

**KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
CAMP COURT ABBOTTABAD.**

BEFORE: **KALIM ARSHAD KHAN ...CHAIRMAN**
FAREEHA PAUL ...MEMBER (Executive)

Service Appeal No.806/2022

Date of presentation of appeal.....18.05.2022
Dates of Hearing.....23.10.2023
Date of Decision.....23.10.2023

Shahid Usman, Primary School Teacher (PST) posted at GPS Rash Skindra Circle Khaki Tehsil & District Mansehra.....Appellant

Versus

1. **The Secretary, Elementary and Secondary Education Government of Khyber Pakhtunkhwa, Peshawar.**
2. **The Director Elementary & Secondary Education, Khyber Pakhtunkhwa, Peshawar.**
3. **The District Education Officer (Male) Mansehra.**
.....(Respondents)

Present:

Mr. Malik Ashfaq Ahmed Jillani, Advocate.....For the appellant.

Mr. Asif Masood Ali Shah,
Deputy District Attorney.....For respondents

APPEAL UNDER SECTION 4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974 AGAINST THE IMPUGNED ORDER DATED 21.02.2020 PASSED BY RESPONDENT NO. 03 TO THE EXTENT OF ONLY NOTE: THE PERIOD W.E.F 29.09.2018 TO 18.10.2019 TREATING THE SAME AS LEAVE WITHOUT PAY AND IMPUGNED ORDER DATED 30.03.2022 PASSED BY RESPONDENT NO.3 UPON THE DEPARTMENTAL APPEAL OF THE APPELLANT.



JUDGMENT

KALIM ARSHAD KHAN CHAIRMAN: We have an appeal before us brought by Shahid Usman son of Muhammad Akram, who alleges that he was appointed as PST on 07.01.1996; that he was terminated on 28.04.1997; that the government of Khyber Pakhtunkhwa enacted Sacked Employees Act, 2012, whereby all the terminated employees were to be reinstated into service; that the appellant and others invoked the jurisdiction of Peshawar High Court and in the light of the judgment/order of Peshawar High Court, Abbottabad Bench, appellant and others were reinstated into service vide order dated 04.12.2017; that after reinstatement, the appellant assumed the charge and was performing his duty; that the respondent department had withdrawn the reinstatement order of the appellant vide order dated 25.08.2018; that the appellant had challenged the withdrawal order dated 25.08.2018 before this Tribunal through service appeal No. 1548/2018, which was allowed vide order dated 17.09.2019 with the direction to the respondent department to conduct regular inquiry; that the respondent department in compliance of the judgment of this Tribunal, reinstated the appellant for the purpose of enquiry; that after conducting de-novo enquiry, the respondents department agreed with the recommendation of the inquiry officer and as such the appellant was reinstated into service vide order dated 21.02.2019, but without back benefits; that for back benefits, the appellant preferred departmental appeal, which was rejected on 30.03.2022 and then he filed this appeal.

2. On receipt of the appeal and its admission to full hearing, the respondents were summoned. Respondents put appearance and contested the appeal by filing written reply raising therein numerous legal and factual objections. The defence setup was a total denial of the claim of the appellant



3. We have heard learned counsel for the appellant and learned Deputy District Attorney for the respondents.

4. The Learned counsel for the appellant reiterated the facts and grounds detailed in the memo and grounds of the appeal while the learned Deputy District Attorney controverted the same by supporting the impugned order.

5. Earlier vide judgment dated 17.09.2019 in service appeal No. 1548/2018, while allowing the appeal partially and on setting aside the impugned order, the appellant was reinstated into service with the direction to the respondent-department to conduct regular enquiry in accordance with the provisions of the Khyber Pakhtunkhwa Government Servants (Efficiency and Discipline) Rules, 2011. The issue of back benefits was subject to the final outcome of the de-novo enquiry. It was then the appellant was conditionally reinstated vide order dated 18.10.2019 and an enquiry was conducted by an enquiry committee comprising Amjad Ali, Principal, GHS Naran Mansehra and Zulfiqar Ahmad, Principal GHS Trangri Bala Mansehra. The recommendations of the committee are as under:

“Therefore, a clear-cut recommendation is given that

1. His first appointment order is accurate and correct. Similarly, termination letter, in the presence of department doings and judicial procedure found to be correct.
2. His arrears are given to him from date of appointment after when worthy High Court took decision of reinstatement that is from 06.12.2017.”

