

**BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL**  
**PESHAWAR**

Service Appeal No. 7777/2021

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

Mst. Robia Shams, Ex. SST (BPS-16), GGHSS Ghalanai, District Mohmand.  
... (Appellant)

**VERSUS**

1. Government of Khyber Pakhtunkhwa through Secretary Elementary & Secondary Education Department, Civil Secretariat Peshawar.
  2. The Director, Elementary & Secondary Education, Khyber Pakhtunkhwa Peshawar.
  3. The Chairman, Khyber Pakhtunkhwa Public Service Commission, Fort Road, Peshawar Cantonment.
- ... (Respondents)

Mr. Noor Muhammad Khattak  
Advocate ... For appellant

Mr. Muhammad Jan  
District Attorney ... For respondents

Date of Institution.....19.11.2021  
Date of Hearing.....05.03.2024  
Date of Decision.....05.03.2024

**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:

“On acceptance of this appeal, the impugned Notification dated 26.07.2021 may very kindly be set-aside and the



**appellant may kindly be re-instated into service with all back benefits. Any other remedy which this august tribunal deems fit that may also be awarded in favour of appellant."**

2. Brief facts of the case, as given in the memorandum of appeal, are that appellant was appointed as Secondary School Teacher (BPS-16) on the recommendation of Khyber Pakhtunkhwa Public Service Commission on 30.01.2012. She was adjusted at GGHSS Ghallani, vide notification dated 16.02.2012 and in response of it, she started performing her duty at the concerned station quite efficiently and up to the entire satisfaction of her superiors. After proper verification of educational documents and service documents, the salary of the appellant started. Unfortunately, during service, appointment order of the appellant was disowned and she was declared bogus employee by the department vide notification dated 26.07.2021. Feeling aggrieved, she preferred departmental appeal on 07.08.2021, which was not responded, 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 appellant argued that the notification dated 26.07.2021 is against law, facts, norms of justice and material on record, therefore, not tenable and liable to be set-aside. He further argued that appellant was appointed in accordance with law and rules by following the prescribed procedure and hence cannot be held as fake appointment. He further argued that neither proper regular inquiry was conducted nor she was



associated with the inquiry proceedings. He contended that neither statement was recorded nor she was given the chance of cross examination and without final show cause notice the impugned order was passed which is against the law and principle of natural justice. He submitted that no opportunity of personal hearing was afforded to her and she was condemned unheard. He placed reliance on 2011 SCMR 1581; 2004 SCMR 303; 2016 SCMR 1299 and 2010 PLD SC 483.

5. Conversely learned District Attorney appearing on behalf of respondents, controverted the contentions of learned counsel for appellant by contending that claim of the appellant regarding her appointment is baseless and liable to be rejected as she never applied for the said post nor appeared in any interview, therefore, she appointment was declared fake & bogus and has been disowned by the Department vide notifications dated 26.07.2021. He submitted that appellant was treated as per law, rules and policy and there is no question of violation of Article 10-A of the Constitution of Islamic Republic of Pakistan 1973, hence stance of the appellant is baseless and liable to be rejected and lastly, he submitted that appellant's claim to be recommended by the Khyber Pakhtunkhwa Public Service Commission, failed to produce any proof of their recommendation by Public Service Commission.

6. Perusal of record reveals that appellant was appointed as SST on the recommendations of Khyber Pakhtunkhwa Public Service Commission and it was on 26.07.2021 when she received notification vide which her appointment order was found bogus, thus, her appointment/adjustment notification was disowned. Before disowning her appointment order, neither any show cause



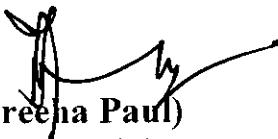
notice was served upon appellant nor any personal hearing as well as regular inquiry was conducted by the respondents, which was the necessity of law and her appointment order was straight away disowned by the respondents. The hurry shown by the department in disowning the appellant's appointment order was not in accordance with law. Appellant must be provided with opportunity of personal hearing and cross examination for fulfilling purpose of fair trial. Respondents major penalty of disowning appellant's appointment order who served for long eight years.

7. It is a well settled legal proposition, that regular inquiry is must before imposition of major penalty, 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/her without adopting the required mandatory procedure, resulting in manifest injustice. In the 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/her. Reliance is placed on 2010 PLD SC 483.



8. As a sequel to above discussion, we set aside the impugned order and reinstate the appellant for the purpose of de-novo inquiry and remand the case back to the respondents to conduct de-novo inquiry within a period of sixty days, by providing proper opportunity of self-defense and cross examination. The issue of back benefits shall be decided subject to the outcome of de-novo inquiry. 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 5<sup>th</sup> day of March, 2024.*


  
(Fareeha Paul)  
Member (E)

  
(Rashida Bano)  
Member (J)

**ORDER**

05.03.2024

1. Learned counsel for the appellant present. Mr. Muhammad Jan learned District Attorney alongwith Faheem Khan, Assistant and Mr. Mehtab Gul, Law Officer for the respondents present.
2. Vide our detailed judgment of today placed on file, we set aside the impugned order and reinstate the appellant for the purpose of de-novo inquiry and remand the case back to the respondents to conduct de-novo inquiry within a period of sixty days, by providing proper opportunity of self-defense and cross examination. Costs shall follow the event. Consign.
3. *Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal on this 5<sup>th</sup> day of March, 2024.*



**(Faresha Paul)**  
Member (E)



**(Rashida Bano)**  
Member (J)