

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

Service Appeal No. 11405/2020

BEFORE: MR. SALAH-UD-DIN ... MEMBER (J)  
MISS FAREEHA PAUL ... MEMBER (E)

**Hafiza Rukhsana Farrukh, Ex-Subject (Maths) (BPS-17), Elementary & Secondary Education Department Khyber Pakhtunkhwa, lastly on deputation to Federal Government ..... (Appellant)**

Versus

1. Government of Khyber Pakhtunkhwa through Chief Secretary, Civil Secretariat Peshawar.
2. Secretary, Government of Khyber Pakhtunkhwa, Elementary & Secondary Education Civil Secretariat, Peshawar.
3. The Secretary, Government of Khyber Pakhtunkhwa, Establishment Department, Civil Secretariat, Peshawar. .... (Respondents)

Mr. Khaled Rehman;  
Advocate

... For appellant

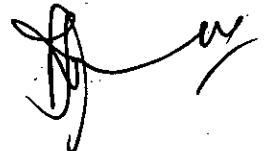
Mr. Asif Masood Ali Shah  
Deputy District Attorney

... For respondents

Date of Institution..... 28.09.2020  
Date of Hearing..... 12.10.2023  
Date of Decision..... 13.10.2023

**JUDGEMENT**

**FAREEHA PAUL, MEMBER (E):** The service appeal in hand has been instituted under Section 4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974 against the impugned original order dated 20.02.2015 of respondent No.1, communicated on 16.10.2018, whereby appellant was removed from service, against which she preferred departmental appeal on 25.10.2018; but the same was unlawfully regretted and communicated vide impugned appellate order dated 10.09.2020. It has been prayed that on acceptance of the appeal, both the impugned orders might be set aside by reinstating the appellant into service and she might be allowed to rejoin her parent department as Subject Specialist Maths (BPS-17) with all back

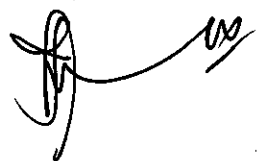


benefits alongwith any other relief which the Tribunal deemed fit and appropriate.

2. Brief facts of the case, as given in the memorandum of appeal, are that the appellant was initially appointed as Subject Specialist Mathematics (BPS-17) in the respondent department on recommendations of the Khyber Pakhtunkhwa Public Service Commission on 31.07.1999. Since the husband of the appellant was discharging his duties against the post of LDC in the National Institute of Electronics, Ministry of Sciences & Technology Government of Pakistan, Islamabad since 1995, therefore, appellant moved a transfer application for inter-provincial transfer from the Khyber Pakhtunkhwa to Federal Government under the Spouse Policy. The application was duly replied on 19.05.2004 wherein the respondent department maintained that they would have no objection on the transfer of the appellant from the Khyber Pakhtunkhwa to Federal Government, Islamabad. The appellant moved a request for her permanent transfer to the Federal Government and it was held that the matter would be considered in the light of the relevant rules. In response to the request of appellant for permanent transfer/deputation to the Federal Government, Provincial Government, vide letter dated 02.11.2005, was asked to furnish NOC regarding her transfer on deputation. The Respondent No.2, in consultation with the Establishment Department, accorded approval to the transfer of the appellant on deputation basis, initially for a period of three years vide Notification dated 09.01.2006. She was relieved by provincial government vide Notification date 13.03.2006 to join her new assignment. Vide Notification dated 12.04.2006, the appellant was permitted to assume the




