

**KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,**  
**PESHAWAR**

BEFORE: KALIM ARSHAD KHAN ... CHAIRMAN  
SALAH-UD-DIN ... MEMBER (Judicial)

*Service Appeal No. 1736/2023*

Mst. Imtiaz Begum (PSHT) at GGPS Civil Quarters, Peshawar  
D/O Mohd: Lisaan R/O Civil Quarters Peshawar.

*(Appellant)*

Versus

Government of Khyber Pakhtunkhwa, through Secretary Education,  
Elementary & Secondary Education, Khyber Pakhtunkhwa Peshawar  
and 05 others.

*(Respondents)*

Present:

Mr. Adnan Riaz Mughal, Advocate.....For the appellant  
Mr. Asad Ali Khan, Assistant Advocate General .....For respondents

.....

Date of presentation of Appeal.....25.08.2023  
Date of Hearing.....08.12.2023  
Date of Decision.....08.12.2023

----

**JUDGMENT**

**SALAH-UD-DIN, MEMBER:** Precise facts giving rise to the instant appeal are that vide the impugned order dated 03.05.2023, whereby the appellant was transferred from GGPS Civil Quarters to GGPS Syedna Zainab while one Mst. Fatima Head Teacher was transferred to the place of appellant. Vide another impugned order dated 22.05.2023, posting/transfer order dated 03.05.2023 was modified and the appellant was transferred to GGPS Palosi Maghdazai Peshawar, while private respondent No. 6 namely Sariat Begum was transferred to the place of appellant. The appellant preferred departmental appeal against her transfer, however the same remained un-responded. The appellant then approached this Tribunal



through service appeal, however the same was returned to her being premature. The appellant then invoked the jurisdiction of Peshawar High Court, Peshawar through Writ Petition No. 2813-P/2023, however the same was dismissed on the ground that the matter exclusively falls within the domain of Service Tribunal, attracting the constitutional bar under Article 212 of the Constitution of Islamic Republic of Pakistan, 1973. The appellant then approached this Tribunal by way of filing the instant appeal for redressal of her grievance.

2. On receipt of the appeal and its admission to regular hearing, respondents were summoned. Private respondent No. 6 appeared in person. Official respondents appeared through their representative and contested the appeal by way of filing written reply raising therein numerous legal as well as factual objections.

3. Learned counsel for the appellant argued that transfer of the appellant was not made in public interest rather the same was the result of political influence, which is against the Posting/Transfer Policy of the Provincial Government. He next contended that the appellant is a female of advanced age and is also suffering from joint disease but the said facts were not considered by the competent Authority while issuing the impugned posting/transfer order of the appellant. He further argued that the appellant was treated with discrimination and her rights guaranteed under Article 4 & 25 of the Constitution

of Islamic Republic of Pakistan, 1973 were badly violated. He also argued that the appellant is a female and was required to be posted in the Union Council to which she belonged but the same was also not considered by the competent Authority. He next argued that vide the impugned order, the appellant has been transferred to a far flung area and she would face extreme difficulties in performing of her duties in the school to which she has been transferred. In the last he requested that the impugned posting/transfer order may be set-aside and the appellant may be allowed to continue her services in GGPS Civil Quarters Peshawar.

4. On the other hand, learned Assistant Advocate General for official respondents contended that the appellant had been serving in GGPS Civil Quarters for the last about 10 years and has already spent much more period than her normal tenure of 02 years as provided in posting/transfer policy of the provincial government. He next argued that the impugned transfer order of the appellant was issued on 22.05.2023 but she remained adamant and did not assume the charge of her post in GGPS Palosi Maghdazai Peshawar, which is against service discipline. He further argued that the appellant was not performing her duties properly due to which studies of the students were badly affected resulting in lodging of complaint against the appellant by the people of the locality. He also argued that in view of Section-10 of Khyber Pakhtunkhwa Civil Servants Act, 1973, the appellant is bound to serve

anywhere in the province, therefore, her appeal being devoid of any merit may be dismissed with cost.

