

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

Service Appeal No. 15090/2020

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

Sumbal D/O Nisar Muhammad, PST BPS- 12, GGPS Pakistan Kalley Dheri
Zardad Charsadda.(Appellant)

Versus

1. Secretary to Government of Khyber Pakhtunkhwa Elementary & Secondary Education Peshawar.
2. Director Elementary & Secondary Education Peshawar.
3. District Education Officer (Female) Charsadda.(Respondents)

Mr. Yasir Saleem,
Advocate

... For appellant

Mr. Asif Masood Ali Shah,
Deputy District Attorney

... For respondents

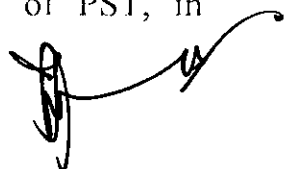
Date of Institution.....	24.11.2020
Date of Hearing.....	13.03.2024
Date of Decision.....	13.03.2024

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 as follows:

“On acceptance of this appeal the appellant may be allowed salary w.e.f. 16.01.2019 till date and onwards and to allow the appellant to perform her duties as per her appointment notification with all back and consequential benefits.”

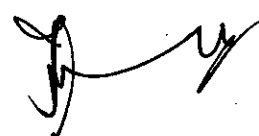
2. Brief facts of the case, as given in the memorandum of appeal, are that the respondents advertised various posts, including the post of PST, in



newspaper. The appellant applied for the post of PST BPS- 12. She was appointed as PST BPS- 12 vide appointment order dated 19.01.2019 and was posted at Government Girls Primary School Pakistan Kalley Dheri Zardad Charsadda. She submitted her arrival report and performed her duties for about three days when she was contacted by the respondent no. 3 and was directed to keep away from duties in the school. She was further advised to stay at home till further orders and that she would be informed telephonically when her duties were required. Thereafter, she approached the office of respondent No. 3 many times to inquire about duties, however there was no plausible response from respondents and on each occasion she was advised to wait till further orders. She filed many applications to respondent No. 3, but not a single application was responded. Feeling aggrieved, she submitted departmental appeal on 24.07.2020 which was not responded within the statutory period of ninety days; hence the instant service appeal.

3. Respondents were put on notice who submitted their joint parawise comments on the appeal. We heard the learned counsel for the appellant as well as learned Deputy District Attorney for the respondents 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 was not treated in accordance with law and her rights guaranteed under the law and constitution were violated. He argued that the appellant was appointed by the competent authority after observing all the codal formalities, and if at all there was any irregularity committed in the process of appointment, the same could not be attributable to the appellant nor



she could be punished for the faults committed by others. She served for some time, therefore, valuable rights had been accrued to her. He further argued that no charge sheet, statement of allegations or show cause notice were served upon her nor any opportunity of personal hearing was afforded to her. He further argued that services of the appellant were not terminated and hence she was entitled to receive her monthly salary. 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 there were two candidates with the name of Sumbal. Their father's names were also the same. Sumbal no. 1 with CNIC number 17301-7757864-4 got a total score of 106 and qualified the written test but after scrutiny of the documents it was found that she belonged to MC- 4 Charsadda and was not eligible for appointment in Union Council Dheri Zardad. On the other hand Sumbal no. 2 with CNIC number 17101-2982441-8 belonged to the union council Dheri Zardad but she did not qualify the written test and took wrong advantage of the situation and succeeded in getting her appointment wrongly. Later on, it was informed by the ADHO Circle that the appellant took the advantage of the academic qualification score and written test marks of the other candidate and was wrongly appointed. In order to probe into the matter NTS authorities were contacted who send an email on 2nd January 2019 which made it crystal clear that the appellant obtained 38 marks and failed the written test. Learned DDA requested that the appeal might be dismissed.



6. From the arguments and record presented before us, it transpires that the appellant was appointed as Primary School Teacher (PST BS- 12) in GGPS, Pakistan Killy, Dheri Zardad Charsadda vide an order dated 16.01.2019. She submitted her arrival report to the head of the school on 18.01.2019, but as stated by the appellant herself in her appeal, she was contacted by the District Education Officer (Female) Charsadda and was directed to keep away from duties in the school in which she was appointed and stay at home till further orders. When no orders were received by the appellant to join her duties, she approached the respondents. When her request was not responded, she preferred the instant service appeal.


7. The learned Deputy District Attorney presented the case in detail and tried to explain the confusion created by the similar names and parentage of two candidates. He presented the record of NTS according to which one Sumbal Nisar, bearing CNIC No. 17301-77551864-4 applied on her father's name and qualified the test by securing 106 marks, but as she was not from the Union Council for which the test was held, therefore she was not selected. The other Sumbal, who is the appellant before us, bearing CNIC No. 17101-2982441-8, applied on her husband's name who is Muhammad Saddique, and the same was confirmed by her learned counsel also. A document produced by the respondents at Page 40 of their reply shows that one Sumbal bearing CNIC No. 17101-2982441-8 U/C Dheri Zardad, District Charsadda got 38 marks in NTS and hence she was declared fail. Credentials mentioned in that document were verified by the learned counsel for the appellant to be correct. As stated by the departmental representative, Sumbal, who is the appellant before us,



presented herself before the departmental committee and convinced them that she was the one who secured 106 marks but her CNIC had been wrongly mentioned. The departmental representative further stated that no call letter was sent to the appellant to appear before the committee for verification of documents, rather the other Sumbal Nisar was called but she did not appear before the said committee. As stated by the departmental representative, the appellant got selected due to mis-statement before the departmental committee. When the details of the matter came to the notice of respondent department, NTS authorities were asked to clarify the result position, in pursuance of which document attached at page 40 of the reply was forwarded by them declaring that Sumbal, the appellant was fail in the test.

8. After going through all the details presented before us, we are of the view that it is for the respondent department to look into the matter, hold a proper inquiry and come to a conclusion that how the appellant got appointed despite the fact that she was declared fail in the NTS test. The inquiry shall be completed within sixty days of the receipt of this judgment. Cost shall follow the event. Consign.

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


(FARZEHA PAUL)
Member (I)


(RASHIDA BANO)
Member(J)




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13th Mar. 2024 01. Mr. Yasir Saleem, Advocate for the appellant present.
Mr. Asif Masood Ali Shah, Deputy District Attorney for the
respondents present. Arguments heard and record perused.

02. Vide our detailed judgment consisting of 05 pages, we
are of the view that it is for the respondent department to look
into the matter, hold a proper inquiry and come to a conclusion
that how the appellant got appointed despite the fact that she
was declared fail in the NTS test. The inquiry shall be
completed within sixty days of the receipt 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 13th day of March,
2024.*


(FARUKHA PAUL)
Member (E)


(RASHIDA BANO)
Member(J)

Fazal Subhan PS