

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 1493/2022

BEFORE: MRS. RASHIDA BANO ... MEMBER (J)  
MISS FAREEHA PAUL ... MEMBER (E)

Mst. Abida Begum D/o Abdul Jan R/o Ahmadi BandaKarrak.

.... (Appellant)

VERSUS

1. Government of Khyber Pakhtunkhwa through Chief Secretary, Secretariat, Peshawar.
2. Secretary, Elementary and Secondary Education, Government of Khyber Pakhtunkhwa, Peshawar.
3. Director, Elementary & Secondary Education, Khyber Pakhtunkhwa, Peshawar
4. District Officer, Primary Education and Literacy, Karak.
5. Sub-Divisional Educational Office (Female) Karak.
6. Head Clerk, Banda Daud Shah, Education Office (Female) Karak.

.... (Respondents)

Mr. Amir Nawaz Khan Durrani  
Advocate

... For appellant

Mr. Muhammad Jan  
District Attorney

... For respondents

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Date of Institution.....17.10.2022  
Date of Hearing.....19.12.2023  
Date of Decision.....19.12.2023

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 service appeal the order dated 11.04.2002 of respondent No.04 passed against the appellant for considering the 3 yearsof service of the appellant on leave without pay and verbal order of the**

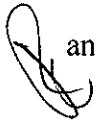


**respondent No.5, for deduction of Rs.35000/- from the monthly salaries of the appellant, of the period from dated 21.01.2021 to 10.02.2021, may please be set-aside and the respondents be directed to pay, the appellant her all due salaries of 3 years & 20 days, alongwith her due annual increments as arrears with consequential back benefits accrued to the appellant in the best interest of justice, as her constitutional legal & vested rights.”**

2. Brief facts of the instant case are that appellant was appointed as PTC Teacher in GGPS Gurguri vide order dated 31.10.1996. That she was serving there when in the year 1998, she was sent on training to GGPS No.1 Teri which had been held from 11.05.1998 to 21.05.1998. That she, being on training, on 13.05.1998, was issued charge sheet that she had closed the school for two months. Besides, she was treated as absent from duty w.e.f 01.09.1998 to 12.09.2001 and the said period was treated as without pay and no annual increment was given to her. That on 31.08.2001, she was transferred from GGPS Mardan Khel to GGPS Ahmadi Banda. Furthermore, the respondents also deducted Rs.35000/- from the monthly salary of the appellant. Feeling aggrieved, the appellant submitted departmental appeal which was not responded hence, the 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 has not been treated in accordance with law and rules. He further argued that the impugned orders passed by the respondents are against the law, facts, without adopting procedure and without giving any opportunity of personal hearing to the appellant. He further



argued that the alleged absence of the appellant with effect from 01.09.1998 to 12.09.2021 and alleged enquiry vide impugned order was conducted by the respondents in unlawful and illegal manner.

5. Conversely, learned District Attorney contended that appellant has been treated in accordance with law and rules. He further argued that appellant remained absent from GGPS Mardan Khel without any leave or permission from highups. He further argued that in that respect, proper inquiry was conducted and after enquiry, upon recommendation of inquiry officer, entries in the service book in respect of treating her absence period w.e.f 01.09.1998 to 12.09.2001 vide order dated 11.04.2002 was made, which she duly signed. She did not object this order within a stipulated period, therefore, he termed that appeal of the appellant is barred by time. He further argued that appellant requested for exemption of duty at GGPS Shakar Khel and she deliberately not performed her duty, therefore, deduction was made from her salary.

