

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR AT
CAMP COURT ABBOTTABAD

Service Appeal No. 70/2019

Mr. Imdad Ullah S/O Musa Khan, R/O Shareen Abad, Cum Kuza Banda,
P/O Ghidari Tehsil & District Battagram.

.... (Appellant)

VERSUS

1. The Government of Khyber Pakhtunkhwa, through Secretary Elementary & Secondary Education, Khyber Pakhtunkhwa, Peshawar.
2. The Director Elementary & Secondary Education, Khyber Pakhtunkhwa, Peshawar.
3. The District Education Officer, Battagram.
4. The District Accounts Officer, Battagram.

.... (Respondents)

Mr. Malik Masood Ur Rehman Awan
Advocate

... For appellant

Mr. Asif Masood Ali Shah
Deputy District Attorney

... For respondents

Date of Institution.....15.01.2019
Date of Hearing.....23.01.2024
Date of Decision.....23.01.2024

JUDGMENT

Rashida Bano, Member (J): The instant appeal instituted under section 4 of the Khyber Pakhtunkhwa Service Tribunal, Act 1974 with the prayer copied as below:

“On acceptance of the instant service appeal, the impugned order may graciously be set aside and the appellant be ordered to be reinstated in service with all back benefits. Any other relief deemed fit and proper in the circumstances of the case.”


2. Brief facts of the case are that appellant was appointed as PTC Teacher vide order dated 29.10.1995. That while serving in the said capacity, he was



terminated in the year 1997. That the Government introduced Sack Employees Reinstatement Act, 2010, amended 2013 and in view of the said Act, he was reinstated vide order dated 15.02.2013. That at the time of reinstatement, condition of educational qualification was imposed upon appellant which was fulfilled by the appellant and he submitted his educational testimonials. That in the year 2016, his salary was stopped, therefore, he approached the Peshawar High Court through Writ Petition No.859-A/2016, and the Peshawar High Court sent back that petition to the Secretary Education with direction to decide the issue through a uniform policy within 30 days. That the Secretary Education did not resolve the same, therefore, the appellant filed COC in the Peshawar High Court, wherein, the then EDO committed for compliance but failed to do so. Consequently, the appellant filed another COC for implementation of the judgment of the Peshawar High Court and during the pendency of that COC, he came to know that he has been terminated from service vide order dated 31.01.2018. Feeling aggrieved, he filed departmental appeal, which was rejected on 26.09.2018, hence, the instant service appeal.

4. 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 Deputy District Attorney and perused the case file with connected documents in detail.

5. Learned counsel for the appellant argued that the impugned order was illegal, against law, facts and was liable to be set aside. He submitted that proceedings had been initiated without any notice, information and in the absence of appellant; that no charge sheet was issued to the appellant and the impugned order was against rules and basic principles of natural justice. Further submitted that the appellant had not given any opportunity



of defense. Lastly, he concluded that the impugned order was against the fundamental rights of the appellant and in clear violation of natural justice, hence, liable to be set aside.

6. Conversely, learned Deputy District Attorney argued that the impugned order had been passed after proper verification of documents and in the light of proper inquiry. He submitted that there was no need of notice to the appellant as it had been mentioned in the terms & conditions of the appointment order that no notice shall be given. Further submitted that the impugned order had been issued as per law and full opportunity of defense had been given to the appellant. Lastly, he submitted that the appellant had submitted fake documents for his appointment, therefore, he was rightly dismissed from service. Therefore, he requested for dismissal of the instant service appeal.

7. Perusal of record reveals that the appellant was removed from service on the allegation of not completing requisite training/prescribed qualification within three years in accordance with terms and conditions No.15 of their appointment/reinstatement order dated 15.02.2013. It is admitted fact that appellant was appointed in the 1995 and was terminated during the 1997. Worthy Peshawar High Court, Peshawar provided three year time to acquire prescribed qualification to the sacked employee/present appellant in the judgment dated 14.02.2017 in writ petition No 859-A/2016 but arrangements of training to acquire prescribed qualification was the job and responsibility of the respondents and not of the appellant who was performing his duty. So respondent department failed to discharge his burden of arranging training courses for appellant in light of judgment of Worthy Peshawar High Court Peshawar given in writ petition No 859-A/2016. Respondent also in their written reply mentioned that despite giving time, appellant failed to attain



required training and acquire prescribed qualification which is now BA. Therefore, they were removed from service in this regard.


8. In our humble view requisite qualification at that time of appointment of appellant was matric and not F.A or B.A. Qualification of F.A and B.A were introduced later on 13.11.2012 and is not applicable retrospectively in case of appellant when he got the right of appointment by operation of law promulgated on 20.09.2012. It is not disputed that the appellant was appointed during the year 1995. It is a matter of fact that the Khyber Pakhtunkhwa Sacked Employees (Appointment) Act, 2012 was promulgated on 20.09.2012 to provide relief to those sacked employees who were dismissed, removed, or terminated from service during the period from 1st day of November 1996 to 31st day of December 1998. A sacked Employee as defined under Section 2(g) of the said Act means a person who were appointed on regular basis to a civil posts in the province of Khyber Pakhtunkhwa and who possessed the prescribed qualification and experience for the said post at that time, during the period from 1st day of November 1993 to 30th day of November 1996 (both days inclusive) and was dismissed, removed, or terminated from service during the period from 1st day of November 1996 to 31st day of December 1998 on the ground of irregular appointments. By virtue of Section-3 of the said Act, sacked employees were to be appointed in respective cadre of their concerned department. The notification dated 13.11.2012 on its face does not provide for its retrospective effect. Appellant was reinstated into service vide sacked employees Act 2012 which means by operation of law, therefore, any subsequent amendment with respect to qualification of FA & B.A for the post of PST will not be applicable to appellants. So both the reason advanced by the respondents for

removal of appellants have no logic and no legal force in it, hence declared arbitrary and not binding upon appellants.


9. As a sequel to above discussion, we accept the appeal as prayed for.

Costs shall follow the event. Consign.

10. *Pronounced in open court in Abbottabad and given under our hands and seal of the Tribunal on this 23rd day of January, 2024.*


(MUHAMMAD AKBAR KHAN)
Member (E)
Camp Court, Abbottabad

Kaleemullah



(RASHIDA BANO)
Member (J)
Camp Court, Abbottabad


ORDER
23.01.2024

1. Learned counsel for the appellant present. Mr. Asif Masood Ali Shah, learned Deputy District Attorney alongwith Lutfullah, ~~FADEO~~ for the respondents present.

2. Vide our detailed judgement of today placed on file, we accept the appeal as prayed for. Costs shall follow the event. Consign.

10. *Pronounced in open court in Abbottabad and given under our hands and seal of the Tribunal on this 23rd day of January, 2024.*


(Muhammad Akbar Khan)
Member (E)
Camp Court, Abbottabad


(Rashida Bano)
Member (J)
Camp Court, Abbottabad