

31st August, 2023

1. Nemo for the appellant. Mr. Muhammad Jan, District Attorney for official respondents present.
2. Lawyers are on strike, therefore, case is adjourned to 11.09.2023 for arguments before the D.B.



(Salah-ud-Din)
Member (Judicial)



(Kalim Arshad Khan)
Chairman

Naeem Amin

11.09.2023

Junior of learned counsel for the appellant present. Mr. Sifatullah, Assistant alongwith Mr. Asad Ali Khan, Assistant Advocate General for official respondents present. Junior of learned counsel for private respondent No. 7 also present and submitted an application for adjournment on the ground that learned senior counsel for private respondent No. 7 is indisposed today. Adjourned. To come up for arguments on 21.09.2023 before the D.B. Parcha Peshi given to the parties.

RECORDED
(Presiding Officer)



(Fareeha Paul)
Member (E)



(Salah-ud-Din)
Member (J)

Naeem Amin

Service Appeal No. 1412/2023 titled "Mst. Shakeela Raina Vs. Government of Khyber Pakhtunkhwa through Chief Secretary, Khyber Pakhtunkhwa, Peshawar and others"

ORDER

21st Sept 2023

Kalim Arshad Khan, Chairman: Learned counsel for the appellant, Mr. Fazal Shah Mohmand, Additional Advocate General alongwith Mr. Fahim Khan, Assistant for official respondents and learned counsel for private respondent No.7 present.

2. An application has been moved by the private respondent No.7 for fixation of the instant service appeal at Camp Court, D.I.Khan but because both the parties and their counsel are present before us, so the applicant has not pressed this application and dismissed accordingly.

3. Now coming to the main appeal, which is against the transfer order dated 29.03.2023, whereby, notification of transfer dated 15.03.2023 in respect of the appellant was withdrawn and private respondent No.7, Sadia Naz was directed to be retained at GGHS Ratta Kulachi, D.I.Khan. During some previous dates of hearing, it was pointed out that private respondent No.7 Sadia Naz was transferred from GGHS Gandi Kha Khel, Lakki Marwat and posted at GGHS Ratta Kulachi with the condition that she would assume charge on retirement of one Mst. Kulsoom Begum. It was also pointed out that on 18.01.2023, the Notification of transfer of Mst. Sadia Naz to GGHS Ratta Kulachi, issued on 23.11.2022 was withdrawn. Not only on that date but today also, the learned counsel for the appellant contended that on withdrawal of posting orders of Mst. Sadia Naz made on 23.11.2022, the post of Headmistress at GGHS Ratta Kulachi had fallen vacant, therefore, usage of words of retention of Mst. Sadia Naz at GGHS Ratta Kulachi vide Notification dated 29.03.2023 was

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misconceived. It was then, the representative of the Department produced copy of a corrigendum which reads as under:

"In partial modification of this Department's notification of even number and date, the word "retained" in respect of Mst. Sadia Naz Headmistress (BPS-17) may be read as "transferred from GGHS Gandi Khan Khel Lakki Marwat to GGHS Ratta Kulachi D.I Kha", with immediate effect."


So, the confusion of "retention" of Mst. Sadia Naz was removed and instead, she was transferred from GGHS Gandi Khan Khel, Lakki Marwat to GGHS Ratta Kulachi on 29th March, 2023. Be that as it may, we see that none of the above notifications show that these were issued in the public interest, whereas, the postings and transfers are always made in the public interest or some exigencies and the reasons thereof are always there, as is evident from clause (i) of the duly notified Policy of Posting & Transfer Policy of the Government of Khyber Pakhtunkhwa vide No.SOR-II (E&AD) 1-1/85(VOL-II) Dated Peshawar the 15th February 2003 and amended upto date. Clause (i) reads as *"i. All the postings /transfers shall be strictly in public interest and shall not be abused misused to victimize the Government servants."*, whereas, we do not see any of the notifications referred to above to have been passed in the public interest or any exigency.

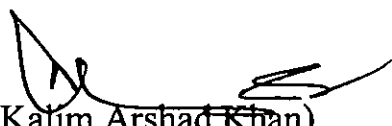
4. Admittedly, none of the above referred orders show that these are passed in the public interest as is evident from all the above orders because the words "public interest" are missing in all these orders, therefore, we set aside all the orders. We find that passage of these orders have not only created a great confusion but also seems to be an effort in getting rid by the concerned authorities in the department shifting the burden to the Tribunal, to resolve their

issues here. Be that as it may we still believe that it is basically and originally the domain of the authorities to make postings/transfers of officers in the manner they deem appropriate, having regard to the provisions of duly notified Posting/Transfer Policy.

3. In view of the above, we set aside the impugned transfer orders and send back the matter to the department to make posting/transfers of the appellant and private respondent as they deemed appropriate having regard to the provisions of the Posting/Transfer Policy. Consign.

4. *Pronounced in open Court at Peshawar and given under our hands and seal of the Tribunal on this 21st day of September, 2023.*


(Muhammad Akbar Khan)
Member (E)


(Kalim Arshad Khan)
Chairman

Mutazem Shah