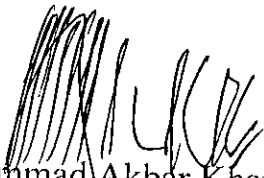


S.A No.1381/2022

ORDER

29th May. 2024

1. Learned counsel for the appellant and Mr. Asif Masood Ali Shah, Deputy District Attorney present.
2. Vide our consolidated judgment of today placed on file, instant service appeal is accepted. The matter is remitted to the Department for conduct of proper inquiry, which is to be done within 60 days of the receipt of the judgment. Needless to mention that the appellant shall be provided proper opportunity of defense during the inquiry proceedings. Appellant is reinstated in service for the purpose of proper inquiry. The issue of back benefits shall be subject to the outcome of inquiry. (Copy of the judgment be placed on files of all the connected service appeals). Consign.
3. *Pronounced in open Court at Abbottabad and given under our hands and the seal of the Tribunal on this 29th day of May, 2024.*



(Muhammad Akbar Khan)
Member (E)
Camp Court, Abbottabad



(Kalim Arshad Khan)
Chairman
Camp Court, Abbottabad

Service Appeal No.1381/2022 titled "Rizwana -vs- The Secretary Elementary & Secondary Education Department, Khyber Pakhtunkhwa, Peshawar and others"; Service Appeal No.1382/2022 titled "Nazesh -vs- The Secretary Elementary & Secondary Education Department, Khyber Pakhtunkhwa, Peshawar and others"; Service Appeal No.1383/2022 titled "Saira Khaliq-vs- The Secretary Elementary & Secondary Education Department, Khyber Pakhtunkhwa, Peshawar and others"; Service Appeal No.1384/2022 titled "Gul Taj-vs- The Secretary Elementary & Secondary Education Department, Khyber Pakhtunkhwa, Peshawar and others" and Service Appeal No.1385/2022 titled "Gul Nar -vs- The Secretary Elementary & Secondary Education Department, Khyber Pakhtunkhwa, Peshawar and others" declared on 29.05.2024 by Division Bench comprising of Mr. Kalim Arshad Khan, Chairman, and Mr. Muhammad Akbar Khan, Member Executive, Khyber Pakhtunkhwa Service Tribunal, Peshawar At Camp Court, Abbottabad.

7. Therefore, instant service appeals are accepted. The matters are remitted to the Department for conduct of proper inquiry, which is to be done within 60 days of the receipt of this judgment. Needless to mention that the appellants shall be provided proper opportunity of defense during the inquiry proceedings. Appellants are reinstated in service for the purpose of proper inquiry. The issue of back benefits shall be subject to the outcome of inquiry. (Copy of this judgment be placed on files of above mentioned connected service appeals). Consign.

8. *Pronounced in open Court at Peshawar and given under our hands and the seal of the Tribunal on this 29th day of May, 2024.*



KALIM ARSHAD KHAN
Chairman



MUHAMMAD AKBAR KHAN
Member (Executive)

Mutazem Shah

Service Appeal No.1381/2022 titled "Rizwana -vs- The Secretary Elementary & Secondary Education Department, Khyber Pakhtunkhwa, Peshawar and others", Service Appeal No.1382/2022 titled "Nazesh -vs- The Secretary Elementary & Secondary Education Department, Khyber Pakhtunkhwa, Peshawar and others", Service Appeal No.1383/2022 titled "Saira Khaliq-vs- The Secretary Elementary & Secondary Education Department, Khyber Pakhtunkhwa, Peshawar and others", Service Appeal No.1384/2022 titled "Gul Taj-vs- The Secretary Elementary & Secondary Education Department, Khyber Pakhtunkhwa, Peshawar and others" and Service Appeal No.1385/2022 titled "Gul Nar -vs- The Secretary Elementary & Secondary Education Department, Khyber Pakhtunkhwa, Peshawar and others" declared on 29.05.2024 by Division Bench comprising of Mr. Kalim Arshad Khan, Chairman, and Mr. Muhammad Akbar Khan, Member Executive, Khyber Pakhtunkhwa Service Tribunal, Peshawar At Camp Court, Abbottabad.


the same were rejected. The appellants again submitted representations, but the same were not responded, hence, the present service appeals.

3. On receipt of the appeals and their admission to full hearing, the respondents were summoned, who put appearance and contested the appeal by filing written reply raising therein numerous legal and factual objections. The defense setup was a total denial of the claim of the appellant.

4. We have heard learned counsel for the appellants and learned Deputy District Attorney for the respondents.

5. The learned counsel for the appellants reiterated the facts and grounds detailed in the memo and grounds of the appeal while the learned Additional Advocate General controverted the same by supporting the impugned order.

