

**BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL**  
**CAMP COURT, ABBOTTABAD**

**Service Appeal No. 7735/2021**

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

Mst. Neelam Bibi, Ex-Primary School Teacher at Government Girls  
Primary School Sazin Abad, Tehsil Dassu, District Kohistan Upper.  
.....(Appellant)

Versus

1. Director Elementary and Secondary Education Peshawar.  
2. District Education Officer (Female) Kohistan at Dassu.  
.....(Respondents)

Mr. Fazal Haq,  
Advocate

... For appellant

Mr. Asif Masood Ali Shah,  
Deputy District Attorney

... For respondents

Date of Institution..... 21.10.2021  
Date of Hearing..... 23.07.2024  
Date of Decision..... 23.07.2024

**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 10.06.2021, whereby major penalty of removal from service was imposed upon her. It has been prayed that on acceptance of the appeal, the impugned order dated 10.06.2021 might be set aside and the appellant be reinstated into service, with all back benefits.

2. Brief facts of the case, as given in the memorandum of appeal, are that the appellant was appointed against the post of Primary School Teacher vide order dated 09.12.2006. All of a sudden, respondent No. 2,



without citing any reason and intimation, imposed major penalty of removal from service upon her w.e.f 10.06.2021 on the ground of alleged and unspecified absence from duty. She moved an application to respondent No. 2 on 07.06.2021 for release of her salary but the same was not responded. Aggrieved from the order of 10.06.2021, she filed departmental appeal on 17.06.2021 before respondent No. 2 but no order was passed on it; hence the instant service appeal.

3. Respondents were put on notice who submitted written reply. We heard the learned counsel for the appellant as well as learned Deputy 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 appellant had never remained absent as alleged by the respondents and the entire proceedings were illegal and fictitious. He argued that no publication was made in the leading newspapers as required under Rule 9 of the Khyber Pakhtunkhwa Government Servants (E&D) Rules, 2011. Regarding the publication as referred in the impugned order, it was made in the newspapers which were not commonly available in the area of the appellant, hence the impugned order was wholly illegal, and having no legal effect. He argued that no inquiry into the matter was conducted and the appellant was never confronted with the allegations leveled against her. He further argued that the appellant had long service at her credit and was removed from service with a single stroke of pen



without observing the due process of law. He requested that the appeal might be accepted as prayed for.

5. Learned Deputy District Attorney, while rebutting the arguments of learned counsel for the appellant, argued that the appellant was reported absent from duty by EMA authority. Show cause notice was served upon her which was not responded by her. As per report of the ASDEO concerned, the appellant did not perform her duty and after fulfilling all the codal formalities, she was removed from service. He requested that the appeal might be dismissed.


6. From the arguments and record presented before us it appears that the appellant was removed from service on account of willful and unauthorized absence from duty. The absence was reported by the EMA authority who visited the school where the appellant was posted and she was found absent from duty. An unsigned and unauthentic report dated 08.03.2021 of the EMA had been attached at page 7 of the reply. Other than that report, there was no other evidence regarding willful absence of the appellant. The show cause notice issued to her regarding her absence showed that the same was issued at her school address and did not specify the date of visit of EMA/DCMA. The proceedings initiated by the respondents show that the appellant had not been properly associated with the proceedings and no opportunity of defence had been provided to her. Besides neither the period of absence was specified in the show cause notice nor in the impugned order of removal from service. We observed




that the proceedings conducted by the respondents were not in accordance with law and rules.

7. In view of the above discussion, the appeal in hand is allowed and the case is remitted to the department for denovo inquiry with the directions that the appellant should be fully associated in the inquiry proceedings. The inquiry should be completed within sixty days of the receipt of copy of this judgment. The appellant is reinstated into service for the purpose of denovo inquiry and the issue of back benefits should be subject to the outcome of the inquiry. Cost shall follow the event. Consign.

8. *Pronounced in open court at camp court, Abbottabad and given under our hands and seal of the Tribunal this 23<sup>rd</sup> day of July, 2024.*

  
(FAREEHA PAUL)  
Member (E)  
(Camp Court, Abbottabad)

  
(RASHIDA BANO)  
Member (J)  
(Camp Court, Abbottabad)


\*Fazle Subhan PS\*


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23<sup>rd</sup> July, 2024 01. Mr. Fazal Haq, advocate for the appellant present. Mr. Asif Masood Ali Shah, Deputy District Attorney for the respondents present. Arguments heard and record perused.

02. Vide our detailed judgment consisting of 04 pages, the appeal in hand is allowed and the case is remitted to the department for denovo inquiry with the directions that the appellant should be fully associated in the inquiry proceedings. The inquiry should be completed within sixty days of the receipt of copy of this judgment. The appellant is reinstated into service for the purpose of denovo inquiry and the issue of back benefits should be subject to the outcome of the inquiry. Cost shall follow the event. Consign.

03. *Pronounced in open court at camp court, Abbottabad and given under our hands and seal of the Tribunal this 23<sup>rd</sup> day of July, 2024.*

  
(FAREEHA PAUL)  
Member (E)  
(Camp Court, Abbottabad)

  
(RASHIDA BANO)  
Member (J)  
(Camp Court, Abbottabad)

\*Fazle Subhan PS\*