

30.11.2023

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR

3958
13/11/23

Service Appeal No.1714/2023

Alia Ghafoor D/O Ghafoor Gul Resident of Mohallah Gojran, Bazargai, Tehsil Lahor

District Swabi **Appellant**

VERSUS

1. Govt: of Khyber Pakhtunkhwa, Through Secretary E&SE Department, Civil Secretariat, Peshawar.
2. Secretary E&SE Department, Civil Secretariat, Peshawar.
3. Director Elementary and Secondary Education Khyber Pakhtunkhwa, Peshawar.
4. Deputy Director (Female) Elementary and Secondary Education Khyber Pakhtunkhwa Peshawar.
5. District Education Officer (Female) Swabi..... **Respondents**
6. District Accounts Officer Swabi

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**DISTRICT EDUCATION OFFICER
(FEMALE) SWABI**

District Education Officer
(Female) Swabi

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR

Service Appeal No.1714/2023

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District Swabi **Appellant**

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2. Secretary E&SE Department, Civil Secretariat, Peshawar.
3. Director Elementary and Secondary Education Khyber Pakhtunkhwa, Peshawar.
4. Deputy Director (Female) Elementary and Secondary Education Khyber Pakhtunkhwa Peshawar.
5. District Education Officer (Female) Swabi..... **Respondents**
6. District Accounts Officer Swabi

PARA WISE COMMENTS ON BEHALF OF THE RESPONDENTS No. 1 TO 6

Respectfully Sheweth,

PRELIMINARY OBJECTIONS.

1. That the appellant has impugned the judgement order dated 13.12.2017 at the belated stage that is in 2023, which is hit by the principle of laches, hence the appeal is not maintainable.
2. That the departmental appeal as well as the service appeal is badly barred by time, hence not maintainable.
3. That the departmental appeal rejection notification dated 18/07/2023 is not impugned anywhere in the memo of appeal, hence ~~not~~ the appeal is not maintainable.
4. That the service appeal is wrong, baseless and not maintainable, it shows no strong cause to be taken for adjudication, therefore, the same service appeal is liable to be rejected/ dismissed.
5. That the service appeal is unjustifiable, baseless, false, frivolous and vexatious. Hence the same is liable to be dismissed with the order of special compensatory cost in favour of respondents.
6. That no constitutional or legal right of the appellant has been violated, therefore, the appellant is not entitled to invoke the constitutional jurisdiction of this honorable Service Tribunal under Article 212 of the constitution of Pakistan.
7. That the appellant has not come to the Court/Tribunal with clean hands.
8. That the appellant has concealed the material facts from this Honorable Tribunal.
9. That the appeal is bad for misjoinder and non-joinder of the necessary party.
10. That the appellant has filed the instant appeal just to pressurize the respondents.
11. That the appellant has no cause of action to file the instant appeal.
12. That the appeal is not maintainable in the eye of law.
13. That the instant appeal is not maintainable in the present form and also in the present circumstances of the issue.


**District Education Officer
(Female) Swabi**

Facts:

1. That para relates to the residence of the appellant, which does not create any right of back benefit in favour of the appellant, hence needs no comments.
2. That the para relates to the academic and professional qualification of the appellant, on the basis of which, she is performing her duty as PST. It does not create any right of back benefit in favour of the appellant, hence needs no comments.
3. That the PST is a District cadre post and appointment is made on Union Council base, thus the appointment of the appellant at District Kohistan is highly objectionable. Furthermore, the appointment was made without adopting any procedure, required for recruitment of PST. The departmental selection committee (DSC) did not recommend the appellant for recruitment against the PST post. The stance of the appellant is false, baseless, vexatious, surmise, contemptuous and ludicrous.
4. That after transfer from District Kohistan to District Swabi, the department conduct an enquiry against the appellant on the recommendation of enquiry report she was removed from service on 22/10/2015. Inquiry report, cancellation of transfer order, removal from service order, 2017 PLC (C.S) 177, and service tribunal judgement dated 18-02-2020. **Annexed as A, B, C, D, and E.**
5. That taking over charge merely a part of accounting procedure not a step that could confer any vested right on the civil servant in the context neither of her appointment nor for that it could validate any illegal order. As for as the performance of her duty whole heartedly and to the entire satisfaction of her superiors is concerned it will best known to the District Kohistan. This office has no such information about the appellant. Furthermore, the District Education Officer Female Kohistan is not arrayed as respondent in the list of respondent.
6. That the appellant was removed from service on 22/10/2015 after conducting enquiry against the appellant, who declared her appointment order fake and bogus. Hence needs no further comments.
7. That the appellant herself admits, she filed service appeal No. 252/2016 against removal order dated 22/10/2015, which was disposed off with the direction," consequently the present appeal is accepted and the department is directed to hold regular enquiry against the appellant within a period of 90 days from the date of receipt of this judgment, failing which the petitioner shall be re-instated into service," there is nothing about her back benefit in the judgment. As per FR 54 (b) it is the discretionary power of the appellate authority to allow back benefit or otherwise, the Director E&SE Khyber Pakhtunkhwa, was the appellate authority in this particular case reinstated her without any back benefit. The appellant took over charge without any hesitation, thus the re-instatement without back benefits gained finality. It is illogical and immoral to re-open the case after lapse of about more than five years. It is badly barred by time and hit by the doctrine of laches. Each case has its own merit. As for as the Ruqia Begum is concerned, her case is quite different than the appellant. She challenged the said judgment and through new judgment, she gained the benefit. The judgment of the appellant is still in field, its implementation is also in the field and the appellant did not present any judgment, through which her reinstatement order would modify, thus she does not deserve any relief. **Departmental appeal rejection letter annexed as F.**
8. That the appellate authority did it as per mandate of FR 54 (b), therefore, the said order is legal in accordance with law and fact. The said order gained

