

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWA AT CAMP COURT SWAT

BEFORE: SALAH-UD-DIN ... MEMBER (Judicial)
FAREEHA PAUL ... MEMBER (Executive)

Service Appeal No. 1670/2022

Muhammad Idrees, Ex-Junior Clerk, R/O Ouch East, Tehsil Adenzai,
Dir Lower. (Appellant)

Versus

The Director Education, (E&SED), Near Malik Saad BRT, Terminal,
G.T.Road Firdous, Peshawar and 02 others. (Respondents)

Present:

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

Date of presentation of Appeal.....24.11.2022
Date of Hearing.....07.11.2023
Date of Decision.....07.11.2023

JUDGMENT

SALAH-UD-DIN, MEMBER: Brief facts giving rise to filing of the instant appeal are that departmental action was taken against the appellant on the allegations that he while posted as Junior Clerk in GGHS Kotigram, had submitted fake sources for stoppage of salaries of Headmistress Zaitoon Begum, Lubna kanwal SST (IT) and Mst. Sarwat Begum SST (General); that he had prepared fake retirement order of Headmistress Zaitoon Begum as well as fake transfer order of Mst. Sarwat Begum showing her transferred from GGHS Kotigram to GGHS Nulo Malakand by putting fake signatures of Deputy Directress Female; that he had issued a letter of DDO ship of a contract teacher on the basis of illegal and fake signature of Headmistress



Zaitoon Begum. The appellant was awarded major penalty of compulsory retirement from service vide order dated 22.08.2022. The penalty so awarded to the appellant was challenged by him through filing of departmental appeal before the Director Elementary & Secondary Education, Khyber Pakhtunkhwa, Peshawar, however the same remained un-responded within the statutory period of 90 days, constraining the appellant to file the instant appeal.

2. On receipt of the appeal and its admission to regular hearing, respondents were summoned. They appeared through their representative and contested the appeal by way of submitting para-wise comments, wherein they raised certain legal as well as factual objections.

3. Learned counsel for the appellant contended that no charge sheet or statement of allegations were issued to the appellant and whole of the proceedings were conducted at his back without providing him an opportunity of self defence. He next contended that the allegations against the appellant were factual in nature requiring a regular inquiry but whole of the proceedings were carried out in derogation of the procedure prescribed for disciplinary action against government servant as prescribed in Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011. He further contended that no evidence was recorded in the inquiry proceedings for ascertaining the fact as to whether the signatures on the documents allegedly prepared by the appellant were genuine or fake. He also argued that the inquiry



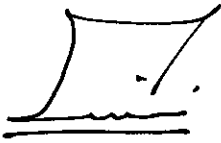
proceedings were carried out by the District Education Officer (Male) Dir Lower as an inquiry officer and the impugned penalty of compulsory retirement was also awarded to the appellant by the District Education Officer (Male) Dir Lower, which is in utter violation of the relevant law/rules as well as against the principle of natural justice. He further argued that the statement of witnesses were recorded in absence of the appellant without providing him opportunity of cross-examination, therefore, the same could not be taken into consideration as evidence against the appellant. He next argued that the appellant was exonerated vide order dated 11.08.2022 passed by Director Elementary & Secondary Education Khyber Pakhtunkhwa, Peshawar but on the other hand he was awarded major penalty of compulsory retirement from service vide order dated 22.08.2022 passed by the District Education Officer (Male) Dir Lower in sheer violation of relevant law/rules. In the last he argued that as the impugned order of compulsory retirement of the appellant is having no legal sanctity, therefore, the same may be set-aside and the appellant may be reinstated in service with all back benefits.

4. On the other hand, learned Assistant Advocate General for the respondents argued that the appellant was in habit of preparation of false letters/orders/documents by affixing forged signatures on the same since long and was previously too removed from service vide order dated 30.10.2009. He next argued that the appellant was duly associated with the inquiry proceedings and was provided opportunity of personal hearing as well as self

defence. He further argued that a proper inquiry was conducted against the appellant and the allegations against him stood proved in the inquiry proceedings, therefore, he has rightly been awarded the punishment of compulsory retirement from service.

