

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR
AT CAMP COURT, ABBOTTABAD

BEFORE: **KALIM ARSHAD KHAN** ... **CHAIRMAN**
FAREEHA PAUL ... **MEMBER(Executive)**

Service Appeal No. 1714/2023

Date of presentation of Appeal.....15.08.2023
Date of Hearing.....03.06.2024
Date of Decision.....03.06.2024

Alia Ghafoor D/O Ghafoor Gul R/O Mohallah Gojaran,
Bazargai Tehsil Lahore, District Swabi.....(**Appellant**)

Versus

1. **Government of Khyber Pakhtunkhwa** through Secretary, Elementary & Secondary Education, Peshawar
2. **Director**, Elementary & Secondary Education, Khyber Pakhtunkhwa, Peshawar.
3. **Deputy Director (Female)**, Elementary & Secondary Education, Khyber Pakhtunkhwa, at Hashtnagri Chowk, Near Qila Bala Hisar Peshawar.
4. **District Education Officer (Female)** Swabi.
5. **District Accounts Officer**, Swabi.....(**Respondents**)

Present:

Mr. Amjad Ali, Advocate.....For the appellant
Mr. Asif Masood Ali Shah, Deputy District AttorneyFor respondents

SERVICE APPEAL UNDER SECTION 4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974 AGAINST THE ORDER DATED 28.08.2019 PASSED BY RESPONDENT NO.3 (I.E. DIRECTOR E&SED) AND ORDER DATED 04.09.2019 PASSED BY RESPONDENT NO.5 (I.E. DEO (F) SWABI) WHEREIN THE INTERVENING PERIOD IS TREATED AS EXTRAORDINARY LEAVE WITHOUT PAY INSTEAD OF EXTENDING BENEFIT OF JUDGMENT DATED 22.11.2022 BY THE HONOURABLE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR IN SERVICE APPEAL NO.209/2020 WHERE-AFTER APPELLANT PREFERRED DEPARTMENTAL APPEALS DATED 13.3.2023 AND FILED WRIT PETITION NO.1402-P/2023 BEFORE HONORABLE PESHAWAR HIGH COURT PESHAWAR WHEREIN RESPONDENTS ARE DIRECTED VIDE ORDER DATED 26.04.2023 TO DECIDE THE DEPARTMENTAL APPEALS OF THE APPELLANT WITHIN 90 DAYS WHICH REMAINED UN-RESPONDED AFTER LAPSE OF 90 DAYS WHICH IS ILLEGAL

AGAINST LAW AND FACTS AND LIABLE TO BE SET ASIDE.

JUDGMENT

KALIM ARSHAD KHAN CHAIRMAN: Facts of the case of the appellant, gathered from memorandum and grounds of appeal are that appellant was appointed in the Education Department as PST; that vide order dated 22.10.2015, she was removed from service, which order was challenged before this Tribunal in Service Appeal No.253/2016; that this Tribunal, vide judgment dated 13.12.2017, set aside the impugned order dated 22.10.2015 and directed the respondents to hold regular inquiry within 90 days; that, vide order dated 28.08.2019, she was reinstated in service, for the purpose of de-novo inquiry, and the intervening period was treated as leave without pay, but no inquiry was conducted; that the appellant filed another Service Appeal No.409/2020 for the purpose of benefits from the date of her removal; that the said service appeal was allowed and the appellant was directed to be reinstated in service w.e.f 22.10.2015 with all back benefits; that for the purpose of back benefits, she filed departmental appeal on 13.03.2023 but the same was not responded, therefore, she filed Writ Petition No.1402-P/2023 before the Peshawar High Court and the Peshawar High Court, vide order dated 26.04.2023, directed the respondents to decide the departmental appeal of the appellant, within 90 days, and in case of not deciding the appeal of the appellant, she was left at liberty to approach this Tribunal; that the departmental appeal of the appellant was not decided within 90 days, hence, the instant service appeal.

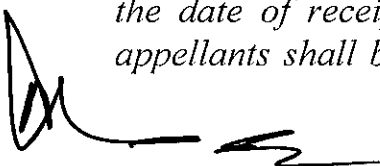
2. On receipt of the appeal and its admission to full hearing, the respondents were summoned, who put appearance and contested the appeal by filing written reply raising therein numerous legal and factual objections. The defense setup was a total denial of the claim of the appellant.

