

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL  
PESHAWAR

Service Appeal No. 521/2023

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

Ibrar-ud-Din Chowkidar, Government Primary School Azamabad, Tehsil Mathra, District Peshawar. .... (*Appellant*)

Versus

1. The Secretary Elementary and Secondary Education, Government of Khyber Pakhtunkhwa Civil Secretariat, Peshawar.
2. The Director (Elementary & Secondary Education) Khyber Pakhtunkhwa, Peshawar.
3. The Assistant Director (Admin) Directorate of Elementary & Secondary Education, Khyber Pakhtunkhwa, Peshawar.
4. The District Education Officer (Male) Khyber Pakhtunkhwa, Peshawar.
5. The Sub-Divisional Education Officer (Male) Town-II Peshawar.
6. The Assistant Sub-Divisional Education, Circle Mathra Road, Peshawar.
7. The Head Master, Government Primary School, Azamabad, Peshawar. ....(*Respondents*)

Mr. Anwar Shah,  
Advocate ... For appellant

Mr. Asif Masood Ali Shah,  
Deputy District Attorney ... For the respondents

Date of Institution..... 09.03.2023  
Date of Hearing..... 15.02.2024  
Date of Decision..... 15.02.2024

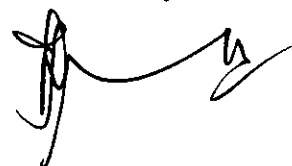
**JUDGEMENT**

**FAREEHA PAUL, MEMBER (E):** The service appeal in hand has been instituted under Section 4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974 for release of salary of the appellant with the following prayer:-



*“On acceptance of the instant service appeal, the respondents act for stoppage of appellant’s salary for the month of September 2022 may graciously be declared as illegal, unjustified and without any rhyme and reason, which act was reflected in the appellant’s statement of account bearing No. 1112-000213394334 maintained in United Bank Limited 1112- Hayatabad branch Peshawar. And may graciously be directed to release his monthly salary from the month of September 2022 and onward too.”*

2. Brief facts of the case, as given in the memorandum of appeal, are that the appellant was appointed as Chowkidar in Government Primary School, Azamabad, Peshawar on 21.12.2012. He performed his duty under the direction and supervision of the Respondent No. 6, mostly during night time, while some time in day shift too. There was difficulties for him to mark attendance, especially during the night shift due to the reason that while leaving the school, the attendance register remained in the custody and control of the relevant staff available in day time. He, in order to avoid any objection, on precautionary basis, requested respondent No. 7 to issue him proper order in writing for night time duty as Chowkidar and the respondent No. 6 allowed in writing to work in night time. The respondent No. 4 issued show cause notice to the appellant with the allegation of willful absence from duty since 02.07.2022. He furnished reply to the show cause notice on 19.09.2022. Without considering his reply, the respondents stopped his monthly salary on 01.10.2022. Malafide intention could be assessed from another fresh notice dated 23.02.2023 issued by the respondent No.7, addressed in the name of chowkidar, in which he was directed to be present on duty for



day as well as night, which meant that he would perform his duty for 24 hours. The respondents violated their own circular/notification dated 03.04.2018 regarding observing duty for 08 hours fixed for chowkidars. The appellant approached respondent No. 2 through a departmental representation on 14.11.2022 in which it was requested to release his salary with effect from September 2022 onwards but till completion of statutory period of 03 months, no response was communicated to him, hence the instant service appeal.

3. Respondents were put on notice. They submitted written reply/comments on the appeal. We heard the learned counsel for the appellant as well as learned Deputy District Attorney for the respondents 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 act for stoppage of monthly salary w.e.f. 1st September 2022 was illegal, unjustified and not tenable in the eyes of law. He further argued that in case of such punishment, proper enquiry was mandatory which was not conducted in the present case. Respondent No. 7 violated instructions dated 23.02.2023 of the Provincial Government regarding duty hours of a chowkidar. 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 was appointed as chowkidar and according to law he was bound to look after the school building and its valuable assets. He argued that the appellant failed to take