5. We have heard the arguments of learned counsel for the parties and have perused the record.

6. A perusal of the record would that on 14.03.2022, Zaitoon Begum the then Headmistress GGHS Kotigram, Dir Lower had submitted an application to the District Education Officer (Female) Dir Lower, Timergara alleging therein that the appellant while posted as Junior Clerk in GGHS Kotigram had submitted fake sources for stoppage of salaries of Headmistress Zaitoon Begum, Lubna kanwal SST (IT) and Mst. Sarwat Begum SST (General); that he had prepared fake retirement order of Headmistress Zaitoon Begum as well as fake transfer order of Mst. Sarwat Begum showing her transferred from GGHS Kotigram to GGHS Nulo Malakand by putting fake signatures of Deputy Directress Female; that he had issued a letter of DDO ship of a contract teacher on the basis of illegal and fake signature of Headmistress Zaitoon Begum. The afore-mentioned application was forwarded by the District Education Officer (Female) Dir Lower to the Director Elementary & Secondary Education Khyber Pakhtunkhwa Peshawar vide letter bearing No. 1138 dated 18.03.2022, who vide Notification dated 30.03.2022 nominated District Education Officer (Male) Dir Lower as inquiry officer for conducting inquiry against the appellant. The inquiry was





conducted by District Education Officer (Male) Dir Lower and submitted inquiry report to the Director Elementary & Secondary Education, Khyber Pakhtunkhwa, Peshawar vide letter bearing No. 3593 dated 11.06.2022. Vide letter No. 2961 dated 27.06.2022 issued from the Directorate of Elementary & Secondary Education, Khyber Pakhtunkhwa, Peshawar, the District Education Officer (Female) Dir Lower was asked to implement the recommendations of the inquiry officer. The appellant was, however issued show-cause notice bearing Endst: No. 6101-03 dated Timergara the 18.07.2022 by the District Education Officer (Male) District Dir Lower and after providing opportunity of personal hearing to the appellant, he was awarded major penalty of compulsory retirement from service vide order bearing Endst: No. 6103-07 dated 22.08.2022 passed by the District Education Officer (Male) Dir Lower. It is astonishing that on one hand, the matter was sent to the District Education Officer (Female) Dir Lower vide letter bearing No. 2961 dated 27.06.2022 issued from the Directorate of Elementary & Secondary Education Khyber Pakhtunkhwa Peshawar for implementation of the recommendations of the inquiry report but on the other hand Notification bearing No. 5364-67 dated 11.08.2022 passed by Director Elementary & Secondary Education Khyber Pakhtunkhwa Peshawar whereby the appellant was issued only warning in respect of the same issue. All this would show that the proceedings were conducted in a slipshod manner and the inquiry was not conducted in the prescribed manner provided in the

relevant provisions of Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011. The manner in which the matter was dealt with by the respondents is highly deplorable.

7. In view of the above discussion, the impugned order dated 22.08.2022 stands set-aside and the appellant is reinstated in service with directions to the competent Authority to conduct proper inquiry in the matter in accordance with Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011 within a period of 60 days of receipt of copy of this judgment. The issue of back benefits shall be subject to outcome of the inquiry. In case the competent Authority fails to conduct the inquiry within the afore-mentioned period of 60 days of receipt of copy of this judgment, it shall be deemed that the appellant has been reinstated in service with all back benefits with effect from 22.08.2022. Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCED
07.11.2023


(FAREEHA PAUL)
MEMBER (EXECUTIVE)
CAMP COURT SWAT



(SALAH-UD-DIN)
MEMBER (JUDICIAL)
CAMP COURT SWAT


ORDER
07.11.2023

Appellant alongwith his counsel present. Mr. Asad Ali Khan, Assistant Advocate General for the respondents present. Learned counsel for the appellant stated at the bar that he is having no objection on the application submitted by the respondents for grant of permission to file written reply/comments, therefore, the application is allowed. The respondents have already submitted para-wise comments alongwith their application so allowed. Arguments heard and record perused.

Vide our detailed judgment of today, separately placed on file, the impugned order dated 22.08.2022 stands set-aside and the appellant is reinstated in service with directions to the competent Authority to conduct proper inquiry in the matter in accordance with Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011 within a period of 60 days of receipt of copy of this judgment. The issue of back benefits shall be subject to outcome of the inquiry. In case the competent Authority fails to conduct the inquiry within the afore-mentioned period of 60 days of receipt of copy of this judgment, it shall be deemed that the appellant has been reinstated in service with all back benefits with effect from 22.08.2022. Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCED
07.11.2023


(Fareeha Paul)
Member (Executive)
Camp Court Swat


(Salah-Ud-Din)
Member (Judicial)
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