

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR

Service Appeal No. 1423/2023

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

Mst. Shabana Mir D/o Mir Zakam Khan Wazir R/o House No. 32, St. No.5, Shaheen Housing Society, Mathra, SST (G) BPS-17, GGHS Dab Kor Mohmand.....(*Appellant*)

VERSUS

1. Chief Secretary, Khyber Pakhtunkhwa Civil Secretariat, Peshawar.
2. Secretary Elementary & Secondary Education Department Block-A Opposite MPAs Hostel, Civil Secretariat, Peshawar.
3. Director Elementary & Secondary Education Department, near GHSS No. 1, G.T Road, Peshawar.
4. District Education Officer (Female) Mohmand.
5. Mst. Nazia Rehman SST (BPS-16) Qafila Road, Naseer Street, Tehkal Payan-1 Peshawar.....(*Respondents*)

Present:-

INAYAT ULLAH KHAN,
Advocate --- For Appellant

MUHAMMAD JAN,
District Attorney --- For official respondents No. 1 to 4

ARBAB SAIFUL KAMAL,
Advocate --- For private respondent No. 5

Date of Institution.....16.05.2023
Date of Hearing.....06.11.2023
Date of Decision..... 06.11.2023

JUDGMENT.

MUHAMMAD AKBAR KHAN, MEMBER(E):- The instant service appeal has been instituted under Section 4 of the Khyber Pakhtunkhwa Service Tribunal, Act 1974 with the prayer copied as under;

“That on acceptance of this service appeal it is therefore, earnestly prayed from this Hon’ble Tribunal to set aside the impugned order dated 30.03.2023 and restore the corrigendum order dated 29.03.2023 issued by respondent No. 3 for posting of the appellant at GGHS Dab Kor Mohmand, which is a nearest school to the residence of her parents in terms of Clause-X of the posting and transfer policy promulgated by Provincial Government.”

02. Brief facts of the case are that the appellant was serving as SST (G) at GGHS Dab Kor Mohmand; that vide order dated 22.03.2023 the respondent No. 4 transferred Nazia Rehman SST (G) BPS-16 (Private respondent No. 5) from GGHS Dab Kor Mohmand to GGHS Elam Kor Mohmand which was withdrawn/cancelled through another order dated 27.03.2023 and in her place the appellant was transferred from GGHS Dab Kor, Mohmand to GGHS Elam Kor vide order dated 27.03.2023. Feeling aggrieved from the order dated 27.03.2023 the appellant approached to respondent No. 4, who issued the corrigendum order dated 29.03.2023 wherein the order dated 22.03.2023 was kept intact and the appellant was retained at GGHS Dab Kor; that respondent No. 3 withdrew/cancelled the order dated 29.03.2023 issued by respondent No. 4 and the appellant was transferred/posted from GGHS Dab Kor to GGHS Elam Kor. Feeling aggrieved from the impugned order dated 30.03.2023, the appellant preferred departmental appeal on 31.03.2023 which was fixed for personal hearing on 12.04.2023 in the office of Additional Secretary Elementary and Secondary Education Department

but the same was postponed and till date no further hearing has been fixed, hence preferred the instant service appeal on 16.05.2023.

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, learned District Attorney for official respondents and learned counsel for private respondent No. 5 and have gone through the record with their valuable assistance.

04. Learned counsel for the appellant contended that the impugned transfer notification dated 30.03.2023 is violative of Clause-X of the Posting Transfer Policy promulgated by the Provincial Government wherein it has been categorically mentioned that unmarried female government servants may be facilitated to be posted at the station of the residence of their parents; that Nazia Rehman SST (BPS-16) General was working against the wrong post of SST (Bio/Chemistry), therefore, she was transferred from GGHS Dab Kor Mohmand to GGHS Elam Kor, Padyali Mohmand against the vacant post of SST General in the best public interest, however, the ibid order was illegally withdrawn by the Director Elementary & Secondary Education Khyber Pakhtunkhwa on her political influence which is also violative of Clause-II of the Posting Transfer Policy of the provincial government; that the illegal transfer of the appellant speaks volume of malafide and indicative of high handedness, favoritism and misuse of authority, therefore, violative of the most celebrated judgment rendered by the Supreme Court of Pakistan in Anita Turab's case reported in PLD 2013 Supreme Court of Pakistan 195.

05. Learned District Attorney on the other hand contended that the impugned order dated 30.03.2023 is within the legal sphere & even in accordance with the law in terms of Clause-X of the Transfer & Posting Policy of the Government & liable to be maintained in favor of the respondent department; that respondent No. 4 i.e. DEO (F) Mohmand is not competent to transfer and post an officer of BPS-16 in view of lack of jurisdiction, hence the order dated 29.03.2023 is illegal and was withdrawn by the respondent No. 3 dated 30.03.2023 on the ground of ab-initio; that a chance of personal hearing in response to the Departmental appeal of the appellant dated 31.03.2023 against the order dated 30.03.2023 was provided to the appellant by respondents No. 2 on 12.04.2023 but the appellant did not attend hence the instant appeal is liable to be dismissed; that the stance of the appellant is illegal as no reported judgment has been cited by the appellant in support of her plea.


06. Learned counsel for private respondent No. 5 relied on the arguments advanced by learned District Attorney for official respondents No. 1 to 4.

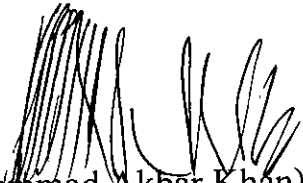
07. The frequent orders issued by the District Education Officer (F) District Mohmand, (respondent No. 4) speaks about maladministration, mismanagement and failure to withstand pressure in posting transfer. From 22.03.2023 up to 30.03.2023 (05) orders have been issued regarding posting transfer of the appellant and the private respondent No. 5 by withdrawing, issuing corrigendum etc thus making a simple issue much more complicated to comprehend. The fact of the matter is that the appellant is serving as SST (G) GGHS Dab Kor for quite long time. Although she is unmarried but she does not reside in Mohmand District. Moreover, the Director Elementary &

Secondary Education, Khyber Pakhtunkhwa Peshawar is the competent authority for making posting transfers and his order shall gain finality. We, therefore, see no legal reasons to interfere in the impugned order issued by the Director Elementary and Secondary Education dated 30.03.2023.

08. In view of the above discussion, the instant appeal being devoid of any merit stands dismissed. Costs shall follow the event. Consign.

09. *Pronounced in open court at Peshawar and given under our hands and seal of the Tribunal on this 06th day of November, 2023.*


(Rashida Bano)
Member (J)


(Muhammad Akbar Khan)
Member (E)