

Service Appeal No. 142/2015 filed by Mst. Alia Iqbal Vs. Government of Khyber Pakhtunkhwa through Secretary Elementary & Secondary Education, Peshawar & others decided on 18.10.2023 by Division Bench comprising of Mr. Kalim Arshad Khan, Chairman and Mr. Salah-ud-Din, Member (Judicial), Khyber Pakhtunkhwa Service Tribunal, Peshawar at Camp Court D.I.Khan.

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR AT CAMP COURT, D.I.KHAN.

BEFORE: **KALIM ARSHAD KHAN** ... CHAIRMAN
SALAH-UD-DIN ... MEMBER(Judicial)

Service Appeal No.142/2015

Date of presentation of Appeal.....20.02.2015
Date of Hearing.....18.10.2023
Date of Decision.....18.10.2023

Mst. Alia Iqbal Bibi, daughter of Sadiq Hussain, wife of Muhammad Subhan, resident of Mohalah Gariban, Dera Ismail Khan.Appellant

Versus

1. Government of Khyber Pakhtunkhwa through Secretary Elementary & Secondary Education, Peshawar.
2. Secretary Elementary & Secondary Education Khyber Pakhtunkhwa, Peshawar.
3. District Education Officer (Female), Elementary & Secondary Education, Dera Ismail Khan/the then Executive District Officer, Elementary & Secondary Education, Dera Ismail Khan.....(Respondents)

Present:

Mr. Ahmad Ali, Advocate.....For the appellant
Mr. Asad Ali Khan, Assistant Advocate GeneralFor respondents

SERVICE APPEAL U/S 4 OF THE KHYBER
PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974,
AGAINST THE ANTEDATED TERMINATION LETTER
NO.1520-1602 SHOWING DATE 08.02.2012 ISSUED BY
THE EXECUTIVE DISTRICT OFFICER (ELEMENTARY
& SECONDARY EDUCATION) DERA ISMAIL KHAN.




JUDGMENT

KALIM ARSHAD KHAN CHAIRMAN: According to the memorandum and grounds of the appeal the Education Department announced vacancies of Certified Teachers (CT) in District D.I.Khan and the appellant allegedly applied for the same. That after appearing in the selection process, she was placed at Serial No.76 of the merit list; that the respondents allegedly made appointments below the merit which were challenged by the appellant through Writ Petition No.353/2005 in the Peshawar High Court; that in the meanwhile, similar nature writ petitions were decided and in the light of that decision, the appellant requested for withdrawal of her writ petition; that respondents again ignored the appellant for appointment, which act was again challenged by the appellant before the Peshawar High Court in Writ Petition No.22/2007; that the appellant was reinstated by the respondents vide order dated 01.02.2007 as CT Teacher (BPS-09); that after assumption of charge she started the duty and accordingly, was allowed BPS-14 and then BPS-15 on the basis of higher qualification; that as the grievance of the appellant had been redressed, therefore, she requested for withdrawal of the Writ Petition No.22/2007; that after passage of almost two years, the then DCO D.I.Khan vide order dated 04.09.2009 ordered the termination of the illegal appointees of Education Department whose appointments were made during January, 2007 to June, 2008, therefore, in compliance of the orders of DCO D.I.Khan, the appellant was enlisted in the said list of illegal appointees and accordingly was terminated; that the same termination was suspended by the Peshawar High Court in Writ Petition No.472/2009 and she started to perform her duty, but she was later on terminated from

Service Appeal No. 112/2015 titled Mst. Ahsan Iqbal Vs. Government of Khyber Pakhtunkhwa through Secretary Elementary & Secondary Education, Peshawar & others, declared on 15.11.2023 by Division Bench comprising of Mr. Kadun Arshad Khan, Chairman, and Mr. Salah-Ud-Din, Member Judicial, Khyber Pakhtunkhwa Service Tribunal, Peshawar at Camp Court, D.I.Khan.

service as the said writ petition was dismissed with direction to the appellant to approach proper forum; that the appellant preferred Service Appeal No.1813/2010 before the Tribunal which was accepted and held the termination letter of the then DCO and EDO as void and remanded the case to the Secretary Education for reconsideration of the case of the appellant but the appellant was not reinstated in service; that the appellant filed Writ Petition No.238 of 2012 before the Peshawar High Court for implementation of the judgment of the Tribunal; that the said writ petition was dismissed being not pressed; that the appellant filed execution petition before the Tribunal for the implementation of the judgment dated 27.10.2011 and on 25.09.2014 when the execution petition was fixed for filing of reply, the respondents submitted an order dated 08.02.2012, by terminating the appellant from back date.

