

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR

Service Appeal No. 976/2023

BEFORE: RASHIDA BANO --- MEMBER (J)
MUHAMMAD AKBAR KHAN --- MEMBER (E)

Mr. Shams ur Rehman, Niab Qasid, (BPS-03), GMS, Makhrani,
District Kurram.....(*Appellant*)

VERSUS

1. The Director Elementary & Secondary Education, Khyber Pakhtunkhwa, Peshawar.
2. The District Education Officer, District Kurram.....(*Respondents*)

Present:-

WALEED ADNAN
Advocate --- For Appellant

ASIF MASOOD ALI SHAH,
Deputy District Attorney --- For respondents.

Date of Institution.....03.05.2023

Date of Hearing.....14.11.2023

Date of Decision.....14.11.2023

JUDGMENT.

MUHAMMAD AKBAR KHAN, MEMBER(E):- Through this judgment this appeal and the connected service appeal bearing No. 977/2023 titled "Sajjad Rehman versus The Director Elementary & Secondary Education, Khyber Pakhtunkhwa Peshawar and others", are decided as both are the same and can conveniently be decided together.

02. According to the facts gathered from the record, that the appellants were appointed as Naib Qasid/Sweeper vide order dated 16.07.2021 after fulfilling the codal formalities, the appellants took over the charge of their

post; that after submission of his arrival report, the appointment order of the appellants were cancelled via order dated 13.09.2021. Feeling aggrieved, the appellants filed departmental appeal before the appellate authority 24.09.2021; that via letter dated 29.09.2021 a report/comments were asked from the competent authority which was forwarded via letter 30.09.2021; that on 05.11.2021 the competent authority was once again asked to submit documentary evidence as well as clarify that how a regular employee was removed from service without any proceedings; that via letter dated 19.11.2021 the competent authority submitted that the appellant was not removed from service but his appointment order was cancelled on telephonic directions of the respondent No. 1, however it was brought into the knowledge of the appellate authority that the appointment order was accordingly made; that an inquiry was conducted and a detailed report was forwarded via letter dated 06.04.2023 to respondent No. 2 but interestingly, a show cause notice dated 08.04.2023 was issued to the appellant on the allegations of two days absence without prior permission of the competent authority irrespective of the fact that on 10.03.2023, the appellant was out of service. The appellant was reinstated into service via impugned appellate order dated 11.04.2023 with immediate effect without any back benefits. The appellant preferred the instant service appeal on 03.05.2023.

03. Notices were issued to the respondents, who submitted their comments, wherein they refuted the assertions raised by the appellant in his appeal. We have heard arguments of learned counsel for the appellant and learned Deputy District Attorney for the respondents and have gone through the record with their valuable assistance.

04. Learned counsel for the appellant contended that the impugned appellate order dated 11.04.2023 to the extent of denying salaries and back benefits to the appellants is not sustainable in the eye of law and is liable to be modified/rectified; that the appellant has not been treated in accordance with law/rules and as such violated Article 4 and 25 of the Constitution of Islamic Republic of Pakistan 1973; that since their appointment till their reinstatement, they have regularly performed duties and the same fact has been admitted by respondent No. 2 as well as Head Master of the school where the appellant was posted; that the impugned action of the respondents by not denying the back benefits and salaries is also violation of Section 17 of the Khyber Pakhtunkhwa Civil Servants Act, 1973.


05. Learned Deputy District Attorney on behalf of respondents contended that the appointment order of the appellants was withdrawn/cancelled and they were marking their attendance in the school registered illegally after receiving the cancellation order of their appointment; that the appellants were later on reinstated in true letter and spirit as recommended by the inquiry committee. Moreover, the appellants were not entitled for arrears on the principle of "*No work no pay*;" that the respondent department has not violated of Section 17 of the Khyber Pakhtunkhwa Civil Servants Act, 1973; that the respondent department has acted according to the rules policy, and the respondent has not violated Article 4 & 25 of the Constitution of Islamic Republic of Pakistan, 1973.

06. It is admitted fact that the appointment order in respect of the appellants dated 16.07.2021 were cancelled vide order dated 13.09.2021. The reason for this cancellation was stated to be verbal directions of Director Elementary &

Secondary Education department Khyber Pakhtunkhwa. The cancellation of the appointment order was issued without any observance of codal formalities i.e. Inquiry, Show Cause Notice etc. Later on after inquiry the appointment order was found valid and on the direction of Director Elementary & Secondary Education Department Khyber Pakhtunkhwa, they were reinstated into service vide order dated 11.04.2023 on the same terms and conditions contained in their original appointment order dated 16.07.2021. Since there was no fault on part of the appellants, therefore, we allow the instant appeal as well as connected service appeal as prayed for. Costs shall follow the event. Consign.

07. Pronounced in open court at Peshawar and given under our hands and seal of the Tribunal on this 14th day of November, 2023.


(Rashida Bano)
Member (J)


(Muhammad Akbar Khan)
Member (E)