

**KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,**  
**PESHAWAR AT CAMP COURT ABBOTTABAD**

BEFORE: SALAH-UD-DIN ... MEMBER (Judicial)  
FAREEHA PAUL ... MEMBER (Executive)

*Service Appeal No. 312/2022*

Mst. Saima Naz Ex-PST, D/o Khuda Dad W/o Abdul Jabbar,  
R/o Sanda Saray Cum Arghashori, Tehsil & District Battagram.  
(Appellant)

Versus

Government of Khyber Pakhtunkhwa through Secretary Elementary &  
Secondary Education Peshawar and 02 others. (Respondents)

Present:

Mr. Hamayun Khan, Advocate.....For the appellant  
Mr. Habib Anwar, Additional Advocate General .....For respondents

.....  
Date of presentation of Appeal.....04.03.2022  
Date of Hearing.....11.12.2023  
Date of Decision.....11.12.2023

**JUDGMENT**

**SALAH-UD-DIN, MEMBER:** The appellant has invoked the jurisdiction of this Tribunal by filing the instant appeal with the prayer copied as below:-

*“On acceptance of the instant appeal, impugned Notification dated 09.10.2021 issued by respondent No. 3 may kindly be declared null and void and appellant be reinstated into service alongwith all back benefits. Any other relief which this honourable court may deem fit and proper in the circumstances of the case may also be granted to the appellant.”*

2. Precise averments raised by the appellant in her appeal are that she was appointed as Primary School Teacher in the year 2011 and was performing her duty with full devotion; that vide Notification dated 09.10.2021, she was removed from service without any justification or lawful Authority, therefore, she preferred departmental


appeal, however the same was not responded within the statutory period, hence the instant appeal.

3. On receipt of the appeal and its admission to regular hearing, respondents were summoned, who put appearance through their representative and contested the appeal by way of filing written reply raising therein numerous legal as well as factual objections.

4. Learned counsel for the appellant contended that whole of the proceeding were conducted at back of the appellant and no charge sheet, statement of allegations or show-cause notice was served upon her. He next contended that the appellant was proceeded against on account of willful absence but the procedure as laid down in Rule-9 of Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011 was not at all complied with, rendering the impugned order of removal of the appellant from service as wrong and illegal. He further contended that all the proceedings were conducted in a haphazard manner without complying the procedure provided in Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011. He next argued that no opportunity of personal hearing was afforded to the appellant and she was thus condemned unheard. He further argued that the rights of the appellant as guaranteed under Articles 4 & 25 of the Constitution of Islamic Republic of Pakistan, 1973 were badly violated. In the last he requested that the impugned order may be set-aside and the appellant may be reinstated in service with all back benefits.

5. On the other hand, learned Additional Advocate General while controverting the arguments advanced by learned counsel for the appellant, contended that the appellant was not performing her duty

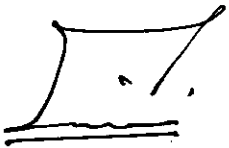
regularly and was found absent from duty on so many occasions as reported by IMU. He next contended that show-cause notices were issued to the appellant, however she deliberately avoided to submit reply of the same. He further contended that notice for personal hearing was also issued to the appellant but she failed to appear before the competent Authority. He next argued that previously too, the appellant was found absent from duty on 07.08.2021, 12.07.2021, 08.06.2021, 27.05.2021 as well as 09.04.2021 and was penalized for the same. He further argued that the inquiry proceedings were conducted by complying the procedure as laid down in Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011. In the last he requested that the impugned order may be kept intact and the appeal in hand may be dismissed with cost.



