

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR AT CAMP COURT ABBOTTABAD

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

Service Appeal No. 261/2023

Mst. Hari Jan PST Government Girls Primary School Gath Kandia
District Kohistan Upper. (Appellant)

Versus

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

Present:

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

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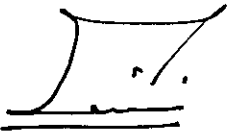
Date of presentation of Appeal.....31.01.2023

Date of Hearing.....12.12.2023

Date of Decision.....12.12.2023

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 02.12.2009; 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 09.09.2021 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 05.01.2023, 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 or statement of allegations 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

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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 argued that the appellant remained absent from duty and had put signatures in the attendance register to justify her bogus presence on duty. 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 show-cause notice was issued to the appellant on 02.08.2021, wherein it is mentioned that as per report of SDEO/ASDEO Circle Seo Kandia, the appellant had willfully remained absent from duty on 09.05.2021. Nothing is available on the record, which could show that the said show-cause notice was personally served upon the appellant. While going through the contents of show-cause notice issued to the appellant on 02.08.2021, nothing has been mentioned therein that the competent Authority had decided to dispense with the conducting of inquiry as provided in Rule-7 of Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011. Moreover, according to the show-cause

notice, the absence of the appellant was just only for one day i.e 09.05.2021. Supreme Court of Pakistan in its judgment reported as 2004 SCMR 616 has held that in case of imposing of major penalty, the principle of natural justice requires that a regular inquiry be conducted in the matter and opportunity of personal hearing and defense be provided to the civil servant proceeded against. 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.



7. 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



(FAREEHA 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


(Fareeha Paul)
Member (Executive)
Camp Court Abbottabad


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