

**BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR**

Service Appeal No. 2030/2023

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

Mst. Nizakat, SAT (BPS-16), GGHS Kass under Transfer to GGHS
Sundarwal Dir Upper.....(*Appellant*)

VERSUS

1. The Secretary (E&SE) Education Department, Khyber Pakhtunkhwa, Peshawar.
2. The Director (E&SE) Education Khyber Pakhtunkhwa, Peshawar.
3. The District Education Officer (F), Dir Upper.....(*Respondents*)

Present:-

KAMRAN KHAN,
Advocate --- For Appellant

MUHAMMAD JAN,
District Attorney --- For respondents.

Date of Institution.....21.09.2023

Date of Hearing..... 13.12.2023


Date of Decision..... 13.12.2023

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 order dated 08.09.2023 and appellate order dated 02.10.2023 may very kindly be set aside und the order dated 24.07.2023 may pleased be restored. 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 is serving in the respondent department as SAT (BPS-16). He was transferred from GGHS Sundarawal to GGHS Kass vide office order dated 24.07.2023 on needed basis and in the best interest of public service; that in compliance of the said order the appellant assumed the charge of her post at GGHS Kass on 25.07.2023; that the order dated 24.07.2023 issued by respondent No. 3 was withdrawn vide impugned order dated 08.09.2023. Feeling aggrieved from the impugned order dated 08.09.2023, the appellant filed departmental appeal 12.09.2010 which was rejected on 02.10.2023, hence preferred the instant service appeal on 02.10.2023.

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 and have gone through the record with their valuable assistance.

04. Learned counsel for the appellant contended that the impugned orders dated 08.09.2023 & 02.10.2023 are against the law, facts, norms of natural justice, hence not tenable and liable to be set aside; that the appellant has not been treated in accordance with law and rules and as such the respondents violated Article 4 and 25 of the Constitution of Islamic Republic of Pakistan 1973; that the impugned office order dated 08.09.2023 is also violative of Clause-I, IV of Transfer/Posting Policy of Provincial Government of Khyber Pakhtunkhwa; that the impugned office order dated 08.09.2023 and appellate order dated 02.10.2023 are politically motivated which is not tenable in the eyes of law; that the impugned order dated 08.09.2023 is not passed in the

public interest nor exigencies of public service, hence not tenable and liable to be set aside.

05. On the other hand, learned District Attorney contended that the stance of the appellant is without any moral and legal justification on the ground that he was transferred from GGHS Sundrawal to GGHS Kass, while in GGHS SAT (BPS-16) was not sanctioned. That the order dated 02.10.2023 is fake/bogus and in this regard a letter dated 30.10.2023 has been forwarded to the Director Elementary & Secondary Education, Peshawar for taking action against the appellant in which an inquiry has been initiated. Moreover, in GGHS Kass a Teacher namey Mst. Subhania is working as AT (BPS-15) since long and getting her monthly salary regularly.

06. Scrutiny of record reveal that the appellant is holding the post of Senior Arabic Teacher (SAT) in BPS-16. While serving as Senior Arabic Teacher (SAT) against sanctioned post in GGHS Sundarawal she was adjusted at GGHS Kass, District Dir Upper on need basis. The order issued by the DEO (Female) District, Dir Upper dated 24.07.2023 clearly states that the adjustment of the appellant has been made on the recommendation of Advisor to Chief Minister Khyber Pakhtunkhwa Elementary & Secondary Education. As there was no sanctioned post of SAT at GGHS Kass, therefore, the adjustment order of the appellant dated 24.07.2023 was withdrawn vide DEO (F) Upper Dir order dated 08.09.2023. We observe that the arrangement made vide order dated 24.07.2023 was a temporary arrangement to facilitate the appellant having no element of public interest. Such orders have no legal cover or defensible backing of rules and Policy Parameter. It appears that the competent authority (DEO (F) Dir Upper)

issued an illegal order under outside pressure and soon after lapse of some time (One month and 16 days) realized and corrected the wrong by herself. We, therefore, find no merit to entertain the appeal and as such the instant appeal stands dismissed. Costs shall follow the event. Consign.

07. *Pronounced in open court at Peshawar and given under our hands and seal of the Tribunal on this 13th day of December, 2023.*



(Rashida Bano)
Member (J)



(Muhammad Akbar Khan)
Member (E)

ORDER


13.12.2023 01. Learned counsel for the appellant present. Mr. Muhammad Jan,

District Attorney for Arguments heard and record perused.

02. Vide our detailed judgment of today separately placed on file, consisting of (04) pages, we find no merit to entertain the appeal and as such the instant appeal stands dismissed. Costs shall follow the event. Consign.

03. *Pronounced in open court at Peshawar and given under our hands and seal of the Tribunal on this 13th day of December, 2023.*


(Rashida Bano)
Member (J)


(Muhammad Akbar Khan)
Member (E)