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12/02/2020
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finality; therefore, the appellant has no right to re-open the past and close transaction at the belated stage.

9. Admitted, hence needs no comments.
10. That the para does not relate to the appellant hence needs no comments.
11. As replied in above paras.
12. That the judgment in question is in persona and not in rem therefore, the said relief cannot be extended to the appellant. It is a settled law that delegated legislation cannot be given retrospective effect.

If statute or rule which given right to the citizens, always operates retrospectively, is accepted, it would tantamount to open a floodgate for all other similarly placed persons. Reliance is placed on 2021 SCMR 1246 & PLD SC 315. Each case has its own merit.

13. That the appellant took over charge happily without any hesitation with the condition that the intervening period is treated as Extra Ordinary Leave (EOL), as per mandate of FR 54 (b), therefore the appellant is not an aggrieved person at all. The order dated 28/08/2019 passed by the Director Elementary & Secondary Education Khyber Pakhtunkhwa and adjustment order dated 04/09/2019 passed by DEO (F) Swabi gained finality. It is illogical, immoral and irrational to re-open it after a lapse of more than 04 years. It is badly barred by time and hit by the doctrine of laches, therefore, the appellant has no locus standi/cause of action to approach the appellate authority and the departmental appeal is liable to be rejected/ dismissed on the above facts and circumstances. The appellant bluntly confesses that she filed ~~two~~ departmental appeals date 13/02/2023 one addressed to secretary E&SED and the other addressed to Director E&SE duly dispatched through registered post by claiming the benefit of judgement dated 22/11/2022. Thus she has violated section 4 of service tribunal ACT, 1974. She filed a time barred departmental appeal on 14/03/2023 against the judgement dated 22/11/2022, hence the service appeal is also time barred. Furthermore, she filed WP No.1402-P/2023 on the same grounds, which was converted into departmental representation with direction to respondent No.3 to decide the departmental appeal of the petitioner strictly in accordance with law dated 26/04/2023. Respondent No.3 regretted the appeal of the petitioner in the interest of public service, which is not impugned anywhere in the whole memo of appeal.
14. That the director E&SE, being the appellate authority, consulting with relevant law, rules, policy regretted the appeal of the petitioner in the interest of public service.
15. That the respondent No.3 Director E&SE KP regretted in public interest the departmental appeal of the petitioner/appellant, vide Directorate E&SE, Endst No.7668-70 dated Peshawar the 18/07/2023. Amazingly, this order is not impugned before this honorable tribunal, anywhere in the memo of appeal. Therefore, the appellant has no locus standi/cause of action to file the instant appeal and the appeal in hand is liable to be dismissed on the above facts and circumstances.

Grounds.

- A. Incorrect, hence denied. The removal from service was made on the recommendations of enquiry report. She was reinstated on technical grounds, therefore, as per plethora judgments of August Apex Court of Pakistan she is not entitled for any back benefits.

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DIRECTOR E&SE
PESHAWAR

- B. Incorrect, hence denied. The reinstatement was on technical grounds; therefore, she is not entitled for back benefits. Furthermore, there is nothing about the back benefit in the judgement of this honorable court.
- C. Incorrect, hence denied. The basic appointment order was fake but reinstated on technical grounds; therefore, she is not entitled for back benefits.
- D. Incorrect, hence denied. The appointment order was on back door.
- E. Incorrect, hence denied. The basic order was fake.
- F. Incorrect, hence denied. The said judgment is in persona.
- G. That the judgment is in persona.
- H. Incorrect, hence denied. The said judgment is not in rem, therefore, the appellant cannot gain any benefit on the basis of that judgment. Moreover, the case was pursued by the DEO (F) Kohistan for further detail please contact DEO(F) Kohistan. Amazingly DEO Female Kohistan is not arrayed as respondent in the list of respondents.
- I. That each case has its own merit.
- J. That the appellant herself admits the said order was as per mandate of FR 54 (b), hence needs no comments. This order was not challenged by the appellant.
- K. That the case of the appellant does not fall under 1996 SCMR 1185 and 2009 SCMR
 The judgment of the Tribunal was in persona and not in rem.
- L. That the appellant misconceives the matter, hence she is not entitled for any relief.
- M. That the appellant appointment order was fake but she was reinstated on technical grounds, therefore, she is not entitled for any relief.
- N. That the judgment of Ruqiya was in persona and not in rem. Therefore, the appellant is not entitled for back benefits at all.
- O. That the respondents seek permission to raise/argue other points/grounds on the day of hearing the case.

