

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

Service Appeal No. 2012/2022

BEFORE: MR. KALIM ARSHAD KHAN CHAIRMAN
MRS. RASHIDA BANO ... MEMBER (J)

Mst. Amina D/O Farhad Khan PST, GGPS No.1 Pabbi, District Nowshera.
.... (Appellant)

VERSUS

1. The Government of Khyber Pakhtunkhwa through Secretary Elementary & Secondary Education Department, Civil Secretariat, Peshawar.
2. Director Elementary & Secondary Education Peshawar.
3. District Education Officer (F), Nowshera.

... (Respondents)

Mr. Kabir Ullah Khattak
Advocate

... For appellant

Mr. Asif Masood Ali Shah
Deputy District Attorney

.... For respondents

Date of Institution.....28.12.2022
Date of Hearing.....04.04.2024
Date of Decision.....04.04.2024

JUDGEMENT

RASHIDA BANO, MEMBER (J): The service appeal in hand has been instituted under Section 4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974 with the following prayer:

“That on acceptance of this appeal, the appellant may kindly be treated accordance to law and rules by adjusting/releasing her salary as well as allowing her to perform her duty with respondent department alongwith all back benefits. ”




2. Brief facts of the case are that appellant was appointed as Primary School Teacher (BPS-07) and was performing her duty; that allegedly she performed her duty w.e.f 13.04.2010 to 30.09.2010 but she was not paid salary of the said period; that she filed applications for release of her salaries, but no response was made and lastly, in response to her representation, an inquiry was conducted and the inquiry officer in her recommendations submitted that the appellant might be reinstated in service and the period she had not perform her duty, might be treated as leave without pay subject to verification of her educational testimonials (if not verified); that despite the recommendation of the inquiry officer, the grievance of the appellant was not redressed, hence, this appeal.

3. Respondents were put on notice who submitted their 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 argued that the appellant was a civil servant and had neither been removed nor dismissed. He submitted that no charge sheet/statement of allegations or explanation have ever been served upon her. Further submitted that the appellant was a civil servant but she had not been paid salaries. Therefore, he requested for acceptance of the instant service appeal as prayed for.

5. Conversely, learned Deputy District Attorney argued that the appellant after assumption of charge was disappeared from duty without any prior permission. He submitted that the department had followed the law and rules of the law. Further, submitted that the department had followed all the codal formalities. Lastly, he submitted that the appellant was not legally eligible for her salaries, therefore, requested for dismissal of the instant service



appeal.

6. Perusal of record reveals that factum of appointment of the appellant as Primary School Teacher vide order dated 09.04.2010 is not denied by the respondent. Respondent in their reply to Para No.2 of the facts have taken the plea that appellant remained absent from duty without prior permission of the competent authority. Appellant filed application to Director Elementary & Secondary Education, Khyber Pakhtunkhwa, for her reinstatement against the post of PST upon which Sadia Begum, Head Mistress, GGHS Dasi Qadcm, Nowshera, was nominated as inquiry officer, who after conducting inquiry submitted her report wherein she in the finding held that;

- *Reason for removal from service is not available anywhere.*
- *No procedure for removal of service has been adopted nor any record available anywhere in offices.*

So, it is held by the inquiry officer that reason for removal of the appellant from service is not available in written and no procedure for removal from service has been adopted nor any record was found available anywhere in office. It means that appellant was removed from service without any fault at her part, that too without adopting any proper procedure i.e. to conduct regular inquiry into the factum of verification of documents or absence as the case may be but she was removed from service upon verbal orders in an arbitrary manner which is unwarranted under the law and rules on the subject. She was condemned unheard and major penalty of removal from service awarded to her.

7. It is a well settled legal proposition, that regular inquiry is a 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 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. For what has been discussed above, the impugned order are set aside and appellant is reinstated into service by treating intervening period as leave of the kind due. Costs shall follow the event. Consign.

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


(KALIM ARSHAD KHAN)
Chairman


(RASHIDA BANO)
Member (J)

ORDER

04.04.2024

1. Learned counsel for the appellant present. Mr. Asif Masood Ali Shah, learned District Attorney for the respondents present.
2. Vide our detailed judgment of today placed on file, the impugned order are set aside and appellant is reinstated into service by treating intervening period as leave of the kind due. Costs shall follow the event. Consign.
3. *Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal this 4th day of April, 2024.*



(KALIM ARSHAD KHAN)
Chairman



(RASHIDA BANO)
Member (J)