

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

BEFORE: **KALIM ARSHAD KHAN ... CHAIRMAN**
RASHIDA BANO ... MEMBER (Judicial)

Service Appeal No.74/2022

Date of presentation of Appeal.....21.01.2022
Date of Hearing.....03.07.2024
Date of Decision.....03.07.2024

Hazrat Ali S/O Haq Dad Khan R/O Lahor, District Swabi, Ex-Chowkidar at GPS Wisal Abad Jehangira District Swabi
.....(*Appellant*)

Versus

1. **Secretary Elementary & Secondary Education, Khyber Pakhtunkhwa, Peshawar.**
2. **Director Elementary & Secondary Education, Khyber Pakhtunkhwa, Peshawar.**
3. **District Education Officer (Male) Swabi.....(*Respondents*)**

Present:

Mr. Khair Ul Wahab Yousafzai, Advocate.....For the appellant
Mr. Asif Masood Ali Shah, Deputy District Attorney..For respondents
.....

**APPEAL UNDER SECTION 4 OF THE KHYBER
PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974**

JUDGMENT

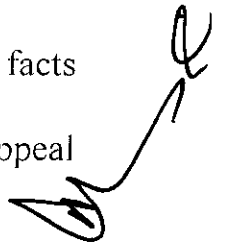
KALIM ARSHAD KHAN, CHAIRMAN: Appellant's case as per memo and grounds of appeal are that he was appointed as Chowkidar vide order dated 14.10.2019 and took charge of the said post on 15.10.2019; that vide order dated 18.10.2019, his appointment order was cancelled; that he filed representation to the Director Elementary & Secondary Education Khyber

Pakhtunkhwa who assigned the case to the Inquiry Officer who recommended for withdrawal of the cancellation order dated 18.10.2019; that the said report was forwarded by the Director to the DEO (Male) Swabi for implementation of the recommendations of the inquiry officer; that the DEO again asked for clarification of the intervening period of the appellant and status of the cancellation of the appellant; that the Director directed the DEO for treating the intervening period as leave without pay; the DEO once again asked for clarification; that the appellant's case was delayed therefore, he filed Writ Petition No.4053-P/21 before the Hon'ble Peshawar High Court, Peshawar and the Hon'ble Peshawar High Court dismissing the writ petition of the appellant, directed the respondents to pass final order on inquiry report submitted by the inquiry officer; that the appellant submitted representation dated 25.10.2021 but the same was not responded, hence, the instant service appeal.

02. On receipt of the appeal and its admission to full hearing, the respondents were summoned. Respondents 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.

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

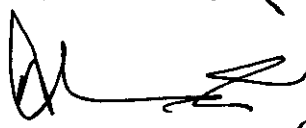
04. The learned counsel for the appellant reiterated the facts and grounds detailed in the memo and grounds of the appeal



while the learned Deputy District Attorney assisted by learned counsel for private respondents, controverted the same by supporting the impugned order(s).

05. There are documents placed on file by the appellant which are not denied by the respondents and those are in the shape of inquiry report conducted by one Naveed Akhtar, Principal GHS Nanak Pura, Peshawar, wherein, he had recommended for withdrawal of the impugned order. Besides, the Director Elementary & Secondary Education Khyber Pakhtunkhwa, Peshawar vide letter dated 18.05.2021 had also directed the District Education Officer (Male), Swabi to implement the recommendation of the inquiry officer. Again vide letter No.4441 dated 23.06.2021 of the DEO (Male) Swabi, the Director Education vide letter No.6792 dated 05.07.2021 asked the DEO to implement the recommendation of inquiry officer and treat the intervening period as leave without pay. In such a situation, contention of the respondents that the respondents, in Para-6 of the reply, that competent authority did not agree with the recommendation of the inquiry officer is neither acceptable nor well founded and the order of the Director Education being, higher in hierarchy, had to prevail, whereby, the DEO was directed to implement the recommendation treating the intervening period as leave without pay.

06. Therefore, we allow this appeal and direct the District Education Officer (Male) Swabi to pass order on the direction of



the Director Elementary & Secondary Education Khyber Pakhtunkhwa, Peshawar. Costs shall follow the event. Consign.

07. *Pronounced in open Court at Peshawar and given under our hands and the seal of the Tribunal on this 3rd day of July, 2024.*



KALIM ARSHAD KHAN
Chairman



RASHIDA BANO
Member (Judicial)

Mutazem Shah