

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR
AT CAMP COURT SWAT

Service Appeal No. 400/2016

BEFORE: MR. SALAH UD DIN ... MEMBER (Judicial)
MRS. RASHIDA BANO ... MEMBER (Judicial)

Mst. Shahida, Ex Theology Teacher, GGMS Kakad, Dir Upper.

.... (Appellant)

VERSUS

1. Secretary Elementary & Secondary Education Department Khyber Pakhtunkhwa Peshawar.
2. Director Elementary & Secondary Education Department Khyber Pakhtunkhwa Peshawar.
3. District Education Officer (Female) Dir Upper.

.... (Respondents)

Mr. Noor Muhammad Khattak
Advocate

... For appellant

Mr. Muhammad Jan
District Attorney

... For respondents

Date of Institution.....15.04.2016

Date of Hearing.....03.10.2023

Date of Decision.....03.10.2023

JUDGMENT

RASHIDA BANO, MEMBER (J): The instant service appeal has been instituted under section 4 of the Khyber Pakhtunkhwa Service Tribunal, Act 1974 with the prayer copied as below:

“On acceptance of instant appeal the impugned order dated 02.12.2015 may very kindly be set aside and the respondents may be directed to re-instate the appellant

with all back benefits. Any other relief which this august court deems appropriate may kindly be awarded to meet the ends of justice.”

2. Brief facts of the case, as given in the memorandum of appeal, are that the appellant while serving as Theology Teacher in Government Girls Middle School Kakad District Dir Upper, was removed from service vide impugned order dated 12.12.2015 on the allegations of absence from duty. The appellant challenged the order dated 12.12.2015, through filing of departmental appeal on 27.12.2015, however the same was not responded within the statutory period, hence the instant service appeal on 15.04.2016.

3. Respondents were put on notice who submitted written replies/comments on the appeal. We have heard the learned counsel for the appellant as well as the learned District Attorney and perused the case file with connected documents in detail.

4. Learned counsel for the appellant contended that the absence of the appellant from duty was not intentional rather the same was due to her illness and the doctor also advised her bed rest. He next argued that the appellant also submitted leave application on medical ground but the same was not responded. He further argued that no charge sheet as well as statement of allegations and show-cause notice were issued to the appellant at her home address and she was awarded major penalty without holding any regular inquiry as well as affording her opportunity of personal hearing. He further argued that rights of the appellant as enshrined in Articles 4 & 25 of the constitution of Islamic Republic of Pakistan were badly violated. In the last

he argued that the appellant was awarded major punishment of removal from service on the allegation of absence from duty, however neither specification of dates of absence has been mentioned in the impugned order nor the procedure as provided in Rule-9 of Efficiency and Disciplinary Rules, 2011 was adopted, therefore, the impugned order is illegal and liable to be set-aside and the appellant may be reinstated in service with all back benefits.

5. Conversely, On the other hand, learned District Attorney for the respondents contended that the appellant had remained absent from duty without any leave or permission of the competent Authority. He next contended that In-charge of the concerned school reported the absence of the appellant from duty and public complaint was also received against the appellant. He further contended that the appellant has not submitted any kind of medical prescriptions regarding her illness and bed rest advised by the doctors. He next argued that the show-cause notices were issued to the appellant but the same remained un-responded, therefore, publication was also made in daily "AAJ" newspaper to resume her duty but she failed to resume her duty. In the last, he argued that all the legal and codal formalities were fulfilled before passing the impugned order dated 12.12.2015, therefore, the impugned order may be kept intact and the appeal in hand may be dismissed with costs.

6. Perusal of record reveals that appellant was appointed as Theology Teacher in the respondent department upon recommendation of Departmental Selection Committee vide order dated 19.11.2008. Appellant assumed charge of the post and performed her duties to best of her abilities having unblemished service upon her credit. Appellant while posted at GGMS Kakad

District Dir Upper became ill and due to illness doctor advised him complete bed rest. Appellant submitted leave application on medical ground to respondent No.3 which was not responded after gaining health appellant visited respondent No.3 for joining her duty but some was refused to her and respondent No.3 handed over to the appellant copy of her removal from service order dated 02.12.2015.

