

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No.1457/2022

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

Shamim Bibi Ex-PST, GGPS Yazai Chawa Dera Pattan, Lower Kohistan.
.... (Appellant)

VERSUS

1. The Secretary Elementary & Secondary Education Department, Khyber Pakhtunkhwa, Peshawar.
2. The Director, Elementary & Secondary Education Department, Khyber Pakhtunkhwa, Peshawar.
3. The District Education Officer (Female), Kohistan Lower.
....(Respondents)

Syed Noman Ali Bukhari
Advocate For appellant

Mr. Muhammad Jan
District Attorney For respondents

Date of Institution.....20.11.2023
Date of Hearing..... 13.02.2024
Date of Decision.....13.02.2024

JUDGMENT

RASHIDA BANO, MEMBER.(J):The instant service appeal has been instituted under section 4 of the Khyber Pakhtunkhwa Service Tribunal, Act 1974 with the prayer copied as below:

“That on acceptance of this appeal the impugned order dated 22.11.2021 and rejection order dated 25.07.2022 may be set aside and the appellant may be reinstated into service with all back and consequential benefits. Any other remedy which this august Tribunal deems fit and appropriate that may also be awarded in favour of the appellant.”



2. Brief facts of the case as given in the memorandum of appeal are that appellant was performing her duty as Primary School Teacher in Education Department with devotion, dedication and up to the entire satisfaction of his superiors. On 16.02.2021 appellant submitted leave application w.e.f 16.02.2021 to 22.02.2021. Due to threat to her life and her family from the complainants of the FIR in which her husband was got arrested she submitted application for her transfer from GGPS Yazai Chawa Dara Pttan to GGCMS Colony, Pattan. Salary of the appellant was stopped on the ground of absence from duty and she was also directed to attend the office for personal hearing vide letters dated 16.03.2021 and 17.03.2021. It was on 07.07.2021 and 14.07.2021 she submitted applications to the DEO (F) Kohistan Upper and Deputy Commissioner for her transfer but in vain. The appellant through office order dated 22.11.2021 was removed from service 16.02.2021 with immediate effect. She filed departmental appeal, which was rejected, hence the present service appeal.

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

4. Learned counsel for the appellant argued that that the impugned office orders dated 22.11.2021 and 25.07.2022 are against the law, facts, rules and material on record, therefore, liable to be set aside. He further argued that the inquiry proceedings were conducted at the back of the appellant as fair opportunity of defence was not provided to her, nor chance of cross examination of the complainants were provided to her. He further argued that no regular inquiry was conducted before imposition of major penalty, which is illegal and against the law, rules and natural justice. He further argued that no charge sheet was issued to her and she was removed from which is violation of

Rule-10(b) of the (Efficiency and Discipline) Rules, 2011. He further argued that no opportunity of personal hearing was afforded to her and she was condemned unheard which is against the principle of audi alteram partem. He therefore, requested that instant appeal might be accepted as prayed for.


5. Conversely, learned District Attorney contended that appellant while serving as PST, she absented herself from w.e.f 16.02.2021 till. 22.11.2021. On the basis of which show cause notices and personal hearing notice have been service upon the official as well as home address of the appellant which was not replied. Thereafter, final show cause notice was issued in daily "Aaj" dated 04.10.2021 in which she was directed to assume her duty and submit reason for absence but neither she resume her duty nor submit reply. So the competent authority after fulfillment of all codal formalities, impose major penalty of removal from service.

6. Perusal of record reveals that appellant was performing her duties as PST in respondent department. When on 16.02.2021 unpleasant occurrence taken place and her husband was charged in a criminal murder case on 17.02.2021 due to which appellant submitted application for leave from 16.02.2021 to 22.02.2021. Husband of the appellant was arrested by the police. Appellant due to threat of her life and her family members from the opponent party submitted application on 23.02.2021 to ASDEO Circle Chawa Dara Pattan to transfer her from GGPS Uazai Chawa Dera Pattan to GGCMS Colony, Pattan which was near to her home and safe. She despite severe threats to her life used to perform her duties off and on. Respondent department stopped pay of the appellant vide letter dated 11.03.2021. She also submitted applications on 07.07.2021 to DEO (F) Kohistan Lower and on 14.07.2021 to Deputy Commissioner Kohistan Lower for her transfer due to the threats and unavailability of any 'Mehram' to accompany her while

travelling from home to the school of her posting which was earlier being done by her husband who is in prison but in vain.

7. It is a well settled legal proposition, that regular inquiry is must before imposition of major penalty of removal from service, whereas in case of the appellant, no such inquiry was conducted. The Supreme Court of Pakistan in its judgment reported as 2008 SCMR 1369 has held that in case of imposing major penalty, the principles of natural justice required that a regular inquiry was to be conducted in the matter and opportunity of defense and personal hearing was to be provided to the civil servant proceeded against, otherwise civil servant would be condemned unheard and major penalty of dismissal from service would be imposed upon him without adopting the required mandatory procedure, resulting in manifest injustice. In absence of proper disciplinary proceedings, the appellant was condemned unheard, whereas the principle of '*audi alteram partem*' was always deemed to be embedded in the statute and even if there was no such express provision, it would be deemed to be one of the parts of the statute, as no adverse action can be taken against a person without providing right of hearing to him. Reliance is placed on 2010 PLD SC 483.


8. It is pertinent to mention here that absence of the appellant was not willful rather she was compelled from performing her duties due to threats from the complainants. Moreover, she categorically in her departmental appeal mentioned that brother of complainant of FIR in which her husband was charged was working in the office of DEO (Female), due to which nothing was communicated to her. Appellant was proceeded against departmentally on the ground of willful absence but requirements of Rule-9 of the (Efficiency & Discipline) Rules, 2011 was not complied with i.e neither notice on her home address was sent nor publication was issued in two leading newspapers. Only one publication in the newspaper was issued.



9. Appellant had filed application for her transfer due to threats to her life but respondents instead of considering her request removed her from service which is not accordance with law and rules. First they will have to decide application and communicate the decision to the appellant. Reason advanced by the appellant is genuine and department must consider it sympathetically as all employees are child of the department but respondent in a very cursory manner proceeded her by passing impugned order of removal from service, which is not warranted in the peculiar circumstances of the appellant.

10. For what has been discussed above, we are unison to set aside the impugned orders and reinstate the appellant into service by treating absence period as leave without pay. Cost shall follow the event. Consign.

11. *Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal on this 13th day of February, 2024.*


(MUHAMMAD AKBAR KHAN)
Member (E)


(RASHIDA BANO)
Member (J)