6. Perusal of record reveals that appellant was appointed as PTC teacher in GGPS Gurguri vide order 31.10.1995 and was sent for training to GGPS No.1 Teri from 11.05.1998 to 21.05.1998. Appellant alongwith one Miss. Zainab PTC GGPS Gurguri was issued with charge sheet on 13.05.1998 with the allegation that;

*“You both have closed the school without giving any information to this office for the last two months as per inquiry report and complainants of the inhabitants of the village concerned.”*

Appellant alleged that she never remained absent from her duty; despite that she was illegally considered and treated absent from 01.09.1998 to 12/09/2001 vide order dated 11/04/2002 and her absence period was treated as leave without pay, which is wrong and against the facts. Appellant was transferred from GGPS

Mardankhel to GGPS Ahmadi Banda vide order dated 31/08/2001 and she assumed charge of her post and regularly performed duties. Respondent malafidely considered her absent from 21/01/2021 to 10/02/2021 and deducted Rs.35000/- from her salary without any reason. Appellant filed several departmental appeals but in vain; hence the appeal in hand.

7. In the instant appeal there are two prayers of the appellant, one is regarding setting aside the order dated 11.04.2002 vide which period w.e.f 01/09.1998 to 12.09.2001 has been treated as leave without pay. Appellant challenged order dated 11.04.2002 by filing departmental appeal dated 17/04/2002 which is available on page No.23 as Annexure "H" on this file but she, after lapse of statutory period, did not file any service appeal and now challenged it in the instant service appeal on 17/10/2022 which is hopelessly barred by time as she challenged it with a considerable delay of 20 years and six months. She had to file the service appeal within 30 days after lapse of statutory period of 90 days in accordance with Khyber Pakhtunkhwa Service Tribunal Act, 1974.

8. Appellant contended that she had regularly performed her duties at GGPS Gurguri during this period i.e 01.09.1998 to 12.09.2001 but the same is not supported by any documentary proof as she failed to bring on record any attendance register of this period. Moreover as per her service book, she was transferred from GGPS Gurguri to GGPS Mardan Khel from 01.12.1997 onward and this entry in her service book is duly signed by the appellant. Furthermore she was also served with charge sheet dated 13/05/1998 about closing of school without giving information or obtaining prior approval of the authority, reply of which was not given by the appellant. On record to establish her attendance during period w.e.f. 01.09.1998 to 12.09.2001 even in GGPS Gurguri. She had to produce her attendance register of GGPS Gurguri but she

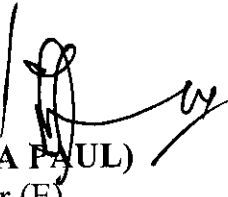


failed to produce it. So on the factual side the appellant failed to establish her attendance at GGPS Gurguri.

9. Now we come to the second part of the prayer of the appellant about setting aside order dated 08/02/2021 regarding deduction of Rs.35000/-, 20 days pay/salary of the appellant. Appellant herself annexed with this appeal, order dated 12/10/2020 in accordance with which, as a stopgap arrangement, SDEO female detailed seven teachers, including the appellant, to perform duties at GGPS Shakar Khel with effect from 21/01/2021 to 10/02/2021, but the appellant had not performed her duties at GGPS Shakar Khel and submitted application for exemption from duty on 15/01/2021 which was not allowed. Although appellant annexed her attendance register of her school wherein she marked her attendance in these day i.e 21/01/2021 to 10/02/2021 but during this period she was supposed to be present at GGPS Shakar Khel where no other teacher was available. Being a civil servant there are certain responsibilities and obligations upon the appellant and she has to obey the valid order of her high ups as it is part and parcel of her service discipline but appellant performed duty of her choice which can't be tolerated and respondent being authority rightly deducted pay of those 20 days from her salary.

10. For what has been discussed, we are unison to dismiss the appeal in hand being devoid of merits. Costs shall follow the event. Cosign.

11. *Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal on this 19<sup>th</sup> day of December, 2023.*


  
(FAREEHA PAUL)  
Member (E)

  
(RASHIDA BANO)  
Member (J)

**ORDER**

19.12.2023

1. Learned counsel for the appellant present. Mr. Muhammad Jan learned District Attorney for the respondents present.
2. Vide our detailed judgment of today placed on file, we are unison to dismiss the appeal in hand being devoid of merits. Costs shall follow the event. Cosign.
3. *Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal on this 19<sup>th</sup> day of December, 2023.*

  
(FAREEHA PAUL)  
Member (E)

  
(RASHIDA BANO)  
Member (J)