

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No.1774/2022

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

Irfan Ullah S/O Mir Adam Khan, R/O Behram Khel, Lakki Marwat Ex-Naib Qasid Village Council, Adam Zai Lakki Marwat. ... (Appellant)

VERSUS

1. Assistant Director, Local Government & Rural Development Department
Lakki Marwat.
2. Director General, Local Government, Election & Rural Development
Department, Government of Khyber Pakhtunkhwa, Peshawar.
3. Secretary Local Government, Election & Rural Development
Department, Government of Khyber Pakhtunkhwa, Peshawar.
4. Sher Alam Khan, S/O Shah Jehan, R/O Village Adam Zai, Naib Qasid
Adam Zai, Lakki Marwat.

... (Respondents)

Mr. Arbab Sailful Kamal
Advocate ... For Appellant

Mr. Asif Masood Ali Shah
Deputy District Attorney ... For Respondents

Date of Institution..... 09.12.2022
Date of Hearing.....06.11.2023
Date of Decision.....06.11.2023

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, order dated 18.04.2018 of respondent No. 1 and appointing respondent No. 4 as Naib Qasid Village Council be set aside and appellant be reinstated in service with all consequential benefits.



2. Brief facts of the case are that on 04.07.2015 respondents advertised some post of Class IV servant for Village Councils. After going through the prescribed procedure of selection and upon commendation of Selection and Recruitment Committee, the appellant was appointed as Naib Qasid on regular basis vide order dated 18.03.2016. The appellant assumed the charge of the post and started performing duty against the said post. Private respondent No.4 filed Writ Petition before the Hon'ble High Court, Bannu Bench to declare the order of appointment of the appellant as illegal and prayed for his appointment against the said post. The petition was disposed of on 28.02.2018 and the case was remanded back to respondent No. 1 to re-examine the issue. After receipt of the judgment respondent No.1 issued show cause notice on 30.03.2018 which was replied on 10.04.2018 by the appellant but respondent No.1 vide impugned order dated 18.04.2018 terminated services of the appellant with immediate effect and respondent No.4 was appointed in his place vide order dated 19.04.2018. Feeling aggrieved, appellant filed departmental appeal, which was not responded 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 Deputy District Attorney for the respondents and perused the case file with connected documents in detail.

4. Learned counsel appearing on behalf of appellant argued that the appellant had applied for the post of Naib Qasid against the his own village council and it was incumbent upon the competent authority to appoint him in his own Village Council, but the appellant was posted against another village council which was not illegal, as the appellant was selected against his own village council on merit. He further argued that upon recommendation of DSC, the appellant was appointed vide order dated 18.03.2016 and he was gone through the process of



medical fitness, proper arrival and construction of his service book and served against the post for almost three years and valuable rights have been accrued to him, which cannot be taken back from him.

5. Conversely, learned Deputy District Attorney contended that appellant has been treated in accordance with law and rules. He further contended that appellant could not be accommodated due to non-availability of the post and termination, was an appropriate action on the part of respondent. He further contended that no malafide could be pointed out by the appellant on part of respondents rather the termination of the appellant was in compliance with the judgement of Hon'ble Peshawar High Court, Bannu Bench.

6. Perusal of reveals that the Local Government Department had advertised certain Class-IV vacancies vide advertisement dated 04-07-2015. Such Class-IV vacancies were meant for village/neighborhood councils. It had been specifically mentioned in the advertisement that preference will be given to the candidates belonging to the same Village Council, which means that candidates from adjoining villages can also be considered but preference will be given to candidate of the same Village Council. The appellant was also one of the candidates, who had applied for his own Village Council. After due process of selection, the appellant was appointed as Naib Qasid vide order dated 15-03-2016, but was posted against another Village Council. In a similar manner appellant alongwith some other class iv were also selected but were appointed against Village Councils other than their own. One of the un-successful candidates filed a writ petition No 432-B/2018 with the contention that candidate of other Village Council had been appointed against his Village Council. The Honorable Peshawar High Court, Bannu Bench remanded the case to respondent No. 1 vide judgment dated 18-09-2018. Operative part of the judgment is reproduced as under:



“this case is send back to the Assistant Director, Local Government and Rural Development Lakki Marwat to re-examine the appointments of the private respondents (present appellants), merit position of the petitioners (present respondents) and pass an appropriate order keeping in mind the rules, policy and the terms and conditions incorporated in the advertisement for appointment as Class-IV employees, after providing the parties an opportunity of hearing”

