

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

12(2) Application No. 345/2021 in S.A No.776/2016

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

Sami Ullah son of Sana Ullah resident of Mohallah Garibaan City D.I Khan. (Ex-PET GMS, Kat Kachi Paind Khan D.I Khan.)
 (Petitioner)

VERSUS

1. Government of Khyber Pakhtunkhwa through Secretary Elementary & Secondary Education Department, Peshawar.
2. Director Elementary & Secondary Education, Peshawar.
3. District Education Officer (Male) D.I Khan.
4. District Account Officer, D.I Khan.

.... (Respondents)

Muhammad Waqar Alam
 Advocate ... For petitioner

Muhammad Jan
 District Attorney ... For respondents

Date of Institution.....25.11.2021
 Date of Hearing.....18.03.2024
 Date of Decision.....18.03.2024

JUDGMENT

RASHIDA BANO, MEMBER (J):The instant petition filed under section 12(2) CPC 1908 for setting aside the judgment/decreed dated 24.02.2021 in service appeal No. 776/2016 which was obtained by practicing fraud and misrepresentation.

2. Brief facts giving rise to instant petition are that the petitioner was appointed as P.E.T (BPS-09) and posted at Government Middle School(GMS) Wanda Khani vide order dated 09.05.2006 and on the same date, vide another order, was adjusted temporarily at GMS Kat Kachi Paind Khan due to less enrollment in the first school . It was on 15.07.2015

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when a show cause notice was served upon the petitioner on the charges of willful absence from duty as well as fraudulent drawl of salaries for almost nine years without performing any duty. The petitioner responded to the show cause notice dated 18.08.2015. Simultaneously he filed a Writ Petition for correction of office record along with release of salary, the fate of which is not correctly known, but in the meanwhile he was removed from service vide order dated 19.02.2016, against which he filed departmental appeal undated, which was not responded to, then present petitioner filed service appeal bearing No. 776/2016 which was dismissed by this Tribunal vide impugned order dated 24.02.2021, hence the instant petition.

3. In the impugned judgment/order dated 24.02.2021 in Service Appeal No. 776/2016 it was held that appointment of the petitioner is based on forgery as petitioner failed to furnish any details to ascertain as to how he was appointed against the regular post of PET. This view appears to be against the record because perusal of reply of respondents reveals that they had admitted the factum of appointment of the petitioner as PET against regular post correct in para No 1. Moreover petitioner was issued show cause notice on the ground of absence by the DEO wherein no fact of fake documents and appointment order was mentioned and the petitioner was removed from service on the ground of absence from place of duty only but in the impugned judgment it was found that educational testimonial of the petitioner was fake and his appointment was made as a result of forgery which is irrelevant having regard to the reason given in the show cause mentioned above which resulted into his removal from

service. Moreover, the petitioner in his rejoinder categorically mentioned that in inquiry educational documents of the petitioner was declared genuine which facts is admitted by the DEO in his reply of 12(2) CPC petition. It is mentioned in the order that NOC issued to petitioner was declared fake but DEO in reply given to 12(2) CPC admitted correct issuing of NOC with the assertion that same was wrongly issued.

4. Perusal of impugned judgment further reveals that finding are based on Anti-Corruption Inquiry report which was initiated upon application of one Ramzan, said inquiry was not initiated and conducted by the department itself. In the inquiry of Anti-Corruption no chance of defense was provided to the petitioner to defend himself in accordance with (E&D) Rules, 2011. Therefore, place reliance on that inquiry is not a correct approach. Section 12(2) CPC reads as under:

“Where a person challenges the validity of a judgment, decree or order on the plea of fraud, misrepresentation or want of jurisdiction, he shall seek his remedy by making an application to the Court which passed the final judgment, decree or order and not by a separate suit”.

5. It is pertinent to mentioned here that during the course of arguments it was brought into our notice that petitioner had also filed C.P bearing No.3306/2021 in the apex court which was dismissed for non-prosecution on 23.05.2023 by the august Supreme Court of Pakistan. In this respect it is observe here that as per verdicts of.



superior courts if Supreme Court merely affirms judgment or order of the High Court by refusing leave the final judgment in terms of section 12(2) will be of the High Court and not Supreme Court. In the instant petition final judgment/order in the field now after dismissal of CP No. 3306/2021 for non-prosecution by the Supreme Court, is of this Tribunal, therefore, forum to file 12(2) C.P.C petition will be this Tribunal. Reliance is placed on 1993 SCMR 1171, 1999 SCMR 1516. In view of above, petitioner had made out the case under section 12(2) for interference of this Tribunal, therefore, we deemed it appropriate to provide a chance to the petitioner and decide the matter on merit.

6. As a sequel to above, the instant 12(2) petition is accepted and original appeal is revived. This office is ~~decided~~ ^{directed} to fix the service appeal on 20.05.2024 for arguments. Copy of this order be placed on the service appeal. This file be consigned.

7. *Pronounced in open Court in Peshawar and given under our hands and seal of the Tribunal on this 18th day of March, 2024.*


(FAREEHA PAUL)
Member (E)


(RASHIDA BANO)
Member (J)