6. On receipt of enquiry report, the impugned order was passed in the following manner:-

“In continuation with this Endst No. 16821-25/PST/(M)/Reinstatement dated 18.10.2019 and in compliance with the judgment of the Honorable Service Tribunal, Khyber Pakhtunkhwa Peshawar camp court Abbottabad dated 17.09.2019 in service appeal No. 1545/2018 titled as Shahid Usman-vs-Government of Khyber Pakhtunkhwa, whereas the same has been declared unfit for CPLA by law department vide



its letter No. SO (:LIT)/LD/9-5(61) E&SED/2019/20719-20 dated Peshawar 12.11.2019 and in the light the recommendation of inquiry committee and on the approval of the competent authority. Mr. Shahid Usamn Ex-PST is hereby reinstated into government service on regular basis at GPS Raah Sikandara.

Note: The period w.e.f. 29.09.2018 to 18.10.2019 may be treated as Leave without pay and necessary entry be made in his service book”

7. Aggrieved of the impugned order, the appellant filed this appeal and claiming that the appellant was entitled to the financial and service back benefits w.e.f. 29.09.2018 to 18.10.2019. The respondents controverted the claim of the appellant by specifically stated in replies to grounds B and D. The replies to grounds B and D are reproduced below:

“ B- Para B is correct to the extent that period from withdrawal order vide Endst No. 12140-44 dated 25.08.2018 to again reinstatement order vide Endst: No. 1800-07 dated 21.02.2019 will be considered as Leave Without Pay. “No work no Pay”. As per Sacked Employee (Appointment) Act, 2012, under section 5, sacked Employee shall not be entitled to claim seniority and other back benefits: A sacked employee appointed under section 3, shall not be entitled to claim seniority, promotion or other back benefits and his appointment shall be considered as fresh appointment, wherein the appellant is not entitled to any claim of the back benefits/pay fixation etc.

D- Incorrect hence denied the working period w.e.f 06.12.2017 to 25.08.2018 is his legal right to claim salary if not taken salary from the department but the period withdrawal order w.e.f. 25.08.2018 to again reinstatement order dated 21.02.2020 already considered as department but the period withdrawal order to again reinstatement order already considered as Leave Without Pay. As per verdict of august Supreme Court of Pakistan “No work no Pay”.

8. A pure and quite simple question of back benefits was involved, after reinstatement of the appellant in service, in consequence of departmental proceedings, which culminated in favour of the appellant, but the confusing, vague, self-contradictory and incomprehensible actions of the department, in the shape of impugned order, enquiry report and the reply have constrained us to hold that the

impugned actions are not sustainable having not been clarified and justified through any speaking and reasonable order paving the way for remand of the matter. The vagueness and ambiguity of actions of the respondents are evident from bare reading of the above reproduced portions of the actions of the respondents.

09. Therefore, we allow this appeal and on setting aside the impugned order, remit the matter back to the departmental authorities to pass a clear and speaking order having regard to the issue of back benefits and while doing so wisdom should be derived from 2021 SCMR 962 titled "Muhammad Shairf versus Inspector General of Police and others". Costs shall follow the event. Consign.

10. *Pronounced in open Court at Abbottabad and given under our hands and the seal of the Tribunal on this 23rd day of October, 2023.*



KALIM ARSHAD KHAN
Chairman
Camp Court Abbottabad



FAREEHA PAUL
Member (Executive)
Camp Court Abbottabad

Achnan Shah