

Service Appeal No.7601/2021 titled "Haroon -vs- Government of Khyber Pakhtunkhwa through Secretary Elementary & Secondary Education Peshawar and others" and Service Appeal No.7637/2021 titled "Noor Azam -vs- Government of Khyber Pakhtunkhwa through Secretary Elementary & Secondary Education Peshawar and others", declared on 26.02.2024 by Division Bench comprising of Mr. Kalim Arshad Khan, Chairman, and Mr. Salah Ud Din, Member Judicial, Khyber Pakhtunkhwa Service Tribunal, Peshawar at Camp Court, Abbottabad.

**KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,**  
**PESHAWAR**  
**AT CAMP COURT, ABBOTTABAD**

BEFORE: **KALIM ARSHAD KHAN** ... **CHAIRMAN**  
**SALAH UD DIN** ... **MEMBER(Judicial)**

*Service Appeal No.7601/2021*

Date of presentation of Appeal.....15.10.2021  
Date of Hearing.....26.02.2024  
Date of Decision.....26.02.2024

**Mr. Haroon**, son of Yaqeen Shah, Ex-PSHT Government Primary School Chuchang, Tehsil Dassu, District Kohistan Upper..(**Appellant**)

Versus

1. **Government of Khyber Pakhtunkhwa** through Secretary Elementary & Secondary Education Peshawar.
2. **Director** Elementary & Secondary Education, Peshawar.
3. **Muhammad Amin**, District Education Officer, (Male) Kohistan at Dassu.....(**Respondents**)

*Service Appeal No.7637/2021*

Date of presentation of Appeal.....21.10.2021  
Date of Hearing.....26.02.2024  
Date of Decision.....26.02.2024

**Mr. Noor Azam**, S/o Sudoor, Ex PST, GPS Uchar Nala, Tehsil Dassu, District Kohistan Upper.....(**Appellant**)

Versus

1. **Government of Khyber Pakhtunkhwa** through Secretary Elementary & Secondary Education Peshawar.
2. **Director** Elementary & Secondary Education, Peshawar.
3. **Muhammad Amin**, District Education Officer, (Male) Kohistan at Dassu.....(**Respondents**)

Present:

Mr. Muhammad Tasleem Khan, Advocate.....For the appellants  
Mr. Asad Ali Khan, Assistant Advocate General .....For respondents



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**APPEALS UNDER SECTION 4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974 AGAINST THE IMPUGNED ORDERS NO.3015-22 AND NO.2899-3006 DATED 10.03.2021 PASSED BY RESPONDENT NO.3 WHEREBY MAJOR PENALTY OF REMOVAL FROM SERVICE OF APPELLANTS ON THE GROUND OF ALLEGED UNSPECIFIED ABSENCE FROM DUTY WAS IMPOSED WITHOUT ANY INQUIRY AND INTENDING OPPORTUNITY BEING HEARD WITHOUT AND BEYOND TO THE LAW, SUCH CONDUCT OF THE RESPONDENTS IS ILLEGAL AND VOID AB INITIO.**

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**CONSOLIDATED JUDGMENT**

**KALIM ARSHAD KHAN CHAIRMAN:** Through this single judgment the above appeals are going to be decided as both the are similar in nature and almost with the same contentions, therefore, can conveniently be decided together.

2. The appellants' cases in brief are that they were serving in the Education Department as PSHT and PST. Show cause notices were issued to them on 07.04.2021 on the allegations of absence. That the notices were replied by them. That vide impugned orders dated 10.06.2021 major penalty of removal from service was imposed upon them. Feeling aggrieved, they filed departmental appeals but the same were not responded, rather the respondents issued a Notification dated 08.07.2021 w.e.f 01.04.2019 for the absenteeism, the mechanism to be observed for penalty of civil servant. Therefore, they filed the instant service appeals.

3. On receipt of the appeals and their admission to full hearing, the respondents were summoned, who put appearance and contested the appeal by filing written reply raising therein numerous legal and factual



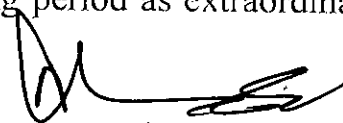
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objections. The defense setup was a total denial of the claim of the appellant.

4. We have heard learned counsel for the appellant and learned Assistant Advocate General for the respondents.

5. The learned counsel for the appellant reiterated the facts and grounds detailed in the memo and grounds of the appeal while the learned Assistant Advocate General controverted the same by supporting the impugned order(s).

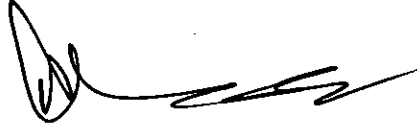
6. During the course of arguments, learned AAG produced copy of Notification dated 26.08.2022, according to which on acceptance of appeals, the Director Elementary & Secondary Education Khyber Pakhtunkhwa Peshawar reinstated the appellants into service with immediate effect converting the intervening period into extraordinary leave without pay in the best public interest. As part of the relief prayed in these appeals to the extent of reinstatement has otherwise been granted to the appellants by way of the above notification, therefore, the appeal has rendered fruitless to that extent and as regards their prayer for grant of back benefits is concerned, we observe that when once the punishment awarded in lieu of the alleged absence of the appellant was set aside and the appellants were reinstated into service, they become entitled to back benefits they were deprived of, while being out of service for none of their fault. Reinstatement of the appellants was not on humanitarian grounds, rather he should reinstate them on merits. In such view of the matter, reinstatement the appellants are entitled to the back benefits and treating the intervening period as extraordinary leave without pay is not



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just and legal and their reinstatement needs to be treated as they have been reinstated with back benefits. Appeals are allowed in the above manner. Copy of this judgment be placed in Service Appeal No. 7637/2021 titled "Noor Azam Vs. Government of Khyber Pakhtunkhwa". Costs shall follow the event. Consign.

7. *Pronounced in open Court at Abbottabad and given under our hands and the seal of the Tribunal on this 26<sup>th</sup> day of February, 2023.*



**KALIM ARSHAD KHAN**

Chairman

Camp Court Abbottabad



**SALAH UD DIN**

Member (Judicial)

Camp Court Abbottabad

\*Mutazem Shah\*

ORDER

26<sup>th</sup> Feb, 2024

1. Learned counsel for the appellant and Mr. Asad Ali Khan, Assistant Advocate General for respondents present.

2. Vide our consolidated judgment of today placed on file, instant service appeal is accepted. Copy of the judgment be placed in the connected Service Appeal No. 7637/2021 titled "Noor Azam Vs. Government of Khyber Pakhtunkhwa". Costs shall follow the event. Consign.

3. *Pronounced in open Court at Abbottabad and given under our hands and the seal of the Tribunal on this 26<sup>th</sup> day of February, 2024.*



(Salah Ud Din)

Member (J)

Camp Court Abbottabad



(Kalim Arshad Khan)

Chairman

Camp Court Abbottabad

\*Mutazem Shah\*