

**Service Appeal No.1443/614 & Restoration Application No. 614/2023 titled
"Bibi Amina Vs. Government of Khyber Pakhtunkhwa through Chief
Secretary, Khyber Pakhtunkhwa, Peshawar and others"**

ORDER

21st September, 2023.

Kalim Arshad Khan, Chairman: An application for restoration of the appeal was filed on 06.09.2023. The appeal was dismissed in default on 01.09.2023. The application being within time, is allowed and appeal is restored on its original number.

2. Learned counsel for the appellant, Mr. Fazal Shah Mohmand, Additional Advocate General alongwith Mr. Fahim Khan, Assistant for official respondents No.1 to 3 and learned counsel for private respondent No.4 are present.

3. Coming to the appeal, it is against the order dated 15th May, 2023, whereby, earlier notification of transfer, made on the same date, in respect of the appellant, was withdrawn *ab-initio*. The appeal is also against the order/notification of transfer dated 14.07.2023, whereby, private respondent No.4 was transferred and posted at GGHSS Mathra, where, the appellant claims to have been posted vide Corrigendum dated 15.05.2023.

4. Learned counsel for the appellant, learned AAG for official respondents and learned counsel for private respondent No.4 have been heard.

5. The main ground mooted before us by the appellant is her premature transfer.

6. It is an admitted fact that the postings and transfers are always made in the public interest 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

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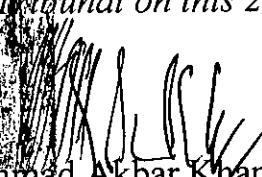
and amended upto date. Clause (i) reads as "i. All the postings /transfers shall be strictly in public interest and shall not be abused /misused to victimize the Government servants.", whereas, we do not see any of the notifications dated 15.03.2023, corrigendum issued on 15.05.2023, withdrawal Notification dated 16.05.2023 and that of 14.07.2023 to have been passed in the public interest or any exigency. It has been seen by the Tribunal in a number of cases that after getting interim relief in the shape of suspension of the operation of the transfer order, passed in a manner that the transfer order stands suspended, if not acted upon earlier, the appellant and private respondent, both make all out efforts to manage submission of arrival report, charge assumption report and at times also get their salaries activated thinking that these would support their respective claims. We, in this regard, observe that these are totally irrelevant grounds/considerations for maintaining or cancelling/setting aside an order of transfer, as the decision of transfer appeals is not always or alone on such irrelevant things rather on merits and in accordance with law.


6. Admittedly, none of the orders i.e. of 15.03.2023, 15.05.2023, 16.05.2023 and 14.07.2023 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 three subsequent orders i.e. of 15.05.2023, 16.05.2023 and 14.07.2023 in toto while the order of 15.03.2023 is set aside to the extent of the appellant because none other of the transferee officers had any grievance against that and we feel justified in doing so because, 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

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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. We thus, would direct the respondents to pass appropriate posting/transfer orders in respect of the appellant and private respondents, having regard to their own Posting/Transfer Policy. Disposed of in the above manner. Consign

7. *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