In view of the above stated submissions, it is earnestly requested that the appeal in hand may very graciously be dismissed with special compensatory cost in favour of the respondents.

Mutabim Bilal Shah
 Secretary E&SE Department
 Govt: of Khyber Pakhtunkhwa

SECRETARY
 Elementary & Secondary Edu. Deptt
 Government of Khyber Pakhtunkhwa.

Suzayyq
 Deputy Director Female
 E&SE Peshawar
 Respondent No.4

Deputy Director Estab. (Female)
 Elementary & Secondary Education
 Khyber Pakhtunkhwa

Respondent No: 6
 DISTRICT ACCOUNTS OFFICER
 SWABI
 Sultan Saad

Dr. Muhammad Iqbal
 Director Elementary & Secondary Education
 Khyber Pakhtunkhwa, Peshawar

Respondent No.3
 Director
 Elementary & Secondary Education
 Khyber Pakhtunkhwa Peshawar

Sofia Tabassum
 District Education Officer
 (Female) Swabi
 Respondent No.5

District Education Officer
 (Female) Swabi

Affidavit

I, Sofia Tabassum DEO(F) Swabi do hereby solemnly affirm and declare on oath that the contents of the better comments submitted by respondents are true and correct to the best of my knowledge and belief and nothing has been concealed from this Honourable Tribunal.

It is further, stated on oath that in this appeal the answering respondents have neither been placed ex-parte nor has their defense been struck off.

SOFIA TABASSUM
 DISTRICT EDUCATION OFFICER
 FEMALE SWABI

AKBAR ALI ADVOCATE
 Oath
 Commissioner
 NO. 22 DATE 07-02-27

District Education Officer
 (Female) Swabi

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- Mst Alia Ghafoor PST:**
- Mst Alia Ghafoor D/O Ghafoor Gul R/O of District Swabi was appointed as pst at GGPS Kass Banda Vide appointment order Issued Endstt No.3189-94 dated 31.07.2009 and took over the charge on the same day.
 - She was again adjusted at GGPS Yanjool w.e.f 01-03-2011 vide EDO E&SE Kohistan No.741-49 dated 22-04-2011.
 - The source I for the release of pay was verified from District Accounts Office Kohistan in the M/O 5/2011 along with the adjustment of arrear of pay for the M/O 3-4/2011.
 - It mean that she could not get salary from date of appointment to 02/2011 (19 months) that indicate that she was appointed without the availability of post and on the availability of post she was adjusted in at GGPS Yanjool.
 - She was appointed only on pick and chooses method.
 - She was appointed on single hand written application.

- Mst Ruqia PST:**
- Mst Ruqia Begum D/O Mustafa Gul R/O of District Swabi was appointed as pst at GGPS Kass Banda Vide appointment order issued Endstt No.3189-94 dated 31.07.2009 and took over the charge on the same day.
 - After taking over charge she was again adjusted at GGPS Dassu w.e.f 01-03-2011 vide EDO E&SE Kohistan No.741-49 dated 22-04-2011.
 - The source I for the release of pay was verified from District Accounts Office Kohistan in the M/O 5/2011 along with the adjustment of arrear of pay for the M/O 3-4/2011 it mean that she could not get salary from date of appointment to 02/2011 (19 months) that indicate that she was appointed without the availability of post she was adjusted at GGPS Dassu.
 - She was appointed only on pick and chooses method.
 - She was appointed on single hand written application.

- Mst Sara PST:**
- Mst Sara Begum D/O Fazal Yazdan R/O Mardan (Swabi) was appointed as PST GGPS Kundal vide DEO (F) Kohistan appointment order issued under Endst No.827-33 dated 2/2/1996 being SSC and PTC and as per entry in the service book she took over the charge on 3/2/1996.
 - As per entry in the service book the pay of the said teacher was released vide DEO (F) Letter No. 6071-73 dated 12/10/2010 in the period w.e.f. 01/12/2006 to 3/4/2012 (41 Months) as treated as EOL without pay and the period w.e.f date of appointment 30/11/2006 is not trace able for the month of October 2010.
 - As per entry in the service book, the source I for the release of salary was verified from District Accounts Office for the month of 11/2010, the pay of the teacher for the period 1/5/2010 to 31/10/2010 has already been drawn.
 - She was appointed on 2/2/1996 and got the salary w.e.f 1/5/2010, that indicates that she remained without salary from 2/2/1996 to 30/4/2010 (14 years & 3 Months)
 - It id astonishing that how the appointment is valid.
 - She was appointed only on pick and chooses method.
 - She was appointed on single hand written application.

