

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

Service Appeal No. 2586/2023

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

Dr. Asim Saeed son of Muhammad Saeed, resident of Basti Ustrana Shumali, Principal (BPS-18) presently serving under the domain of DEO (Male), Dera Ismail Khan. (Appellant)

Versus

1. Govt. of Khyber Pakhtunkhwa through Secretary Elementary and Secondary Education Department Khyber Pakhtunkhwa, Peshawar.
2. Chief Secretary Government of Khyber Pakhtunkhwa, Peshawar.
3. Director, Elementary and Secondary Education, Khyber Pakhtunkhwa Peshawar.
4. Noor Sultan, SDEO (Sub Divisional Education Officer) (BS-17), Dera Ismail Khan. Presently posted as Deputy DEO (Male) office, D.I.Khan.....(Respondents)

Mr. Ahsan Bilal Langraw,
Advocate

... For appellant

Mr. Asif Masood Ali Shah,
Deputy District Attorney

... For the respondents

Mr. Khalid Mehmood
Advocate

... For Private respondent No. 4

Date of Institution..... 14.12.2023

Date of Hearing..... 12.02.2024

Date of Decision..... 12.02.2024

JUDGEMENT

FAREEHA PAUL, MEMBER (E): The service appeal in hand has been instituted under Section 4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974 against the order dated 27.09.2023, whereby the appellant was transferred as SSS (Islamiyat) at GHSS Ramak, D.I.Khan, order dated 01.12.2023 and against the order dated 11/12/2023, whereby the departmental appeal of the

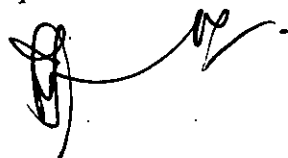


appellant was rejected by the appellate authority. It has been prayed that on acceptance of the appeal, the impugned orders might be set aside/cancelled/withdrawn in the larger interest of justice.

2. Brief facts of the case, as given in the memorandum of appeal, are that the appellant was serving in the Education Department since 21.04.1999. Later on, he was selected and appointed as Principal (BPS-18) through Khyber Pakhtunkhwa Public Service Commission vide notification dated 25.08.2015. He, while serving as Deputy DEO (Male) D.I.Khan since 10.01.2022, was transferred and posted as Subject Specialist (Islamiyat) (BS-18) GHSS Ramak D.I.Khan and private respondent No. 4 was assigned to hold the look after charge of the post of Deputy DEO (Male) D.I Khan. Feeling aggrieved from the impugned order, the appellant preferred a departmental appeal on 02.10.2023, which was rejected by the appellate authority vide order dated 11.12.2023; hence the instant service appeal.

3. Respondents were put on notice. They submitted written rely/comments on the appeal. We heard the learned counsel for the appellant, learned Deputy District Attorney for the official respondents as well as learned counsel for private respondent No. 4 and perused the case file with connected documents in detail.


4. Learned counsel for the appellant, after presenting the case in detail, argued that the appellant had not exhausted his normal tenure of service as Deputy DEO (Male) D.I.Khan, hence the impugned order was premature and against the service rules and law. He further argued that as per service rules every civil servant was liable to serve anywhere but it did not empower the



authority to cut short his normal tenure, particularly without assigning any reasons. He requested that the appeal might be accepted.

5. Learned Deputy District Attorney, while rebutting the arguments of learned counsel for the appellant, argued that the appellant belonged to the Teaching Cadre whereas respondent No. 4 was from the Management Cadre and hence were adjusted accordingly. He further argued that the Hon'ble Peshawar High Court vide its judgment dated 18.11.2009, in Writ Petition No. 2937/2009, had observed that it was not befitting for teachers to hold administrative posts and get benefits from it and the students suffered, therefore they should go to their respective places. He requested that the appeal might be dismissed.