6. We have heard the arguments of learned counsel for the parties and have perused the record.

7. According to the impugned Notification dated 09.10.2021, whereby the appellant has been removed from service, the appellant was held liable for willful absence with effect from 17.03.2021 till the date of her removal from service i.e 09.10.2021. According to the record annexed by the respondents alongwith their reply, an absence notice as well as a show-cause notice was issued to the appellant on 12.04.2021 by the District Education Officer (F) Battagram. In the absence notice, it has been mentioned that the appellant was found absent from duty with effect from 09.03.2021 and she had been asked to submit reply within seven days, failing which she would be proceeded under Rule-3 (a), (b), (c), (d) of the Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline)


Rules, 2011. However in the show-cause notice issued to the appellant on the same day, it had been mentioned that she was found absent during the surprise visit on 17.03.2021 and 10.04.2021 and that the competent Authority had tentatively decided to impose major penalty of removal from service upon the appellant under Rule-9 of Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011. Instead of any action on the aforementioned show-cause as well as absence notices, the District Education Officer (Female) Battagram issued another absence notice to the appellant on 30.06.2021 wherein it had been mentioned that in case of failure to join her duty within seven days, the appellant will be proceeded against under Rule-9 of Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011. While going through the show-cause as well as absence notices allegedly issued to the appellant, it can be observed that the District Education Officer (F) Battagram was herself not certain to proceed against the appellant for habitual absence as provided in Rule-3 (d) of Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011 or for willful absence as provided in Rule-9 of the said rules. Ultimately another show-cause notice dated 23.09.2021 was issued to the appellant, the contents of which would show that the appellant had been proceeded against for misconduct as well as habitual absence, while the impugned Notification of removal of the appellant from service dated 09.10.2021 would show that she was proceeded against for willful absence. Another interesting aspect of the case is that on one hand the appellant has been shown to have remained absent from duty with effect from 17.03.2021 till her removal from

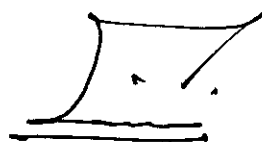


service on 09.10.2021, while on the other hand, it has been mentioned in para-3 of facts of the reply submitted by the respondents that in the intervening period the appellant had remained absent on 09.04.2021, 27.05.2021, 08.06.2021, 12.07.2021 and 07.08.2021 and that she had been previously penalized for the same. In such a scenario, the impugned order of removal of the appellant from service is not sustainable in the eye of law and is liable to be set-aside.

8. In view of the above discussion, the impugned order of removal of the appellant is set-aside and she is reinstated in service with directions to the competent Authority to conduct de-novo inquiry in the matter strictly in accordance with the relevant law/rules within a period of 60 days of receipt of copy of this judgment. Needless to mention that the appellant shall be associated with the inquiry proceedings and fair opportunity be provided to her to defend herself. The issue of back benefits shall be subject to outcome of the de-novo inquiry. In case the respondents failed to conduct de-novo inquiry within the period of 60 days mentioned above, the appellant shall be deemed to have been reinstated in service with all back benefits. Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCED  
11.12.2023

  
(FARZEHA PAUL)  
MEMBER (EXECUTIVE)  
CAMP COURT ABBOTTABAD


  
(SALAH-UD-DIN)  
MEMBER (JUDICIAL)  
CAMP COURT ABBOTTABAD

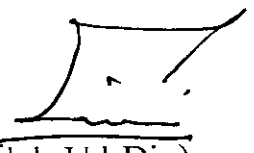
ORDER  
11.12.2023

Learned counsel for the appellant present. Mr. Ihsanullah, ADEO alongwith Mr. Habib Anwar, Additional Advocate General for the respondents present. Arguments heard and record perused.

Vide our detailed judgment of today, separately placed on file, the impugned order of removal of the appellant is set-aside and she is reinstated in service with directions to the competent Authority to conduct de-novo inquiry in the matter strictly in accordance with the relevant law/rules within a period of 60 days of receipt of copy of this judgment. Needless to mention that the appellant shall be associated with the inquiry proceedings and fair opportunity be provided to her to defend herself. The issue of back benefits shall be subject to outcome of the de-novo inquiry. In case the respondents failed to conduct de-novo inquiry within the period of 60 days mentioned above, the appellant shall be deemed to have been reinstated in service with all back benefits. Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCED  
11.12.2023

  
(Farsena Paul)  
Member (Executive)  
Camp Court Abbottabad

  
(Salah-Ud-Din)  
Member (Judicial)  
Camp Court Abbottabad