

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR

Service Appeal No. 1630/2023

BEFORE: RASHIDA BANO --- MEMBER (J)
MUHAMMAD AKBAR KHAN --- MEMBER (E)

Mst. Sima Gul, Principal (BPS-19), GGHS Miran Shah, District North Waziristan under transfer to GGHS Kotka Bilwar Khan, District Bannu.(Appellant)

VERSUS

1. The Government of Khyber Pakhtunkhwa through Secretary Elementary & Secondary Education Department, Khyber Pakhtunkhwa, Peshawar.
2. The Director Elementary & Secondary Education, Khyber Pakhtunkhwa Public Service Commission, Peshawar.
3. The District Education Officer (F) North Waziristan.
4. The District Education Officer (F) Bannu.....(Respondents)

Present:-

NOOR MUHAMMAD KHATTAK,
Advocate

--- For Appellant

MUHAMMAD JAN,
District Attorney

--- For respondents.

Date of Institution.....09.08.2023

Date of Hearing.....25.09.2023

Date of Decision..... 25.09.2023

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 transfer order dated 21.06.2023 to the extent of appellant at serial No. 2 and appellate order dated 08.08.1012 may very kindly be set aside and the appellant be retained at GGHS Miran Shah North Waziristan. Any other remedy which this august

Tribunal deems fit that may also be awarded in favor of the appellant."

02. Brief facts of the case are that appellant is performing her duty as Principal GGHS Miran Shah North Waziristan. She was transferred from the said school to GGHSS Kotka Khan Bilwar Khan Bannu vide impugned Notification dated 21.06.2023 which was communicated to the appellant on 12.07.2023. Feeling aggrieved from the impugned transfer Notification dated 21.06.2023 the appellant filed departmental appeal on 12.07.2023 which was rejected vide appellate order dated 08.08.2023, hence preferred the instant service appeal on 09.08.2023.

03. Notices were issued to the respondents, who submitted their comments, wherein they refuted the assertions raised by the appellant in her 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 transfer Notification dated 21.06.2023 communicated to the appellant on 12.07.2023 and appellate order dated 08.08.2023 are against the law, facts, norms of natural justice and material on record, hence liable to be set aside; that the impugned transfer Notification is violative of Clause-I of transfer/posting policy of the Provincial Government; that according to the transfer and posting policy right person for the right job shall be posted, hence the impugned transfer Notification and the subsequent Notification dated 02.08.2023 whereby a junior officer of BPS-16 has been assigned with additional responsibilities of Principal of the School. It was further contended that the Election Commission of Pakistan vide Notification dated 22.01.2023 banned all kinds of transfer/postings in the provinces of Khyber Pakhtunkhwa and Punjab; that the appellant has not been

treated in accordance with law, rules and also violated Article 4 and 25 of the Constitution of Islamic Republic of Pakistan 1973; that the impugned transfer Notification dated 21.06.2023 has been issued by the respondents in arbitrary and malafide manner, therefore, the same is not tenable in the eye of law and liable to be struck down.

05. Learned District Attorney on the other hand contended that the appellant has completed her normal tenure of posting in GGHS Miran Shah North Waziristan and after approval from the Election Commission of Pakistan, the appellant was transferred and posted at GGHSS Kotka Bilwar Khan, Bannu; that the competent authority has given look after charge to Miss Memona Akhtar, SST for smooth running of School Administration till further arrangements. It was further contended that impugned transfer Notification dated 21.06.2023 is in accordance with law and there is no violation of Article 4 and 25 of the Constitution of Islamic Republic of Pakistan 1973; that the transfer Notification dated 21.06.2023 is legal and no violation of Clause-I of transfer/posting policy of the Provincial Government has been made; that there is nothing un-just or malafide on the part of respondents, therefore, the appeal in hand is liable to be dismissed.

06. It is admitted fact that the post of Principal GGHS Miran Shah, North Waziristan is a BPS-19 post and the appellant being BPS-19 officer was holding the said post. It is also not disputed that the appellant's tenure at the school had matured. However, the respondents department has not been able to find proper substitute to post as Principal GGHS Miran Shah. The District Education Officer (Female) has issued order dated 02.08.2023 whereby one Miss Memona Akhtar SST (BPS-16) has been declared as Incharge of the said school. Giving the charge of BS-19 post to a junior teacher in BS-16 is not justifiable and beyond

competency of the DEO (Female) North Waziristan. Representative of the respondents stated at the bar that this arrangement is still in place in GGHS Miran Shah which is not only unjust and unfair but illegal as well. What prompted the respondents to transfer the appellant and go for this unjust adhoc arrangement is not coming on record. The posting/transfer policy of the Government clearly sets out in Clause-I of the Policy that posting/transfer of Government Servants shall be made strictly in the public interest. What public interest or exigency was involved in the transfer of the appellant without proper substitute in her place is not known. The impugned order dated 21.06.2023 and the comments submitted by the respondents are silent in the matter. Another guiding principle contained in Clause XIII of the Policy *ibid* expressly enunciate that while making posting/transfer of civil servants the authorities concerned shall keep in mind and ensure posting of proper person on proper post, which, in the instant case, has been ignored.

07. In view of the above discussion we are constrained to allow the instant appeal as prayed for and also set aside the order of DEO (Female) North Waziristan dated 02.08.2023 being devoid of legal authority. Costs shall follow the event. Consign.

08. *Pronounced in open court at Peshawar and given under our hands and seal of the Tribunal on this 25th day of September, 2023.*



(Rashida Bano)
Member (J)



(Muhammad Akbar Khan)
Member (E)