2. Feeling aggrieved, the appellant filed departmental appeal on 23.10.2014 but the same was not responded. Therefore, she filed the instant service appeal.
3. On receipt of the appeal and its admission to full hearing, the respondents were summoned, who put appearance and contested the appeal by filing written reply raising therein numerous legal and factual objections. The defense setup was a total denial of the claim of the appellant.
4. We have heard learned counsel for the appellant, learned Assistant Advocate General for the respondents and also sought assistance of the District Education Officer (Female) D.I.Khan.
5. The learned counsel for the appellant reiterated the facts and grounds detailed in the memo and grounds of the appeal while the learned Assistant



Service Appeal No. 142/2015 titled "Mst. Alta Iqbal Vs. Government of Khyber Pakhtunkhwa through Secretary Elementary & Secondary Education, Peshawar & others decided on 18.10.2023 by Division Bench comprising of Mr. Kalim Arshad Khan, Chairman, and Mr. Satoh-Ul-Din, Member Judicial, Khyber Pakhtunkhwa Service Tribunal, Peshawar at Camp Court, D.I.Khan.

Advocate General controverted the same by supporting the impugned order(s).

6. From the record, it is evident that after admission of appeal, when the respondents were put on notice for submission of reply, they submitted reply and in Para-2 of the reply to the facts, they had clearly denied the very appointment of the appellant.

7. On 20.03.2023, the following order sheet was passed:

1. Learned counsel for the appellant present. Mr. Muhammad Jan, District Attorney present. Respondent No.4 (District Education Officer (Female) D.I.Khan) in person present and is directed to produce merit list, minutes of the meeting of Departmental Selection Committee and appointment order made as a result of selection in the year 2003, by tomorrow i.e. 21.03.2023.

2. Adjourned to 21.03.2023 for record/hearing before D.B at Camp Court, D.I.Khan. P.P given to the parties.

8. On 21.03.2023 the following order sheet was passed by the Tribunal:

"Learned counsel for the appellant present. Mr. Muhammad Jan, District Attorney for the respondents present. The matter was heard at great length yesterday as well as today. Yesterday, we directed the DEO (F) D.I.Khan to produce merit list, minutes of the meeting of Departmental Selection Committee and appointment order made as a result of selection in the year 2003 but the DEO (F) DIK could not produce a single document nor any explanation has been made. In order to reach just and proper conclusion of the matter we direct all the respondents through the learned District Attorney to produce entire record of the selection process initiated in response to the advertisement made in the year 2003 right from the advertisement to the final selection process of 2003. We further direct that the respondents shall also produce the appointment order of the appellant which they admit in their reply to have been made somewhere in the year 2007, the date of which has allegedly not been correctly mentioned in the enquiry report page-113 of the appeal file. A detailed report shall also be submitted by the respondents, particularly respondent No.4, to clearly verify the fact whether the appointment order, of the appellant made somewhere in the year 2007, was as a consequence of the advertisement of the selection process of 2003 or else. The matter be listed before a bench of which either of us is a part. To come up on 09.05.2023 before D.B at principal Seat, Peshawar. P.P given to the parties."

9. In compliance Tribunal directed the respondents for submission of entire record of the appellant, they submitted a report in shape of Preliminary Objection, and in the said report, they in Para-02, again confirmed the bogus appointment of the appellant. Para-02 of the said report is as under:

"2. That, the appointment order, addendum order and other orders related to appointment, annexed with this appeal are bogus, forged and counterfeited, without legal entity and any lawful authority."

