

BEFORE THE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL PESHAWAR.

Service Appeal No. 1474/2023

Date of Institution ... 17.07.2023

Date of Decision... 22.09.2023

Prof. Khurshid Ahmad (BS-20), Professor, Government Degree College,
Hayatabad, Peshawar.

... (Appellant)

VERSUS

The Government of Khyber Pakhtunkhwa, through Chief Secretary
Government of Khyber Pakhtunkhwa, Civil Secretariat Peshawar and 03
others.

... (Respondents)

MR. ALI GOHAR DURRANI,
Advocate

For appellant.

MR. ASIF MASOOD ALI SHAH,
Deputy District Attorney

For official respondents No. 1 to 3.

MR. MUHAMMAD ASIF YOUSAFZAI,
Advocate

For private respondent No. 4.


SALAH-UD-DIN
FAREEHA PAUL

MEMBER (JUDICIAL)

MEMBER (EXECUTIVE)

JUDGMENT:

SALAH-UD-DIN, MEMBER:- .Precise facts forming the
background of the instant appeal are that the appellant was serving
as Director Higher Education Khyber Pakhtunkhwa, while private
respondent No. 4 was posted in Government Degree College
Hayatabad Peshawar. Vide the impugned Notification dated
22.03.2023, the appellant was transferred to Government Degree
College Hayatabad Peshawar, while private respondent No. 4 was
posted as Director Higher Education Khyber Pakhtunkhwa in
place of the appellant. The appellant being aggrieved of the
Notification dated 22.03.2023, challenged the same by way of



filing representation on 27.03.2023, however the same was not responded within the statutory period of 90 days, hence the instant appeal.

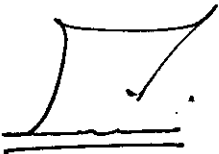
2. On receipt of the appeal and its admission to regular hearing, respondents were summoned. Official respondents appeared through their representative, while private respondent No. 4 also appeared and contested the appeal by way of filing respective replies raising therein numerous legal as well as factual objections.

3. Learned counsel for the appellant contended that the appellant was posted as Director Higher Education Khyber Pakhtunkhwa vide Notification dated 21.12.2022 but he was not allowed to complete his normal tenure and was pre-maturely transferred vide the impugned Notification dated 22.03.2023. He next contended that upon the dissolution of Khyber Pakhtunkhwa Assembly on 18.01.2023, Caretaker set up was installed in the province and a posting/transfer summery was initiated, which resulted in transfer of private respondent No. 4 as Director Higher Education Khyber Pakhtunkhwa in place of the appellant. He further contended that there was no exigencies of service nor could the impugned posting/transfer Notification be termed to have been passed in the public interest rather the same had been issued in violation of the posting/transfer policy of the Provincial Government. He also argued that the impugned posting/transfer Notification was issued during the ban period for the purpose of



posting private respondent No. 4 as Director Higher Education Khyber Pakhtunkhwa purely on political basis. He next contended that the impugned transfer/posting Notification was issued with mala-fide intention, therefore, the same is liable to be set-aside.

4. On the other hand, learned Deputy District Attorney for official respondents has argued that the impugned posting/transfer Notification was issued in the interest of public and in view of Section-10 of the Khyber Pakhtunkhwa Civil Servants Act, 1973, the appellant is having no vested right to remain posted on a desired post. He next contended that before issuing of impugned posting/transfer Notification, proper NOC was obtained from the Election Commission of Pakistan. In the last he requested that the impugned posting/transfer Notification may be kept intact and the appeal in hand may be dismissed with costs.

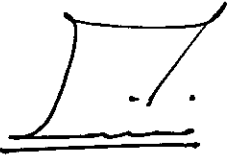


5. Learned counsel for private respondent No. 4 while placing reliance on the arguments of learned Deputy District Attorney has further contended that the appellant was previously assigned look after charge of the post of Director Higher Education Khyber Pakhtunkhwa vide order dated 09.12.2021, which was issued in violation of Government Instructions dated 07.12.2022 as contained in ESTA Code. He next contended that as per the seniority list of Professors BS-20 College Cadre, the appellant has been placed at serial No. 186, while private respondent No. 4

has been placed at serial No. 140 and the appellant thus could not be posted as Director, Higher Education Khyber Pakhtunkhwa for the reason that he is junior to private respondent No. 4. He further argued that the appellant has been transferred to Government Degree College Hayatabad Peshawar and none of his rights were violated. In the last he requested that the impugned Notification may be kept intact and the appeal in hand may be dismissed with costs.