6. It appears from the impugned order dated 23.06.2021 that the appellants were removed from service on the basis of alleged absence from duty, reported by the Education Monitoring Authority (EMA). The same shows that there are some flaws in it. There is nothing available on the files which could show that any inquiry was conducted, whereas, the proceedings appear to be for absence of the appellants but the relevant rules have not been followed before imposition of penalty. It is otherwise a well settled legal proposition that regular inquiry is must before imposition of major penalty which includes provision of full opportunity of defense to be provided to the civil servant which however was not done in the case of appellant. Reliance is placed on 2009 PLC (CS) 650.



Service Appeal No.1381/2022 titled "Rizwana -vs- The Secretary Elementary & Secondary Education Department, Khyber Pakhtunkhwa, Peshawar and others", Service Appeal No.1382/2022 titled "Nazesh -vs- The Secretary Elementary & Secondary Education Department, Khyber Pakhtunkhwa, Peshawar and others", Service Appeal No.1383/2022 titled "Saira Khaliq-vs- The Secretary Elementary & Secondary Education Department, Khyber Pakhtunkhwa, Peshawar and others", Service Appeal No.1384/2022 titled "Gul Taj-vs- The Secretary Elementary & Secondary Education Department, Khyber Pakhtunkhwa, Peshawar and others" and Service Appeal No.1385/2022 titled "Gul Nar -vs- The Secretary Elementary & Secondary Education Department, Khyber Pakhtunkhwa, Peshawar and others" declared on 29.05.2024 by Division Bench comprising of Mr. Kalim Arshad Khan, Chairman, and Mr. Muhammad Akbar Khan, Member Executive, Khyber Pakhtunkhwa Service Tribunal, Peshawar At Camp Court, Abbottabad.

2. **The Director**, Elementary & Secondary Education Department, Khyber Pakhtunkhwa, Peshawar.
3. **Muhammad Amin**, District Education Officer (I), Kohistan Upper at Dassu.....(**Respondents**)

Present:

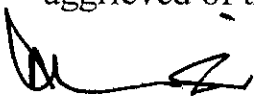
Mr. Muhammad Taseem Khan Kaloch, Advocate.....For appellant
Mr. Asif Masood Ali Shah Deputy District AttorneyFor respondents

APPEALS UNDER SECTION 4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974 THE IMPUGNED ORDERS DATED 23.06.2021, PASSED BY RESPONDENT NO.3 WHEREBY MAJOR PENALTY OF REMOVAL FROM SERVICE OF APPELLANTS ON THE GROUND OF ALLEGED UNSPECIFIED ABSENCE FROM DUTY WAS IMPOSED WITHOUT ANY INQUIRY AND INTENDING OPPORTUNITY BEING HEARD WITHOUT AND BEYOND TO THE LAW, SUCH CONDUCT OF THE RESPONDENTS IS ILLEGAL AND VOID AB INITIO AND IMPUGNED ORDER DATED 30.06.2022 PASSED BY THE RESPONDENT NO.2, WHEREBY THE APPEALS OF THE APPELLANTS WERE REJECTED.

CONSOLIDATED JUDGMENT

KALIM ARSHAD KHAN CHAIRMAN: Through this single judgment all the above five appeals are going to be decided as all are similar in nature and almost with the same contentions, therefore, can conveniently be decided together.

2. The appellants' cases in brief are that appellants were appointed as Primary School Teachers and were serving in the Education Department in different Schools of District Kohistan Upper. In the meanwhile, they were removed from service vide order dated 23.06.2021. Feeling aggrieved of the said impugned order, they filed departmental appeals, but



Service Appeal No.1381/2022 titled "Rizwana -vs- The Secretary Elementary & Secondary Education Department, Khyber Pakhtunkhwa, Peshawar and others". Service Appeal No.1382/2022 titled "Nazesh -vs- The Secretary Elementary & Secondary Education Department, Khyber Pakhtunkhwa, Peshawar and others". Service Appeal No.1383/2022 titled "Saira Khaliq-vs- The Secretary Elementary & Secondary Education Department, Khyber Pakhtunkhwa, Peshawar and others", Service Appeal No.1384/2022 titled "Gul Taj-vs- The Secretary Elementary & Secondary Education Department, Khyber Pakhtunkhwa, Peshawar and others" and Service Appeal No.1385/2022 titled "Gul Nar -vs- The Secretary Elementary & Secondary Education Department, Khyber Pakhtunkhwa, Peshawar and others" declared on 29.05.2024 by Division Bench comprising of Mr. Kalim Arshad Khan, Chairman, and Mr. Muhammad Akbar Khan, Member Executive, Khyber Pakhtunkhwa Service Tribunal, Peshawar At Camp Court, Abbottabad.

