

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 220/2022

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

Wakeel Khan, Ex-Driver S/o Sawab Gul, Ex-Driver of Court of  
Additional Session Judge, District Momand, R/o Hadi Khel, Tehsil  
Khewezai, District Mohmand. .... (Appellant)

VERSUS

1. District & Sessions Judge, District Mohmand.
2. Registrar, Peshawar High Court, Peshawar.

.... (Respondents)

Mr. Arbab Saiful Kamal  
Advocate ... For appellant

Mr. Muhammad Jan  
District Attorney ... For respondents

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Date of Institution.....23.02.2022  
Date of Hearing.....28.11.2023  
Date of Decision.....28.11.2023

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:

**“It is therefore, most humbly prayed that on acceptance of  
this appeal, this Hon’able Court be pleased to;**

- a. **Declare order dated 30-08-2019 of R. No.01 to be  
illegal, improper, unjust, malafide, discriminatory,  
without lawful authority and of no legal effect.**
- b. **Direct the authority to reinstate petitioner in service  
with all consequential benefits of service.**



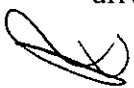
**c. Any other writ / order / direction deemed proper and just in the circumstances of the case may also be issued / order / given.”**

2. Brief facts of the case, as given in the memorandum of appeal, are that the appellant was appointed as Driver upon the recommendation of Departmental Selection Committee vide order dated 14.06.2019. After appointment domicile certificate of the appellant was sent for verification to the office concerned, but record of the same was not found and the District & Session Judge, Mohmand compelled him to submit resignation application from the said post to him from criminal proceedings and as a consequence appellant submitted his resignation application. On 30.08.2019 respondent No.1 issued relieving order of the appellant. Feeling aggrieved, he filed departmental appeal, which was not responded to, hence instant 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 the appellant argued that appellant is the bonafide resident of Village Khadi Khel Tehsil Khewezai Mohmand which is evident from his domicile certificate. He further argued that appellant has passed upto 8<sup>th</sup> class and he was no knowledge as to where the record of domicile certificates will be kept. He submitted that appellant has never submitted resignation application on his own will but he was threatened by the respondents to resign from the post. Lastly he submitted that no codal formalities were observed in the matter, therefore, his appeal might be accepted.

5. Conversely, learned District Attorney contended that domicile certificate dated 30.04.2018 of the appellant on the basis of which he applied for the post of driver has be declared fake and bogus by the local administration during the process



of verification, therefore, the subsequent domicile certificate dated 16.09.2019 if at all issued by any authority cannot be considered of retaining the post and may a manipulated move on his part for which the appellant is liable to be processed under criminal liability. He further contended that appellant at his free will and consent submitted an application for resignation from the post of driver before the respondent No.1 which was personally verified by the respondent No.1, thereafter, he was relieved from the said post.

6. Perusal of record reveal that appellant applied for post of Driver in light of advertisement published in newspaper was appointed as such by respondent No.1 upon recommendation of Departmental Selection Committee vide order dated 14.06.2019 after fulfillment all the codal formalities. Appellant and his family members are resident of Mohmand Agency that is why domicile certificate to his brother on 02.09.1996 and to the appellant on 29.04.2018 was issued by the then Assistant Political Agent, Mohmand Agency at Ghalani. When domicile certificate of the appellant was sent for verification to the Deputy Commissioner Mohmand office record of it was not found which was misplaced by one Noman S/o Kamal R/o Prang Ghar, Utman Khel Mohmand against which appellant also filed application for initiation of departmental proceeding. Police Department after verification declared appellant as bona-fide resident of Mohmand Agency vide letter dated 13.03.2019 before appointment of the appellant by respondent on 14.06.2019. That on 29.06.2019 appellant was issued with original domicile certificate by Assistant Commissioner, Mohmand Tribal District on 16.09.2019. That authority on the basis of non-verification of domicile certificate and due to non-availability of its record at Assistant Commissioner, Office forcefully under pressure and coercion obtained resignation from appellant which is not voluntarily. Authority issued impugned order dated 30.08.2019 after acceptance of



resignation of the appellant with order of forfeiture of one month salary of the appellant as no notice one month prior to the resignation was given by the appellant.

7. Perusal of application for acceptance of resignation reveals that it is not resignation rather application for its acceptance which read as (کہ بمنظوری) درخواست ہذا من سائل کا استعفی منظور فرمایا جائے۔ مجھے کسی قسم کا کوئی اعتراض نہ (ہوگا) So on record there is no proper resignation which was accepted. It is held in PLD 1994 Supreme Court 79 that;


*Resignation of member of Provincial Assembly--- Duty of Authority receiving the resignation --- Anybody receiving the resignation has a duty to ascertain personally whether it was signed by the man resigning; where the it was voluntary and whether it was intended to act as a resignation---Unless said three requirements of the resignation were satisfied it was dangerous in the political milieu in which people of Pakistan were living to give effect to such resignation.*

Moreover mentioning of words (درخواست بمراد منظوری استعفی) speaks about the presence and undue influence upon the appellant other otherwise there was no need to mention such words (مجھے اعتراض نہیں ہوگا) if appellant himself voluntarily submitted resignation and application for its acceptance. Moreover it is not acceptable to prudent mind that how appellant just after two and half month of his appointment tender resignation that too in absence of any blood fluid enmity. Appellant contended that due to non-verification of domicile certificate he was forced and pressurized for signing said application by the authority. Respondents also in reply mentioned that appellant due to factum of non-verification of his domicile certificate by Assistant Commissioner Office tender resignation which means that issue is non-verification of domicile certificate of the appellant. In such a situation when

domicile certificate of the appellant is not verified by the Assistant Commissioner proper procedure which will be adopted by the authority is to recall/withdraw appointment order of the appellant on the ground of non-verification of domicile certificate and not obtaining application for acceptance of resignation by exhorting undue influence and pressure upon him.

8. For what has been discussed above, we are unison to set aside impugned order dated 30.08.2019 and reinstate the appellant into service, however respondents are at liberty to proceed in accordance with law on the issue of domicile and intervening period will be treated as leave without pay. 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 28<sup>th</sup> day of November, 2023.*

  
(MUHAMMAD AKBAR KHAN)  
Member (M)

  
(RASHIDA BANO)  
Member (J)

15.08.2023

1. Appellant in person present. Mr. Fazal Shah Mohmand learned Additional Advocate General for the respondents present.

2. Due to summer vacations D.B is not available, therefore, case is adjourned. To come up for arguments on

28.11.2023 before D.B. P.P given to parties.

SCANNED  
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Peshawar

(Rashida Bano)  
Member (J)

**ORDER**

\*Kaleemullah  
28.11.2023 1

Learned counsel for the appellant present. Mr. Mohammad Jan learned District Attorney alongwith Mr. Alamzeb Khan, Computer Operator for the respondents present.

2. Vide our detailed judgement of today placed on file, we are unison to set aside impugned order dated 30.08.2019 and reinstate the appellant into service, however respondents are at liberty to proceed in accordance with law on the issue of domicile and intervening period will be treated as leave without pay. 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 28<sup>th</sup> day of November, 2023.*

(MUHAMMAD AKBAR KHAN)  
Member (M)

(RASHIDA BANO)  
Member (J)