

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL  
PESHAWAR

Service Appeal No. 2211/2023

BEFORE: KALIM ARSHAD KHAN ... CHAIRMAN  
MISS FAREEHA PAUL ... MEMBER(E)

Mst. Shahida Parveen, Associate Professor Pashto, Government Girls Degree College Gulshan Rehman, Peshawar. ....(Appellant)

Versus

1. The Government of Khyber Pakhtunkhwa through Chief Secretary, Peshawar.
2. The Government of Khyber Pakhtunkhwa through Secretary Higher Education, Civil Secretariat, Peshawar.
3. Director Higher Education, Peshawar.
4. Sadaf Syed, Associate Professor Philosophy, Government Girls Degree College Gulshan Rehman Colony, Peshawar. ....(Respondents)

Mr. Ali Gohar Durrani,  
Advocate

... For appellant

Mr. Asif Masood Ali Shah,  
Deputy District Attorney

... For official respondents

Mr. Babar Hayat Khan,  
Advocate

... For private respondent  
No. 4

Date of Institution.....	24.10.2023
Date of Hearing.....	22.02.2024
Date of Decision.....	22.02.2024

JUDGEMENT

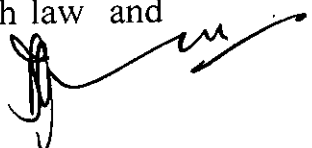
FAREEHA PAUL, MEMBER (E): The service appeal in hand has been instituted under Section 4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974 with the prayer to withdraw the transfer order of the appellant dated 12.10.2023 by further stating that she might be allowed to continue her service as Associate Professor Pashto at Government Girls Degree College Gulshan Rehman, Peshawar.



2. Brief facts of the case, as given in the memorandum of appeal, are that the appellant joined the Education Department of Khyber Pakhtunkhwa Government in the year 2002 as Lecturer (BS-17). Subsequently, she was promoted to the post of Assistant Professor (BS-18) on 16.05.2012 and then as Associate Professor (BS- 19) on 09.08.2017 on the recommendation of the Khyber Pakhtunkhwa Public Service Commission and was serving at Government Girls Degree College Gulshan Rehman, Peshawar. Her spouse, namely Mr. Pervez Ahmad Khan, was also serving as Principal, Government Shaheed Ahmad Elahi Technical High School, Gulbahar Peshawar. Both remained posted at one station for almost two years but vide impugned notification dated 12.10.2023, the appellant was transferred to Government Girls Degree College Lund Khwar, District Mardan and private respondent No. 4 was transferred and posted at Government Girls Degree College Gulshan Rehman Peshawar, where no sanctioned post for Philosophy was available. Feeling aggrieved, the appellant moved a representation, which was regretted on 10.10.2023; hence the instant service appeal.

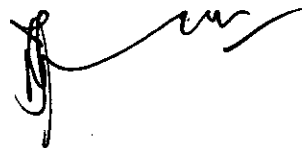
3. Respondents were put on notice. Official respondents submitted joint written reply/comments on the appeal while private respondent No. 4 submitted reply through her learned counsel. We heard the learned counsel for the appellant, learned Deputy District Attorney for the official respondents as well 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 been treated in accordance with law and

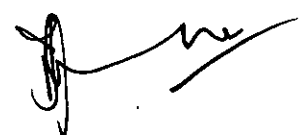


her rights secured and guaranteed under the law and Constitution were violated by the respondents. He further argued that under the spouse policy of the provincial government, wife and husband should be posted at one station but through the impugned notification, the appellant was transferred to District Mardan, which was against the spouse policy and the principles of natural justice. He further argued that private respondent No. 4 remained posted at Peshawar right from her appointment and spent her entire tenure there. According to him, the appellant was an Associate Professor of Pashto, but in Mardan, where she was transferred through the impugned order, no sanctioned post for Associate Professor Pashto existed. Similarly, private respondent No. 4 was an Associate Professor of Philosophy, transferred to college at Gulshan Rehman where there was no sanctioned post for her. He requested that the appeal might be accepted as prayed for.

