

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 1585/2022

BEFORE: MRS. RASHIDA BANO ... MEMBER(J)
MR. MUHAMMAD AKBAR KHAN ... MEMBER (E)

Imran Khan, S/O Shah Jehan Ex-PST, Takhtbhai, District Mardan.
.... (Appellant)

VERSUS

1. The Government of Khyber Pakhtunkhwa through Secretary Elementary & Secondary Education Civil Secretariat, Peshawar.
2. The Director, Elementary & Secondary Education, Khyber Pakhtunkhwa, Peshawar.
3. The District Education Officer (Male), Mardan.
.... (Respondents)

Mr. Khalid Rehman
Advocate ... For appellant

Mr. Muhammad Jan
District Attorney ... For respondents

Date of Institution.....25.10.2022
Date of Hearing.....07.11.2023
Date of Decision.....07.11.2023

JUDGMENT


RASHIDA BANO, MEMBER (J):The instant service appeal has been instituted under section 4 of the Khyber Pakhtunkhwa Service Tribunal, Act 1974 with the prayer copied as below:

“On acceptance of this appeal, the impugned original order dated 15.08.2022 passed by Respondent No.3 and the impugned appellate order dated 27.09.2022 passed by respondent No.2, may graciously be set aside and appellant be reinstated into service with all back benefits.”

2. Through this single judgment we intend to dispose of instant service appeal as well as connected (1) Service Appeal No. 1586/2022 titled “Hazrat Mohammad Vs. Education Department” (2) Service Appeal No. 1587/2022 titled “Raheem Khan Vs. Education Department” (3) Service Appeal No. 1588/2022 titled “Muhammad Ayaz Vs. Education

Department” (4) Service Appeal No. 1589/2022 “Safdar Khan Vs. Education Department” (5) Service Appeal No. 1590/2022 titled “Mohammad Farooq Vs. Education Department” (6) Service Appeal No. 1591/2022 titled “Fazal Mehmood Vs. Education Department” (7) Service Appeal No. 1592/2022 titled “Aman Ullah Vs. Education Department” (8) Service Appeal No. 1593/2022 titled “Inam Ullah Vs. Education Department” (9) Service Appeal No. 1594/2022 titled “Fayaz Mohammad Vs. Education Department” (10) Service Appeal No. 1595/2022 titled “Saeed Muhammad Vs. Education Department” (11) Service Appeal No. 1596/2022 titled “Shams Ur Rehman Vs. Education Department” (12) Service Appeal No. 1597/2022 titled “Fazal Ahmad Shah Vs. Education Department” (13) Service Appeal No. 1598/2022 titled “Siraj Mohammad Vs. Education Department” (14) Service Appeal No. 1599/2022 titled “Sultan Ali Vs. Education Department” (15) Service Appeal No. 1608/2022 titled “Abdul Ahad Vs. Education Department” (16) Service Appeal No. 1694/2022 titled “Muhammad Naeem Vs. Education Department” as in all these appeals common question of law and facts are involved.

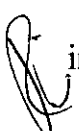
3. Brief facts of the case, as given in the memorandum of appeal are that appellants being eligible under the then prevailing rules were appointed during 1995 to 1996 in the respondent department in accordance with the rules then prevailing and procedure laid down therein was adopted in letter and spirit; the respondent No. 1 promulgated Act No. XVII of 2012 to provide relief to those sacked employees who were appointed on regular basis to a civil post in the Province of Khyber Pakhtunkhwa during the period from 1995 to 1997; that respondents despite promulgation of above Act were reluctant to provide any relief to the appellants which compelled the appellant to seek direction of the Court that after hearing the parties, the

 Hon'ble High Court was pleased to accept the Writ Petition through

Hon'ble High Court was pleased to accept the Writ Petition through judgment dated 12.04.2018 in writ petition No. 2440-P/2016 wherein reliance was placed on writ petition No. 516-A/2013 that in compliance with order of Hon'ble High Court, the appellants were reinstated in their services and a time period of 03 years was given to them to acquire training certificate under the law vide notification dated 04.10.2017 and 25.11.2017; that it was duty of the respondents to arrange and manage the requisite Training Course for appellants in view of directions, although Directorate of Curriculum and Teacher Education, Abbottabad addressed a letter dated 21.10.2019 to concerned quarter by informing that the directorate was going to arrange training course of PTC, CT, DM JDPE for sacked employees in light of judgment of the Hon'ble Peshawar High Court in W.P No 516-A of 2013 and asked respondent to send complete data, which respondent accordingly sent vide letter dated 17.09.2012 and 04.03.2021 but said training was kept pending. Respondent issued show cause notice dated 21.06.2022 to which appellant submitted his reply on 25.06.2022, without fulfilling codal formalities respondent issued impugned order of removal from service of appellant vide order dated 15.08.2022. Appellants challenged impugned order in departmental appeal on 22.08.2022, which was rejected vide order dated 27.09.2022, hence the instant service appeal.