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

7. A perusal of the record would show that the summery for posting/transfer of the appellant and private respondent No. 4 was submitted to the Caretaker Chief Minister Khyber Pakhtunkhwa on 01.02.2023 and vide para-6 of the summery, he had inquired about the tenure of the appellant and private respondent No. 4 on the positions held by them prior to the impugned posting/transfer Notification. Vide para-7 of the summery, the Secretary Higher Education provided the details of tenure of posting of the appellant and private respondent No. 4 as 02 months and 04 months respectively, however vide para-12 of the summery, the proposal of posting/transfer was approved by the Caretaker Chief Minister on 10.02.2023 and the impugned transfer/posting Notification was issued on 22.03.2023. Similarly, copy of the summery submitted to the Chief Minister in respect of the representation/departmental appeal preferred by

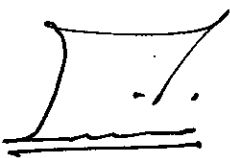


the appellant against the impugned posting/transfer Notification dated 22.03.2023 is also available on the record. In para-12 of the afore-mentioned summary, the Chief Minister Khyber Pakhtunkhwa had observed that at no stage were adequate reasons given for transfer of these officers after such short tenures. The representation/departmental appeal of the appellant, however remained un-responded.

8. Keeping in view the material available on the record, it is an admitted fact that the appellant was pre-maturely transferred vide the impugned transfer/posting Notification dated 22.03.2023. According to Clause-iv of the Posting/Transfer Policy notified by the Provincial Government, the normal tenure of posting shall be two years. Similarly, Clause-i of the said policy prescribes that all postings /transfers shall be made strictly in public interest and shall not be abused misused to victimize the Government servants. The impugned posting/transfer Notification was issued in violation of Clauses-i & iv of the Posting/Transfer Policy notified by the Provincial Government. Supreme Court of Pakistan in its judgment reported as PLD 2013 Supreme Court 195 has held as below:-

“12. This Court, in a number of precedents has, interpreted and emphasized these very principles, some of which need to be reiterated at this point. Before that, however, we may note the precept and rule of public trust which forms the basis of this area of the law. This court has

repeatedly observed that “functionaries of the State are fiduciaries of the people and ultimately responsible to the people who are their pay masters.” [Syed Yousaf Raza Gillani v. Assistant Registrar, (PLD 2012 SC 466) affirming Muhammad Yasin v. Federation of Pakistan]. Most recently, in the case relating to dual nationality of Parliamentarian, we have reiterated that “all State authority is in the nature of a ‘sacred trust’ and its bearers should therefore be seen as fiduciaries” (Mehmood Akhtar Naqvi v. Federation of Pakistan, Const. P.5/2012). One of the implications of this concept, highlighted in the case-law considered below, is that the matter of tenure, appointment, posting, transfer and promotion of civil servants cannot be dealt with in an arbitrary manner; it can only be sustained when it is in accordance with the law. Moreover, the use of the words ‘in the public interest’ in such matters are not fatuous or pointless, but emphasize the fiduciary nature of orders relating to tenure, posting etc. Thus a proposed decision which deviates from the accepted or rule-based norms without proper justification, can be tested on the touchstone of a manifest public interest.”



9. It has further been held in the above referred judgment that when the ordinary tenure for a posting has been specified in the law or rules made there-under, such tenure must be respected and cannot be varied, except for compelling reasons, which should be recorded in writing and are judicially reviewable.

10. Consequently, the appeal in hand is allowed by setting-aside the impugned Notification dated 22.03.2023 and the respondents

are directed to allow the appellant to complete his normal tenure on the post of Director Higher Education Khyber Pakhtunkhwa. Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCED
22.09.2023



(FARZEHA PAUL)
MEMBER (EXECUTIVE)




(SALAH-UD-DIN)
MEMBER (JUDICIAL)

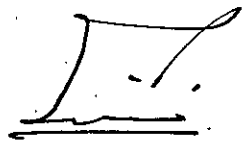
ORDER
22.09.2023

Appellant alongwith his counsel present. Mr. Asif Masood Ali Shah, Deputy District Attorney for official respondents No. 1 to 3 present. Private respondent No. 4 alongwith his counsel also present. Arguments heard and record perused.

Vide our detailed judgment of today, separately placed on file, the appeal in hand is allowed by setting-aside the impugned Notification dated 22.03.2023 and the respondents are directed to allow the appellant to complete his normal tenure on the post of Director Higher Education Khyber Pakhtunkhwa. Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCED
22.09.2023


(Farzha Paul)
Member (Executive)


(Salah-Ud-Din)
Member (Judicial)