

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR AT
CAMP COURT ABBOTTABAD

Service Appeal No: 2009/2022

BEFORE: MRS. RASHIDA BANO ... MEMBER (J)
MR. MUHAMMAD AKBAR KHAN ... MEMBER (E)

Mr. Muhammad Waqar S/o Muhammad Bashir (Ex. JCT Surgical, BPS-12),
Resident of Tamai, Tehsil & District Battagram.

.... (Appellant)

VERSUS

1. The Government of Khyber Pakhtunkhwa through Secretary Health, Civil Secretariat, Peshawar.
2. The Director General Health Services Department, Khyber Pakhtunkhwa, Peshawar.
3. The District Health Officer, Battagram.

.... (Respondents)

Mr. Hamayun
Advocate

...

For appellant

Mr. Asif Masood Ali Shah
Deputy District Attorney

...

For respondents

Date of Institution..... 28.12.2022
Date of Hearing..... 24.01.2024
Date of Decision..... 24.01.2024

JUDGMENT

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

“On acceptance of instant appeal the impugned order dated

23.08.2021 passed by respondent No.2 and similarly order dated



27.08.2021 passed by respondent No.3 may kindly be declared as null and void, illegal, unlawful, against the law, void ab-initio, hence liable to be set aside and the appellant be reinstated in service alongwith all back benefits. Any other relief which this honorable tribunal deems fit and proper in the circumstances of the case may also be granted to the appellant.”

2. Through this judgment we intend to dispose of instant service appeal as well as connected service appeal bearing No.2010/2022 titled “Javed Khan Vs Secretary Health & Others” as in both the appeals are common question of law and facts are involved.

3. Brief facts leading to filing of the instant appeals are that the appellants were appointed against the posts of JCT (Surgical) vide order dated 30.07.2021. They were serving against their respective seats when in the meanwhile, vide office order dated 23.08.2021, their appointments were cancelled and an inquiry was ordered to be conducted in the matter. Resultantly, all the orders were cancelled vide impugned office order dated 27.08.2021. Feeling aggrieved from the said orders, they filed writ petition before the Peshawar High Court and the Peshawar High Court, vide order dated 15.09.2022 transmitted the writ petition to the respondents for treating the same as departmental appeal. But the respondents did not respond to the departmental appeal, hence, the instant service appeals.

4. Respondents were put on notice who submitted written reply/comments on the appeal. We have heard learned counsel for the appellants and Mr. Asif Masood Ali Shah, Deputy District Attorney for the



respondents and have gone through the record and the proceedings of the case in minute particulars.

5. Learned counsel for the appellants argued that the impugned orders dated 23.08.2021 and 27.08.2021 were against law, facts and norms of natural justice. He submitted that the respondents had violated Articles-4 & 25 of the Constitution of Islamic Republic of Pakistan, 1973. Further submitted that no inquiry had been conducted before passing of the impugned orders which was against law and rules. Lastly, he concluded that the action taken against the appellants was arbitrary and malafide, therefore, he requested for acceptance of the instant service appeals.

6. Conversely, learned Deputy District Attorney submitted that the respondents had treated appellants in accordance with law, rules and principles of natural justice. Further submitted that a fact finding inquiry had been conducted before passing of impugned orders; that the appellants were appointed without conducting of ETEA test. Further submitted that irregularities had been committed in the process of appointments of the appellants due to which their appointments were cancelled. Therefore, he requested for dismissal of the instant service appeals.

7. Perusal of record reveals that appellants applied for their respective posts in consequence of publication published in newspaper for the posts of JCT Surgical advertised by respondent No.3. Appellants were considered by the DPC duly constituted and attended by the respondent No.3 as Chairman, Dr. Ahmad Faisal representative of DGHS and Mr. Mustafa

Khan representative of DC Battagram as members held on 14.07.2021 upon recommendation of DSC, appellants were appointed vide order dated 30.07.2021 by respondent No.3.

8. Appellants assumed charge of their posts on 31.07.2021 and 03.08.2021 respectively and started performing official duties but appointment order was withdrawn by Director General Health vide order dated 23.08.2021 followed by order of respondent No.3 dated 27.08.2021 on the grounds of irregularities committed during appointing/recruitment process. Appellant approached worthy Peshawar High Court, Peshawar by filling writ petition bearing No.955/2021, which was considered as departmental appeals vide order dated 15.09.2022 by considering appellants as civil servants and send it to the respondent to decide it. The order of worthy Peshawar High Court is reproduced as under:

“Since the matter squarely falls within the jurisdiction of service tribunal, as such, jurisdiction of this court is bar under Article 212 of The Constitution of Islamic Republic of Pakistan.”

In view thereof copy of the memorandum of this writ petitions be transmitted to the respondents/department and be treated as departmental appeals for decision in accordance with law. On the completion of 90 days the petitioners would be at liberty to approach service tribunal subject to all just and legal exceptions. Respondents after receipt of order of Worthy



Peshawar High Court alongwith writ petition did not decided the matter within 90 days.

9. It is also pertinent to mention here that appointment orders were cancelled as per representative of respondent upon report of respondent No.3 who reported that local MPA Mr. Zubair forcefully snatched entire record of appointments/recruitments of appellants at gun point from him as he wants to get appoint his blue eyed who was not appointed. When respondent No.3 reported incident of snatching of record legal proceeding must be initiated against the said MPA but instead of doing so, appointment orders were concealed without providing opportunity to direct effectees i.e. present appellants which is against the settled norms and rules upon subject and is not sustainable in the eyes of law.


10. Moreover it is mentioned in cancellation order dated 27.08.2021 local in-charge are directed not to accept the arrival of any of appointee/candidate but present appellants submit their arrival reports and also assumed charge of their posts. So, when appellants assumed charge then they became civil servants and they will have to be dealt with in accordance of rules and law, otherwise too Worthy Peshawar High Court consider appellants as civil servant.


11. In the circumstance it would be appropriate to provide opportunity to the appellants to defend themselves as they were appointees of the process in which irregularities were allegedly committed. Hence, impugned orders



are set-aside with direction to the respondents to associate appellants with the inquiry proceeding by providing opportunity of defense and hearing to them. Appellants who assumed charge of their respective posts are hereby reinstated into service for the purpose of inquiry. Respondent are further directed to conduct and conclude inquiry within 60 days after receipt of copy of this order. Costs shall follow the event. Consign.

12. *Pronounced in camp court at Abbottabad and given our hands and seal of the Tribunal on this 24th day of January, 2024.*


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


(RASHIDA BANO)
Member (J)
Camp Court Abbottabad


ORDER


24.01.2024 1. Learned counsel for the appellant present. Mr. Asif Masood Ali

Shah learned Deputy District Attorney Dr. Adnan Shehzad, Litigation Officer for the respondents present.

2. Vide our detailed judgment of today placed on file, the impugned orders are set-aside and appellant is reinstated into service for the purpose of denovo inquiry with direction to the respondents to associate appellant with the inquiry proceeding by providing opportunity of defense and hearing to him. Respondent are further directed to conduct and conclude inquiry within sixty days after receipt of copy of this order. Costs shall follow the event. Consign.

3. *Pronounced in camp court at Abbottabad and given our hands and seal of the Tribunal on this 24th day of January, 2024.*


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


(RASHIDA BANO)
Member (J)
Camp Court Abbottabad