- Mst Khus Numa PST:**
- Mst Khush Numa D/O Khurshid Ahmad R/O Swabi was appointed as PST at GGPS Dobair Village being only SSC Vide appointment order issued under Endst No.539-44 dated Kohistan 2/12/2009 and she took over the charge in the school on 3/12/2009.
 - She was again adjusted at GGCMS Jijal vide adjustment order issued under Endst No. 8004-6 dated 19/10/2010 at serial No. 13 of the order.
 - As per entry in the service book the source I for the release of salary was verified from District Accounts Office for the month of 11/2010.

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 District Education Officer
 (Female) Swabi

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- d. She was appointed being low academic qualification.
 - e. She was transferred from Kohistan on 8/1/2011 and she got the salary for only 2 month from Kohistan.
 - h. She was appointed only on pick and chooses method.
 - i. She was appointed on single hand written application.
 - vii. **Mst Mussarat Bibi PST:**
 - a. Mst Mussarat Bibi D/O Hazrat Wali was appointed as PST at GGPS Badar Shaha vide appointment order issued Endst No.1135-40 dated 1/2/1996 w.e.f 1/5/1996.the order was issued in advance and as per entry in the service book she took over the charge on 1/5/1996.
 - b. She was appointed being only SSC with 342/850 marks less than 40% in 3rd division. She was appointed on simple hand written application without merit list and without other coddles formalities.
 - c. She was appointed with a very low academic qualification.
 - e. She was appointed on simple hand writing application
 - f. She was appointed by pick and chooses method
 - g. No other record is available for further verifications
 - viii. **Mst.Nadia Qazi**
 - a. Mst.Nadia Qazi D/O Qazi Fazal Haq was appointed as PST GGPS bar Komila vide appointment order issued under End: No.8836-42 dated 07-12-2006
 - b. According to the merit list of Female candidates for the year 2006, she falls at S.No.28/06 being SSC.
 - c. She was appointed on simple hand writing application
 - d. She was appointed by pick and chooses method
 - e. No other record is available for further verifications.

The score of all these candidates has been changed/ inserted in pen writing and has been changed and the appointments were made randomly and disorderly.

Findings

1. The appointments were made without the availability of vacant post and the submission of charge reports is merely the paper work that is why the source I for the release of salary was verified after the issuance and adjustment in 2nd orders.
 2. The appointments were made with poor/ relaxed criteria with the intension to induct the candidates and leave out them from District Kohistan as soon as possible and the similar has been done.
 3. The appointments were made to use District Kohistan as a launching bad/ back door for accommodating academically poor candidates.
 4. The appointments were made on pick and choose policy.
 5. The appointments were s made in piece-meal by violating the rules.
- Photocopy of appointment orders, charge report, pages of service books and merit lists for the year 2006 and 2008 are attached here with as Annexure "A" & "B".

Recommendations.

- After perusal of available record, facts and findings, the following recommendations are made.
1. The appointments are illegal and irregular and against the recruitment rules / policy, the appointing authority could not absolve himself from the responsibilities hence departmental proceeding/ legal action may be initiated against the appointing authority.
 2. The appointments of above mention teachers are illegal and irregular hence liable to be withdrawn / cancelled / terminated.

Riasat Khan
District Education Officer
(Male) Kohistan

District Education Officer
(Female) Swabi

21/1/14

21/1/2020

**OFFICE OF THE DIRECTOR OF ELEMENTARY & SECONDARY
EDUCATION KHYBER PAKHTUNKHWA, PESHAWAR**

NOTIFICATION

The transfer orders of the following teachers from District Kohistan to District Swabi issued vide this office Endst.No. detail given below are hereby withdrawn due to their illegal and irregular appointments as per report of the inquiry officer vide letter No.02 dated 2-12-2014.

S.N o.	Name of Teacher	From District Kohistan	To District Swabi	Endst.No.
1.	Alia Ghafoor PST	GGPS Banjar Yanjool	GGPS Battai No.2	Endst.No.2511-15 dated 19-10-2011
2.	Ruqia PST	GGPS Mada Khel	GGPS Haryan Banda	Et.No.2511-15 dated 19-10-2011
3.	Nuzhat PST	GGPS Banjar Yanjool	GGPS Haryan Banda	Endst.No.2527-31 dated 24-11-2010
4.	Khushnama PST	GGCMS Jijal Kohistan	GGPS Hayatabad	Endst.No.985-90 dated 08-01-2011
5.	Nazia Qazi PST	GGPS Bar Komila	GGPS Razi Bahadar Koti	Endst.No.4980-85 dated 20-09-2011
6.	Sara PST	GGPS Saglo	GGPS Aala Dher Dhala 449A	E.No.1599-1605 dated 15-02-2011
7.	Mussarat PST	GGPS Samad Abad Sao	GGPS Palosai	Endst.No.7490-95 dated 27-09-2008
8.	Aneela PST	GGPS Koz	GGPS No.1 Dheri Gandaf	Endst.No.505-10 dated 08-10-2010

