

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

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

*Service Appeal No. 260/2023*

Mst. Anila Babar PST Government Girls Primary School Rustam Abad  
District Kohistan Upper. (Appellant)

Versus

District Education Officer (F) District Kohistan Upper and 02 others.  
(Respondents)

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Present:

Mr. Munfat Ali Yousafzai, Advocate.....For the appellant  
Mr. Asif Masood Ali Shah, Deputy District Attorney .....For respondents

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Date of presentation of Appeal.....31.01.2023

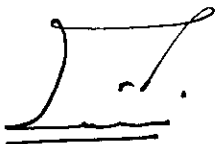
Date of Hearing.....12.12.2023

Date of Decision.....12.12.2023

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**JUDGMENT**

**SALAH-UD-DIN, MEMBER:** Precise averments as per memorandum of appeal are that the appellant was appointed as Primary School Teacher vide appointment order dated 07.08.2009; that the appellant was efficiently and regularly performing her duties to the entire satisfaction of her superiors and was never found absent during the visits of her high-ups; that she was awarded major penalty of removal from service vide the impugned order dated 23.06.2021 without any charge sheet, statement of allegations or show-cause notice; that the appellant preferred departmental appeal



before the appellate Authority, which was rejected vide order dated 06.01.2023, hence the instant appeal.

2. 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.

3. Learned counsel for the appellant contended that no charge sheet, statement of allegations or show-cause notice was issued to the appellant and she was removed from service without even providing any opportunity of personal hearing. He next contended that the procedure for taking departmental action against a civil servant is provided in Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011 and the competent Authority was legally bound to comply the same but the proceedings against the appellant were taken at her back in a fanciful and arbitrary manner. He further contended that the appellant was performing her duties regularly and the allegations of her absence from duty are wrong and false. He also contended that as the prescribed procedure was not adopted by the competent Authority, therefore, the impugned orders are liable to be set-aside and the appellant is entitled to be reinstated in service with all back benefits.

4. On the other hand, learned Deputy District Attorney for the respondents has contended that the appellant was reported

absent from duty by her officer, therefore, show-cause notice was issued to her but she did not submit any reply of the same. He next contended that the appellant was called for personal hearing but she did not appear before the competent Authority. He further contended that the appellant had remained absent from duty, therefore, she was removed from service by complying all legal and codal formalities. In the last he requested that the impugned orders may be kept intact and the appeal in hand may be dismissed with cost.

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

6. A perusal of the record would show that statement of allegations/show-cause notice was issued to the appellant on 21.04.2021, wherein it is mentioned that as per EMA, the appellant had habitually and willfully remained absent on 14.01.2020, 01.10.2020 and 16.02.2021 during visits of the concerned DCMA. According to the said statement of allegations/show-cause notice, conducting of inquiry in the matter was dispensed with under Rule-7 of Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011 and seven days time was given to the appellant to submit reply failing which ex-parte action was to be taken against her. No documentary proof is available on the record to show that the aforementioned statement of allegations/ show-cause notice was served upon the appellant. Moreover, it has been mentioned in


the said statement of allegations/show-cause notice that the appellant had remained absent from duty only on three dates. The procedure prescribed to be adopted for taking disciplinary action against a civil servant on account of habitual absence as provided under Rule-3 of Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011 is distinct from the procedure required to be adopted against an employee for willful absence as prescribed in Rule-9 of the said rules. The competent Authority was therefore, required to have first ascertained as to whether departmental action was to be taken against the appellant for habitual absence or for willful absence. Moreover, it is quite astonishing that statement of allegations/show-cause notice was issued to the appellant, while she was serving at GGPS Bansiri, however, as per Endorsement No. 1028-33 dated 21.04.2023, copy of the same was forwarded to one Mst. Saira Khaliq, who was serving at GGPS Samad Abad.


7. While going through the record, we have observed that the appellant has been awarded major penalty of removal from service in a haphazard manner without complying the required procedure prescribed in the Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011. The impugned orders are, therefore, not sustainable in the eye of law and are liable to be set-aside.

8. Consequently, the impugned orders are set-aside and the appellant 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  
12.12.2023

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

  
(FARZEHA PAUL)  
MEMBER (EXECUTIVE)  
CAMP COURT ABBOTTABAD

\*Naeem Amin\*

ORDER  
12.12.2023

Learned counsel for the appellant present. Mr. Ihsanullah, ADEO alongwith Mr. Asif Masood Ali Shah, Deputy District Attorney for the respondents present. Arguments heard and record perused.

Vide our detailed judgment of today, separately placed on file, the impugned orders are set-aside and the appellant 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  
12.12.2023



(Farzeha Paul)  
Member (Executive)  
Camp Court Abbottabad



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