

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 7667/2021

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

Mst. Zubaida Begum, Ex. SST (BPS-16), GGMS Kuta Trap, District
Mohmand. ... (Appellant)

VERSUS

1. Government of Khyber Pakhtunkhwa through Secretary Elementary & Secondary Education Department, Civil Secretariat Peshawar.
2. 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.....26.10.2021
Date of Hearing.....04.03.2024
Date of Decision.....04.03.2024

CONSOLIDATED 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 25.06.2021 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 appellant.”

2. Through this single judgment, we intend to dispose of the instant service appeal as well as connected service appeals, which are mentioned below as in all these appeals common questions of law and facts are involved:

1. Service Appeal No. 7548/2021
2. Service Appeal No. 7549/2021
3. Service Appeal No. 7550/2021
4. Service Appeal No. 7551/2021
5. Service Appeal No. 7563/2021
6. Service Appeal No. 7564/2021

3. Brief facts of the case, as given in the memorandum of appeals, are that appellants were appointed as Secondary School Teacher (BPS-16) on the recommendation of Khyber Pakhtunkhwa Public Service Commission in the year 2012 and 2013 in response of which they started performing their duties at the concerned station quite efficiently and up to the entire satisfaction of his/her superiors. After proper verification of educational documents and service documents, the salary of the appellants started. Unfortunately, during service, appointment order of the appellants were disowned and they were declared bogus employee by the department vide notification dated 11.06.2021 & 25.06.2021. Feeling aggrieved, they preferred departmental appeal, which was not responded, hence, the present service appeal.

4. Respondents were put on notice who submitted written replies/comments on the appeal. We have heard the learned counsel for the appellants as well as the learned District Attorney and perused the case file

with connected documents in detail.

5. Learned counsel for appellant argued that the notifications dated 11.06.2021 & 25.06.2021 are 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. Reliance is placed on 2011 SCMR 1581; 2004 SCMR 303; 2016 SCMR 1299 and 2010 PLD SC 483.

6. 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 their appointment is baseless and liable to be rejected as they never applied for the said post nor appeared in any interview, therefore, their appointment was declared fake & bogus and have been disowned by the Department vide notifications dated 11.06.2021 & 25.06.2021. He submitted that 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 those appellants who claimed to have been recommended by the Khyber



Pakhtunkhwa Public Service Commission, failed to produce any proof of their recommendation by Public Service Commission.

7. Perusal of record reveals that appellant was appointed as SST on the recommendations of Khyber Pakhtunkhwa Public Service Commission and it was on 11.06.2021 & 25.06.2021 when they received notification vide which their appointment orders was found bogus, thus, their appointment/adjustment notification was disowned. Before disowning their appointment order, neither any show cause notice was served upon the appellants nor any personal hearing as well as regular inquiry was conducted by the respondents, which was the necessity of law and their appointment orders were 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. Respondent awarded major penalty of disowning appellant's appointment order who served for long eight years.

8. 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 have 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.

9. As a sequel to above discussion, we set aside the impugned notifications and reinstate the appellants for the purpose of de-novo inquiry and remand the cases 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. Costs shall follow the event. Consign.

10. *Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal on this 4th day of March, 2024.*

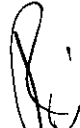

(FAREEHA PAUL)
Member (E)


(RASHIDA BANO)
Member (J)

ORDER
04.03.2024

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 notifications 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. 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 4th day of March, 2024.*


(FAREEHA PAUL)
Member (E)


(RASHIDA BANO)
Member (J)