10. Another statement was also submitted by the DEO (F) D.I.Khan. The relevant paragraphs of the said statement are as under:

"3. That, the appointment order, addendum order and other orders related to appointment, annexed with this appeal are bogus, forged and counterfeited, without legal entity and any lawful authority. That the same has already been decided after thorough investigation through the Inquiry Committee constituted in the light of the judgment dated 27.10.2011, of this Honourable Tribunal in SA No.1407/2010.

4. That the appellant is concocting and fabricating his story of appointment without any legal footings and is wrongly tracing it back to the 2003 advertisement, whereas, she has obtained her appointment in or 2007, with a fake order as investigated by the Inquiry Committee that was constituted in light of Judgment dated 27.10.2011, of this Tribunal in SA No.1407/2010.

5. That in compliance to the order of this Tribunal passed in SA No.1407/2010 titled Abdul Salam Vs. Government of Khyber Pakhtunkhwa, the appellant has already been served the final order No.1520-1602, dated 08.02.2012, after providing a satisfying opportunity of hearing to prove cogence of her appointment, though she could not prove her service based on legal footings and natural law of justice.

6. That, the appellant is one of the 1613 teachers' case – illegal, bogus and fake, who were appointed without any advertisement, hence, their service was duly terminated either in general or specially through an omnibus Termination Order by the competent Authority, the EDO E&SE, D.I.Khan vide order dated 08.02.2012, alongwith almost 1613 teachers.

7. That, the present service appeal is not maintainable in its present form in jurisdiction of this Tribunal, is barred by Section 23 of the Khyber Pakhtunkhwa Service Tribunal Rules, 1974, according to which, the Tribunal shall not entertain any appeal in

which the matter directly or indirectly has already been finally decided by a Tribunal of the competent jurisdiction.

8. **That, the appellant has got no cause of action or locus standi to file the instant appeal. Especially, when there is provision for Review under Rule 3 of the Appeal Rules, 1986.**

9. **That, in fact, the EDO (Schools & Literacy) advertised vacant posts of PST and other cadre on 07.04.2007 after completion of procedural formalities for only PST cadre, the 309 male and 131 female PSTs were appointed on merit under joint appointment No.12655-973 dated 02.07.2007. Whereas, name of the appellant does not reflect in the same appointment order, hence, is illegal, under the recommendations of the Committee constituted in light of direction of this Tribunal. In fact, the Provincial Assembly constituted a Committee No.26 for Elementary and Secondary Education Department, dated 20.08.2008, which scrutinized all the appointments record of the year 2007-8 and concluded that all the illegal appointees during the period 01.01.2007 to 30.06.2008 shall be terminated from services, except 309 male PSTs and 131 female PSTs appointed vide order No.12655-973 dated 02.07.2007.**

11. Today i.e. 18.10.2023, the District Education Officer (Female)

D.I.Khan appeared before the Tribunal and produced following order:

"OFFICE ORDER

In compliance to the order passed in SA No.142 of 2015. Mst. Alia Iqbal, vs Secretary Edu by the Honourable Khyber Pakhtunkhwa Service Tribunal dated 21.03.2023, reached to this office dated 06.05.2023 vide Diary No.1939, and as the search has already been started vide undersigned verbal orders, to dig out the Original Record including

1. **Merit Lists of 2003 CT appointments,**
2. **Minutes of the meeting of Departmental Selection Committee of 2003 CT appointments,**
3. **Appointment Orders made as a result of Selection in 2003.**

Therefore, once again the following Searching Committee is hereby ordered in writing to search the above mentioned record for submission to the Honourable Tribunal before the next date of hearing, 21.06.2023.

In case of failure, you are directed to submit a signed on oath report mentioning therein the search positing/situation for onward submission to the Honourable Tribunal without any fail.

1.	Mr. Shuaib Sultan, Supdt: at Office of the DEO (Female) D.I.Khan	Chairman
2.	Mr. Jamshed, Senior Clerk at the	Member

Service Appeal No. 142-2015 titled "Mst. Alia Iqba Vs. Government of Khyber Pakhtunkhwa through Secretary Elementary & Secondary Education, Peshawar & others, declared on 18.10.2023 by Division Bench comprising of Mr. Kalim Arshad Khan, Chairman, and Mr. Salah-Ud-Din, Member Judicial, Khyber Pakhtunkhwa Service Tribunal, Peshawar at Camp Court, D.I.Khan.

