

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 5203/2021

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

Mst. Nazish Jehan Ex. SST (Gen) (BPS-16),GGCMS Tehsil Razzar, District Swabi. ... (Appellant)

VERSUS

1. Government of Khyber Pakhtunkhwa through Chief Secretary, Khyber Pakhtunkhwa, Peshawar.
2. Government of Khyber Pakhtunkhwa through Secretary Elementary & Secondary Education, Civil Secretariat Peshawar.
3. Director Elementary & Secondary Education Department, Khyber Pakhtunkhwa Peshawar.
4. District Education Officer (F), Swabi.
5. Secretary, Khyber Pakhtunkhwa Public Service Commission, Fort Road, Peshawar Cantonment.

... (Respondents)

Mr. Muhammad Asif Yousafzai
Advocate ... For appellant

Mr. Muhammad Jan
District Attorney ... For respondents

Date of Institution.....19.05.2021
Date of Hearing.....13.11.2023
Date of Decision.....13.11.2023

JUDGMENT

RASHIDA BANO, MEMBER (J):The instant service appeal has been instituted under section 4 of the Khyber Pakhtunkhwa Service Tribunal, Act 1974 with the prayer copied as below:


“On acceptance of this appeal, the order dated 30.12.2020 may be set aside and the appellant may be reinstated into service with all back and consequential benefits. Any other remedy which this august tribunal deems fit and appropriate that may also be awarded in favour of appellant.”



2. Brief facts of the case, as given in the memorandum of appeal, are that appellant was appointed as Secondary School Teacher (BPS-16) in the year 2012 upon the recommendation of Khyber Pakhtunkhwa Public Service Commission. She served the department for eight years upto the entire satisfaction of his superiors. But all of a sudden without observing the codal formalities appointment order of the appellant was disowned and she was declared bogus employee by the department vide notification dated 30.12.2020. Feeling aggrieved, she preferred departmental appeal on 25.01.2021, which was not responded to, hence, the present service appeal.

3. Respondents were put on notice who submitted written replies/comments on the appeal. We have heard the learned counsel for the appellant as well as the learned District Attorney and perused the case file with connected documents in detail.

4. Learned counsel for appellant argued that the notifications dated 30.12.2020 is against law, facts, norms of justice and material on record, therefore, not tenable and liable to be set aside. He further argued that appellant was appointed in accordance with law and rules by following the prescribed procedure, which cannot be held as fake appointment. He further argued that neither proper regular inquiry was conducted nor she was associated with the inquiry proceedings. He contended that neither statement was recorded nor she was given the chance of cross examination and without final show cause notice the impugned order was passed which is against the law and principle of natural justice. He submitted that no opportunity of personal hearing was afforded to her and she was condemned unheard. Reliance is placed on 2011 SCMR 1581; 2004 SCMR 303; 2016 SCMR 1299 and 2010 PLD SC 483.



5. Conversely learned District Attorney appearing on behalf of respondents, controverted the contentions of learned counsel for appellant by contending that claim of the appellant regarding their appointment is baseless and liable to be rejected as she never applied for the said post nor appeared in any interview, therefore, her appointment was declared fake & bogus and has been disowned by the Department vide notifications dated 30.12.2020. He submitted that appellant was treated as per law, rules and policy and there is no question of violation of Article 10-A of the Constitution of Islamic Republic of Pakistan 1973, hence stance of the appellant is baseless and liable to be rejected and lastly, he submitted that claim of the appellant for recommendation by the Khyber Pakhtunkhwa Public Service Commission, failed to produce any proof of their recommendation by Public Service Commission.

6. Perusal of record reveals that appellant was appointed as SST on the recommendations of Khyber Pakhtunkhwa Public Service Commission and it was on 30.12.2020 when she received notification vide which appointment order in respect of appellant was found bogus, thus, her appointment/adjustment notification was disowned. Before disowning the appellant, neither any show cause notice was served upon appellant nor any personal hearing as well as regular inquiry was conducted by the respondents, which was the necessity of law and the appellant's appointment order was straight away disowned by the respondents. The hurry shown by the department in disowning the appellant's appointment order was not in accordance with law. Appellant must be provided with opportunity of personal hearing and cross examination for fulfilling purpose of fair trial. Respondent in


Ri

a way awarded major penalty of disowning appellant's appointment order who served for long eight years.

7. It is a well settled legal proposition, that regular inquiry is must before imposition of major penalty, whereas in case of the appellant, no such inquiry was conducted. The Supreme Court of Pakistan in its judgment reported as 2008 SCMR 1369 have held that in case of imposing major penalty, the principles of natural justice required that a regular inquiry was to be conducted in the matter and opportunity of defense and personal hearing was to be provided to the civil servant proceeded against, otherwise civil servant would be condemned unheard and major penalty of dismissal from service would be imposed upon him without adopting the required mandatory procedure, resulting in manifest injustice. In absence of proper disciplinary proceedings, the appellant was condemned unheard, whereas the principle of '*audi alteram partem*' was always deemed to be imbedded in the statute and even if there was no such express provision, it would be deemed to be one of the parts of the statute, as no adverse action can be taken against a person without providing right of hearing to him. Reliance is placed on 2010 PLD SC 483.

8. As a sequel to above discussion, we set aside the impugned order and reinstate the appellant for the purpose of denovo inquiry and remand case back to the respondent to conduct denovo inquiry within a period of sixty days, by providing proper opportunity of self-defense and cross examination. Costs shall follow the event. Consign.


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


(MUHAMMAD AKBAR KHAN)
Member (E)


(RASHIDA BANO)
Member (J)

ORDER

- 13.11.2023
1. Learned counsel for the appellant present. Mr. Muhammad Jan learned District Attorney alongwith Mr. Behramand Khan, Assistant Director (Litigation) and Mr. Hamid Saleem, Law Officer for the respondents present.
 2. Vide our detailed judgment of today placed on file, we set aside the impugned order and reinstate the appellant for the purpose of denovo inquiry and remand case back to the respondent to conduct denovo inquiry within a period of sixty days, by providing proper opportunity of self-defense and cross examination. Costs shall follow the event. Consign.
 3. *Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal on this 13th day of November, 2023.*


(MUHAMMAD AKBAR KHAN)
Member (E)


(RASHIDA BANO)
Member (J)