLE KPK SERVICE TRIBUNAL CAMP COURT ABBOTTABAD on behalf of respondents no 1 to 3

District Education Officer
(Female) Abbottabad