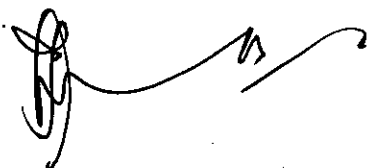


interest in his duty and always remained absent without any permission of his superiors and hence the Head Master as well as the Parent Teacher Council (PTC) lodged several complaints against him. The Assistant Sub Division Education Officer Circle Mathra visited the school, and found the chowkidar absent from duty. The ASDEO tried to contact him several times but he did not respond upon which the SDEO forwarded the absence report of the appellant to the DEO (Male) Peshawar. A Show Cause notice was issued to the appellant and inquiry was also conducted. The inquiry officer submitted his recommendations and in the light of those recommendations the competent authority imposed the said penalty on the appellant. The learned DDA informed that when he resumed his duty on 17.03.2023, monthly salary of the appellant was started from the same date by the competent authority. He requested that the appeal might be dismissed.

6. The service appeal in hand has been preferred by the appellant for release of his salary that was stopped from September 2022. Arguments and record presented before us shows that the appellant was appointed Chowkidar at Government Primary School, Azamabad Peshawar in 2012. During the course of his service, he was found absent on various instances and the same fact was brought to the notice of District Education Officer (Male) Peshawar by the Head Master of the school as well as the members of Parent Teacher Council. In a meeting of the PTC held on 02.07.2022, the matter of absence of the appellant was discussed and the concern of the council was conveyed in writing to the DEO. The ASDEO



(M) Circle Mathra, during various visits to the school, found the chowkidar absent from his lawful duty. It was further brought to the notice of the DEO (M) that a relative of the appellant, namely Lumber Khan, used to perform duty in his place. Inquiry was also conducted and absence of the appellant, who was also the owner of the land on which the school was constructed, was confirmed by the Inquiry Officer. An argument was presented by the learned counsel for the appellant that under the standing instructions of the department, he was duty bound for only eight hours, but as per the instructions of the school headmaster, he had to perform duty during the day as well as at night also. Upon inquiry from the departmental representative, it was clarified that there was only one sanctioned post of chowkidar in the school and that his duty was required after school hours only in order to take care of the premises. The appellant himself has admitted in his appeal in para 3 that he used to perform his duty mostly at night and sometimes in day shift also, which indicates that duty during day time was not a regular feature, rather it was required at rare occasions. Another stance taken by the appellant and his learned counsel that he could not make his attendance on the ground that the attendance register used to be in the custody of the concerned staff, who was present at day time only, was not acceptable because if he was present for his duty and it was in the knowledge of head master of the school, there would have been no issue in marking his attendance and he could have marked it in the next morning. Moreover, the appellant did not deny deputing his relative to perform duty in his place.




7. Record presented before us further shows that the appellant despite replying to the show cause dated 15.08.2022 on 19.09.2022, never bothered to attend to his lawful duty and continued his absence. His salary was, therefore, stopped. He, ultimately, reported for duty on 17.03.2023, and his salary was released from that date.

8. After going through the entire record, we have come to the conclusion that the appellant absented himself from his duty and authorized some private person to perform duty in his place, which is a gross misconduct on his part, being a civil servant. He did not show any seriousness after he was issued a show cause notice, to which he responded also, and still remained absent. The department therefore, rightly stopped his salary for the period he remained absent and the same was released the moment he resumed his duty.

9. The appeal in hand is, therefore, dismissed, being groundless. Cost shall follow the event. Consign.

10. *Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal this 15<sup>th</sup> day of February, 2024.*

  
(FARZEEN PAUL)  
Member (I)

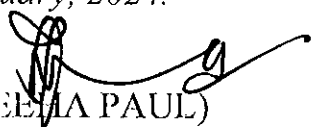
  
(RASHIDA BANO)  
Member (J)

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15<sup>th</sup> Feb. 2024 01. Mr. Anwar Shah, Advocate for the appellant present.  
Mr. Asif Masood Ali Shah, Deputy District Attorney alongwith  
Arshad Ali, ADEO for the respondents present. Arguments  
heard and record perused.

02. Vide our detailed judgment consisting of 06 pages, the  
appeal in hand is dismissed, being groundless. 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 15<sup>th</sup> day of  
February, 2024.*

  
(FAREEHA PAUL)  
Member (E)

  
(RASHIDA BANO)  
Member(J)

\*Fuzal Subhan PS\*