charge of the post of Deputy Head Mistress at F.G. Girls Secondary School, Kuri (FA) Islamabad w.e.f 20.03.2006. After completion of three years deputation period, appellant made a request to the Director, Federal Directorate of Education Islamabad, for extension of deputation period to five years which was considered and appellant was directed to obtain NOC from parent Department. She applied and her application was conceded to w.e.f. 17.03.2009 to 16.03.2011 vide notification dated 2.11.2009. While discharging her duties against the said post, she made a request/representation for her regularization/permanent absorption in the Federal Directorate of Education, Islamabad, and extension in deputation period. In response, the borrowing Department showed its willingness and asked the appellant to procure NOC from the parent Department vide letter dated 04.03.2011. The Government of Pakistan, Ministry of Capital Administration & Development moved a Summary to the Prime Minister of Pakistan regarding absorption of staff under Federal Directorate of Education, Islamabad working on deputation basis, pursuant to which the borrowing department vide letter dated 12.09.2013 requested the parent department of the appellant for NOC for her permanent absorption in the Federal Government. The appellant also moved a written request to the Parent Department for NOC for permanent absorption. While correspondence between the two departments continued, vide Notification dated 22.09.2014, appellant was transferred from IMSG (I-X), Kuri against the vacant post of DHM at IMSG (IV-X) I-X/IV where she assumed the charge and started performing duties. While performing her duties at Islamabad, on 16.10.2018 she was provided the impugned order dated



20.02.2015 whereby she was removed from service under the pretext of willful and unauthorized absence from duty w.e.f 16.03.2011. Neither the order was earlier communicated to the appellant nor was she ever served with any kind of Notice. On communication of that order, the Federal Government also stopped the salary of the appellant. The appellant, feeling aggrieved, filed departmental appeal and she was verbally told that her appeal had been regretted, but no written order was provided to her. The appellant then filed an application for providing the decision on her departmental appeal, upon which vide letter dated 10.09.2020, she was informed that her appeal had been regretted; hence the instant service appeal.

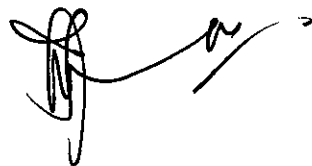
3. Respondents were put on notice who submitted their reply/comments on the appeal. We heard the learned counsel for the appellant as well as the learned Deputy District Attorney for the respondents and perused the case file with connected documents in detail.

4. Learned counsel for the appellant, after presenting the case in detail, argued that respondents had not treated the appellant in accordance with law, rules and policy on the subject and acted in violation of Article 4 of the Constitution of Islamic Republic of Pakistan, 1973. He further argued that the appellant was neither absent from duty nor the so-called absence was willful or intentional. According to him, it was an admitted position that she was at the disposal of the Federal Government and was regularly performing her duties there and was in the receipt of salaries also, therefore, the charge of absence was totally false and fabricated. He further argued that since the appellant was not relieved by the Federal Government, being a borrowing



department, and had initiated the process of permanent absorption of the appellant by requesting the lending department, therefore, no question of absence of the appellant could arise. He contended that in the absence of relieving by the Federal Government, the appellant was unable to join the provincial service, thus it was the lapse on the part of the Provincial Government which caused the entire mess. He further argued that under Rule-9 of Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011, in case of willful absence notice should have been published in at least two leading newspapers but a notice was published in daily Aaj, Peshawar and Daily Mashriq, Peshawar dated 26.09.2014, despite the fact that the appellant was serving at Islamabad. He requested that the appeal might be accepted as prayed for.

5. Learned Deputy District Attorney, while rebutting the arguments of learned counsel for the appellant, argued that as per deputation policy, after five years the deputationist was automatically repatriated to his parent department and that the Federal Govt's. Notification was not binding upon the Provincial Government, as the appellant was placed at the disposal of Federal Directorate of Education Islamabad on deputation basis w.e.f. 20.03.2006 to 17.03.2009 to 16.03.2011. He contended that after expiry of her deputation period, she did not assume her duty at her parent department despite clear direction vide letter dated 25.08.2014, followed by publication of absence notices in two newspapers. He further argued that Federal Government vide letter dated 12.09.2013 requested for NOC regarding permanent absorption of the appellant, but the department regretted it and requested the Federal Government to repatriate her and subsequently the



appellant was repatriated on 21.02.2014. She was directed through letter dated 04.02.2014 to report to the parent department but she did not report. After completion of her deputation period of maximum 05 years, no further extension was admissible under the law. The learned DDA argued that the appellant's removal from service notification was issued on 26.02.2015, against which she filed the departmental appeal after a lapse of more than three years, which was badly time barred. He further argued that proper proceedings were conducted against her under Section 09 of Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules 2011 and absence notice was served upon her at her home address on 25.08.2014 and also published in two leading newspapers but no response was received. He requested that the appeal might be dismissed.