Director
Elementary & Secondary Education
Khyber Pakhtunkhwa,

Endst. No. 3827-39 /F.No.20/(F)Enquiry dated Peshawar the 22/10/2015

Copy to the:-

1. District Account Officer, Swabi & Kohistan
2. District Officer (Female) Swabi & Kohistan.
3. Teacher Concerned.
4. P.A to Director Local Office

Deputy Director (Female)
(E&SE) Khyber Pakhtunkhwa,

noted on
12/11/2015
notify to All
ASDEOS concern.

12/11/2015

OFFICE OF THE DISTRICT EDUCATION OFFICER (FEMALE) SWABI.

Endst: No. 3090-4/DA-I (Estab) Dated Swabi the 12/11/2015

Copy of the above is forwarded for information and strict compliance to the:-

1. Sub-Divisional Education Officer (Female) Lahor, Swabi and Topi.
2. District Accounts Officer, Swabi.

DISTRICT EDUCATION OFFICER
(FEMALE) SWABI.

OFFICE OF THE SUB DIVISIONAL EDUCATION OFFICER FEMALE LAHOR

Endst.No: 1479-80 Dated lahor the: 16/11/2015

Copy of the above is forwarded for information and strict compliance to the:-

1. District Education Officer Female Swabi w/ to her Endst. refer to above.
2. All concerned teacher from SNO: 1 to 6.

16/11/2015



Annexure - C
 Annexure - C
 Annexure - 10
 "F"
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OFFICE OF THE DISTRICT EDUCATION OFFICER, (F) KOHISTAN.

Ph: & Fax No. 0998407225

OFFICE ORDER..

In compliance with the Director, Elementary & Secondary Education Khyber Pakhtunkhwa Peshawar letter No. 3081/F.No.20 (F) enquiry dated 16/03/2015, Reminder No. 2200/F No.20/(F) enquiry dated 20/04/2015, No. 3530/ F No.20/(F) enquiry dated 22/05/2015, and No.3696/F No.20/(F) enquiry Dated 24/08/2015. and In light of recommendation of enquiry officer, the following PST teachers are hereby removed from service with immediate effect.

S/NO	Name	School
1	Nuzhat PST	GGPS Kas banda
2	Nazia Qazi PST	GGPS Bar komila
3	Alia Ghafoor	GGPS Kas banda
4	Ruqia PST	GGPS Kas banda
5	Sara PST	GGPS Kundal
6	Khushnuma PST	GGPS Dubair
7	Mussarat bibi PST	GGPS Badar shaha

District Education Officer
 (Female) Kohistan

E/No, /Estab: 7/12-12 /DEO (F) KH: dated 22-11/2015.

Copy of the above is forwarded to:

1. The Director, Elementary & Secondary Education, Khyber Pakhtunkhwa Peshawar.
2. The District Education Officer (F) District Swabi, for necessary action at her end as the above teachers are now posted in District Swabi.
3. The District Accounts Officer, Swabi.
4. The District Accounts Officer, Kohistan.
5. The Sub Divisional Education Officer (F) Kohistan.
6. Office record.

District Education Officer
 (Female) Kohistan

District Education Officer
 (Female) Swabi

21/11/2015

Attested to be
 True Copy
 District Education Officer
 (Female) Swabi

Annexure - D
Annexure - E

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Judgment

<http://www.plsbeta.com/LawOnline/law/content21.asp?CaseId=>

~~Annexure E~~

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2017 P L C (C.S.) 177

[Punjab Subordinate Judiciary Service Tribunal]

Before Mehmood Maqbool Bajwa, Chairman and Shahid Waheed, Member

MUHAMMAD ANAYET GONDAL

Versus

REGISTRAR, LAHORE HIGH COURT, LAHORE

S.A. No.11 of 2012 and C.M. No.1 of 2015, heard on 11th September, 2015.

Punjab Subordinate Judiciary Service Tribunal Act (XII of 1991)---

---S. 6---Civil Procedure Code (V of 1908), S.151---Judicial officer---Reinstatement by Service Tribunal---Execution petition for release of salaries and allowances i.e. back benefits---Contention of department was that the claim of back benefits of the applicant would be decided by the Authority after getting recommendations from the "Hearing Officer"---Validity---Service Tribunal had set aside the notification of dismissal of applicant due to certain infirmities in the procedure---Applicant had been reinstated in service without passing any order with regard to grant of back benefits---Back benefits were not granted to the applicant in circumstances---Applicant had not been acquitted of the charges but he was reinstated into service on technical ground---Applicant could not claim that he was entitled to the back benefits on his reinstatement into service---No direction for release of salaries, allowances and increments could be issued in the present case---Execution petition was dismissed in circumstances.

