

Service Appeal No.2589/2023 titled "Muhammad Yasin Shah Versus Government of Khyber Pakhtunkhwa through Secretary Education Department, Khyber Pakhtunkhwa, Peshawar and others", and Service Appeal No. 2590/2023 titled "Zain Ud Din Versus Government of Khyber Pakhtunkhwa through Secretary Education Department, Khyber Pakhtunkhwa, Peshawar and others" decided on 31.07.2024 by Division Bench comprising of Mr. Aurangzeb Khattak, Member Judicial and Ms. Rashida Bano, Member Judicial, Khyber Pakhtunkhwa Service Tribunal, Peshawar.

**KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,**  
**PESHAWAR**

BEFORE: **AURANGZEB KHATTAK** ... MEMBER (Judicial)  
**RASHIDA BANO** ... MEMBER (Executive)

**Service Appeal No. 2589/2023**

Date of presentation of Appeal.....14.12.2023  
Date of Hearing.....31.07.2024  
Date of Decision.....31.07.2024

**Muhammad Yasin Shah**, TC BS-17, SDEO (M) SD, Sarwakai,  
District South Waziristan. ....*Appellant*

Versus

1. Government of Khyber Pakhtunkhwa through Secretary Education Department, Khyber Pakhtunkhwa, Peshawar.
2. Chief Secretary Government of Khyber Pakhtunkhwa.
3. Director, Elementary & Secondary Education, Khyber Pakhtunkhwa, Peshawar. ....(*Respondents*)

Present:

Mr. Ahmad Abu Hanifa, Advocate .....For appellant  
Mr. Asif Masood Ali Shah, Deputy District Attorney.....For respondents

**Service Appeal No. 2590/2023**

Date of presentation of Appeal.....14.12.2023  
Date of Hearing.....31.07.2024  
Date of Decision.....31.07.2024

**Zain Ud Din**, TC BS-16, SDEO (M) SD, Ladha, District South  
Waziristan. ....*Appellant*

Versus

1. Government of Khyber Pakhtunkhwa through Secretary Education Department, Khyber Pakhtunkhwa, Peshawar.
2. Chief Secretary Government of Khyber Pakhtunkhwa.
3. Director, Elementary & Secondary Education, Khyber Pakhtunkhwa, Peshawar. ....(*Respondents*)

Present:

Mr. Ahmad Abu Hanifa, Advocate .....For appellant

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Mr. Asif Masood Ali Shah, Deputy District Attorney.....For respondents

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**CONSOLIDATED JUDGMENT**

**AURANGZEB KHATTAK, MEMBER (JUDICIAL):** This consolidated judgment is directed to dispose of both the service appeals captioned above, as common questions of law and facts are involved in both the appeals.

2. The appellant namely, Muhammad Yasin Shah was posted as Secondary School Teachers (SST) at GHS Sam, South Waziristan, while appellant namely, Zain Ud Din was posted as Secondary School Teachers (SST) at GMS Poi Khel, Shamirai South Waziristan. They were transferred to the position of Sub-Divisional Education Officer (SDEO) (Male) SD Sarwakai South Waziristan and Sub-Divisional Education Officer (SDEO) (Male) Ladha South Waziristan respectively vide notification dated 24.07.2023. However, the said posting was rescinded through a notification dated 09.08.2023. Feeling aggrieved, appellants filed separate departmental appeals against the notification dated 09.08.2023, which were not responded within the statutory period of 90-days, prompting the approach to this Tribunal for resolution.

3. The respondents were summoned, who contested both the appeals by way of filing their respective written replies/comments.

4. The learned counsel for the appellants contended the impugned notification dated 09.08.2023 was issued only 17 days after their transfer, which is premature and without lawful justification. He next

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contended that the impugned notification dated 09.08.2023 was politically motivated rather than in the public interest. He further contended that according to Posting/Transfer Policy, the posting tenure is presumed to be a minimum of three years, rendering the cancellation premature. He next argued that no prior notice or valid reason was communicated to the appellants regarding the impugned notification dated 09.08.2023. In the last he argued that the impugned notification dated 09.08.2023 may be set-aside and both the appeals in hand may be accepted as prayed for.

5. Conversely, learned Deputy District Attorney for the respondents contended that according to the judgment of the Honorable Peshawar High Court dated 18-11-2009 in writ petition No. 2937/2009, administrative positions should be held by suitable officers, not teachers who are required at educational institutions. He next contended that Section-10 of Civil Servant Act, empowers the authority to transfer civil servants as needed for public interest, thereby negating any claim of a right to any specific posting. He further contended that as per Mrs. Shilpis Bose and Others vs State of Bihar (1991), courts should not interfere with transfer orders unless they violate statutory rules or demonstrate mala fide. He next argued that the transfer was executed following standard procedures and based on the recommendation of the District Education Officer (DEO). He further argued that the reassignment was made to optimize public service and was not indicative of any misuse of power or political

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influence. In the last he argued that both the appeals in hand may be dismissed with costs.

6. We have heard the arguments of learned counsel for the parties and have perused the record.

7. The perusal of the record reveals that appellant namely, Muhammad Yasin Shah was posted as Secondary School Teachers (SST) at GHS Sam, South Waziristan, while appellant namely, Zain Ud Din was posted as Secondary School Teachers (SST) at GMS Poi Khel, Shamirai South Waziristan and they were transferred to the post of Sub-Divisional Education Officer (SDEO) (Male) SD Sarwakai South Waziristan and Sub-Divisional Education Officer (SDEO) (Male) Ladha South Waziristan respectively vide notification dated 24.07.2023. Admittedly, both the appellants belong to teaching cadre and all educators are to be encouraged to prioritize their roles as teachers. Positions that divert focus from direct educational engagement shall be limited and where feasible, educators currently serving in administrative roles should be transitioned back to teaching assignments to foster a strong educational environment. Furthermore, according to Section-10 of the Khyber Pakhtunkhwa Civil Servants Act, 1973, a civil servant shall be liable to be served anywhere, as deemed necessary by the authority. No civil servant shall have any claim of right to remain in a specific post, nor shall the assignment or posting to any position be construed as a permanent appointment. Moreover, the appellants have failed to present sufficient evidence that the notification dated 09.08.2023 was passed on the basis of political


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pressure or that there has been a significant deviation from statutory requirements.

8. In view of the above, both the above mentioned service appeals being lack of merit are hereby dismissed. Parties are left to bear their own costs. File be consigned to the record room.

9. *Pronounced in open Court at Peshawar and given under our hands and the seal of the Tribunal on this 31 day of July, 2024.*

  
**AURANGZEB KHATTAK**  
Member (Judicial)

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**RASHIDA BANO**  
Member (Judicial)


\*Naeem Amin\*

**ORDER**

31<sup>st</sup> July, 2024

1. Learned counsel for the appellant present. Mr. Asif Masood Ali Shah, Deputy District Attorney alongwith Mr. Muhammad Faheem, Assistant for the respondents present. Arguments heard and record perused.
2. Vide our judgment of today placed on file, the appeal in hand as well as Service Appeal No. 2590/2023 titled "*Zain Ud Din Versus Government of Khyber Pakhtunkhwa through Secretary Education Department, Khyber Pakhtunkhwa, Peshawar and 02 others*" being lack of merit are hereby dismissed. Parties are left to bear their own costs. File be consigned to the record room.
3. *Pronounced in open Court at Peshawar and given under our hands and the seal of the Tribunal on this 31 day of July, 2024.*

  
(Rashida Bano)  
Member (Judicial)

  
(Aurangzeb Khattak)  
Member (Judicial)

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