6. Learned counsel for private respondent No. 4 added that the appellant was transferred vide notification dated 27.09.2023 and he was relieved from the post of Deputy DEO (Male) on 28.09.2023 and was at the strength of GHISS Ramak, which the appellant challenged before the Service Tribunal on 14.12.2023. Later on, vide notification dated 01.12.2023, the competent authority had posted/transferred private respondent No. 4 as Deputy DEO (M) D.I.Khan, against which no appeal was preferred before the competent departmental authority, which was a pre-requisite under Rule 3 of the Khyber Pakhtunkhwa Civil Servants (Appeal) Rules, 1986 and hence the service appeal was not maintainable under section 4(a) of the Khyber Pakhtunkhwa Service Tribunal Act, 1974. He further argued that the appellant had taken over charge at GHISS Ramak and private respondent No. 4 had also taken over the charge of the post of Deputy District Education Officer (M) D.I.Khan on



02.12.2023; hence the appeal had become infructuous. He requested that the appeal might be dismissed.

7. This is a service appeal against notification dated 27th September, 2023, whereby the appellant has been transferred from the post of Deputy District Education Officer (Male) BS-18, D.I.Khan to the post of Subject Specialist (BS-18) GHSS Ramak, D.I.Khan. Record presented before us shows that he was posted as Deputy DEO (M) D.I.Khan vide a Notification dated 10.01.2022. It is pertinent to note here that the appellant is an officer of Teaching Cadre of the Elementary and Secondary Education Department and appointed as Principal (BS-18) through Khyber Pakhtunkhwa Public Service Commission. Terms and conditions of his service at sr. no. 6 mention that his recruitment shall be School Based and shall not be transferable to any other school. In various judgments of different courts, including this Tribunal, it has been held that officers of Teaching Cadre should not be appointed against positions of Management Cadre, but those clear instructions are frequently violated by the Elementary and Secondary Education Department on the grounds that they are short of Management Cadre Officers and that whenever and wherever need arises, officers of Teaching Cadre are posted on Management Cadre positions. It is an undisputed fact that under section 10 of the Civil Servants Act 1973, a civil servant can be posted at any position by his competent authority wherever his services are required and that he has to act according to the directions given to him. No civil servant can claim transfer/posting to any specific position of his own choice, unless his competent authority considers him fit and appropriate for such post. In the case




under consideration, we see that the appellant, despite being a teaching cadre officer and specifically appointed as Principal, was posted on a management cadre post, where he completed almost one year and eight months before he was posted and adjusted against a teaching cadre post. The plea taken by the learned counsel for the appellant, that tenure of two years was not complete, does not seem genuine as he was short of only four months to complete his tenure of two years. Moreover one must not forget an important point that he was not posted on the right post, which for him was Principal of a school, being an officer specifically appointed for that position. It has been noted that the respondent department did not take into consideration his appointment order according to which he was appointed as Principal and being school specific post, he could not be transferred to any other position, not even any other post of Teaching cadre. While issuing the impugned order dated 27.09.2023, this fact was not kept in view. In our opinion, it would have been in the fitness of the matter to post the appellant on the position, i.e Principal, for which he was appointed.

8. Learned counsel for the appellant through an amended appeal, impugned a notification dated 01.12.2023, which is again a transfer order of three officers, of which he is not a part. Against that notification, no departmental appeal had been preferred by him. From the diary number and date on the main service appeal, it appears that it was preferred on 14.12.2023 and by that date the notification dated 01.12.2023 had already been in field and under the rules, the appellant had to submit a departmental appeal first, which was not done and hence the same is not maintainable before us.



9. From the above discussion, we arrive at a conclusion that the service appeal is groundless and hence dismissed with the observation ~~to~~ to post ~~the~~ appellant on the position of Principal for which he was appointed. Cost shall follow the event. Consign.

10. *Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal this 12th day of February, 2024.*


(Farzha Paul)
Member (I)

(Rashida Bano)
Member (J)


Fazle Subhan P.S.

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12th Feb. 2024 01. Mr. Ahsan Bilal Langraw, Advocate for the appellant present. Mr. Asif Masood Ali Shah, Deputy District Attorney for the official respondents and Mr. Khalid Mahmood, Advocate for private respondent No. 4 present. Arguments heard and record perused.

02. Vide our detailed judgment consisting of 06 pages, the service appeal is groundless and hence dismissed with the observation ~~to~~ to post^{to} appellant on the position of Principal for which he was appointed Cost shall follow the event. Consign.

03. *Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal on this 12th day of February, 2024.*


(FARAHIA PAUL)
Member (E)

(RASHIDA BANO)
Member(J)

Fazal Subhan PS