Syed Kamaluddin Ahmad v. Federal Service Tribunal and others 1992 SCMR 1348 rel.

Applicant in person.

Zubda Tul Hussain along with Taimoor Ali, Assistant Registrar Legislation and Litigation for Respondent.

Date of hearing: 11th September, 2015.

JUDGMENT

C.M. No.1 of 2015

This is an application under section 6 of The Punjab Subordinate Judiciary Service Tribunal Act, 1991 read with section 151, C.P.C. for issuance of direction to the respondent to release applicant's salaries, allowances, increments etc. with effect from 24.5.2012 by implementing/executing the judgment dated 16.01.2015 passed by this Tribunal in S.A. No.11 of 2012.

2. Briefly the facts of the case are that the disciplinary proceedings were initiated against the applicant, Muhammad Anayet Gondal, under The Punjab Civil Servants (Efficiency and Discipline) Rules, 1999 which culminated in the Notification dated 24.5.2012 whereby major penalty of dismissal from service was imposed upon the applicant. Feeling anguished, the applicant challenged the said notification through an appeal under Section 5 of The Punjab Subordinate Judiciary Service Tribunal Act, 1991 i.e. S.A No.11 of 2012 before this Tribunal. Due to some procedural flaws in the disciplinary proceedings the said appeal was accepted vide judgment dated 16.01.2015 in the following terms:

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02/10/2015
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03-Jun-20, 11:47 AM

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"In the sequel, while setting aside the impugned Notification dated 24.5.2012, this appeal is accepted and the Registrar of the Lahore High Court, Lahore is directed to place the matter before the Authority for granting reasonable time to the appellant for submitting reply to the final show cause notice dated 10.3.2012 and thereafter to take further steps as per relevant rules."

The applicant challenged the judgment of this Tribunal through CPLA. No.172 of 2015 before the Hon'ble Supreme Court of Pakistan. This petition was dismissed being without merit vide order dated 5.3.2015. Subsequently, in compliance with the judgment dated 16.1.2015 passed by this Tribunal the applicant was reinstated into service with immediate effect vide Notification No.53/RHC/CJJ, dated 27.3.2015. The applicant accordingly joined the duty on 1.4.2015. Now, the applicant has filed the present application with a prayer that a direction be issued to the respondent to release his salaries, allowances and increments, etc., that is, back benefits with effect from 24.5.2012.

3. The applicant, in person, submits that this Tribunal vide its judgment dated 16.1.2015 had reinstated him into service and, therefore, he is entitled to consequential back benefits; and that non-payment of back benefits is a clear violation of section 16 of The Punjab Civil Servants Act, 1974.

4. On the other hand, learned counsel for the respondent has submitted that in compliance with judgment dated 16.1.2015 of this Tribunal, matter was placed before the Authority; and, that the Authority, i.e., the Administration Committee of the High Court in its meeting held on 30.01.2015 resolved as follows:

"Judgment dated 16.1.2015 passed by Subordinate Judicial Service Tribunal in Service Appeal No.11 of 2012 titled "Muhammad Anayat Gondal v. Registrar, Lahore High Court, Lahore" perused and it is resolved to re-instate the Officer in service. Mr. Justice Syed Mazahar Ali Akbar Naqvi is requested to afford personal hearing to the Officer by granting him reasonable time for submitting reply to the Final Show Cause Notice dated 10.3.2012 and record Note on Personal Hearing along with recommendations for grant of back benefits to the Officer for consideration by the Committee."

The respondent's counsel summed up his arguments by submitting that the question of grant of back benefits to the applicant shall be decided by the Authority after getting recommendations from the Hearing Officer and, thus, this application being premature is not competent.

5. We have heard the parties and perused the record. This Tribunal vide its judgment dated 16.1.2015 in S.A. No.11 of 2012, after finding certain infirmities in the procedure, had set aside the notification dated 24.5.2012 and reinstated the applicant into service but without passing any order with respect to grant of back benefits. It means that the back benefits were not granted to the applicant. In the said appeal before this Tribunal the applicant had pleaded that reasonable time for submitting reply to the final show cause notice dated 10.3.2012, i.e. a notice for enhancement of punishment, was not given to him; that he had received the said show cause notice on 14.3.2012 and at that time he was discharging his duties as Civil Judge, Class-I, at Darya Khan; and that he had filed an application dated 14.3.2012 before the Registrar, Lahore High Court, Lahore with a request that he be allowed to peruse/consult record of inquiry proceedings and for provision of necessary documents for submitting the proper reply to the notice; and, that neither the documents were supplied to him nor reasonable time for filing reply to the show cause notice was granted and, therefore, the hearing afforded to him on 16.3.2012 was feigned. It was, in these circumstances, this Tribunal set aside the notification dated 24.5.2012 vide its judgment, referred to above, on technical grounds and directed the Registrar, Lahore High Court, Lahore to place the matter before the Authority for granting reasonable time to the applicant for submitting reply to the final show cause notice dated 10.3.2012 and thereafter to take further steps as per relevant rules. The contention of the applicant that on setting aside of the order of dismissal by this Tribunal he was entitled to the back