7. Appellant alleged that impugned order of her removal from service is against law and rules on the subject as no show cause notice, statement of allegation was issued to the appellant on her home address and she was condemned unheard. The fact of the absence of the appellant from duty admitted by her in para No. 3 of the appeal wherein she categorically mentioned that due to her illness doctor advised her bed rest and she submitted leave application to respondent No.3 on medical grounds alongwith doctor prescription. Although it is mentioned in para 3 of ground of appeal that copy of leave application on medical grounds are attached with the appeal but the same is not annexed with the appeal. Similarly no medical prescription or advice from doctor is annexed or even procured during the course of arguments by the appellant.

8. When factum of absence from duty is admitted then there is no need to sent notice upon her home address because purpose of serving the notice is to inform a civil servant about his/her absence and its consequence but in instant case appellant willfully absented herself from duty thereafter she are in knowledge of the consequence of her absence which is not less than removal from service.

9. It is pertinent to mentioned here that appellant was removed from service under Rule-9 of Efficiency & Discipline Rules, 2011. As she was proceeded against on basis of her willful absence. Rule 9 of (E&D) Rules 2011 read as;

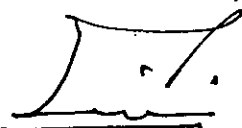
“Notwithstanding anything to the contrary contained in these rules, in case of willful absence from duty by a Government Servant for seven or more days, a notice shall be issued by the competent authority through register acknowledgement on his home address directing him to resume duty within fifteen days of issuance of the notice. If the same is received back as undelivered or no response is received from the absentee within stipulated time, a notice shall be published in at least two leading newspapers directing him to resume duty within fifteen days of the publication of that notice, failing which an *ex-parte* decision shall be taken against the absentee. On expiry of the stipulated period given in the notice, major penalty of removal from service may be imposed upon such Government servant.”

So in accordance with Rule 9 mentioned above respondent is required to issue two show cause notices to the appellant with direction to resume her duties within fifteen days from issuance of show cause notice “when appellant remained absent for seven or more days upon her home address” which respondent department sent to the appellant upon her home address which is evident from both the notices as well as publication in daily AAJ dated 16.11.2005. That in the peculiar circumstances of this case in our humble view there is no need to hold inquiry against the appellant because


question is of willful absence from duty of appellant which will have to be dealt with in accordance with Rule 9 of (Efficiency & Discipline) Rules 2011 mentioned above. Appellant despite knowledge did not bother to resume her duty in time given by the respondents, which is proof of his willful absence. Moreover, previous conduct of the appellant also shows that appellant remained absent from her duty place which compelled the Principal and people of local area where school is situated to file a complaint to her higher authority about her absence which effects studies and future of the students.

10. As a sequel to the above discussion, we are of the view that appeal in hand is devoid of merits, is hereby dismissed. Costs shall follow the event. Consign.

11. *Pronounced in open court at Swat and given under our hands and seal of the Tribunal on this 3rd day of October, 2023.*

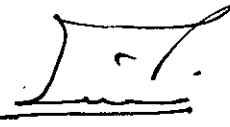

(SALAH UD DIN)
Member (J)
Camp Court, Swat

*Kaleemullah


(RASHIDA BANO)
Member (J)
Camp Court, Swat

ORDER
3rd Oct, 2023

1. Learned counsel for the appellant present. Mr. Muhammad Jan learned District Attorney for the respondents present.
2. Vide our detailed judgement of today placed on file, the appeal in hand is devoid of merits, which is hereby dismissed. Costs shall follow the event. Consign.
3. *Pronounced in open court at Swat and given under our hands and seal of the Tribunal on this 3rd day of October, 2023.*



(SALAH UD DIN)
Member (J)
Camp Court, Swat



(RASHIDA BANO)
Member (J)
Camp Court, Swat

*Kaleemullah