

**BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR**

Service Appeal No. 7727/2021

BEFORE: KALIM ARSHAD KHAN --- MEMBER (J)
MUHAMMAD AKBAR KHAN --- MEMBER (E)

Miss Maryam Naznin, Vice Principal, GGCMHS Nauthia,
Peshawar.....(*Appellant*)

VERSUS

1. The Secretary Elementary & Secondary Education Department, Government of Khyber Pakhtunkhwa, Civil Secretariat, Peshawar.
2. The Director Elementary & Secondary Education Department Khyber Pakhtunkhwa, Peshawar.
3. The Deputy Director (Female) Elementary & Secondary Education Department Khyber Pakhtunkhwa Peshawar.
4. The District Education Officer (Female) Peshawar.
5. The Principal, GGCMHS, Nauthia, Peshawar.
6. The Assistant Director (General) Directorate of Elementary & Secondary Education Khyber Pakhtunkhwa, Peshawar.....(*Respondents*)

Present:-

SHAHID QAYUM KHATTAK,
Advocate

--- For Appellant

MUHAMMAD JAN,
District Attorney

--- For respondents.

Date of Institution.....05.11.2021

Date of Hearing.....14.09.2023

Date of Decision..... 14.09.2023

JUDGMENT.

MUHAMMAD AKBAR KHAN, MEMBER(E):- The instant service appeal has been instituted under Section 4 of the Khyber Pakhtunkhwa Service Tribunal, Act 1974 with the prayer copied as under;

“That on acceptance of this appeal the impugned recovery notice dated 17.06.2021 or any other recovery notice issue after


or before the impugned notice may please be set aside. It was further prayed that the respondent may please be directed to act in the matter in accordance to law and to process and sanction the appellant case of House Subsidy and to pay the arrears and back benefits from the date i.e. 04.07.2017 when she was promoted to BPS-19. Any other relief not specifically prayed for deem appropriate in the circumstance of the case may also be granted."

02. Brief facts of the case are that appellant was serving as Subject Specialist BPS-17 in GGHSS University Town, Peshawar in the year 2009. That the appellant applied for House Subsidy through proper channel in October, 2009 which was sanctioned after lapse of more than one year vide order dated 30.09.2011; that on 04.07.2017 the appellant was promoted to BPS-19; that the appellant applied for arrears of more than 2 years of BPS-19 in the year 2020, but instead of allowing the application an enquiry was initiated to the effect that the earlier order dated 30.09.2011 was fake and bogus; that the appellant is entitled for the House Subsidy but her application has not been processed and recovery proceedings has been initiated against the appellant vide letter dated 17.06.2021. The appellant filed departmental appeal on 08.07.2021 which was not responded within the statutory period, hence preferred the instant service appeal on 05.11.2021.

03. Notices were issued to the respondents, who submitted their comments, wherein they refuted the assertions raised by the appellant in his appeal. We have heard arguments of learned counsel for the appellant and

learned District Attorney and have gone through the record with their valuable assistance.

04. Learned counsel for the appellant contended that the impugned actions and inactions are against the principle ordained under Article 25 of the constitution of Islamic Republic of Pakistan; that in the enquiry officer in its report clear cut states that the appellant was entitled for House Subsidy but still her fresh application is not processed and recovery has been order which is totally illegal and against the law; that all the relevant documents have been sent by the appellant to the respondent through proper channel, now the question arises that who was the responsible for the issuance of fake and bogus order, especially when all the requirement have been fulfilled by the appellant as per House Subsidy Rules, therefore, the recovery proceeding is totally illegal against the rules and regulations; that no proper procedure of service law has been adopted by the respondent while starting the recovery proceedings from the appellant and the real culprits have not been traced out which nullity the whole proceedings in the eyes of law.

 05. Learned District Attorney, on the other hand contended that the action of the respondents was according to law, based upon the principle of natural justice; that no discrimination has been made with the appellant; that the inquiry officer recommended recovery from the appellant as the appellant had drawn Housing Subsidy Allowance w.e.f 2011 illegally producing fake order/Notification, therefore, she is liable to be proceeded under the law.

06. It is admitted fact that the appellant was eligible for the facility of House Subsidy by the government to civil servants serving within the Municipal jurisdiction. The appellant was serving as Subject Specialist (BS-

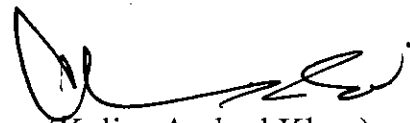
19) at GGHSS University Town Peshawar when she applied for the facility of House Subsidy. She owned house in her name in the Municipal area. It is undisputed that the appellant fulfilled the terms and conditions for award of House Subsidy. The disputed point in the authenticity of order issued bearing No. E.O (ADM) R-7067/2011-1296-94 dated 30.09.2011 under signature of Estate Officer Administration Department whereby house subsidy amounting to Rs.9845/- was sanctioned in favour of the appellant. The appellant started availing House Subsidy on the authenticity of this order duly honoured by the office of the Accountant General Khyber Pakhtunkhwa. As per available record the house subsidy, availed by the appellant since October, 2011, was stopped when she was posted out from the Municipal area of Peshawar on 30.07.2012. Upon transfer of the appellant back in the Municipal area on 21.03.2014, she applied for restart of the facility of house subsidy, which was allowed. The question of authenticity of the order dated 30.09.2011 came to surface when the appellant was promoted to BS-19 on 04.07.2017 and posted at Government Girls Higher Secondary School, Nauthia Peshawar from where the appellant applied for enhancement of House Subsidy in accordance with her Basic Pay Scale-19. The Estate Office, Administration Department termed the order dated 30.09.2011 as fake and refused to allow the subsidy to the appellant in accordance with her BPS-19.


07. The fact finding inquiry, conducted by Mr. Abdul Akram, Deputy Secretary (Legal) E&SE Department, reveals that as per rules the appellant was entitled for House Subsidy. The inquiry officer recommended to process application of the appellant for House subsidy as per her entitlement and

adjustment/recovery may be made on account of unauthorized payment. No information is available with regard to process of the appellant's application in the Estate Office, Administrative Department. However, the respondents have started process of recovery from the appellant on the basis of fact finding inquiry. The office of the Accountant General Khyber Pakhtunkhwa and Estate Office, Administration Department have not been made respondents by the appellant and as such without comments/inputs of their departments/offices the Tribunal is unable to reach just and fair conclusion.

08. In view of the above discussion we set aside the Letter No. SOG/E&SI/2-34/2021 dated 17.06.2021 alongwith operation of letters referred therein and remit the case back to the Administrative Department for disposal in accordance with the findings of the fact finding inquiry report or conduct detailed inquiry in the matter covering all aspects of the case in accordance with law/rules. Costs shall follow the events. Consign.

09. *Pronounced in open court at Peshawar and given under our hands and seal of the Tribunal on this 14th day of September, 2023.*


(Kalim Arshad Khan)
Chairman


(Muhammad Akbar Khan)
Member (E)