

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

Service Appeal No. 7813/2021

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

Sabir Shah S/O Tamash Khan SST (BPS-16) R/O Garhi Karigaram Alam
Gudar Bara, Khyber Agency.

.... (Appellant)

VERSUS

1. The Government of Khyber Pakhtunkhwa through Secretary Elementary & Secondary Education Department, Civil Secretariat, Peshawar.
2. Director Elementary & Secondary Education, Khyber Pakhtunkhwa, Peshawar.
3. District Education Officer, Khyber Tribal District at Jamrud.

... (Respondents)

Mr. Noman Ali Bukhari
Advocate

... For appellant

Mr. Muhammad Jan
District Attorney

.... For respondents

Date of Institution.....30.11.2021
Date of Hearing.....24.04.2024
Date of Decision.....24.04.2024

JUDGEMENT

RASHIDA BANO, MEMBER (J): The service appeal in hand has been instituted under Section 4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974 with the following prayer:



“That on acceptance of this appeal, the respondents may kindly be directed to adjust the appellant on his post and further directed to give salary onward after adjustment of the appellant on his post as the appellant is still on the strength of the department. The department may further be directed to grant all back benefits including arrears to the appellant being appellant not remained gainful employed and confined in jail. Any other remedy which this August Tribunal deems fit and appropriate that may also be awarded in favour of appellant.”


2. Brief facts of the case are that the appellant was initially appointed as Theology Teacher in respondent department in the year 2002 and later on he was recommended by the Khyber Pakhtunkhwa Public Service Commission against the post of SST BPS-16 vide order dated 27.03.2012. During service, he was nominated in criminal case FIR No. 36 U/S 9(c) CNSA 1997 of P.S ANF Attock and was arrested in said case due to which he remained absent from duty. He was convicted and sentenced by the trial court vide judgment and order dated 16.01.2018 against which he preferred appeal before worthy Lahore High Court, Rawalpindi Bench which was accepted and he was acquitted from the charges and was ordered to be released vide judgment dated 18.11.2019. Appellant after release approached respondent department by submitting his arrival report on 29.11.2019 and also submitted affidavit at Jamrud. DEO (Male), Khyber sent arrival, affidavit alongwith request to consider and assign duties with the remarks that appellant is now free from the charges. But the respondent sought opinion from the law department as to whether judgment of Lahore High



Court could be challenged in the next higher forum or otherwise and whether pay of the appellant be started and whether back benefits be given to appellant or not. Respondents also got information from incharge ANF Attock Punjab about filing of appeal against order of acquittal of appellant passed by the Lahore High Court in Supreme Court of Pakistan upon which they were informed that they filed appeal which is still pending adjudication before Supreme Court of Pakistan. Respondent on the basis of this information are not adjusting the appellant despite the fact, that appellant is still on the strength of the department as no adverse order is passed against the appellant, hence the instant service appeal.

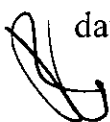
3. Respondents were put on notice who submitted their comments on the appeal. We heard the learned counsel for the appellant as well as learned District Attorney for the respondents and perused the case file with connected documents in detail.

4. Learned counsel for the appellant argued that not taking action on the departmental appeal of the appellant and not adjusting him on his post as he is still on the strength of the department are against the law, rules and material on record; that no disciplinary action has been taken by the respondent department on his absence but they just stop his pay and he is still on the strength of department, he is liable to be adjusted on his post; that recommendations of the inquiry officer as well as of DEO is in favor of the appellant despite he was not adjusted on his post which is illegal; that not adjusting the appellant on the ground that judgment is challenged in the Supreme Court of Pakistan is illegal and against the law and rules. He

 requested that instant appeal might be accepted.

