

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

Service Appeal No. 1959/2023

BEFORE: KALIM ARSHAD KHAN ... CHAIRMAN
MISS FAREEHA PAUL ... MEMBER(E)

Zahida Perveen, Ex-PST, GGPS Mir Ahmad Khan Koroona, Khada Banda, Karak.(Appellant)

Versus

1. Government of Khyber Pakhtunkhwa through Secretary E&SE, Civil Secretariat Peshawar.
2. Director E&SE, Khyber Pakhtunkhwa, Peshawar.
3. DEO (Female), District Karak.(Respondents)

Mr. Tariq Kamal,
Advocate ... For appellant

Mr. Asif Masood Ali Shah,
Deputy District Attorney. ... For respondents

Date of Institution.....	27.09.2023
Date of Hearing.....	03.06.2024
Date of Decision.....	03.06.2024

JUDGEMENT

FAREEHA PAUL, MEMBER (E): The service appeal in hand has been instituted under Section 4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974, against the order dated 12.05.2023, whereby appointment order of the appellant dated 17.03.2023 was withdrawn. It has been prayed that on acceptance of the appeal, the order dated 12.05.2023 might be set aside and the appellant might be reinstated into service with all accruing back benefits admissible under the rules.

2. Brief facts of the case, as given in the memorandum of appeal, are that the appellant was appointed against the deceased son/daughter quota under the provision of Rule 10(4) of the Khyber Pakhtunkhwa



Civil Servants (Appointment, Promotion and Transfer) Rules, 1989 vide order dated 17.03.2023. She was posted at Government Girls Primary School, Mir Ahmad Khan Koroona, Khada Banda, Karak. Respondent No. 03, without any prior notice or show cause, withdrew the appointment order dated 17.03.2023 vide order dated 15.05.2023, which was communicated to her via Whats App on 03.06.2023. After the communication of the impugned order, the appellant preferred departmental appeal to the respondent No. 1 which was not responded within the statutory period; hence the instant service appeal.

3. Respondents were put on notice. They submitted written reply/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.

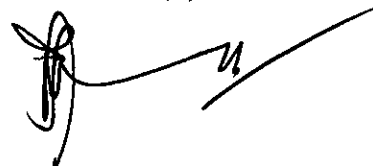
4. Learned counsel for the appellant, after presenting the case in detail, argued that the impugned order was illegal and against the basic norms of justice, hence liable to be set aside. Respondent No. 3 had relied on the letter of the Establishment Department dated 28.04.2023 in respect of appointments under Rule 10(4) of APT Rules 1989, but if the clarification letter was read in juxtaposition with the said rule, it would show that it was misconstrued and misinterpretation of the relevant provision of law. He argued that respondent No. 3 misused her authority and without proper inquiry or investigation passed the impugned order which amounted to violation of fundamental rights of the appellant guaranteed under the Constitution. He further argued that the



respondents had not provided any opportunity of personal hearing to the appellant which was mandatory under the law. He requested that the appeal might be accepted as prayed for.

5. Learned Deputy District Attorney, on the other hand, argued that the appellant was appointed as PST under the deceased son/daughter quota vide order dated 17.03.2023 but she concealed the fact that she was already married as was evident from her CNIC issued on 09.02.2015 with the name of her husband, namely Muhammad Ghaisul Islam, which disentitled her for appointment against the said quota. He further argued that as per Para no. 4 of the terms & conditions, appointment of the appellant was subject to verification of certificates/documents from the concerned authorities by the DEO concerned. It was further stated ~~in~~ in those terms and conditions that anyone found producing bogus certificate would be reported to the law enforcing agencies for further action and appointment would stand withdrawn. According to the learned Deputy District Attorney, in view of those clear terms, there was no need of issuance of show cause notice and other codal formalities in case of withdrawal of appointment order. He further argued that the appellant was living with her husband and was not entitled for appointment under Rule 10(4) of the APT Rules 1989. He requested that the appeal might be dismissed.

6. From the arguments and record presented before us, it transpires that the appellant was appointed as PST (BS-12) on quota fixed for children of deceased government servants under provisions of rule 10(4)



of the Khyber Pakhtunkhwa Civil Servants (Appointment, Promotion and Transfer) Rules, 1989. On a complaint received by the District Education Officer (Female) Karak, that the appellant was married, residing with her husband and hence not eligible for appointment on the said quota, she ordered for an inquiry and appointed Deputy DEO (F) Karak for that purpose who submitted her report according to which the contents of the complaint were found correct after being verified from different sources. Based on that report, the appointment order was withdrawn after two months. Learned counsel for the appellant, when confronted, did not deny the fact that the appellant was married at the time of her appointment, rather he contended that being married was not a hurdle for appointment on the quota reserved for children of deceased government servants. The contention of the learned counsel for the appellant was not correct as the provincial government had already issued guidance/clarification on 21.02.2020 regarding employment of dependent of government servants who were incapacitated or invalidated permanently or retired on medical board which stated as follows:-

"...under Rule 10 (4) of APT Rules, 1989, the facility of employment to one of the children of deceased/invalidated Government Servant is given in view of their dependence on their parents. This facility is equally available to male and female children. However in case the female has contracted a marriage, she loses this right. Hence a married daughter is not eligible for this facility."

In case of married daughter, further clarification was issued vide a letter dated 28.04.2023 by the provincial government as follows:-




“3. It is to further clarify that a married daughter after separation from her husband and dependent on her parents is also entitled to appointment under Rule 10(4) of APT Rules, 1989 subject to the conditions that:

- i. In case the married daughter is separated judicially, she has to produce a divorce certificate duly issued by NADRA.
- ii. In case she has separated customarily she has to produce a certificate from the Deputy Commissioner concerned to the effect that she is separated and is fully dependent on her parents after separation.”

7. In the light of the guidelines issued on 21.02.2020 a married daughter becomes a liability of her husband and hence not entitled for appointment on the quota under rule 10(4) of the APT Rules, 1989. At the time of appointment of the appellant, the fact that she was married did not come into the notice of the appointing authority but as soon as it was highlighted in the complaint and verified through an inquiry, the appointment order was rightly withdrawn as it was against the rule read with the clarification/guidelines.

8. In view of the above discussion, the appeal in hand is dismissed being devoid of merit. Cost shall follow the event. Consign.

9. Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal on this 03rd day of June, 2024.


(FAREEHA PAUL)
Member (E)



(KALIM ARSHAD KHAN)
Chairman

SA 1959/2023

03rd June, 2024 01. Mr. Tariq Kamal, Advocate for the appellant present.
Mr. Asif Masood Ali Shah, Deputy District Attorney for the
respondents present. Arguments heard and record perused.

02. Vide our detailed judgment consisting of 05 pages, the
appeal in hand is dismissed being devoid of merit. Cost shall
follow the event. Consign.

03. *Pronounced in open court in Peshawar and given under
our hands and seal of the Tribunal on this 03rd day of June,
2024.*


(FAREEHA PAUL)
Member (E)


(KALIM ARSHAD KHAN)
Chairman

Fazal Subhan PS