Date of Decision.....29.05.2024

Mst. Saira Khaliq w/o Muhammad Esa Ex-PST, Government Primary School Samad Abad, Kohistan Upper.....(**Appellant**)

Versus

1. **Government of Khyber Pakhtunkhwa** through Secretary Elementary & Secondary Education Department, Peshawar.
2. **The Director**, Elementary & Secondary Education Department, Khyber Pakhtunkhwa, Peshawar.
3. **Muhammad Amin**, District Education Officer (F), Kohistan Upper at Dassu.....(**Respondents**)

Service Appeal No.1384/2022

Date of presentation of Appeal.....21.09.2021
Date of Hearing.....29.05.2024
Date of Decision.....29.05.2024

Mst. Nazesh w/o Waliat Khan Ex-PST Government Girls Primary School Thooti, Kohistan, Upper.....(**Appellant**)

Versus

1. **Government of Khyber Pakhtunkhwa** through Secretary Elementary & Secondary Education Department, Peshawar.
2. **The Director**, Elementary & Secondary Education Department, Khyber Pakhtunkhwa, Peshawar.
3. **Muhammad Amin**, District Education Officer (F), Kohistan Upper at Dassu.....(**Respondents**)

Service Appeal No.1385/2022

Date of presentation of Appeal.....21.09.2021
Date of Hearing.....29.05.2024
Date of Decision.....29.05.2024

Mst. Gul Nar w/o Muhammad Afsar Ex-PST Government Girls Primary School Thooti, Kohistan, Upper.....(**Appellant**)

Versus

1. **Government of Khyber Pakhtunkhwa** through Secretary Elementary & Secondary Education Department, Peshawar.



Service Appeal No.1381/2022 titled "Rizwana -vs- The Secretary Elementary & Secondary Education Department, Khyber Pakhtunkhwa, Peshawar and others", Service Appeal No.1382/2022 titled "Nazesh -vs- The Secretary Elementary & Secondary Education Department, Khyber Pakhtunkhwa, Peshawar and others", Service Appeal No.1383/2022 titled "Saira Khaliq-vs- The Secretary Elementary & Secondary Education Department, Khyber Pakhtunkhwa, Peshawar and others", Service Appeal No.1384/2022 titled "Gul Taj-vs- The Secretary Elementary & Secondary Education Department, Khyber Pakhtunkhwa, Peshawar and others" and Service Appeal No.1385/2022 titled "Gul Nar -vs- The Secretary Elementary & Secondary Education Department, Khyber Pakhtunkhwa, Peshawar and others" declared on 29.05.2024 by Division Bench comprising of Mr. Kalim Arshad Khan, Chairman, and Mr. Muhammad Akbar Khan, Member Executive, Khyber Pakhtunkhwa Service Tribunal, Peshawar At Camp Court, Abbottabad.

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR

BEFORE: **KALIM ARSHAD KHAN** ... **CHAIRMAN**
MUHAMMAD AKBAR KHAN ... **MEMBER(Executive)**

Service Appeal No.1381/2022

Date of presentation of Appeal.....21.09.2021
Date of Hearing.....29.05.2024
Date of Decision.....29.05.2024

Mst. Rezwana, W/o Asad Ex-PST Government Girls Primary School
Bar Kafar Kot, Kohistan, Upper.....(***Appellant***)

Versus

1. **Government of Khyber Pakhtunkhwa through Secretary Elementary & Secondary Education Department, Peshawar.**
2. **The Director**, Elementary & Secondary Education Department, Khyber Pakhtunkhwa, Peshawar.
3. **Muhammad Amin**, District Education Officer (F), Kohistan Upper at Dassu.....(***Respondents***)

Service Appeal No.1382/2022

Date of presentation of Appeal.....21.09.2021
Date of Hearing.....29.05.2024
Date of Decision.....29.05.2024

Mst. Nazesh wife of Noor Hussain Ex-PST Government Girls Primary
School Bar Kafar Kot, Kohistan, Upper.....(***Appellant***)

Versus

1. **Government of Khyber Pakhtunkhwa through Secretary Elementary & Secondary Education Department, Peshawar.**
2. **The Director**, Elementary & Secondary Education Department, Khyber Pakhtunkhwa, Peshawar.
3. **Muhammad Amin**, District Education Officer (F), Kohistan Upper at Dassu.....(***Respondents***)

Service Appeal No.1383/2022



Date of presentation of Appeal.....21.09.2021
Date of Hearing.....29.05.2024