

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

Service Appeal No. 568/2018

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

Altaf Hussain son of Wahid Ullah, R/O Hindi Khel Wazir Jani Khel, Tehsil and District Bannu.:..... (*Appellant*)

Versus

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

Mr. Muhammad Rasheed Khan Wazir
Advocate ... For appellant

Mr. Muhammad Jan For respondents
District Attorney

Date of Institution.....	12.04.2018
Date of Hearing.....	30.10.2023
Date of Decision.....	30.10.2023

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the orders dated 15.08.2016 and 19.12.2017, whereby appointment order of the appellant as Primary School Teacher was withdrawn. It has been prayed that on acceptance of the appeal, both the impugned orders dated 15.08.2016 and 19.12.2017 might be set aside and the appellant might be reinstated on the post of PST, alongwith any other remedy 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 on 29.04.2016 as Primary School Teacher in Union Council Hindi Khel at GPS Malikshai Jani Khel. Respondents, due to some reasons best known to them, withdrew the appointment order on 15.08.2016 without any show cause notice or explanation. Appellant moved an application to the concerned quarter but in vain. He filed a writ petition before the Hon'ble Peshawar High Court, Bannu Bench. In the meanwhile on 28.08.2017, the respondents once again re-instated the appellant on the same post and in the same school. Fate of the Writ Petition was decided on 21.11.2017, wherein the appellant was advised to seek his relief at the proper form. He was still working as teacher, being re-instated by the respondents, however, the respondents once again withdrew the previous order of appointment dated 21.11.2017 without any show cause notice to the appellant. After getting the knowledge about the withdrawal order, appellant approached the concerned quarter for redressal of his grievances but his request was not attended. He moved an appeal before the competent authority but no positive response was received; hence the instant service appeal.

3. Respondents were put on notice who submitted written replies/ comments on the appeal. We heard the learned counsel for the appellant as well as the learned 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 did not bother to issue show cause notice or



explanation to the appellant and thus he was condemned unheard. He further contended that whenever the appellant approached the Hon'ble Courts, the respondents without any explanation re-instated him but when the case of the appellant was decided, they again turned against the appellant which showed their malafide and ulterior motive. Learned counsel for the appellant requested that the appeal might be accepted.

5. Learned District Attorney, while rebutting the arguments of learned counsel for the appellant, argued that during verification process, the Master Degree of the appellant was found to have been issued on 24.11.2015 which was after closing date for submission of application form on 24.08.2015. He contended that as per Government policy the appellant should have the possession of the degree on the closing date of the advertisement. According to him, the appointment order of the appellant was withdrawn in the light of clause 14 of the terms and conditions of his appointment order. He further argued that the operation of the withdrawal of appointment order of the appellant remained suspended temporarily in the light of directions of the Hon'ble Peshawar High Court, Bannu Bench. According to him, the appointment order was withdrawn because the appellant was low in merit order. Learned District Attorney referred to 2020 SCMR 568 and requested that the appeal might be dismissed.

6. The appellant was appointed as Primary School Teacher (BS-12) on 29.04.2016 in pursuance of an advertisement dated 12.08.2015. The basic requirement for the post of PST, as per advertisement, was intermediate or equivalent certificate from a recognized board, alongwith PST



Certificate/diploma in education from a recognized institution or SSC (second division) from a recognized board alongwith two years associate degree in education from a recognized university. Selection criteria had also been given in the same advertisement. As mentioned by the learned counsel for the appellant, he was qualified and had done his Master, based on which he applied for the said post and was selected. According to him, his appointment order was withdrawn on 15.08.2016, without assigning any reason. No departmental appeal against the order of 15.08.2016 is available on file. When confronted, the learned counsel for the appellant replied that he filed a Writ Petition before the Peshawar High Court, and interim relief was granted to him and operation of the impugned order was suspended. In the light of court's order, the department reinstated the appellant, conditionally, vide order dated 28.08.2017. The Hon'ble Peshawar High Court, vide its judgment dated 21.11.2017 decided the matter by saying that the appellant was a civil servant and under Article 212 of the Constitution of Pakistan, the jurisdiction of the High Court is barred in matters relating to the terms and conditions of a civil servant. Learned Counsel for the appellant stated before the court that he would seek his relief from the appropriate form. In pursuance of the decision of Hon'ble Peshawar High Court, the department withdrew its order of temporary appointment on 19.12.2017, from the date of its issuance. A departmental appeal dated 19.01.2018 is available on record, which was not responded.

7. The advertisement available before us shows the last date for submission of application form was 28.08.2015. The appellant claims that he



had completed his master degree program and that he applied on the basis of that degree for the said post. Record presented before us shows that the result of Master of Arts in English of the appellant was declared on 24.11.2015 and the transcript showing the detailed marks of all the four terms was issued on 27.11.2015, which was after the closing date for receiving the application forms. As stated by the respondents, the appellant attached a mark sheet of Master with his application form and based on that, the calculation was done and he was appointed. However, Serial No. 14 of his terms and conditions clearly state that in case any error or deceit on behalf of the appointee is found at any time, the appointment order of the candidate will be withdrawn. As stated by the Learned District Attorney, verification of documents was done and at a very early stage of his appointment, it was found that the document of Master in Arts provided by the appellant was not valid and another document, which was the transcript issued on 27.11.2015, was issued after the closing date of the advertisement and not acceptable under the government policy. When further confronted on the possibility of deducting the marks of Master degree and considering the appellant on the basis of his bachelor degree, the learned counsel for the appellant as well as the departmental representative of the respondents were unison that then he did not fall within the merit.


8. In view of the above discussion, we are of the view that the respondent department acted in line with its policy. The appellant was required to meet the criteria on the date of submission of his application i.e 28.08.2015. It was a fault and misstatement on the part of the appellant when



he applied for the post of PST on the basis of Master Degree, knowing the fact that he did not have even the complete result/total marks of the entire course which was issued to him on 27.11.2015, well after the closing date of the advertisement, which was 28.08.2015. It was shortly after four months time that his appointment order was withdrawn. As it was a temporary appointment and he had not been regularized on his post, therefore the procedure as mentioned in the Khyber Pakhtunkhwa Civil Servants Act 1973 was not adopted.

9. The appeal in hand is, therefore, dismissed. Costs shall follow the event. Consign.

10. *Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal on this 30th day of October, 2023.*


(FAREEHA PAUL)
Member (E)

Fazle Subhan, P.S



(RASHIDA BANO)
Member (J)


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30th Oct. 2023 01. Mr. Muhammad Rasheed Khan Wazir, Advocate for the appellant present. Mr. Muhammad Jan, District Attorney for the respondents present. Arguments heard and record perused.

02. Vide our detailed judgment consisting of 06 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 on this 30th day of October, 2023.*


(FAREEHA PAUL)
Member (E)


(RASHIDA BANO)
Member (J)

Fazal Subhan PS