

BEFORE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR.

Service Appeal No.01/2022

Dr. Salma Sami Vs. Government of Khyber Pakhtunkhwa through Chief Secretary, Civil Secretariat, Peshawar and 6 others

ORDER

2nd Oct. 2023.

Kalim Arshad Khan, Chairman: Learned counsel for the appellant, Mr. Asad Ali Khan, Assistant Advocate General for the official respondents and private respondents No.6 & 7 present through their counsel and have been heard.

2. According to the memo and grounds of appeal, the appellant was transferred and posted against the post of Principal GGHS Gul Abad Jamrud, District Khyber but that post was already stated to be occupied by one Mst. Tahira Naz, where-after, the transfer order was modified and vide impugned order dated 20.12.2021, the appellant was transferred to GGHS Matta Palangzai, District Charsadda instead of GHGS Gul Abad Jamrud, District Khyber. Aggrieved of the said order, the appellant had initially filed representation and then this appeal. During the pendency of appeal, one Mst. Sughra Sadaf submitted an application for impleadment in the appeal on the strength of another transfer Notification dated 14.09.2022, wherein, the appellant Dr. Salma Sami was shown to have been transferred against the vacant post of Principal GGHSS Malogi. The learned counsel for the appellant did not press the appeal saying that a direction might be given to the respondents to actualize transfer Notification dated 14.09.2022, whereby appellant was shown to have been transferred against the vacant post at of Principal at GGHSS Malogi. On such development, the appeal was decided. Where-after, Mst. Saima submitted application under section-12(2) of the CPC,



1908 with the contention that although, the order of transfer dated 14.09.2022 showed the post of Principal GGHSS Malogi as vacant but actually that was not vacant and was already occupied by the applicant Mst. Saima, who was posted there vide Notification dated 12.08.2022. Notice of the application was given to the other side and after hearing parties, the application U/S 12(2) CPC, 1908 was accepted, thereby setting aside the order dated 13.03.2023, whereby, appeal of Dr. Salma Sami was disposed of with the direction that her posting against the post of Principal Malogi be actualized. What the department did was that it issued another Notification dated 17.04.2023, which was shown to have been passed in compliance with the judgment of this Tribunal and date of the judgment was shown in Notification to be 14.09.2022. We observe with very serious concern that neither the Tribunal had given any direction to issue a notification nor there is any order of 14.09.2022 passed by the Tribunal in this regard. Once before, we had directed the Education Department not to use the name of the Tribunal while issuing any order when no such direction is given by the Tribunal. Be that as it may, the Notification dated 17.04.2023 was issued and is said to be still in the filed. On the previous date, i.e. 22.09.2023, representative of the official respondents sought time for resolution of the issue but today, a copy of letter dated 28.09.2023 was produced with a statement at the bar that the matter was negotiated between the parties but Mst. Saima, Principal had requested that the case was in the Tribunal, therefore, the Court should decide that.


3. Postings and transfers is the sole prerogative of the authority under Section-10 of the Khyber Pakhtunkhwa Civil Servants Act, 1973 and the Tribunal least interferes in such discretion of the authority unless there is some deviation from


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the rules, policies, Act/or some malice or political motivation. In this case, both the ladies i.e. Dr. Salma Sami and Mst. Saima are aggrieved from their transfers on the sole ground of premature transfers. The Government has notified a posting/transfer policy, wherein a specific tenure has been given for service of a civil servant at a particular post. Therefore, it is always expected from the authorities by the civil servants that they would be allowed to complete their normal tenure. Not only in this case but in all other such cases, we have seen that the concerned authorities are not honoring their own posting/transfer policy. As against that, no one can be posted against the post of his/her choice. As stated above, the order last in line i.e. of 17.04.2023, though, discussed in the order sheet dated 04.05.2023 and suspended vide the said order, yet is still in the field, therefore, anybody feeling aggrieved, of the order dated 17.04.2023, may trace his/her steps to proper course against the order under which the civil servant is holding the post for another reason also that that was not under challenge before the tribunal. We expect that in order to avoid further unnecessary litigation, the departmental authorities would honour the tenure provided in their own posting/transfer Policy and none of the parties should suffer otherwise than due course of policy.

4. The appeal is disposed of in the above terms. Consign.

5. *Pronounced in open court at Peshawar and given under our hands and seal of the Tribunal on this 2nd day of October, 2023.*


(Muhammad Akbar Khan)
Member(Executive)


(Kalim Arshad Khan)
Chairman