

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR...

Service Appeal No. 1731/2023

BEFORE: MRS. RASHIDA BANO ... MEMBER (J)
MS. FAREEHA PAUL ... MEMBER (E)

Dr. Zulfiqar Ali, Associate Professor of Economics BPS-19, under Transfer from Government College Peshawar to Government Post Graduate College Charsadda. (Appellant)

VERSUS

1. Government of Khyber Pakhtunkhwa Higher Education, Archives & Libraries Department, Civil Secretariat, Peshawar.
2. Secretary to the Government of Khyber Pakhtunkhwa Higher Education, Archives & Libraries Department, Civil Secretariat, Peshawar..
3. Principal, Government College, Peshawar.
4. Dr. Aftab Alam, Associate Professor of Zoology (BPS-19), Government Post College Charsadda, under transfer to Government College, Peshawar. (Respondents)

Mr. Ahmad Sultan Tareen
Advocate ... For appellant

Mr. Muhammad Jan
District Attorney ... For respondents

Date of Institution.....25.08.2022
Date of Hearing.....17.10.2023
Date of Decision.....17.10.2023

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:

“That on acceptance of this service appeal this Hon’ble Tribunal may graciously hold the transfer/adjustment of the appellant having been made vide impugned notification dated 27.04.2023 in violation of spouse policy under the

posting/transfer policy of the Government of Khyber Pakhtunkhwa and also against the public interest; and the same is liable to be reversed with ante status quo remedy in favor of the appellant by transfer/adjustment of the respondent No. 4 in or out of Government College Peshawar or as the respondent No.2 may deem appropriate to adjust him anywhere. ”

2. Brief facts of the case, as given in the memorandum of appeal, are that appellant is serving the respondent department as Associate Professor (Economics) quite efficiently and up to the entire satisfaction of his superiors. Appellant was transferred from Government College, Peshawar to Government Post-Graduate College, Charsadda vide impugned notification dated 27.04.2023. Feeling aggrieved he preferred review petition, which was not responded; hence the instant service appeal.

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 argued that the appellant has not been treated in accordance with law and rules. He further argued that wife of the appellant is government servant and serving at Peshawar and on the basis of spouse policy impugned notification might be set aside. He further argued that impugned notification issued by the respondent was also not in public interest as required under the posting/transfer policy, therefore, the same is not tenable and liable to be set aside.

5. Learned District Attorney on the other hand contended that the appellant was treated in accordance with law and rules on the subject. He further contended that appellant is a civil servant whereas transfer/posting of



a civil servant comes within the purview of terms and conditions of services. A civil servant is to serve where he is posted by the competent authority. The competent authority has been empowered by Section 10 of Civil Servant Act 1973 to transfer and post a civil servant in exigency of service. Lastly he submitted that in view of the spouse policy coupled with the request of the Principal, a summary for retaining the appellant has been moved, which will attain finality shortly.

6. Perusal of record reveals that appellant is serving as Associate Professor of Economics in Government College, Peshawar. He was transferred and adjusted against the vacant post at Government Post Graduate College, Charsadda vide impugned notification dated 27.04.2023. Appellant challenged his transfer/posting order on the ground of being in violation of spouse policy i.e. wife of the appellant Mst. Yasmeen Bibi is performing her duties and serving at Peshawar as Physical Education Teacher (P.E.T) BPS-15 at GGMS Hazarkhwani No. 2 Peshawar. Factum of serving appellant's wife at Peshawar is not denied by the respondent. Government has issued transfer/posting policy wherein there is a specific provision in the shape of clause-ix regarding spouse-posting at one station. The said provision says;

“Regarding the posting of husband/wife, both in provincial services, efforts where possible would be made to post such persons at one station subject to the public interest.”

7. It is also not out of place to mention here that appellant is the only senior member of the institute and is looking after affairs of the BS (Economics) Research students, that is why Principal put forward his request to the respondent for retaining the services of the appellant at Peshawar by cancelling impugned order because education of the students will suffer. As

non availability of suitable professor for Economics would cause damage and loss. therefore, in our humble view, future of the students secured by retaining the appellant at Peshawar. Respondent No.2 moved summary to competent authority to allow the appellant to stay at Peshawar. Factum of sending summary by the respondent No.2 is admitted in the court by respondent. So in the circumstances when respondents themselves moved summary for retaining the appellant and allow him to stay at Peshawar, as his service is required here at Peshawar for the better future of the students who are supervised by the appellant, coupled with the factum of violation of spouse policy, respondents are directed to allow appellant to continue at Peshawar at Government College Peshawar till the approval of the summary. In view of the above, appeal in hand is disposed of. Costs shall follow the event. Consign.

8. *Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal on this 17th day of October, 2023.*


(FAREEHA PAUL)
Member (E)

*Kaleemullah


(RASHIDA BANO)
Member (J)