	Office of the DEO (Female) DIKhan	
3.	Mr. Rashid, Junior Clerk at the Office of the DEO (Female) DIKhan	Member
4.	Mr. Javed, Naib Qasid at the Office of the DEO (Female) DIKhan	Helper
5.	Mr. Umair, Naib Qasid, at the Office of the DEO (Female) DIKhan	Helper
6.	Mr. Ruman, Naib Qasid, at the Office of the DEO (Female) DIKhan"	Helper

12. The above mentioned officials also submitted a report, which was produced before the Tribunal that is as under:

"Subject: REPORT OF SEARCHING OF THE OFFICE RECORD OF CT APPOINTMENTS 2003.

In compliance to your office order No.7316-23 dated 19.05.2023, passed in compliance with the order of the Honourable Khyber Pakhtunkhwa Service Tribunal in Service Appeal No.142 of 2015, Mst. Alia Iqbal, Vs Secretary Edu, dated 21.03.2023, reached to this office dated 06.05.2023 vide Diary No.1939, and as the search has already been started vide your verbal orders, to dig out the Original record including:

1. Merit Lists of 2003 CT appointments,
2. Minutes of the meeting of Departmental Selection Committee of 2003 CT appointments,
3. Appointment Orders made as a result of Selection in 2003.

Therefore, it is reported that on oath that none of the above mentioned record has yet been found.

1.	Mr. Shuaib Sultan, Supdt: at Office of the DEO (Female) D.I.Khan	Chairman	Signature
2.	Mr. Jamshed, Senior Clerk at the Office of the DEO (Female) DIKhan	Member	Signature
3.	Mr. Rashid, Junior Clerk at the Office of	Member	Signature

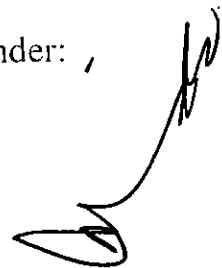
	<i>the DEO (Female) DIKhan</i>		
4.	<i>Mr. Javed, Naib Qasid at the Office of the DEO (Female) DIKhan</i>	<i>Helper</i>	<i>Signature</i>
5.	<i>Mr. Umair, Naib Qasid, at the Office of the DEO (Female) DIKhan</i>	<i>Helper</i>	<i>Signature</i>
6.	<i>Mr. Ruman, Naib Qasid, at the Office of the DEO (Female) DIKhan</i>	<i>Helper</i>	<i>Signature</i>

13. She also submitted in writing in her hand a statement declaring the order of appointment of the appellant shown to have been issued on 01.02.2007 and addendum dated 27.02.2007, both as forged. The appointment order is as under:

"APPOINTMENT ORDER

Consequent upon the approval of Selection Committee and approved by the District Co-ordination Officer, D.I.Khan, the following female is hereby appointed against vacant post of CT in the school noted against her name in BPS-09 plus usual allowances being a qualified, fresh candidate as per existing policy in the interest of public service w.e.from the date of taking over charge S.No.1, Name of Candidate: Alia Iqbal Bibi daughter of Sadiq Hussain R/O Moh: Wakeelanwala, D.I.Khan."

The Addendum of 28.02.2007 is as under: ,



"ADDENDUM

As the appointment of Mrs. Alia Iqbal d/o Sadiq Hussain was made by admitting her claim in Writ Petition filed before the Honourable Peshawar High Court Bench D.I.Khan and keeping in view her legal struggle since 2005 because she was very much eligible, therefore, an addendum is issued and it is hereby added in the said appointment order 'The appointment is made in response to the Writ Petition No.22 of 2007 and her claim in the Writ Petition is admitted'"

14. The handwritten statement of the District Education Officer (Female) D.I.Khan is reproduced below:

"i. The worthy order dated 10.04.2007 in W.P No.22-D/2007 does, in no words, directs this humble respondent to appoint this appellant.

