

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR

BEFORE: **KALIM ARSHAD KHAN ... CHAIRMAN**
MUHAMMAD AKBAR KHAN ... MEMBER(Executive)

Service Appeal No.1124/2022

Date of presentation of Appeal.....19.07.2022
Date of Hearing.....10.07.2024
Date of Decision.....10.07.2024

Mst. Maryam, Ex-P.E.T (BPS-15), GGMS Kota Trap, Tribal District Mohmand.....(Appellant)

Versus

1. **Government of Khyber Pakhtunkhwa through Secretary Elementary & Secondary Education Department, Peshawar.**
2. **The Director, Elementary & Secondary Education Department, Khyber Pakhtunkhwa, Peshawar.**
3. **The, District Education Officer (F), District Mohmand(Respondents)**

Present:

Mr. Mir Zaman Safi, Advocate.....For appellant
Mr. Muhammad Jan, District Attorney.....For respondents



APPEAL UNDER SECTION 4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974 AGAINST THE IMPUGNED ORDER DATED 07.03.2022 WHEREBY MAJOR PENALTY OF REMOVAL FROM SERVICE HAS BEEN IMPOSED UPON THE APPELLANT AND AGAINST NO ACTION TAKEN ON THE DEPARTMENTAL APPEAL OF THE APPELLANT WITHIN THE STATUTORY PERIOD OF NINETY DAYS.

JUDGMENT

KALIM ARSHAD KHAN CHAIRMAN: The appellant's case, as per averments of the appeal in brief are that appellants were appointed as Physical Education Teacher (BPS-15) vide order dated 27.10.2021 and was serving in her District. In the meanwhile, she was removed from service vide order dated 07.03.2022. Feeling aggrieved of the said

impugned order, she filed departmental appeal, but the same was not responded within the statutory period, therefore, she filed the instant service appeal.

3. On receipt of the appeals and their admission to full hearing, the respondents were summoned, who 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.

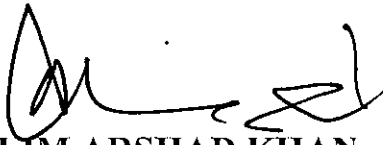
4. We have heard learned counsel for the appellants and learned District Attorney for the respondents.

5. The learned counsel for the appellants reiterated the facts and grounds detailed in the memo and grounds of the appeal while the learned District Attorney controverted the same by supporting the impugned order.

6. It appears from the impugned order dated 07.03.2022 that the appellant was removed from service on the basis of alleged absence from duty, reported by the Education Monitoring Authority (EMA). The same shows that there are some flaws in it. There is nothing available on the file which could show that any inquiry was conducted, whereas, the proceedings conducted by the authority appear to be for absence of the appellant but the relevant rules have not been followed before imposition of penalty. It is otherwise a well settled legal proposition that regular inquiry is must before imposition of major penalty which includes provision of full opportunity of defense to be provided to the civil servant which however was not done in the case of appellant. Reliance is placed on 2009 PLC (CS) 650.

7. Therefore, instant service appeal is accepted. The matter is remitted to the Department for conduct of proper inquiry, which is to be done within 60 days of the receipt of this judgment. Needless to mention that the appellant shall be provided proper opportunity of defense during the inquiry proceedings. Appellant is reinstated in service for the purpose of proper inquiry. The issue of back benefits shall be subject to the outcome of inquiry. Costs shall follow the event. Consign.

8. *Pronounced in open Court at Peshawar and given under our hands and the seal of the Tribunal on this 10th day of July, 2024.*



KALIM ARSHAD KHAN
Chairman




MUHAMMAD AKBAR KHAN
Member (Executive)

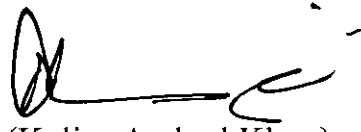
S.A No.1124/2022

ORDER

10th July, 2024

1. Learned counsel for the appellant present. Mr. Muhammad Jan, District Attorney for the respondents present and heard.
2. Vide our detailed judgment of today placed on file, instant service appeal is accepted. The matter is remitted to the Department for conduct of proper inquiry, which is to be done within 60 days of the receipt of this judgment. Needless to mention that the appellant shall be provided proper opportunity of defense during the inquiry proceedings. Appellant is reinstated in service for the purpose of proper inquiry. The issue of back benefits shall be subject to the outcome of inquiry. Costs shall follow the event. Consign.
3. *Pronounced in open Court at Peshawar and given under our hands and the seal of the Tribunal on this 10th day of July, 2024.*


(Muhammad Akbar Khan)
Member (E)


(Kalim Arshad Khan)
Chairman