

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

Service Appeal No. 896/2022

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

Tahira Bibi, Ex-PST, Government Girls Community Model School Dhakki  
Tehsil Tangi District Charsadda. ... (Appellant)

**VERSUS**

1. Director Elementary & Secondary Education, Civil Secretariat, Peshawar.
2. District Education Officer (Female), Charsadda.
3. Government of Khyber Pakhtunkhwa through Secretary Elementary & Secondary Education, Civil Secretariat, Peshawar.
4. Mussarat Begum, PST, GGCMS Dhakki Tehsil Tangi District Charsadda.  
... (Respondents)

Mr. Fazal Shah Mohmand  
Advocate

... For appellant

Mr. Asif Masood Ali Shah  
Deputy District Attorney

... For respondents

Date of Institution.....08.06.2022  
Date of Hearing.....06.03.2024  
Date of Decision.....06.03.2024

**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 as copied below:

**“On acceptance of this appeal, the impugned order dated 20.04.2020 may kindly be set aside and the appellant may kindly be ordered to be reinstated in service with all back benefits.”**

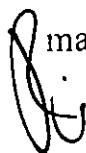
2. Brief facts of the case, as given in the memorandum of appeal, are that respondent department advertised various posts including the post of Primary School Teachers (PST) in the year 2016. The appellant being eligible also applied for it. After conducting test and interview, the appellant secured 47 score whereafter tentative merit list was prepared wherein the appellant was not awarded the score for Arabic (Hons) and the same situation prevailed in the second tentative merit list. The appellant filed appeal for correction, upon which necessary correction was made and secured marks of the appellant came to 100.4 and the appellant alongwith others were appointed vide order dated 19.05.2017. One candidate namely Saima Shah submitted application against the appointment of the appellant, upon which an inquiry was conducted by the Director Education which resulted in favor of the appellant. She filed another application before the Secretary Education, which resulted in her favor. Thereafter, she filed writ petition before Worthy Peshawar High Court, which was disposed of with direction to the D.S.C for reconsideration strictly in accordance with law and rules upon which meeting of D.S.C was convened and it was held that appellant was inadvertently given Arabic (Hons) marks. Thus appointment order of the appellant was withdraw while respondent No.4 was appointed vide order dated 20.04.2020. Feeling aggrieved, she filed

departmental appeal and then filed writ petition bearing No. 2598-P/20 which was disposed of with direction to decide the appeal of the appellant, not later than one month, hence the instant 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 Deputy District Attorney and perused the case file with connected documents in detail.

4. Learned counsel for appellant argued that appellant has not been treated in accordance with law, hence her rights secured and guaranteed under the constitution are badly violated. He further argued that the impugned order is illegal, wrong, void ab-initio and against the rules, hence not tenable in the eyes of law; that appellant was validly appointed as PST on 19.05.2017 on adhoc/contract basis and subsequently regularized in the year 2018 and such under the principle of *locus poenitentiae*, the appointment order of the could not be withdrawn; that no regular inquiry was conducted in the case of appellant nor the appellant was heard in person, thus she was condemned unheard; that no charge sheet, statement of allegation, show cause notice was issued to the appellant, which are mandatory requirement of law.

5. Conversely learned Deputy District Attorney contended that appellant has been treated in accordance with law and rules. He further contended that appellant filed appeal on 13.05.2017 for correction of her marks to include the marks of Arabic (Hons) while last date for submission of documents was



30.09.2016. The prescribed qualification for the post of PST was FA/BSc under the service rules hence in the presence of prescribed qualification the DSC was not supposed to consider and accept the equivalent certificate of Arabic (Hons) qualification and to consider it at belated stage i.e after the due date and even after the preparation of merit list, hence the original score of the appellant is 96.77 only. He further contended that in light of the court direction DSC meeting was held on 31.12.2019, the DSC scrutinized the relevant record and recommended that the score of the appellant be calculated on her FA qualification which she has submitted for the first time to NTS and the next eligible candidate (Mst. Musarrat) was appointed.

6. Perusal of record reveals that appellant is the permanent of union council Daki Tehsil Charsadda and who had qualification of SSC, FA and Arabic

~~(Hons). Respondent No. 2 in the year 2016 advertised various posts including~~

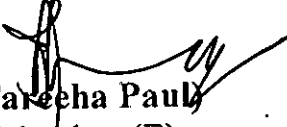
the post of PST, appellant being eligible applied for the post of PST BPS-12 from U.C Daki. She appeared in the test through NTS and qualified the same with 47 score. She was not awarded the score of Arabic Hons in the tentative merit upon which she submitted departmental appeal on 13.05.2017 whereupon necessary correction was made by awarding score allotted for Honors Degree after which score of the appellant came to 100.4 and resultantly she alongwith others were appointed vide order dated 19.05.2017. One candidate Saima Shah filed application challenging the appointment of the appellant which was dismissed after inquiry by respondent department. She also filed W.P No.


2287-P/20 17 which after hearing was disposed of vide order dated 24.09.2019 with direction to DSC for reconsideration strictly in accordance with law and rules on the subject, upon which meeting of DSC was convened on 1.12. 2019 which held that appellant was inadvertently given Arabic score and that respondent No. 4 be appointed, thus the appointment order of the appellant was withdrawn and respondent No.4 was appointed as PST vide 20.04.2020.

7. Perusal of order of worthy Peshawar High Court, Peshawar dated, 24/09/2019 delivered in WP No. 2287 P-/2017 titled as Saima Shah Vs. Government and in the said inquiry report dated 14/04/2019 it was ordered and recommended that matter be placed before DSC for considering it afresh while worthy Peshawar High Court directed DEO(F) District Charsadda to constitute the DSC within a fortnight for consideration of the matter. Impugned order dated 20/04/2020 was passed on the basis of recommendation of scrutiny committee consisting of chairperson, six members and one facilitator dated 31/02/2019. Although in the impugned order it was mentioned as District Selection Committee but same was not decided because DSC consists of three official i.e 1. Chairperson 2. Member nominee from Directorate of Elementary & Secondary Education 3. Member nominee of the Appointing Authority. Therefore it is held that order of worthy Peshawar High Court, Peshawar and recommendation of said inquiry committee was not followed in its true letter and spirit. Matter is remanded back to the respondent by setting aside the impugned order for re-considering it before the DSC with further direction to

provide proper chance of hearing to appellant and Mst. Musarrat Begum and decide it within one month after receipt of copy of judgment. Costs shall follow the event. Consign.

8. *Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal on this 6<sup>th</sup> day of March, 2024.*

  
(Fareeha Paul)  
Member (E)

  
(Rashida Bano)  
Member (J)