

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 3989/2021

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

Sobia D/O Said Kareem, R/O Irum Colony, Nowshera Road, Mardan.

..... (Appellant)

VERSUS

1. Government of Khyber Pakhtunkhwa through Secretary Elementary & Secondary Education Civil Secretariat, Peshawar.
2. Director Elementary & Secondary Education Department Peshawar.
3. Chairman, Khyber Pakhtunkhwa Public Service Commission, Fort Road, Peshawar Cantt.
4. Secretary Khyber Pakhtunkhwa Public Service Commission, Fort Road, Peshawar Cantt.
5. District Education Officer (F), Mardan..
6. Sub-Divisional District Education Officer (F), Mardan.

.... (Respondents)

Mr. Noor Muhammad Khattak
Advocate ... For appellant

Mr. Muhammad Jan
District Attorney ... For respondents

Date of Institution.....22.03.2021
Date of Hearing.....03.11.2023
Date of Decision.....03.11.2023

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 notification dated 28.02.2019 and 20.03.2019 may kindly be set aside and the appellant may graciously be reinstated with all back benefits with costs.”



2. Brief facts of the case, as given in the memorandum of appeal, are that pursuant to advertisement No. 5/2009 dated 13.06.2009, issued by respondent No.4, the appellant being disable, applied against the post of Female Assistant District Education Officer (BPS-16), allocated against 2% quota of disable candidates, appearing at Serial No.10 of the advertisement. She appeared in test & interview, qualified the same and accordingly vide Notification dated 28.02.2012, she was appointed against the said post and was performing her duties when all of sudden respondent No.2 vide notification dated 28.02.2019, disowned her appointment notification and directed the respondent No.5 to recover salaries and other allied benefits drawn by her. Appellant filed writ petition bearing 2206/2019 which was sent to this Tribunal with direction to treat it service appeal vide order dated 24.02.2021, hence the instant service appeal.

3. 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.

4. Learned counsel for the appellant argued that impugned orders are against law, facts and norms of natural justice, hence not tenable and liable to be set side; that the appellant has not been treated in accordance with law, as the appellant was not afforded appropriate opportunity to defend her cause as enshrined in Article 10-A of the Constitution, hence the respondents acted without jurisdiction; that is well settled law that regular inquiry is must before imposition of major penalty of removal from service, which however was not done in case of appellant...



5. Conversely, learned District Attorney for the respondents has contended that the appellant could not produce any cogent proof and legal justification in support of her stand regarding her recommendations by the public service commission and it was found that the recommendation letter by the public service commission was fake; that the appellant could not prove that she has been recommended by public service commission, therefore her claim regarding her appearance before medical board and her service rendered makes no legal ground; that due to the above reason, services of the appellant has been disowned by the respondents after due process of law alongwith the recovery of salaries received by her; that appeal of the appellant is baseless and without any cogent proof and justification, therefore is liable to be dismissed.

6. Perusal of record reveals that when after performing duties for long seven year by the appellant, respondents found that recommendation letter of the Public Service Commission in respect of the appellant was fake bogus and all of a sudden appointment order of the appellant was disowned without providing any opportunity of self-defence. Appellant challenged her disowning of appointment order dated 20.03.2019 in a writ petition bearing No 2206-P/2019 which was sent to this Tribunal by the worthy Peshawar High Court Peshawar vide order dated 24.02.2021 with direction to treat writ petition as service appeal. Record further reveals that Public Service Commission advertised four posts of female Assistant District Officer (Disable Quota BPS-16 vide advertisement No 5/2009). Appellant being qualified having degrees of B.Ed and M.A applied for the post of ADEO, placed on record letter dated 27.05.2010 for interview was issued by Khyber Pakhtunkhwa Public Service Commission, which would suggest that appellant had applied for the post. It is also important to note appellant



placed on record application form submitted to Public Service Commission. Appellant was appointed upon recommendation of Public Service Commission vide note dated 28.02.2012 alongwith three others on disable quota by respondent. In pursuance of the order, the appellant assumed the charge on 20-02-2017 and started performing her duty. After assuming duty, the process of verification of her document started. The directorate of education verified that appointment order dated 02-02-2017 in respect of the appellant has been checked with office record and was found correct. Letters dated 14.04.2012, 24.04.2012 and 21.05.2012 of Dy. DEO (F) Mardan, Dy. Controller of Examination, University of Peshwar and Assistant Secretary, BISE Peshawar would show that educational and professional certificates/degrees/DMCs have been verified from the concerned Board/universities and were found correct. After verification of antecedents of the appellant, salary of the appellant was activated in the district account office Mardan and the appellant served for almost seven years, until her appointment order was withdrawn vide order date 28-02-2019.

