

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR AT
CAMP COURT ABBOTTABAD

Service Appeal No.1345/2019

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

Akhtar Muhammad S/O Yaqeen Khan, Caste Hassan Zai, (Ex-PST Teacher) Govt. Primary School Gharhi Hassan Zai, Resident of Nadray Hassan Zai, Tehsil Kandar District Torghar.

.... (Appellant)

VERSUS

1. Govt. of Khyber Pakhtunkhwa through Secretary Elementary & Secondary Education, Peshawar.
2. Director Elementary & Secondary Education, Khyber Pakhtunkhwa, Peshawar.
3. District Education Officer (Male) District Torghar.

.... (Respondents)

Mr. Hamayun Khan
Advocate

... For appellant

Mr. Asif Masood Ali Shah
District Attorney

... For respondents

Date of Institution..... 14.10.2019
Date of Hearing..... 24.01.2024
Date of Decision..... 24.01.2024

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 appeal, impugned order/notification Endst. No.192-98 dated 29.05.2019 may kindly be declared null and void and appellant be reinstated along with all back benefits and any other relief which this honorable court deem fit and proper.”

2. Brief facts of the case are that appellant was initially appointed as PST (BPS-12) in April 2016. That on 07.09.2016, appointment order of the appellant



was withdrawn/de-notified, therefore, he filed Writ Petition No.897-A/2016 before the Peshawar High Court and the Peshawar High Court vide judgment dated 15.05.2018, reinstated the appellant into service. That on 31.01.2019, he was again served with a show cause notice alongwith statement of allegations, which was replied by the him. Resultantly, he was dismissed from service on 29.05.2019 w.e.f the date of appointment i.e. 09.04.2016. Feeling aggrieved, he filed departmental appeal, which was not responded, hence, the instant service appeal.

3. Notices were issued to the respondents, who submitted their comments, wherein they refuted the assertions raised by the appellant in his appeal. We have heard arguments of learned counsel for the appellant and learned Deputy District Attorney and have gone through the record with their valuable assistance.

4. 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 no opportunity of defense was afforded to the appellants. 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.

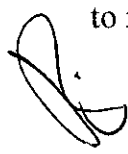
5. Conversely, learned Deputy District Attorney argued that the impugned order had been passed after proper verification of documents and in the light of proper inquiry. He submitted that there was no need of notice to the appellant as it had been mentioned in the terms & conditions of the appointment 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.

6. Perusal of record reveals that appellant was appointed on 09.04.2016 but his appointment order was withdrawn/de-notified due to non-verification of his domicile certificate vide order dated 07.09.2016 initially against which appellant approached Peshawar High Court, Peshawar wherein his writ petition bearing No. 897-A/2016 was accepted vide order dated 15.05.2018 however respondent were left at liberty to conduct de-novo inquiry into the matter. Respondent reinstated appellant vide order dated 03.07.2018 subject to outcome of de-novo inquiry. After de-novo inquiry appellant was dismissed from service vide impugned order dated 29.05.2019 from date of appointment.

7. Record reveals that appellant filed civil suit bearing No.18/1 titled Akhtar Muhammad in the court of Senior Civil Judge Torghar for declaration to the effect that he is bonafide resident of Torghar and he challenged domicile cancellation order passed by respondent No.2 dated 27.03.2019 that statement of the appellant was decreed in his favour vide judgment dated 06.07.2022 against which appeal bearing No. 4/13 of 2022 titled as "Government of Khyber Pakhtunkhwa through Chief Secretary and others Vs Akhtar Muhammad" filed by the DC was dismissed vide order dated 18.10.2023 by District Judge Torghar. When appellant was declared bonafide resident of Torghar by the competent court of law and order of cancellation of domicile of appellant passed by deputy Commissioner dated 27.03.2019 was cancelled/set-aside by the court of Senior Civil Judge, Torghar which was upheld by the District Judge, Torghar being appellate court then in such a situation the very reason that domicile certificate of the appellant are fake are no more in field, therefore, respondents are directed to reinstate the appellant into service.





8. It is admitted on record vide judgment of SCJ, Torghar dated 06.07.2022 and D&SJ, Torghar 18.01.2023 that appellant is bonafide resident of District Torghar and his domicile certificate of Torghar is valid then in such a situation he is entitled for benefits during which appellant remain out of service as it could not be considered as a fault on, the part of the appellant. August Supreme Court of Pakistan in its judgment reported as 2013 SCMR 752 has graciously observed as below:

“Once an employee is reinstated in service after his exoneration of the charges leveled against him, the period during which he remained either suspended or dismissed cannot be attributed as a fault on his part. His absence during this period was not voluntary on his part but it was due to order of the appellant that he was restrained not to attend his job/duty because on the basis of charge sheet, he was suspended and later on dismissed. At the moment, his exoneration from the charges would meant that he shall stand restored in service, as if he was never out of service of the appellant. If the absence of the respondent or non-attending the work was not volunteer act on the part of the appellant, in no manner the service record of the respondent can be adversely affected nor he can be denied any benefit to which he was entitled, if he had not been suspended or dismissed”.

9. For what has been discussed above, we accept the appeal in hand as prayed for. Costs shall follow by the event. Consign.

10. Pronounced in open court at Abbottabad and given under 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. Mohammad Jan

learned District Attorney for the respondents present..

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

3. *Pronounced in open court at Abbottabad and given under 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