3. We have heard learned counsel for the appellant and learned Deputy District Attorney for the respondents.

4. The learned counsel for the appellant reiterated the facts and grounds detailed in the memo and grounds of the appeal while the learned Deputy District Attorney controverted the same by supporting the impugned order(s).

5. In this case, the appellant's claim is for the benefits for the intervening period i.e. with effect from 22.10.2015 (the date of removal) to 01.09.2019 (the date of reinstatement). Perusal of record reveals that appellant was serving at Kohistan and was transferred to District Swabi on 19.10.2011. While serving in the District Swabi, she was removed from service vide order dated 22.10.2015. For the purpose of reinstatement with back benefits, she filed departmental appeal on 01.12.2015 but the same was not responded, therefore, she alongwith one Ruqia, who was also removed from service, filed Service Appeal No.252/2016, which was decided vide consolidated judgment dated 13.12.2017, in the following terms:

"7. Consequently, the present appeals are accepted and the department is directed to hold regular inquiry against the appellants within a period of 90 days from the date of receipt of this judgment, failing which the appellants shall be reinstated in service. Parties are left



to bear their own costs. File be consigned to the record room."

6. Vide adjustment order Endst No.4451-G/DA-IAdjustment/PST. Dated Swabi the 04.09.2019, appellant was reinstated in service with immediate effect and the intervening period, w.e.f 22.10.2015 to 01.09.2019, was treated as extraordinary leave without pay. The said order was assailed in the departmental appeal followed by Service Appeal No. 409/2020. This Tribunal vide order dated 22.11.2022, passed in the said service appeal, modified the order and ordered reinstatement of the appellant w.e.f the date of her removal i.e. 22.10.2015 with all back benefits. There-after, the appellant filed departmental appeal on 13.03.2023 but the same was not responded, therefore, the appellant approached the Peshawar High Court through filing Writ Petition No.1402-P/2023 and the Hon'ble Peshawar High Court, by disposing of the petition, directed the respondents to decide the departmental appeal of the appellant strictly in accordance with law and also in the light of the judgment of the Khyber Pakhtunkhwa Service Tribunal, provided that in case, the appeal of the appellant was not decided within 90 days, the appellant shall be at liberty to approach the Khyber Pakhtunkhwa Service Tribunal. However, the departmental appeal of the appellant remained un-responded, therefore, she again approached this Tribunal for decision of her appeal.

7. The impugned order does not seem to have been passed either in accordance with law or in accordance with the judgment of the Tribunal. Therefore, the matter is remitted to the respondents for its decision in accordance with law and in accordance with the judgment of

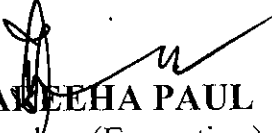
Service Appeal No.1714/2023 titled "Alta Ghafoor -vs- Government of Khyber Pakhtunkhwa through Secretary Elementary & Secondary Education, Peshawar and others" declared on 03.06.05.2024 by Division Bench comprising of Mr. Kalim Arshad Khan, Chairman, and Miss. Fareeha Paul, Member Executive, Khyber Pakhtunkhwa Service Tribunal, Peshawar.

the Tribunal, as directed by the Hon'ble Peshawar High Court, Peshawar in Writ Petition No.1402-P/2023, dated 26.04.2023. Costs shall follow the event. Consign.

8. *Pronounced in open Court at Abbottabad and given under our hands and the seal of the Tribunal on this 27th day of May, 2023.*



KALIM ARSHAD KHAN
Chairman



FAREEHA PAUL
Member (Executive)

Mutazem Shah

S.A No.1714/2023


ORDER


4th June. 2024

1. Learned counsel for the appellant present. Mr. Asif Masood Ali Shah, Deputy District Attorney for the respondents present.

2. Vide our detailed judgment of today placed on file the matter is remitted to the respondents for its decision in accordance with law and in accordance with the judgment of the Tribunal, as directed by the Hon'ble Peshawar High Court, Peshawar in Writ Petition No.1402-P/2023, dated 26.04.2023. Costs shall follow the event. Consign.

3. *Pronounced in open Court at Peshawar and given under our hands and the seal of the Tribunal on this 4th day of June, 2024.*


(Faizeha Paul)
Member (E)


(Kalim Arshad Khan)
Chairman