

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

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

Service Appeal No.1364/2018

Date of presentation of appeal.....05.11.2018
Dates of Hearing.....27.02.2024
Date of Decision.....27.02.2024

Mst. Saima Qazi PST/F/Pry Bps-12 Government Girls Primary School, Loon Patian, Tehsil Abbottabad.....(*Appellant*)

Versus

1. **Government of Khyber Pakhtunkhwa**, through Secretary Education, Government of Khyber Pakhtunkhwa, Peshawar.
2. **Director**, Elementary & Secondary Education, Khyber Pakhtunkhwa, Peshawar.
3. **District Education Officer (Female)** Abbottabad.
4. **Executive District Officer** Elementary & Secondary Education, Abbottabad..**(Respondents)**

Present:

Qazi Ghulam Rauf, Advocate.....For appellant
Mr. Asad Ali Khan, Assistant Advocate GeneralFor respondents

SERVICE APPEAL UNDER SECTION 4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974 AGAINST OFFICE ORDER NO.5237-42/SAIMA QAZI DATED 28.06.2018 ISSUED BY RESPONDENT NO.4 THROUGH WHICH THE MAJOR PENALTY OF REMOVAL FROM SERVICE IMPOSED BY ORDER NO.8875-78 DATED 15.06.2015 WAS CONFIRMED.

JUDGMENT

KALIM ARSHAD KHAN CHAIRMAN: According to the memorandum and grounds of appeal, the appellant was serving in Education Department as PST. That due to illness of her husband (in Abu Dhabi), she proceeded abroad by availing extraordinary leave without pay w.e.f 10.08.2008 to 09.08.2010. That on expiry of the said leave, she applied for further extraordinary leave without pay



which was also approved and she availed the same. That she started performing her duty when respondent No.4 issued order dated 15.06.2015 removing the appellant from service. Therefore, she filed departmental appeal followed by Service Appeal No.1325/2015 before this Tribunal and the Tribunal vide judgment dated 21.11.2017 by accepting the appeal, reinstated the appellant into service, however, the department was left at liberty to proceed afresh in accordance with law and rules. That an inquiry was conducted and vide order dated 28.06.2018, the order dated 15.06.2015 of removal of the appellant was confirmed. Feeling aggrieved, she filed departmental appeal, which was not responded, hence, the instant service appeal.

2. On receipt of the appeal and its 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 objections. The defense setup was a total denial of the claim of the appellant.
3. We have heard learned counsel for the appellant and learned Deputy District Attorney for the respondents.
4. The learned counsel for the appellant reiterated the facts and grounds detailed in the memo and grounds of the appeal while the learned Deputy District Attorney controverted the same by supporting the impugned order(s).



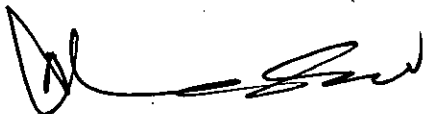
5. Perusal of record reveals that the appellant had earlier filed Service Appeal No.1325/2017 which was decided by the Tribunal vide judgment dated 21.11.2017. In the first round of litigation, the Tribunal in the case of the appellant, has held as under:

"Relevant part of Para-6:

When the appellant appeared in pursuance of the said advertisement it was legal requirement that the proceedings against the appellant under Rule 9 mentioned above should have been dropped but the authority passed the impugned order of removal of service of the appellant. If the authority was to proceed against the appellant for misconduct due to her absence for the said period, the proper course was to have issued charge sheet and statement of allegations and then formal enquiry. But the authority did not adopt the said course."

"7. As a consequence, the present appeal is accepted and the appellant is reinstated in service. The department is however, at liberty to proceed afresh in accordance with law and rules and in the light of observations mentioned above. Parties are left to bear their own costs. File be consigned to the record room."

But as against the above, we could not find any charge sheet, statement of allegations and even formal inquiry was not conducted in accordance with the provisions of Khyber Pakhtunkhwa Government Servants (Efficiency and Discipline) Rules, 2011, compelling the Tribunal to remit the matter back to the department for departmental proceedings/enquiry strictly in accordance with the terms of the earlier judgment of this Tribunal, by issuing charge sheet, statement of allegations and then proper inquiry which shall be held within 60 days of receipt of this judgment, duly associating the appellant and the departmental representative, bringing all the



facts on the record. The appellant is reinstated for the purpose of enquiry. The issue of back benefits shall be subject to the outcome of the inquiry.

6. The appeal in hand is decided in the above terms. 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 27th day of February, 2024.*



KALIM ARSHAD KHAN
Chairman



SALAH UD DIN
Member (Judicial)

Mutazem Shah


ORDER

27th Feb, 2024

1. Learned counsel for the appellant and Mr. Asad Ali Khan, Assistant Advocate General alongwith Syed Hajjad Shah, Litigation Officer for the respondents present.

2. Vide our detailed judgment of today placed on file, we could not find any charge sheet, statement of allegations and even formal inquiry was not conducted in accordance with the provisions of Khyber Pakhtunkhwa Government Servants (Efficiency and Discipline) Rules, 2011. Therefore, instant service appeal is remitted back to the department for departmental proceedings/enquiry strictly in accordance with the terms of the earlier judgment of this Tribunal, by issuing charge sheet, statement of allegations and then proper inquiry which shall be held within 60 days of receipt of the judgment, duly associating the appellant and the departmental representative, bringing all the facts on the record. The appellant is reinstated for the purpose of enquiry. The issue of back benefits shall be subject to the outcome of the inquiry. 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 27th day of February, 2024.*



(Salah Ud Din)
Member (J)

Camp Court Abbottabad



(Kalim Arshad Khan)
Chairman

Camp Court Abbottabad