5. Conversely, learned District Attorney contended that the appellant has been treated in accordance with law and rules. He further contended that an FIR No. 36 under section 9(c) CNSA 1997 of P.S ANF Attock was lodged against the appellant for drugs trafficking, wherein the appellant was convicted vide judgment dated 16.01.2018 and was sentenced for imprisonment of ten years with a fine of Rs.3 lac by learned Sessions Judge Special Court-C NSA Rawalpindi. Against which he filed criminal appeal in Lahore High Court which was accepted vide judgment dated 18.11.2019 and he was released from jail. He further contended that no arrival report has been submitted by the appellant to the respondent No.3 for his resumption of duty. He further contended that ANF filed criminal appeal against the judgment dated 18.11.2019 in august Supreme Court which is still pending, hence the department could not interfere into the matter till the final the final disposal of the appeal.

6. Perusal of record reveals that appellant was recommended by the Khyber Pakhtunkhwa Public Service Commission against the post of SST BPS-16 who was accordingly appointed vide order dated 27.03.2012. Appellant was performing his duties when on 05.11.2014, he was nominated in criminal case FIR NO. 36 Under Section 9(c) CNSA 1997 of P.S ANF Attock and was arrested in said case due to which he remained absent from his duty. He was convicted and sentenced by the trial court vide judgment and order dated 16.01.2018, against which appellant preferred appeal before worthy Lahore High Court, Rawalpindi Bench which was accepted and he was acquitted from the charges and was ordered to be released vide judgment dated 18.11.2019. Appellant after release from the jail approached



respondent by submitting his arrival report on 29.11.2019 and also submitted affidavit at Jamrud to this effect. DEO (Male), Khyber sent arrival, affidavit alongwith request to consider and to assign duties with the remarks that appellant is now free from the charges, upon which department ordered inquiry which was conducted wherein inquiry officer recommended that;

- i. His pay may kindly be started.**
- ii. Arrear and all other back benefits may kindly be granted.**
- iii. Any other penalty (major/minor) if any may be withdrawn.**
- iv. A general circular may kindly be issued to all DEOs of Khyber Pakhtunkhwa.**
- v. To keep the record upto date, take quick action and send the report to the Director E&SE Khyber Pakhtunkhwa for further necessary action in such cases.**

But the respondent sought opinion from the law department that order of acquittal can be challenged in the next higher forum or otherwise and whether pay of the appellant be started and whether back benefits be given to appellant or not.

7. Respondents also got information from incharge ANF Attock Punjab about filing of appeal against order of acquittal of appellant passed by the Lahore High Court in Supreme Court of Pakistan upon which they were informed that they filed appeal which is still pending adjudication before Supreme Court of Pakistan. Respondent on the basis of this information are not adjusting the appellant despite the fact, that appellant is still on the strength of the department as no adverse order is passed against the appellant.

8. Perusal of record further reveals that only pay of the appellant was



stopped now appellant is acquitted on merit and no other charge is there against him. Just on the pretext of pendency of appeal against acquittal in apex court of the country to keep appellant away from performance of his duties which is linked with bread & butter of his family is injustice as we are conscious of the fact that due to huge pendency in the apex court of country there is no possibility of fixation of appeal against acquittal in near future.

9. It is also admitted fact that appellant submitted his arrival on 29.11.2019, therefore, he is entitled to all back benefits from the time as his pay was stopped earlier. Legally speaking respondent must have suspended appellant after getting information about his involvement in criminal case, but they only stopped his pay. Therefore, for said period appellant is entitled for pay which is allowed under the rules to civil servant under suspension. If in future apex court of the country accepts the appeal then respondent will proceed in accordance with law and appellant may be considered guilty/convicted person who will cease to be civil servant. Therefore, this judgment will not be hurdle in way of the any subsequent order of the respondent department.

10. For what has been discussed above, we accept the appeal in hand with above observations. Costs shall follow the event. Consign.

11. *Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal this 24th day of April, 2024.*


(FREEHA PAUL)
Member (E)


(RASHIDA BANO)
Member (J)

ORDER
24.04.2024

1. Learned counsel for the appellant present. Mr. Muhammad Jan learned District Attorney for the respondents present.
2. Vide our detailed judgment of today placed on file, we accept the appeal in hand with above observations. Costs shall follow the event. Consign.
3. *Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal this 24th day of April, 2024.*


(FREEHA PAUL)
Member (E)


(RASHIDA BANO)
Member (J)

*M.Khan