

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

Service Appeal No. 987/2017

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

Muhammad Ramzan Ex-PST, GPS Tube Well Noor Alam, D.I.Khan.
.....(Appellant)

Versus

1. The Secretary (E&SE) Khyber Pakhtunkhwa Peshawar.
2. The Director Education Khyber Pakhtunkhwa Peshawar.
3. Executive District Officer (Schools & Literacy) D.I.Khan.
4. Director General Agriculture (Extension) District Tank.
.....(Respondents)

S.Numan Ali Bukhari,
Advocate

... For appellant

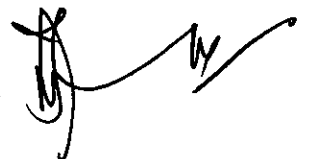
Mr. Muhammad Jan,
District Attorney

... For respondents

Date of Institution.....	21.07.2017
Date of Hearing.....	11.06.2024
Date of Decision.....	11.06.2024

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 08.02.2012, communicated to the appellant on 24.02.2017 in Execution Petition No. 197/2016, whereby the appellant was terminated from service and against not taking action on the departmental appeal of the appellant within the statutory period of 90 days. It has been prayed that on acceptance of the appeal, the impugned order dated 08.02.2012 might be declared as illegal and be set aside and the appellant be reinstated



with all back and consequential benefits, alongwith any other remedy which the Tribunal deemed appropriate.

2. Brief facts of the case, as given in the memorandum of appeal, are that the appellant was working as Driver (BPS- 6) in District Office Agriculture Tank for 16 years. He applied for the post of PST through proper channel and was transferred/posted as PST on 01.02.2008 vide order dated 30.01.2008. He was terminated from service by the DCO, D.I.Khan vide order dated 04.09.2009 against which he filed appeal No. 2600/2010 in the Khyber Pakhtunkhwa Service Tribunal which was disposed of in the same manner as appeal No. 1042/2007 & 545/2011 were decided on 28.01.2010 and 28.04.2011. The respondents were directed to ascertain that the appellant was similarly placed as those in appeal No. 1042/2007 and 545/2011. The respondent department conducted one sided inquiry by violating the directions of the Service Tribunal and issued the impugned termination order dated 08.02.2012, communicated to the appellant on 24.02.2017 in Execution Petition No. 197/2016, without giving him any personal hearing. Feeling aggrieved, he filed departmental appeal which was not replied by the respondents within the statutory period of 90 days; hence the instant service appeal.

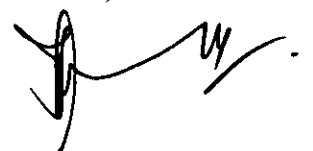
3. Respondents were put on notice. Respondent No. 3 submitted parawise comments. We heard the learned counsel for the appellant as well as learned District Attorney for the respondents and perused the case file with connected documents in detail.



4. Learned counsel for the appellant, after presenting the case in detail, argued that the impugned order dated 08.02.2012 was against the law, facts, material on record and norms of justice and was liable to be set aside. He argued that neither a regular inquiry was conducted nor the appellant was heard in person. He argued that no codal formalities were fulfilled by the department before imposing major penalty which was against the verdict of the superior court and directions of the Service Tribunal given in the judgment dated 27.10.2011. He further argued that the appellant had more than 16 years service in the Agriculture Department and was entitled to be repatriated to his parent department. He requested that the appeal might be accepted as prayed for.

5. Learned District Attorney, while rebutting the arguments of learned counsel for the appellant, argued that appointment of the appellant was made without advertisement and without observance of the codal formalities including test and interview, preparation of merit list and its approval by the competent authority and that was the reason for termination of his services. He requested that the appeal might be dismissed.

6. The appellant was appointed as PTC in the year 2008. Prior to that he was a Driver in the District Office Agriculture, Tank. As stated by him in his service appeal, he applied for the post of PTC through proper channel. Upon a query from the bench, he could not provide any application routed through proper channel to the Executive District Officer, Schools & Literacy, D.I.Khan, nor could he provide any advertisement in pursuance of which he applied for the post of PTC. His services, alongwith several others, were





terminated through the impugned order dated 08.02.2012 on the ground that their appointment was illegal, irregular and void ab-initio in terms of rule 10(2) of the NWFP Civil Savants (Appointment, Promotion and Transfer) Rules, 1989 and prescribed method of recruitment. Before passing the order of 08.02.2012, an order dated 04.09.2009 was passed by the DCO, D.I.Khan and services of various male and female teaches were terminated. That order was impugned before the Tribunal in which a judgment dated 27.10.2011 was passed according to which that order was set aside and the case was remanded back to the Secretary Elementary & Secondary Education Department as follows:-

“-----but instead of their outright reinstatement, their cases are remanded/sent back to the Secretary, Elementary & Secondary Education Department, Peshawar (respondent No. 1) for reconsideration of the cases in the light of above observations for reinstatement of the qualified appellants and a speaking order in respect of those who are not found qualified, by the competent authority, after affording opportunity of hearing to the said appellants through an efficient and fair mechanism to be evolved for the purpose by him so as to ensure compliance with the mandatory legal requirements on the one hand and integrity of the proceedings on the other.”

In pursuance of the above judgment the order dated 08.02.2012 was impugned before the Tribunal by a number of colleagues of the appellant but their appeals were dismissed through a consolidated judgment on 14.03.2018 in Service

Appeal No. 943/2012 titled "Mst. Mehnaz Begum Vs. the Government of Khyber Pakhtunkhwa through Secretary E&SH, Peshawar and two others." The appellants of those appeals preferred Civil Petitions before the august Supreme Court of Pakistan, which were also dismissed on 19.09.2018, refusing leave to appeal.

7. There were two parts of prayer of the appellant in the appeal before us; first part was to declare the order dated 08.02.2012 as illegal, set it aside and reinstate the appellant with all back benefits whereas the second part was that he might be repatriated to his parent department. Taking the first part, it was extremely clear from the record presented before us that due process was not followed in the appointment of appellant, alongwith several other male and female teachers, and the matter was enquired on the orders of the Tribunal and decided through the order dated 08.02.2012. The same order was impugned before the Tribunal and had already been dismissed against which Civil Petitions before the august Supreme Court of Pakistan had also been dismissed which meant that the matter had attained finality and hence the prayer of the appellant had got no ground.

8. As regards the second part of the prayer about repatriation to his parent department, no order of retaining lien with the Agriculture Department could be produced before us by the appellant in his appeal or by his learned counsel during arguments. Moreover, if there was any lien, as per rules it would have been for two years. The appellant's services were terminated in 2012, which meant that his two years service after 2008 completed in 2010 and he could not claim repatriation after 2010.



9. In view of the above discussion, the appeal in hand is dismissed being groundless. Cost shall follow the event. Consign.

10. *Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal this 11th day of June, 2024.*



(FAUZIA PAUL)

Member (B)

Fazle Subhan PS



(RASHIDA BANO)


Member(J)

SA 987/2017

11th June, 2024 01. Syed Numan Ali Bukhari, Advocate for the appellant present. Mr. Muhammad Jan, District Attorney for the respondents present. Arguments heard and record perused.

02. Vide our detailed judgment consisting of 06 pages, the appeal in hand is dismissed being groundless. 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 11th day of June, 2024.*


(FARHANA PAUL)
Member (F)


(RASHIDA BANO)
Member(J)

Fazal Subhan PS