4. Respondents were put on notice who submitted written replies/comments on the appeal. We have heard the learned counsel for the appellant as well as the learned District Attorney and perused the case file with connected documents in detail.

5. Learned counsel for the appellant argued that appellants have not been treated in accordance with law and rules. He further argued that the

 impugned orders passed by the respondents are wrong, illegal, against the

law and facts arbitrary, fanciful perverse, against the fundamental right of the appellant as well as against the canons of justice, that the respondents failed to arrange and managed the requisite training which cannot be attributed to the appellants despite that the appellant have done the same at their own expenses, that the appellants cannot be penalized for the acts of the respondents, that the notices alongwith impugned order have not been issued to all similarly, placed employees while appellants are meted with discrimination that notices alongwith impugned order have been issued to the appellants with malafide, that the appellants have been condemned unheard and have an inalienable fundamental rights to be dealt with law laid down in the judgment of Worthy Peshawar High Court; that it is inalienable rights of the appellant to enjoy the protection of law and to be treated in accordance with law, rules and regulations, that no opportunity of defence has been provided to appellants; that neither show cause notice nor statement of allegation were served upon the him and they were condemned unheard.

6. Conversely, learned District Attorney contended that the Khyber Pakhtunkhwa Sacked Employees (Appointment) Act were basically enacted for those employees who possessed the requisite qualification and experience where the appellant had not possessed the requisite qualification and experience and were not eligible for the appointment under the Act; that the appellants were reinstated in their services in accordance with the judgment of Hon'ble Peshawar High Court vide order dated 04.07.2017 and they were given the time period of three year to acquire the requisite qualification but they failed to acquire requisite qualification and they were removed from service.



7. Perusal of record reveals that the appellants were removed from service on the allegation of not completing requisite training/prescribed qualification within three years in accordance with terms and conditions No.15 of their appointment/reinstatement order dated 09.10.2018. It is admitted fact that appellants were appointed during period in between 1995 to 1996 and were sacked from their jobs subsequently on 23.06.1997. Worthy Peshawar High Court, Peshawar provided three year time to acquire prescribed qualification to the sacked employee/present appellants in the judgment dated 24.05.2016 in writ petition No 516 A/2013 but arrangements of training to acquire prescribed qualification was the job and responsibility of the respondents not of the appellants who were performing their duties. So respondent department failed to discharge this burden of arranging training courses for appellant in light of judgment of Worthy Peshawar High Court Peshawar given in writ petition No 516-A/2013. Respondent also in their written reply para No 6 and 7 mentioned that despite giving time, appellant failed to attain required training and acquire prescribed qualification which is now BA. Therefore, they were removed from service in this regard.

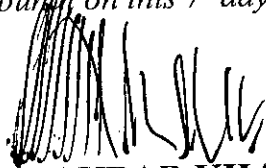
8. In our humble view requisite qualification at that time of appointment of appellant was matric and not F.A or B.A. Qualification of F.A and B.A were introduced later on 13.11.2012 and is not applicable retrospectively in case of appellants when they have got the right of appointment by operation of law promulgated on 20.09.2012. It is not disputed that the appellants were appointed during the period in between 1993 and 1996. It is a matter of fact that the Khyber Pakhtunkhwa Sacked Employees (Appointment) Act, 2012 was promulgated on 20.09.2012 to provide relief to those sacked employees who were dismissed, removed, or terminated from service



during the period from 1st day of November 1996 to 31st day of December 1998. A sacked Employee as defined under Section 2(g) of the said Act means a person who were appointed on regular basis to a civil posts in the province of Khyber Pakhtunkhwa and who possessed the prescribed qualification and experience for the said post at that time, during the period from 1st day of November 1993 to 30th day of November 1996 (both days inclusive) and was dismissed, removed, or terminated from service during the period from 1st day of November 1996 to 31st day of December 1998 on the ground of irregular appointments. By virtue of Section-3 of the said Act, sacked employees were to be appointed in respective cadre of their concerned department. The notification dated 13.11.2012 on its face does not provide for its retrospective effect. Appellants were reinstated into service vide sacked employees Act 2012 which means by operation of law, therefore, any subsequent amendment with respect to qualification of FA & B.A for the post of PST will not be applicable to appellants. So both the reason advanced by the respondents for removal of appellants have no logic and no legal force in it, hence declared arbitrary and not binding upon appellants.

9. As a sequel to above discussion, we accept the instant appeal as well as connected service appeals as prayed for. Costs shall follow the event. Consign.

10. *Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal on this 7th day of November, 2023.*



(MUHAMMAD AKBAR KHAN)
Member (E)



(RASHIDA BANO)
Member (J)


ORDER


07.11.2023 1. Learned counsel for the appellant present. Mr.

Muhammad Jan learned District Attorney alongwith Sajid Khan, ADEO for the respondents present.

2. Vide our detailed judgement of today placed on file, we accept the instant appeal as prayed for. Costs shall follow the event. Consign.

3. *Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal on this 7th day of November, 2023.*


(Muhammad Akbar Khan)
Member (E)


(Rashida Bano)
Member (J)