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Case Judgment

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benefits under section 16 of The Punjab Civil Servants Act, 1974 is of no avail to him as obviously he was not acquitted of the charges but he was reinstated into service on technical grounds and, therefore, he cannot claim that he is entitled to the back benefits on his reinstatement into service. In this regard guidance may be had from the case Syed Kamaluddin Ahmad v. Federal Service Tribunal and others (1992 SCMR 1348). Since the judgment dated 16.01.2015, referred to above, which has attained finality with the approval of the order dated 5.3.2015 passed by the Hon'ble Supreme Court of Pakistan in CPLA. No.172 of 2015, is silent about the grant of back benefits, the direction, as prayed for in this application, for release of salaries, allowances, increments etc. is uncalled for.

6. Upshot of the above discussion leads to the conclusion that the instant application sans merit and, therefore, the same is dismissed.

ZC/3/PST

Application dismissee

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Annexure - E

Annexure - F

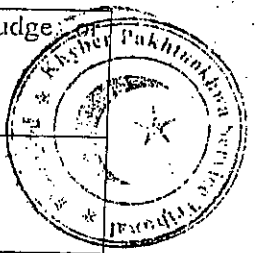
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Annexure - F

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Sr. No	Date of order/proceedings	Order or other proceedings with signature of Judge/Magistrate
1	2	3
	18.02.2020	<p align="center">BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL Service Appeal No. 803/2018</p> <p align="center">Date of Institution 07.06.2018 Date of Decision 18.02.2020</p> <p>Israr Ahmad Qari, Government High School No.2, Saleem Khan Tehsil & District Swabi. <p align="right">Appellant</p> <p align="center">Versus</p> <ol style="list-style-type: none"> Director Elementary & Secondary Education Khyber Pakhtunkhwa Peshawar. Deputy Director Elementary & Secondary Education Khyber Pakhtunkhwa Peshawar. District Education Officer (Male) Swabi. Secretary Elementary & Secondary Education Khyber Pakhtunkhwa Peshawar. <p align="right">Respondents</p> <p>Mr. Muhammad Hamid Mughal-----Member(J) Mr. Mian Muhammad -----Member(E)</p> <p align="center"><u>JUDGMENT</u> <u>MUHAMMAD HAMID MUGHAL, MEMBER:</u></p> <p>Appellant with counsel and Mr. Muhammad Jan learned Deputy District Attorney alongwith Fazal Khaliq ADO present.</p> <p>2. The appellant (Qari), has filed the present service appeal against the order dated 10.05.2018 of the appellate authority (Director E&SE Khyber Pakhtunkhwa Peshawar) and the order dated 17.05.2018 of DEO (Male) Swabi on the ground that</p> </p>



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EXAMINER
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

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District Education Officer
(Female) Swabi

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though the appellant has been reinstated but without all back benefits.

3. Learned counsel for the appellant argued that the appellant was taken into custody by the police authorities and other agencies on the pretext of having links with banned outfits; that father of the appellant informed the Education Department regarding illegal confinement of the appellant; that the appellant was roped in false, concocted and factitious criminal cases by CTD; that vide order dated 25.03.2017, the appellant was removed from service while treating the absence period as unauthorized absence from duty without pay; that the departmental appeal filed by the appellant was accepted and vide order dated 10.05.2018 he was reinstated in service while treating the absence period w.e.f 05.08.2015 to 21.11.2017 as leave without pay; that consequently the DEO (Male) Swabi vide order dated 17.05.2018 reinstated the appellant in service while converting the period w.e.f 05.08.2015 to 09.05.2018 as extraordinary leave without pay. Learned counsel for the appellant argued that the appellate authority treated the absence period w.e.f 05.08.2015 to 21.11.2017 as leave without pay but on the other hand, DEO (Male) Swabi treated the absence period w.e.f 05.08.2015 to 09.05.2018 as extraordinary leave without pay; that the appellant did not remain willfully absent from duty rather he was in custody of agencies, hence he is entitled to all the back benefits upon his reinstatement.