7. In pursuance of the judgment, respondents No. 1 terminated all those including the appellant, who were appointed against villages other than their own. The appellant was terminated vide order dated 16-01-2019 under the pretext that he had provided wrong information regarding his Village Council, but in the meantime, the appellant had served against the post for almost three years and developed a vest right over such post. It however was the statutory duty of the appointing authority to check their documents in a specified time period which however was not done by the respondents well in time and to this effect, the Supreme Court of Pakistan in its judgment reported as 1996 SCMR 1350 has 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, petitioners 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 placed on 2017 PLC (CS) 585. It was also astonishing to note that the same office, which had issued appointment order of the appellant,

had declared such order as illegal. It would be beneficial to refer to the judgment reported as 2006 SCMR 678, which have held "that it has been noted in a number of cases that departmental authorities do show haste at the time of making such appointments when directives are issued to them by the persons who are in helm of the affairs without daring to point out to them that the directions are not implementable being contrary to law as well as prevalent rules and regulations. In fact such obedience is demonstrated by the concerned officers of the department to please the authorities governing the country just to earn their time being pleasure but on the change of regime and due to their such illegal acts the employees who were appointed suffer badly without any fault on their part and then even nobody bothers for their further career and in such a scenario, the appointing authority is required to be taken to task and not the civil servant. The instant case is a classical example of the case referred by the apex court in the above mentioned judgment.

8. In pursuance of the judgment of the Honorable High Court, the respondent No. 1 accommodated the appellants but did not afford appropriate opportunity to respondents (the present appellant), as by every definition, they were civil servants and they were not supposed to be terminated by a single stroke of pen, as proper procedure is available for dealing with such cases, where the authority was required to conduct a detailed inquiry against respondent No. 1 for the lapses and action if any was required against the appellant, was supposed to be under the disciplinary rules, where proper opportunity was required to be afforded to him, as he is also of the same domicile and having valid reasons to show that his appointment was legal, which however was not done by the respondents.

9. The Tribunal observed that appointment of an employee, if made illegally, could not be withdrawn or rescinded instead action must be taken against the appointing authority for committing a misconduct by making illegal appointments as per his own admission. In the instant case, the appointment so made was not




illegal, hence the appellants has made out a good case for indulgence of the Tribunal.


10. It is pertinent to mention here that case of the appellant is similar to appellants in service appeal No. 1225/2019 which was accepted by this Tribunal on 27.01.2022, so on the basis of similarly placed employees, appellant also deserve the same treatment and question of limitation in such like cases are immaterial as it is held by the apex court of the country. --Civil service— Appointment orders, restoration of—relief of restoration of appointments orders granted to similarly and equally placed employees—present employees/respondents were appointed on the same terms and conditions of service as that of similarly placed employees—(earlier litigants) who had been given relief of restoration of their appointment orders by declaring the orders of their withdrawal/cancellation as null and void—present respondents were hired and fired together in the same manner as earlier litigants and were standing on the same pedestal as them –both sets of appointees could not be separated from each other with regard to their appointment and dismissal—Only difference between the two sets was that the earlier group/earlier litigants litigated for their rights and second group, i.e the present respondents, did not go into litigation earlier and through present litigation sought the relief already given to the first group who litigated—to claim such a relief was the fundamental right of the respondents and the Constitution extended protection to such right and as they could not be treated differently; this was the mandate of Art, of 25 of the Constitution—Respondents being equally and similarly placed as the earlier litigants, they become entitled to the same relief which was extended to them— Appeals were dismissed. Reliance is placed on 2021 SCMR 1313.

11. We are of the considered opinion, that the appellant has not been treated in accordance with law and he was illegally removed from service. In view of

the foregoing discussion we accept the instant appeal, the impugned order of termination is set aside and appellant is reinstated into service with all back benefits with further direction that private respondent may not be suffer for lapses of the respondent, hence also be accommodated. Costs shall follow the event. Consign.

12. *Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal on this 6th day of November, 2023.*

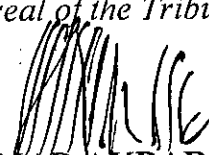

(MUHAMMAD AKBAR KHAN)
Member (E)


(RASHIDA BANO)
Member (J)

ORDER
06.11.2023

1. Learned counsel for the appellant present. Mr. Asif Masood Ali Shah learned Deputy District Attorney for the respondents present.
2. Vide our detailed judgement of today placed on file, we accept the instant appeal, the impugned order of termination is set aside and appellant is reinstated into service with all back benefits with further direction that private respondent may not be suffer for lapses of the respondent, hence also be accommodated. 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 6th day of November, 2023.*


(MUHAMMAD AKBAR KHAN)
Member (E)


(RASHIDA BANO)
Member (J)