5. Learned Deputy District Attorney, while rebutting the arguments of learned counsel for the appellant, argued that the appellant was transferred from GGDC, Gulshan Rehman Peshawar to GGDC, Rustam, District Mardan vide notification dated 12.10.2023 in the best public interest. He further argued that under Section 10 of the Khyber Pakhtunkhwa Civil Servants Act, 1973, a civil servant was liable to serve anywhere in the exigencies of service and no one could ask for posting of one's choice. He requested that the appeal might be dismissed. Learned counsel for private respondent No. 4 relied on the arguments advanced by the learned Deputy District Attorney.




6. Through this service appeal, the appellant has impugned her posting/transfer from Government Girls Degree College Gulshan Rehman Colony, Peshawar to Government Girls Degree College, Lund Khwar Mardan. Through the same order respondent No. 4 has been transferred in her place at GGDC, Gulshan Rehman Colony, Peshawar. It is worth to note that the appellant is an Associate Professor of Pashto whereas respondent No. 4 is an Associate Professor of Philosophy. As contended by the learned counsel for the appellant, there is no sanctioned position of Philosophy in GGDC, Gulshan Rehman Colony Peshawar, where the competent authority has posted an Associate Professor of Philosophy (respondent No. 4) and similarly in the GGDC Lund Khwar Mardan, there is no sanctioned post of Pashto, but she had been transferred there. When confirmed from the departmental representative, he produced a document showing subject wise sanctioned posts in both the colleges, according to which the statement of learned counsel for the appellant proved to be correct. When asked why such posting/transfer order, as the one impugned before us, is made by the provincial government and whether it is justified to post an officer of the rank of Associate Professor against a post in the college where she had no subject of her speciality and in that way it would amount to posting of a senior officer against wrong post, the departmental representative stated that posts in BS- 18 and above in the colleges are not subject specific and that posting/transfer is made according to the demand. When further asked to produce any approved policy/guidelines/instructions in this regard, he showed his inability by stating that no such policy or instructions exist in writing.



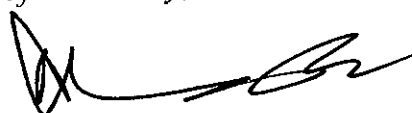
7. Keeping the above discussion in view, one can safely say that the appellant was working against the post of Pashto sanctioned for GGDC Gulshan Rehman Colony, Peshawar, but how can the department justify her posting/transfer to a college where no sanctioned post of her subject exists. Similar is the case of posting of respondent No. 4 in GGDC, Gulshan Rehman Colony Peshawar, where there is no sanctioned post of Philosophy. In the Higher Education Department, we feel that positions are sanctioned in colleges according to the requirement and appointments are made on the basis of positions sanctioned for specific subjects and for those positions lecturers and professors specialized in those subjects are appointed. It has been noted in the present appeal that no heed is paid to the sanctioned posts and posting/transfer has been made in a highly erratic way. Would it not be a wastage of the services of a lecturer or professor appointed for a subject for which the post has been sanctioned for a particular college based on the requirement of that college? The respondent department is directed to look into the matter and resolve it in the light of rules and policy on the subject.

8. The service appeal is disposed of in the above terms. Cost shall follow the event. Consign.

9. *Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal on this 22<sup>nd</sup> day of February, 2024.*

  
(FAREEHA PAUL)  
Member (E)

*\*FazleSubhan. P.S\**

  
(KALIM ARSHAD KHAN)  
Chairman


SA 2211/2023


Order

22<sup>nd</sup> Feb. 2024 01. Mr Ali Gohar Durrani, Advocate for the appellant present. Mr. Asif Masood Ali Shah, Deputy District Attorney alongwith Sohrab Khan, Law Officer for the official respondents present. Mr. Babar Hayat Khan, Advocate, counsel for private respondent No. 4 present. Arguments heard and record perused.

02. Vide our detailed judgment consisting of 05 pages, the service appeal is disposed of in the terms as spelled out in para-7 of the judgment. 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 22<sup>nd</sup> day of February, 2024.*

  
(FAREEHA PAUL)  
Member (E)

  
(KALIM ARSHAD KHAN)  
Chairman

\*Fazal Subhan PS\*