18.2.2020

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EXAMINER
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

8/2/2020
District Engineer
(Peshawar)

18.2.2020

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4. On the other hand learned DDA argued that the appellant has not come to this Tribunal with clean hands; that father of the appellant in his application dated 07.05.2015 addressed to the Headmaster admitted that his son had links with the local Taliban; that due to absence of the appellant, he was removed from service however the appellate authority took the lenient view and reinstated the appellant with immediate effect while treating the absence period as leave without pay; that the appellant did not perform any duty w.e.f 05.08.2015 to 09.05.2018, hence he is not entitled to the salary/monitory benefits of the absence and out of service period.

5. Arguments heard. File perused.

6. Vide order dated 25.02.2017 the appellant was awarded major punishment of removal from service on the ground of absence from duty. Departmental appeal filed by the appellant was accepted and in compliance with the order of the appellate authority, DEO (Male) Swabi reinstated the appellant in service. DEO (Male) Swabi while reinstating the appellant converted the period w.e.f 05.08.2015 to 09.05.2018 as extraordinary leave without pay. Admittedly the appellant did not perform duties w.e.f 05.08.2015 to 09.05.2018. It is not the case of the appellant that due to his involvement in criminal cases, he remained in the judicial lockup during his entire absence period. No documentary evidence is available on file in support of the plea that the appellant was in custody of

18.2.2020

ATTESTED

EX-AMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

18/2/2020

27/2/2020

District Education Officer
(Female) Swabi

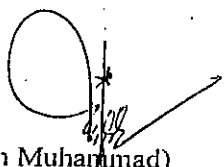
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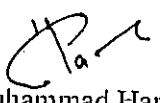
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agencies during the period he remained absent from duty.

7. In nutshell the appellant has not been able to make out his case for the grant of back benefits of the absence period/out of service period. Consequently the present service appeal is dismissed. No order as to costs. File be consigned to the record room.


 (Mian Muhammad)
 Member

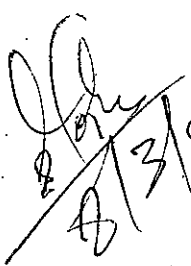

 (Muhammad Hamid Mughal)
 Member

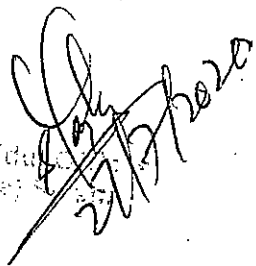
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Certified to be true copy

EX-100/2019
 Khairpur
 Service Tribunal
 Peshawar

Date of Presentation of Copy 18-02-2020
 Number of Words 1600
 Copying Fee 18-00
 Urgent
 Total 18-00
 Name of Applicant
 Date of Copying 12-3-2020
 Date of Delivery of Copy 12-3-2020


 8/3/2020
 District Education Officer
 (Female)


 District Education Officer
 (Female)


 District Education Officer
 (Female) Swabi

**DIRECTORATE OF ELEMENTARY & SECONDARY EDUCATION
DEPARTMENT KHYBER PAKHTUNKHWA PESHAWAR**

NOTIFICATION.

1. **WHEREAS**, Mst. Alia Ghafoor was appointed as PST, vide Notification dated 31-7-2009 by the Executive District Officer, District Kohistan.
2. **ANDWHEREAS**, She was transferred from District to District Swabi vide order dated 19-10-2011.
3. **ANDWHEREAS**, She was removed from service vide office order No.1705-10/DEO (F)KH dated 22-10-2015 in light of inquiry recommendations.
4. **ANDWHEREAS**, She was re-instated into service with immediate effect vide adjustment order No.4404-G/DA-1/Adjustment/PST, dated Swabi the 02-09-2019.
5. **ANDWHEREAS**, feeling aggrieved from the adjustment order dated 02-09-2019, she filed writ petition No. 1402-P/2023 in the Honorable Peshawar High Court Peshawar with the prayer of re-instatement with all back benefits instead of immediate effect.
6. **ANDWHEREAS**, the Honorable Peshawar High Court Peshawar vide judgment dated 26-04-2023 converted the petition in to Departmental representation with the direction to Respondent No. 3 to decide the departmental appeal of the petitioner strictly in accordance with law.

Now therefore, in pursuance of the order dated 26-04-2023 of the Honorable Peshawar High Court Peshawar, consulting with relevant law, rules, policy, the appeal of the petitioner stands regretted in the interest of Public Service.

**DIRECTOR
Elementary & Secondary Education
Khyber Pakhtunkhwa Peshawar.**

Endst: No: 7668-70/

Dated Peshawar the: 18/07/2023

Copy forwarded for information & n/action to the:-

- 1 Additional Registrar Judicial Honorable Peshawar High Court Peshawar.
- 2 Additional Advocate General Honorable Peshawar High Court Peshawar.
- 3 District Education Officer (Female) Swabi.
- 4 Mst. Alia Ghafoor, PST, District Swabi.

**Deputy Director (F/Estab)
Elementary & Secondary Education
Khyber Pakhtunkhwa Peshawar.**