

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
CAMP COURT D.I.KHAN

Service Appeal No. 416/2023

BEFORE: KALIM ARSHAD KHAN --- CHAIRMAN
MUHAMMAD AKBAR KHAN --- MEMBER (E)

Saqbi Ruhin, Ex-PST Qismat Khan Koroona District
Tank.....(*Appellant*)

VERSUS

1. Government of Khyber Pakhtunkhwa through Secretary Education.
2. Director Elementary & Secondary Education, Government of Khyber Pakhtunkhwa, Peshawar.
3. District Education Officer (M) Tank.....(*Respondents*)

Present:-

GUL TIAZ KHAN MARWAT,
Advocate --- For Appellant

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

Date of Institution.....02.03.2023
Date of Hearing.....21.11.2023
Date of Decision..... 21.11.2023

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 appeal this honourable Tribunal may very graciously be pleased to set aside the impugned order of withdrawal of appointment as PST bearing No. 3126-32/DEO(M) Tank dated 11.10.2022 and as consequence thereof the appellant may please be reinstated into service with all back benefits as the appellant is jobless since date of his order of

withdrawal of order of appointment. Any other relief deemed appropriate in the prevailing circumstances may also be granted."

02. Brief facts of the case are that the appellant was appointed as Primary School Teacher under Rule 10(4) of the Khyber Pakhtunkhwa Civil Servants (Appointment Promotion & Transfer) Rules, 1989 by the respondent No. 3 vide order dated 10.02.2022; after completion of the codal formalities the appellant took over charge on the post of PST at GPS Qismat Khan Koroona, District Tank. However, the respondent No. 2 the said appointment order was revoked/discontinued by the respondent No. 3 vide order dated 11.10.2022 on the plea that brother of the appellant had already been appointed against the deceased son quota on 18.01.2021. Feeling aggrieved from the impugned order dated 11.10.2022, he filed departmental appeal which was not responded to, hence preferred the instant service appeal on 02.03.2023.

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 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 order, action and inaction of the respondent No. 3 is against the provisions of fundamental rights guaranteed under the Constitution of Islamic Republic of Pakistan and is against the principles of natural justice as well as the provisions of General Clauses Act. Learned counsel for the appellant further contended that proper charge sheet/statement of allegations was not issued to

the appellant. No Show Cause Notice was issued to the appellant and no chance of personal hearing was provided to the appellant. He has, therefore, been condemned unheard. He submitted that no regular inquiry has been conducted in the matter which is mandatory obligation on the part of competent authority.

05. Learned Deputy District Attorney on the other hand contended that the appointment order of the appellant was not maintainable in the eye of law, because the real brother of the appellant has already availed allocated quota as per rules & policy; that the appointment order of two real sons of a deceased employee could not be intact under the relevant rules; that the appellant was treated in accordance with law and rules because he has no prerogative rights to avail simultaneous appointment, when appointment order of his real brother was already in field.

06. We observe that the appointment order dated 10.02.2022 on duly conferred the status of civil servants upon the appellant as he assume the charge of his post and was performing duty up to 11.10.2022. Proceedings against the civil servant on any ground there is a proper procedure/mechanism provided in the Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011. Rule 5(1) of the rules *ibid* provides that:-

Initiating of proceedings.---*(1) If on the basis of its own knowledge or information placed before it, the competent authority is of the opinion that there are sufficient grounds for initiating proceedings against a Government servant under these rules it shall either:-*

(a) proceed itself against the accused by issuing a showing cause notice under rule 7 and, for reasons to be recorded in writing, dispense with inquiry.

(b) get an inquiry conducted into the charge or charges against the accused, by appointing an inquiry officer or an inquiry committee, as the case may be, under rule 11:

Provided that the competent authority shall dispense with the inquiry where-


(i) a Government Servant has been convicted of any offence other than corruption by a court of law under any law for the time being in force; or


(ii) a Government servant is or has been absent from duty without prior approval of leave;

Provide that the competent authority may dispense with the inquiry where it is in possession of sufficient documentary evidence against the accused or, for reasons to be recorded in writing, it is satisfied that there is no need to hold an inquiry.

07. Since the impugned order dated 11.10.2022 is not in consonance with the aforementioned legal procedure, therefore, we are constraint^{ed ✓} to set aside the impugned order dated 11.10.2022, reinstate the appellant into service for the purpose of disciplinary proceedings and remit the case back to the respondent department to scrutinize the conduct of the appellant and other relevant government servants associated with the process of appointment in the respondent department. Costs shall follow the event. Consign.

08. *Pronounced in open court at camp court D.I.Khan and given under our hands and seal of the Tribunal on this 21st day of November, 2023.*


(Kalim Arshad Khan)
Chairman
Camp Court D.I.Khan


(Muhammad Akbar Khan)
Member (E)
Camp Court D.I.Khan