7. Since no inquiry was conducted either by education department or by public service commission and upon query of this tribunal, the respondent could not ascertain as to what was the source, which pointed out that recommendation in respect of the appellant were fake, rather we were informed that it was due to rumors in the department that some individual entered the system illegally and upon verification, it was found that documents of the appellant as well as other were fake. Due to incomplete information and absence of inquiry, we are confined to the available record to evaluate the stance of the respondents with respect to their claim. We have observed that the appellant was equipped with the prescribed



qualification as well as experience required for the post of ADO. Sufficient material is available on record to show that the appellant had applied for the subject post. The process of advertisement of the post until final selection and her posting against the post is in order and in a sequence, which took almost three years fulfilling all the codal formalities and the appellant served against the post for seven years performing her duty to the entire satisfaction of her superior, which is evident from the commendation certificates awarded to the appellant. As per practice in vogue, the respondents placed requisition for recommendation of 4 posts of ADO (Female), whereas the commission recommended candidates, which does not exceed the requisite number. It is un-believable that a lengthy process of selection spreading over three years of time and culminating into selection of the appellant being female would be maneuvered by her illegally. Antecedents of the appellant had gone through the process of verification and everything was clear during her initial appointment, which is evident from record of the respondents, which is un-disputed and not fake. Appointment order of the appellant was issued by the competent authority, which also is not disputed. Similarly, her medical fitness, preparation of service book, her posting against a post by district education officer and her salary are also not fake and are un-disputed. The appellant has served against the post for quite longer and has developed vested right over the post, but was relieved of her duty overnight without observing the legal formalities under the pretext that her recommendation letter was fake. It was the statutory duty of the appointing authority to check and re-check the appointment procedure, which however was done in case of the appellant well before time, but later in time, the respondents denied its own acts and to this effect, the Supreme Court of Pakistan in its judgment



reported as 1996 SCMR 1350 have held that authority having itself appointed civil servant could not be allowed to take benefit of its lapses in order to terminate service of civil servant merely because it had itself committed an irregularity in violating procedure governing appointment. Appointment of the appellant was made by competent authority by following the prescribed procedure, petitioner were having no nexus with the mode of selection process and they could not be blamed or punished for the laxities on part of the respondents. The order affecting the rights of a person had to be made in accordance with the principle of natural justice; order taking away the rights of a person without complying with the principles of natural justice had been held to be illegal. Government was not vested with the authority to withdraw or rescind an order if the same had taken legal effect and created certain legal rights in favor of the appellant. Reliance is place on 2017 PLC (CS) 585.

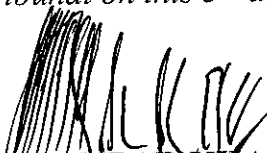
8. It is a well settled legal proposition that regular inquiry is must before imposition of major penalty of removal from service, whereas in case of the appellant, no such inquiry was conducted. The Supreme Court of Pakistan in its judgment reported as 2008 SCMR 1369 have held that in case of imposing major penalty, the principles of natural justice required that a regular inquiry was to be conducted in the matter and opportunity of defense and personal hearing was to be provided to the civil servant proceeded against, otherwise civil servant would be condemned unheard and major penalty of dismissal from service would be imposed upon him without adopting the required mandatory procedure, resulting in manifest injustice. In absence of proper disciplinary proceedings, the appellant was condemned unheard, whereas the principle of Audi Alterm Partem was always deemed to be imbedded in the statute and even if there was no such



express provision, it would be deemed to be one of the parts of the statute, as no adverse action can be taken against a person without providing right of hearing to him. Reliance is placed on 2010 PLD SC 483.

9. In view of the above discussion, we set-aside the impugned orders dated 28.02.2019 and 20.03.2019 and reinstate the appellant into service for the purpose of denovo inquiry with direction to respondents to provide opportunity of personal hearing, self defense and cross which are pre-requisite of fair trial and to conclude the inquiry within 90 days after receipt of copy of this judgment. 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 3rd day of November, 2023.*


(MUHAMMAD AKBAR KHAN)
Member (E)


(RASHIDA BANO)
Member (J)

ORDER
03.11.2023

1. Learned counsel for the appellant present. Mr. Muhammad Jan learned District Attorney alongwith Mr. Mehtab Gul, Law Officer and Behramand Khan, Assistant Director for the respondents present.

2. Vide our detailed judgement of today placed on file, we set-aside the impugned orders dated 28.02.2019 and 20.03.2019 and reinstate the appellant into service for the purpose of denovo inquiry with direction to respondents to provide opportunity of personal hearing, self defense and cross which are pre-requisite of fair trial and to conclude the inquiry within 90 days after receipt of copy of this judgment. 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 3rd day of November, 2023.*

(Muhammad Akbar Khan)
Member (E)


(Rashida Bano)
Member (J)