6. Arguments and record presented before us shows that the appellant proceeded on deputation to the Federal Government, initially for a period of three years, in 2006. After expiry of that period, on her request, the deputation was extended to another two years, which expired on 16.03.2011. After expiry of her five year deputation period, she had to report back to her parent department but she did not do so, rather a case was initiated by the Federal Government, on her request, for her permanent absorption there. Record produced before us shows that a summary was approved by the Prime Minister of Pakistan for permanent absorption of employees working on deputation under wedlock policy in the Federal Directorate of Education, Islamabad. As the appellant was on deputation under the wedlock policy therefore, being covered in the approved summary, the Government of Khyber Pakhtunkhwa was requested by the Federal Directorate of Education



for grant of NOC for the said absorption. The request of Federal Government was regretted and the appellant was directed to report back to her parent department vide letter dated 04.02.2014. It has been noted that through an earlier letter of Government of Khyber Pakhtunkhwa, Elementary & Secondary Education Department dated 07.05.2011, responding to the letter of appellant dated 26.4.2011, further extension in deputation had already been regretted and the appellant had been directed to report to her parent department immediately. Instead of responding to those directions, the appellant stayed in the Federal Government till 2014, as is evident from the letter of provincial government dated 04.02.2014. When she did not report back, absence notice was issued to her on 25.08.2014, followed by publications in newspapers, but she did not respond to any of those notices and was, hence, removed from service.

7. From the above discussion, a point is extremely clear that the appellant was on deputation and after one extension, no further extension was granted, which means that her deputation period ended on 16.03.2011. As a civil servant, she was bound under certain rules and therefore, she had to report back but unfortunately it was not done. She was directed, first in May 2011 and later in August 2014 to report back but she put a deaf ear to all the directions. She did not pay any heed to the absence notices issued to her, which is a serious misconduct on the part of a civil servant. As far as removal on the basis of absence is concerned, upon expiry of her deputation period on 16.03.2011, she had to report back but when she did not do so, she was considered absent from duty and that absence was marked as willful




and unauthorized. Procedure was followed and after doing the needful, she was rightly removed from service.


8. In view of the foregoing, the service appeal in hand is dismissed.

Costs shall follow the event. Consign.

9. *Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal this 13<sup>th</sup> day of October 2023.*

  
(FAREEHA PAUL)  
Member (E)

*\*Fazle Subhan, P.S\**


  
(SALAH-UD-DIN)  
Member (J)



S.A 11405/2020

- 13<sup>th</sup> Oct. 2023
01. Mr. Khaled Rehman, Advocate for the appellant present. Mr. Asif Masood Ali Shah, Deputy District Attorney for the respondents present. Arguments heard and record perused.
02. Vide our detailed judgment consisting of 08 pages, the appeal in hand is dismissed. Costs shall follow the event. Consign.
03. *Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal this 13<sup>th</sup> day of October, 2023.*

  
(FAREEHA PAUL)  
Member (E)


  
(SALAH-UD-DIN)  
Member (J)


*\*Fazle Subhan, P.S\**

12.10.2023

Learned counsel for the appellant present. Mr. Asif Masood Ali Shah, Deputy District Attorney for the respondents present.

Arguments heard. To come up for consideration and order on 13.10.2023 before the D.B. Parcha Peshi given to the parties.

  
(Fareeha Paul)  
Member (E)

  
(Salah-ud-Din)  
Member (J)