

BEFORE THE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL PESHAWAR.
AT CAMP COURT SWAT.

Service Appeal No. 368/2023

Date of Institution... 22.02.2023

Date of Decision... 03.10.2023

Shazia Bibi D/O Jamil Hussain, R/O Mohallah Bakhta Village and P/O Thana
the Batkhela District Malakand.

... (Appellant)

VERSUS

Director Elementary & Secondary Education, Peshawar and 03 others.

... (Respondents)

MR. MUHAMMAD AYAZ KHAN,
Advocate

For appellant.

MR. INAYAT ULLAH KHAN,
Assistant Advocate General

For official respondents.

MR. SALAH-UD-DIN
MRS. RASHIDA BANO

MEMBER (JUDICIAL)
MEMBER (JUDICIAL)

JUDGMENT:

SALAH-UD-DIN, MEMBER:- Precise facts giving rise to

filing of the instant appeal are that vide office order dated

13.06.2022 issued from the office of District Education Officer

(Female) Malakand at Batkhela, the appellant was transferred from

GGCMS Karkani Khar to GGHS Jalala, while private respondent

No. 4 namely Shabnam Begum was transferred from GGHS No. 2

Batkhela to GGCMS Karkani Khar. However, vide the impugned

office order dated 12.12.2022, the afore-mentioned posting/transfer

order dated 13.06.2022 was withdrawn in wake of


recommendations of an inquiry committee constituted on the

application submitted by private respondent No. 4 to the Additional



Secretary (General) Elementary & Secondary Education Department Government of Khyber Pakhtunkhwa Peshawar, raising grievance that she became surplus due to transfer of another teacher at her place in GGHS Batkhela. The appellant being aggrieved of the office order dated 12.12.2022, challenged the same by way of filing departmental appeal, however the same was regretted vide order dated 17.02.2023, hence the instant appeal.

2. On receipt of the appeal and its admission to regular hearing, respondents were summoned. Private respondent No. 4 did not appear despite service, therefore, she was placed ex-parte. Official respondents put appearance through their representative and contested the appeal by way of filing written reply raising therein numerous legal as well as factual objections.

 3. Learned counsel for the appellant has addressed his arguments supporting the grounds agitated by the appellant in his service appeal. On the other hand, learned Assistant Advocate General for the respondents has controverted the arguments of learned counsel for the appellant and has supported the comments submitted by the respondents.

4. We have heard the arguments of learned counsel for the appellant as well as learned Assistant Advocate General for official respondents and have perused the record.

5. A perusal of the record would show that vide office order dated 13.06.2022, the appellant was transferred from GGCMS

Karkani Khar to GGHS Jalala, while private respondent No. 4 was transferred from GGHS No. 2 Batkhela to the place of appellant i.e GGCMS Karkani Khar. The appellant assumed the charge of her post at GGHS Jalala and started performing of her duty. It was on 19.10.2022 that private respondent No. 4 submitted an application to the Additional Secretary Elementary & Secondary Education Khyber Pakhtunkhwa Peshawar seeking cancellation of NOC dated 20.07.2020 by alleging that the same was wrong and a teacher on the basis of the said wrong NOC had been transferred from Ramora District Dir in place of respondent No. 4 and she thus became surplus. The copy of said application is available on record, which bears an endorsement of the Additional Secretary (General) Elementary and Secondary Education Government of Khyber Pakhtunkhwa Peshawar, whereby DEO (Female) Malakand was asked to retain Private respondent No. 4 at Badam Baghecha Thana. DEO (Female) Malakand, however constituted an inquiry committee vide order dated 21.11.2022 for probing the allegations of private respondent No. 4 regarding issuance of wrong NOC. The inquiry committee conducted facts finding inquiry and submitted its report to the District Education Officer (Female) Malakand. The findings of the inquiry committee were as below:-

"1. According to the applicant Shabnam Begum, post of SST (G) was transferred from GGHS BB Thana to GGHS Batkhela No. 2 while the record study shown that these posts were not actually

shifted as Miss. Anisa Chand from Dir Lower was transferred on that post.

2. Negligence on the part of handling staff of GGHS Batkhela No. 2 cannot be ignored as why they handed over charge to the applicant when the post was not sanctioned or shifted from somewhere else and when the post was not shifted there then how the said teacher drawn salaries from GGHS Batkhela No. 2? From where the position code come when the post was not shifted?

3. DEO Female Office is also equally responsible for all this as they did not reconcile these posts with Finance Department for a long period of three year.

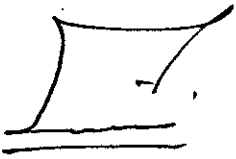
4. When the applicant was surplus in GGHS Batkhela No. 2 and transferred to GGHS Jalala, why was her transfer cancelled without any sound base?



6. It is evident from the findings of the inquiry committee that the post of SST (General) was never transferred from GGHS Badam Baghecha Thana to GGHS No. 2 Batkhela but even then private respondent No. 4 remained posted on the said school with effect from 26.02.2019 and also received salaries without any position code. The inquiry committee in its findings had held that the negligence of dealing staff of GGHS Batkhela No. 2 in the matter could not be ignored. We are, however of the view that the concerned DEO (F) Malakand was also responsible for such lapse. It is evident from the findings of the inquiry committee that the post of SST (G) was not shifted from GGHS Badam Baghecha No. 2 and one Miss. Anisa Chand was transferred to that post due to

which private respondent No. 4 became surplus. It is pertinent to mention that the appellant was not at all heard by the inquiry committee and was thus condemned unheard.

7. The appellant had served in GGCMS Karkani Khar with effect from 06.01.2018 till her transfer to GGHS Jalala vide order dated 13.06.2022. The appellant was, however not allowed to complete her normal tenure and her transfer order was withdrawn vide impugned order dated 12.12.2022. 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."
(Emphasis supplied)

8. In view of the above discussion, the appeal in hand is allowed by setting-aside the impugned orders and the respondents are directed to allow the appellant to complete her normal tenure at GGHS Jalala. Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCED
03.10.2023



(RASHIDA BANO)
MEMBER (JUDICIAL)
CAMP COURT SWAT



(SALAH-UD-DIN)
MEMBER (JUDICIAL)
CAMP COURT SWAT

ORDER
03.10.2023


Learned counsel for the appellant present. Mr. Inayat Ullah Khan, Assistant Advocate General for official respondents 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 orders and the respondents are directed to allow the appellant to complete her normal tenure at GGHS Jalala. Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCED
03.10.2023



(Rashida Bano)
Member (Judicial)
Camp Court Swat



(Salah-Ud-Din)
Member (Judicial)
Camp Court Swat