5. Private respondent No. 6 relied on the arguments advanced by learned Assistant Advocate General.

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

7. The appellant was serving as Primary School Head Teacher in Government Girls Primary School Civil Quarters Peshawar and vide the impugned order dated 22.05.2023, she has been transferred to GGPS Palosi Maghdazai Peshawar. According to Clause-iv of the Posting/Transfer Policy of the provincial government, the normal tenure of posing is two years. Official respondents have specifically alleged in their reply that the appellant had remained posted in GGPS Civil Quarters Peshawar for about 10 years, which assertion of the respondents has not been denied by the appellant through filing of any rejoinder. The appellant had thus already served in GGPS Civil Quarters Peshawar for more than the normal tenure of two years as provided in Posting/Transfer Policy of the Provincial Government. Moreover, Section-10 of Khyber Pakhtunkhwa Civil Servants Act, 1973 pertains to posting/transfer of civil servants, which is reproduced as below:-

*"10. Posting and transfers.--- Every civil servant shall be liable to serve anywhere within or outside the Province in any post under the Federal Government, or any Provincial Government or local authority, or a corporation*

*or body set up or established by any such Government:*

*Provided that nothing contained in this section shall apply to a civil servant recruited specifically to serve in a particular area or region:*

*Provided further that where a civil servant is required to serve in a post outside his service or cadre, his terms and conditions of service as to his pay shall not be less favourable than those to which he would have been entitled if he had not been so required to serve."*


8. In view of section 10 of the Khyber Pakhtunkhwa Civil Servants Act, 1973, desired posting is not an inherent right of a civil servant and the department concerned can transfer a civil servant to any place, which could though be challenged if the same is arbitrary, fanciful or is based upon any mala-fide or ill-will and inherent bias of the superior authorities. Nothing is, however available on the record, which could show that the transfer order of the appellant was outcome of any ill-will or mala-fide on part of the official respondents.

9. In State of U.P. and Others v. Goverdhan Lal, 2004 (3) SLJ 244 (SC) it has been held as below:-

*"8. It is too late in the day for any Government servant to contend that once appointed or posted in a particular place or position, he should continue in such place or position as long as he desires. Transfer of an employee is not only an incident inherent in the terms of appointment but also implicit as an essential condition of service in the absence of any specific indication to the contra, in the law governing or conditions of service. Unless the order of transfer is shown to be an outcome of*

*a mala fide exercise of power or violative of any statutory provision of (an Act or Rule) or passed by an authority not competent to do so, an order of transfer cannot lightly be interfered with as a matter of course or routine for any or every type of grievance sought to be made. Even administrative guidelines for regulating transfers or containing transfer policies at best may afford an opportunity to the officer or servant concerned to approach their higher authorities for redress but cannot have the consequence of depriving or denying the Competent Authority to transfer a particular officer/servant to any place in public interest and as is found necessitated by exigencies of service as long as the official status is not affected adversely and there is no infraction of any career prospects such as seniority, scale of pay and secured emoluments. This Court has often reiterated that the order of transfer made even in transgression of administrative guidelines cannot also be interfered with, as they do not confer any legally enforceable rights, unless, as noticed supra, shown to be vitiated by mala fides or is made in violation of any statutory provision.*

*9. A challenge to an order of transfer should normally be eschewed and should not be countenanced by the Courts or Tribunals as though they are Appellate Authorities over such orders, which could assess the niceties of the administrative needs and requirements of the situation concerned. This is for the reason that Courts or Tribunals cannot substitute their own*



*decisions in the matter of transfer for that of Competent Authorities of the State and even allegations of mala fides when made must be such as to inspire confidence in the Court or are based on concrete materials and ought not to be entertained on the mere making of it or on consideration borne out of conjectures or surmise and except for strong and convincing reasons, no interference could ordinarily be made within an order of transfer.*


*From the aforementioned, it is evident that the posting to any particular place is not a legal right. Article 14 guarantees equality before law only. Right to equality is a positive concept. One can allege violation of Article 14 only where there is enforceable legal right. In the absence of such right, question of discrimination or violation of Article 14 does not arise."*

10. In view of the above discussion, the appeal in hand being devoid of merit stands dismissed. Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCED

08.12.2023

  
(KALIM ARSHAD KHAN)  
CHAIRMAN

  
(SALAH-UD-DIN)  
MEMBER (JUDICIAL)

ORDER  
08.12.2023

Appellant alongwith her counsel present. Mr. Asad Ali Khan, Assistant Advocate General for official respondents present. Private respondent No. 6 in person present. Arguments heard and record perused.

Vide our detailed judgment of today, separately placed on file, the appeal in hand being devoid of merit stands dismissed. Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCED  
08.12.2023



(Kalim Arshad Khan)  
Chairman



(Salah-Ud-Din)  
Member (Judicial)