

Ph: 9214461
Fax: 9220406

REGISTERED
No. C.P. 448-P/2022 &
C.P. 304/2023 - SCJ
SUPREME COURT OF PAKISTAN

Islamabad, dated 24/11/2023

From The Registrar,
Supreme Court of Pakistan,
Islamabad.

To The Registrar,
Khyber Pakhtunkhwa Service Tribunal,
Peshawar.

Khyber Pakhtunkhwa
Service Tribunal

Diary No. 9598

Date 29/11/23

Subject: **CIVIL PETITION 448-P/2022 AND CIVIL PETITION 304/2023**

Govt. of Khyber Pakhtunkhwa through Secretary Elementary &
Secondary Education, Peshawar and others

(in C.P.448-P/2022)

Ali Khan

(in C.P.304/2023)

Versus

Ali Khan

(in C.P.448-P/2022)

Government of Khyber Pakhtunkhwa through Secretary Elementary &
Secondary Education, Khyber Pakhtunkhwa Peshawar and others

(in C.P.304/2023)

On appeal from the Order/Judgment of the Khyber Pakhtunkhwa Service
Tribunal, Peshawar dated 17/01/2022 in Appeal-1579/2019

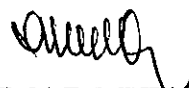
Dear Sir,

I am directed to enclose herewith a certified copy of the Order/Judgment
of this Court dated 16/10/2023 dismissing the above cited cases in the terms stated
therein for information and further necessary action.

Please acknowledge receipt of this letter along with its enclosure
immediately.

Encl: Order/Judgment:

Yours faithfully,



(MUHAMMAD MUJAHID MEHMOOD)
ASSISTANT REGISTRAR (IMP)
FOR REGISTRAR

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

PRESENT:

Mr. Justice Jamal Khan Mandokhail
Mr. Justice Syed Hasan Azhar Rizvi

Civil Petition Nos.448-P of 2022 and 304 of 2023

*(Against the judgment dated 17.01.2022 of the Khber Pakhtunkhwa Service Tribunal,
Peshawar Passed in Service Appeal No.1579 of 2019)*

Government of KPK through secretary Elementary and
Secondary Education, Peshawar and others
(in C.P. No.448-P/2022)

Ali Khan
(in C.P. No.304/2023)

...Petitioner(s)

VERSUS

Ali Khan
(in C.P. No.448-P/2022)

Government of KPK through secretary Elementary and Secondary
Education, Peshawar and others
(in C.P. No.304/2023)

...Respondent(s)

For the Petitioner(s):
(In C.P. No.448-P/2022)

Mr. Sultan Mazhar Khan,
Additional Advocate General, KPK

For the Respondent(s):
(In C.P. No.448-P/2022)

Mr. Fazal Shah Mohmand, ASC

For the Petitioner(s):
(in C.P. No.304/2023)

Mr. Fazal Shah Mohmand, ASC

For the Respondent(s):
(in C.P. No.304/2023)

Mr. Sultan Mazhar Khan,
Additional Advocate General, KPK

For the department:

Mr. Fazle Khaliq, DEO, M & F, Swabi

Date of hearing:

16.10.2023.

...


JUDGMENT

Syed Hasan Azhar Rizvi, J.-

Civil Petition No.448-P of 2022:

Through the instant petition, the petitioners have assailed
the judgment dated 17.01.2022 passed by the Khyber Pakhtunkhwa

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Court Associate
Supreme Court of Pakistan
Islamabad

Service Tribunal, Peshawar (*Tribunal*), whereby service appeal filed by the respondent (*Ali Khan*) was allowed in the following terms:-

"In circumstances, the instant appeal is accepted. The impugned orders dated 16.05.2019 and 24.10.2019 are set aside and the appellant is reinstated into service. The intervening period is treated as leave of the kind due. The respondents still have an option under the relevant provisions of law to take adverse action, if decision in the criminal case was found adverse."

2. Tersely, facts of the case leading to filing of the instant petition are: that a case *vide* FIR No.65 dated 04.02.2019 under Section 302, PPC, Police Station Lahore, Swabi was registered against the respondent (*Ali Khan*) while he was serving as a Primary School Teacher at Government Primary School Kalu Dehr, Swabi. To abide by the law, the respondent surrendered before the police on 11.05.2019 without any intimation to the department.

On absence from the duty, the District Education Officer in exercise of powers conferred under Section 4(b)(iii) of the Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011, imposed 'major penalty of removal from service' upon the respondent *vide* order dated 16.05.2019.

Meanwhile, the respondent filed a bail petition before the Additional Sessions Judge, Swabi, which was allowed and he was released on bail *vide* order dated 18.06.2019. The respondent filed a departmental appeal for his reinstatement, which was rejected through order dated 24.10.2019. However, the appeal filed by respondent before the Tribunal was allowed as mentioned above.

3. At the very outset, learned Additional Advocate General, Khyber Pakhtunkhwa states that the impugned judgment is suffering from material irregularity or illegality; that the respondent was

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involved in a criminal case and willfully absented himself from the duty without informing the department, which act on his part is prejudicial to service discipline; that the relief claimed by the respondent is beyond the pleadings as he has not prayed for reinstatement in service; and that the Tribunal has not applied its mind judiciously.

4. Conversely, learned counsel representing the respondent, has faithfully defended the impugned judgment,

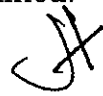
5. Heard the Law Officer at a considerable length and scanned the material available on the record.

It reflects from the record that the Tribunal while passing the impugned judgment has held that *"the respondents still have an option under the relevant provisions of law to take adverse action, if decision in the criminal case was found adverse"*. Pursuant to judgment dated 03.01.2023 delivered by the Additional Sessions Judge, Swabi, the respondent has been acquitted of the charges levelled against him, thus, the stigma on his part has been abolished. The Tribunal while allowing the service appeal through the impugned judgment has already reinstated the respondent into service, which, in our candid view, being apt will meet the ends of justice. All the factual and legal aspects have been dealt with by the Tribunal in the impugned judgment which is well reasoned.

6. No substantial question of law of public importance within the contemplation of Article 212(3) of the Constitution of the Islamic Republic of Pakistan, 1973 has been raised for our interference in the instant jurisdiction.

7. For what has been discussed above, the petition being meritless is dismissed and leave declined.

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Civil Petition No.304 of 2023:

8. This petition is barred by 313 days. The reasons mentioned in Civil Miscellaneous Application No.1360 of 2023 do not disclose 'sufficient cause' for condoning the delay. Consequently, the application seeking condonation of delay is dismissed with the result that the main petition is dismissed as being barred by time. Sd/-

Sd/-



Not approved for reporting
Ghulam Raza/*

08/11/23

Certified to be True Copy

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Supreme Court of Pakistan
Islamabad