

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR
AT CAMP COURT SWAT

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

Service Appeal No.1623/2020

Date of presentation of Appeal.....29.12.2020
Date of Hearing.....07.12.2023
Date of Decision.....07.12.2023

Fazli Azim S/O Fazle Wahid R/O Owen, Tehsil Adenzai, District Dir
Lower.....(*Appellant*)

Versus

1. The Director Elementary & Secondary Education Department
Peshawar.
2. The District Education Officer (M) Lower Dir at Timergara...(*Respondents*)

Present:

MUHAMMAD SHAHID ULLAH,
Advocate ----- For appellant

MUHAMMAD JAN,
District Attorney ----- For respondents.

JUDGMENT

MUHAMMAD AKBAR KHAN, MEMBER (E):- The instant service
appeal has been instituted under Section 4 of the Khyber Pakhtunkhwa
Service Tribunal, Act 1974 with the prayer copied as under;

*"That on acceptance of this appeal the impugned orders
dated 29.07.2019 and 22.02.2019 may very kindly be set
aside and the appellant may be placed against the post of
SST (G) w.e.f 29.07.2019 with all back benefits. Any other
remedy which this august Tribunal deems fit that may also
be awarded in favor of the appellant."*

02. Brief facts of the case are that the appellant was appointed as PTC/PST Teacher at GMPS/GPS Ouch Sharai Adenzai Dir Lower vide order dated 11.05.1983 and performing his duty till 2001; that in the year 2001 he faced accidental situation applied for leave and left his residential area for a long time; that when the appellant came back to his home town alongwith his family members he approached to respondent No. 2 on 20.03.2019 which was rejected vide Notification dated 06.08.2020 on the ground that his services automatically ceased after long absence. Feeling aggrieved from the Notification dated 06.08.2020, the appellant filed departmental appeal to respondent No. 2 on 25.08.2020 which was rejected on 23.10.2020, hence preferred the instant service appeal on 29.12.2020

03. Notices were issued to the respondents, who submitted their comments, wherein they refuted the assertions raised by the appellant in his appeal. We have heard arguments of learned counsel for the appellant and learned District Attorney for the respondents and have gone through the record with their valuable assistance.

04. Learned counsel for the appellant contended that the impugned order is against the law, facts, cannon of natural justice and liable to be set aside; that during his entire service he was neither served with any removal order, notice of inquiry nor any impartial inquiry was conducted disregarding his 18 years of service. That the appellant has an unblemished service record and has served the department to the entire satisfaction of his superior, neither remained absent from his service nor has received any adverse remarks throughout his service; that the appellant has been condemned unheard, which is not only against the law but also against the principles of

natural justice; that the impugned order is pervasive, illegal, unlawful and arbitrary, suffering from material irregularities/ illegalities as such the major penalty has been passed against the appellant without observing any rules by disregarding his length of service; that the absence of the appellant is not willful but was absent in the state of compelling of time: that the appellant is entitled of reinstatement in his service along with all back benefits keeping in view the facts that the impugned order of dismissal is against the law, facts hence liable to be set aside.

05. Learned District Attorney on the other hand contended that the appellant did not inform the office, nor provided any FIR copy hence liable to be dismissed; as per FR.18 in vague at that time his services stood automatically ceased. Moreover, it was considered that he is not willing to join the duty hence no need of hearing; that the appellant remained absent from duty for more than 20 years hence not entitled for re-adjustment.

06. Record reveals that the appellant joined the respondent Department on 11.05.1983 as Primary School Teacher. In the year 2001, he absented himself from duty and suddenly appeared in the 2019 after 18 years with the application dated 20.03.2019 for reinstatement into service. The appellant took the plea that he faced accidental situation and left the area of his residence alongwith family to avoid life threat to him and his family. The application of the appellant was examined by inquiry committee in which it was found that the appellant did not submit any application for long leave nor copy of FIR or any other evidence to leave his area of residence. Based on the findings of the inquiry committee the application of the appellant was rejected through a speaking order dated 06.08.2020. The appellant made

departmental appeal which was also rejected vide speaking communication dated 23.10.2020. During course of hearing the appellant failed to present evidence for his 18 years long absence which were beyond his control to prove his absence was not willful. As regard contention of the appellant that no order regarding his removal from service on account of his willful absence is available on record, The respondents have relied on the Provision of FR.18 which was in the field at that period in time which is reproduced below;

“Unless the Governor-General in view of the special circumstances of the case shall otherwise determine, after five years’ continuous absence from duty, elsewhere than one foreign service in Pakistan whether with or without leave, a Government servant ceases to be in Government employee”

07. Moreover, in a similar nature case civil petition No. 6652/2021 titled Kazim Ali Bangash v/s Government of KP through Secretary E&SE Peshawar, the Supreme Court of Pakistan vide order dated 19.10.2023 declined leave to appeal and dismissed the petition.

08. In view of foregoing, we are constrained to dismiss the instant appeal being devoid of any merit in it. Costs shall follow the event. Consign.

09. *Pronounced in open Court at camp court Swat and given under our hands and the seal of the Tribunal on this 07th day of December, 2023.*



RASHIDA BANO
Member (J)
Camp Court Swat



MUHAMMAD AKBAR KHAN
Member (E)
Camp Court Swat

ORDER

07.12.2023

Learned counsel for the appellant present. Mr. Muhammad Jan, learned District Attorney for the respondents present. Arguments heard and record perused.

2. Vide our detailed judgment of today, separately placed on file, consisting of (04) pages, we are constrained to dismiss the instant appeal being devoid of any merit in it. Costs shall follow the event. Consign.

3. *Pronounced in open Court at camp court Swat and given under our hands and the seal of the Tribunal on this 07th day of December, 2023.*



RASHIDA BANO
Member (J)
Camp Court Swat



MUHAMMAD AKBAR KHAN
Member (E)
Camp Court Swat