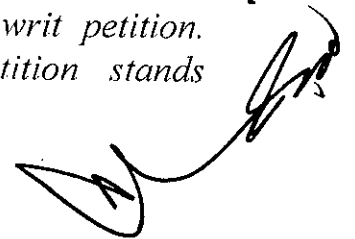
ii. That the orders produced before this Honourable Tribunal dated 01.02.2007 are both forged and are hereby denied.

iii. That the first appointment order of this appellant was of the same stereotype as that of 1613, illegal appointments made in the period 01.01.2007 to 30.06.2008, without following codal formalities, merit criteria and/or other needs of the natural Law of Justice"

15. The DEO has contended that the order dated 10.04.2007 passed by the Peshawar High Court in Writ Petition No.22-D/2007 did not direct the respondents to appoint the appellant. The certified copy of order dated 10.04.2007 in Writ Petition NO.222-D/2007 is found placed on file which reads as under:

"Mr. Abdul Qayyum Qureshi, Advocate for the petitioner present.

States that grievance of the petitioner has been redressed, therefore, he may be allowed to withdraw the writ petition. C.M.No.62/2007 is allowed and the writ petition stands dismissed as withdrawn."



16. The above order shows that writ petition was withdrawn of her own by the appellant on the statement of her counsel that grievance of the petitioner had been redressed. The reply, the reports submitted by the respondents from time to time and the statement of the DEO, all declared the appointment order dated 01.02.2007 and addendum of 28.02.2007, both as forged denying the same. The handwritten statement of the DEO appears to us to be true because if we see the addendum in juxtaposition with the order sheet dated 10.04.2007 of the Peshawar High Court in Writ Petition No.22-D/2007, it would transpire that there was no need for issuing any addendum and that too, the one in the shape, the appellant has produced and relied upon. If we see the contents of the addendum, those, as framed, appear to be a complete cognovit of the claim of the appellant. It is strange to note that instead of admitting the claim of the appellant in the writ petition, the same is shown to have been admitted in the addendum. The order of appointment dated 01.02.2007 and the addendum dated 28.02.2007 were not placed before the Peshawar High Court on 10.04.2007 when the appellant had withdrawn the petition. We may also add that when once the appellant believes that her appointment order dated 01.02.2007 was valid and was as a result of proper selection process in response to some advertisement, then there was nothing left to be further justified in the shape of addendum by also stating therein that the appellant was very much eligible.

17. Last but not the least, the DEO (Female) D.I.Khan stated in writing that the appointment order of the appellant was the same stereotype and that of 1613 illegal appointments made in the period from

Service Appeal No. 142/2015 titled "Mst. Afsana Vs. Government of Khyber Pakhtunkhwa through Secretary Elementary & Secondary Education, Peshawar & others, declared on 18/10/2023 by Division Bench comprising of Mr. Kalim Arshad Khan, Chairman and Mr. Salah-Ud-Din, Member Judicial, Khyber Pakhtunkhwa Service Tribunal, Peshawar at Camp Court, D.I Khan.

01.01.2007 to 30.06.2008 without following codal formalities, merit criteria and/or needs of the natural law and justice. It seems that the appellant has tried to separate her case from the case of 1613 illegal appointees and to link it with the selection process of 2003 but she could not prove through documentary evidence that she was appointed as a result of selection process of 2003 or her alleged appointment made on 01.02.2007 was as a consequence of her alleged selection made in the year 2003. It was incumbent upon the appellant to have placed on record sufficient, cogent and concrete documentary evidence, which could have clearly shown that her appointment, though, made on 01.02.2007, was still not amongst the 1613 appointments and she had been appointed in pursuance of the selection process of 2003.

18. The appointment order dated 01.02.2007 and addendum dated 28.02.2007 have been declared to be forged by the DEO (Male) D.I.Khan, in her written statement, therefore, instant service appeal has no merit and is dismissed. Consign.

19. *Pronounced in open Court at D.I.Khan and given under our hands and the seal of the Tribunal on this 18th day of October, 2023.*



KALIM ARSHAD KHAN
Chairman



SALAH-UD-DIN
Member (Judicial)

Mutazem Shah