



ORDER

27th June, 2024

1. Learned counsel for the appellant present. Mr. Zahid Gul Khan, ADEO alongwith Mr. Asif Masood Ali Shah, Deputy District Attorney for the respondents present. Arguments heard and record perused.
2. Vide our judgment of today placed on file, the appeal is allowed and the impugned order dated 01.07.2022 is set-aside to the extent of treating the intervening period with effect from 19.10.2021 to 30.06.2022 as extra ordinary leave without pay with the direction to the respondents to conduct de-novo inquiry against the appellant to see as to whether she is liable to any minor penalty or otherwise. The de-novo inquiry shall be completed within a period of three months of receipt of copy of this judgment, strictly in accordance with relevant law/rules. Needless to mention that the appellant shall be fully associated with the inquiry proceedings by providing her fair opportunity to cross examine the witnesses as well as to produce evidence in her defence. Parties are left to bear their own costs. File be consigned to the record room.
3. *Pronounced in open Court at Camp Court, Abbottabad and given under our hands and the seal of the Tribunal on this 27th day of June, 2024.*



(Farzeha Paul)
Member (Executive)
Camp Court, Abbottabad



(Aurangzeb Khattak)
Member (Judicial)
Camp Court, Abbottabad

Service Appeal No.148/2023 titled "Uzma Batool versus Government of Khyber Pakhtunkhwa, through Secretary Elementary & Secondary Education Khyber Pakhtunkhwa, Peshawar and others", decided on 27.06.2024 by Division Bench comprising of Mr. Aurangzeb Khattak, Member Judicial and Miss. Fareeha Paul Member Executive, Khyber Pakhtunkhwa Service Tribunal Peshawar, at Camp Court, Abbottabad.

mention that the appellant shall be fully associated with the inquiry proceedings by providing her fair opportunity to cross examine the witnesses as well as to produce evidence in her defence. Parties are left to bear their own costs. File be consigned to the record room.

8. *Pronounced in open Court at Camp Court, Abbottabad and given under our hands and the seal of the Tribunal on this 27th day of June, 2024.*


AURANGZEB KHATTAK
Member (Judicial)
Camp Court, Abbottabad


FAREHA PAUL
Member (Executive)
Camp Court, Abbottabad

Naeem Amin

accordance with law and as the appellant was found guilty of misconduct, therefore, the penalty has rightly been imposed upon her.

He prayed that the appeal in hand may be dismissed with cost.

6. The perusal of case file would show that inquiry was conducted against the appellant and resultantly she was removed from service but later on the matter was again inquired into and the appellant was exonerated from all the allegations and was thus reinstated but minor penalty was imposed upon her and her service period with effect from 19.10.2021 to 30.06.2022 was treated as extra ordinary leave without pay. The perusal of statement of allegations, show cause notice and the inquiry report would show that the findings and penalty in question has not been based on any cogent oral or documentary evidence and even to this effect no opportunity has been provided to the appellant to produce evidence in rebuttal. Fair trial is the right of every citizen which cannot be denied in any way but in the instant case the inquiry has not been conducted properly. In these circumstances, we deem it appropriate to remit the matter back to the competent Authority for conducting de-novo inquiry in accordance with relevant law and rules.

7. Consequently, the appeal is allowed and the impugned order dated 01.07.2022 is set-aside to the extent of treating the intervening period with effect from 19.10.2021 to 30.06.2022 as extra ordinary leave without pay with the direction to the respondents to conduct de-novo inquiry against the appellant to see as to whether she is liable to any minor penalty or otherwise. The de-novo inquiry shall be completed within a period of three months of receipt of copy of this judgment, strictly in accordance with relevant law/rules. Needless to

departmental appeal, which was not responded by the respondents, hence she filed the instant appeal.

2. The respondents were summoned, who contested the appeal by way of filing their respective written reply/comments.

3. Arguments heard and case file perused.

4. The learned counsel for the appellant contended that the appellant was removed from service on the basis of false allegations, however, later on the matter was re-inquired through DEO (Male), Mansehra namely Mr. Muhammad Tanveer, who during the course of inquiry, found the appellant as innocent but despite her innocence, her service period with effect from 19.10.2021 to 30.06.2022 has illegally been converted into extra ordinary leave without pay; that no opportunity of fair trial/ inquiry was provided to the appellant to produce evidence in her defence; that as is evident from the inquiry report, no oral or documentary evidence has been brought on record by the Education Department against the appellant in support of their false allegations; that the inquiry has not been conducted in accordance with the prevailing rules and regulations and has thus subjected the appellant to injustice. He prayed for setting-aside the impugned order to the extent of treating the said period of extra ordinary leave without pay, with the direction to the respondents to pay salaries of the said period to the appellant.

5. On the other hand, learned Deputy District Attorney for the respondents opposed the contention of learned counsel for the appellant and contended that the inquiry proceedings has been conducted in accordance with law and the impugned order has been passed in

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR, AT CAMP COURT ABBOTTABAD.

BEFORE: **AURANGZEB KHATTAK** ... MEMBER (Judicial)
FAREEHA PAUL ... MEMBER (Executive)

Service Appeal No. 148/2023

Date of presentation of Appeal.....17.01.2023
Date of Hearing.....27.06.2024
Date of Decision.....27.06.2024

**Faiza Rafique (Lab Attendant), Government Girls High School,
Salhad, Tehsil and District, Abbottabad.Appellant**

Versus

1. Government of Khyber Pakhtunkhwa, through Secretary Elementary & Secondary Education, Khyber Pakhtunkhwa, Peshawar.
2. Director Elementary & Secondary Education, Khyber Pakhtunkhwa, Peshawar.
3. District Education Officer (Female) Abbottabad.....(**Respondents**)

Present:

Mr. Muhammad Arshad Khan Tanoli, Advocate.....For appellant
Mr. Asif Masood Ali Shah, Deputy District AttorneyFor respondents

JUDGMENT

AURANGZEB KHATTAK, MEMBER (JUDICIAL): The appellant Mst. Faiza Rafique, Lab Attendant has impugned through the instant appeal the order dated 01.07.2022, issued by the District Education Officer (Female), Abbottabad, vide which in light of the inquiry report, she was reinstated into the service, however, the intervening period of her removal from service till her reinstatement was considered as extra ordinary leave without pay. She had challenged the validity and legality of said order to the extent of treating the intervening period as extra ordinary leave without pay through filing of