

Rules, 2011 and as per procedure provided thereunder she was to be proceed against by issuing charge sheet and statement of allegations. Her conduct was required to be scrutinized through a formal inquiry officer or inquiry committee serving Show Cause Notice and affording opportunity of defense and personal hearing to her being a government servant.

07. In view of the above legal findings we are, therefore, without further going into validity of appointment of the appellants set aside the impugned orders dated 05.08.2022 & 08.10.2022 and remand the instant service appeal as well as connected service appeals back to the respondents to conduct proper inquiry under the law in accordance with the provisions/procedure provided under the Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011. The question of back benefits shall be subject to the outcome of inquiry. Costs shall follow the event. Consign.

08. *Pronounced in open Court at Peshawar and given under our hands and the seal of the Tribunal on this 13th day of February, 2024.*




(RASHIDA BANO)
Member (J)



(MUHAMMAD AKBAR KHAN)
Member (E)

06. Perusal of record reveals that the appellant was appointed as Qaria (BS-12) vide order dated 11.09.2019 by respondent No. 3 (competent authority) after fulfillment of all the codal formalities. The appellant was appointed under Rule-10 (4) of the Khyber Pakhtunkhwa Government Servants (Appointment Promotion & Transfer) Rules, 1989. After medical examination and verification of educational testimonials the appellant assumed the charge of her post on 14.09.2019 at her place of posting i.e. GGHS Jalsai Swabi. After lapse of around 3 years her salary was stopped in the month of February, 2022. Subsequently her appointment order was disowned by respondent No. 3 through impugned order dated 05.08.2022 on the basis of fact finding inquiry. The contents of the impugned order of respondent No. 3 with the title of "Notification" contains plethora of allegations and charges which seems a charge sheet and statement of allegations rather than a speaking order passed by the competent authority after proving the charges/allegations. Strangely the impugned order of respondent No. 3 also contains interpretation of Rule 10 (4) of the Khyber Pakhtunkhwa Government Servants (Appointment, Promotion & Transfer) Rules, 1989 trespassing her legal authority. Her interpretation of Rule 10 (4) suggests that a married son or daughter of deceased/invalid government servants is not eligible for appointment under deceased/invalid government servant's son/daughter quota provided under the rule *ibid*. We find that the appellant has rendered around 03 year service and is eligible to hold the post of Qaria in terms of her educational qualification. After 03 year service if anything had come to surface as a result of fact findings inquiry she was required to be proceeded under the Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline)

04. Learned counsel for the appellant contended that the impugned order was illegal, unlawful and without jurisdiction; that the appointment order of the appellant had been issued by the competent authority, therefore, disowning of the same was illegal; that the appellant was only earning hand of her entire family and there was no other source of income. He further contended that no opportunity of personal hearing was afforded to the appellant, which is against the law and principle of natural justice; that fair trial was the fundamental right of the appellant under Article-10-A of the Constitution of Islamic Republic of Pakistan 1973, which had been violated and the appellant had not been granted such right. Therefore, he requested for acceptance of the instant service appeal.



05. As against that, learned Additional Advocate General contended that the appointment order of the appellant was fake and bogus due to which the same was disowned; that the appellant had committed an offence in shape of misconceiving the appointing authority; that stoppage of her salaries was also in accordance with law and rules; that father of the appellant was not died during service, therefore, she was not rightful to be appointed under deceased sons'/daughter quota; that the appellant had married in 2001 which reveals that she was a member of another family; that the appointment was made in the year 2019 i.e. much after her marriage; that the appellant had misconceived the authority and had got appointed, which was an illegal appointment, therefore, the learned Additional Advocate General requested for dismissal of the instant service appeal.

146/2023 titled “Dudisia versus Government of Khyber Pakhtunkhwa through Secretary Elementary & Secondary Education at Block A, 3rd Floor, Building A, Civil Secretariat Peshawar & others”, & service appeal bearing No. 147/2023 titled “Saba Gul versus Government of Khyber Pakhtunkhwa through Secretary Elementary & Secondary Education at Block A, 3rd Floor, Building A, Civil Secretariat Peshawar & others”, as common question of law and facts are involved therein.

02. Brief facts of the case are that the appellant was appointed as Qaria under the deceased sons/daughter quota and was performing her duty in the Education Department. That vide order dated 23.02.2022, her salary was stopped and then on 05.08.2022, the department disowned her appointment order as fake and bogus. Feeling aggrieved, the appellant filed Writ Petition No. 1985-P/2022 before the Hon'ble Peshawar High Court Peshawar and the Peshawar High Court vide order dated 19.08.2022 directed the appellant to file departmental appeal before the proper forum/appellate authority. Accordingly, the appellant filed departmental appeal before the respondent No. 2 i.e. Director Elementary & Secondary Education, which was rejected vide order dated 08.10.2022, hence preferred the instant service appeal on 29.11.2022.

03. Notices were issued to the respondents, who submitted their comments, wherein they refuted the assertions raised by the appellant in his appeal. We have heard arguments of learned counsel for the appellant and learned Additional Advocate General and have gone through the record with their valuable assistance.

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

BEFORE: **RASHIDA BANO** ... MEMBER (J)
MUHAMMAD AKBAR KHAN... MEMBER (E)

Service Appeal No. 1764/2022

Date of presentation of Appeal.....29.11.2022
Date of Hearing.....13.02.2024
Date of Decision.....13.02.2024

Shahzadi D/o Mir Azam Resident of Village Kalo Khan, Thsil Razzar, District Swabi.(Appellant)

Versus

1. Government of Khyber Pakhtunkhwa, through Secretary Education- Civil Secretariat, Principal Secretary, Peshawar.
2. Director Elementary and Secondary Education, Khyber Pakhtunkhwa.
3. District Education Officer (F), Swabi.....(**Respondents**)

Present:

RAHMAN ULLAH & AMJAD ALI KHAN,
Advocates

... For appellant

HABIB ANWAR,
Additional Advocate General

... For respondents

CONSOLIDATED JUDGMENT

MUHAMMAD AKBAR KHAN MEMBER (E): Our this single judgment shall dispose of the instant service appeal as well as connected service appeal bearing No. 144/2023 titled "Saina versus Government of Khyber Pakhtunkhwa through Secretary Elementary & Secondary Education at Block A, 3rd Floor, Building A, Civil Secretariat Peshawar & others", service appeal bearing No. 145/2023 titled "Shehnaz Sadiq versus Government of Khyber Pakhtunkhwa through Secretary Elementary & Secondary Education at Block A, 3rd Floor, Building A, Civil Secretariat Peshawar & others", service appeal bearing No.