

BEFORE THE HONORABLE SERVICE TRIBUNAL PESHAWAR.

Service Appeal No.737/2024.

Mst. Shahida Bibi.....Appellant.


Versus

District Education Officer Kurram.....Respondent

Parawise Comments on behalf of Respondent

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(Zaib-un- Nisa)
District Education officer (female)
District Kurram

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Preliminary objections.

**Khyber Pakhtukhwa
Service Tribunal**

Diary No. 13915

Dated 02-07-24

- That the appellant has got no cause of action, locus standi to file the instant appeal.
- That the appellant has not come to this Tribunal with clean hands.
- That the appeal is not maintainable in the present form.
- That the appellant is estopped by her own conduct to bring the instant appeal.
- That the appeal is premature as per under section -4 of Service Tribunal Act.
- That the appellant has concealed material facts from the Honorable Service Tribunal.
- That the in light of Section-10 of 1973, the appellant is liable to serve anywhere as satisfaction of the Competent Authority.

ON FACTS.

1. That para-1 pertains to the service record of the appellant.
2. That appellant performance was not satisfactory, therefore to utilize the service of the appellant at right place and in the interest of public, she was transferred.
3. That the appellant is trying to mislead this Honorable Tribunal and conceal the facts, the appellant has been adjusted at District Girls Hostel, GGHS Parachinar which is in the same vicinity of City Parachinar but the adjustment is made purely in the Public interest under Section-10.
4. That the in light of Section-10 of civil servant act 1973, the appellant is liable to serve anywhere as per satisfaction of the Competent Authority. Furthermore, this Honorable Tribunal has already decided the identical case vide judgment dated 04-06-2024 (Attached as Annex-A).
5. That detail reply has already been submitted under para-4 above.
6. That the in light of Section-10 of 1973, the appellant is liable to serve anywhere as per satisfaction of the Competent Authority. Furthermore, this Honorable Tribunal has already decided the identical case vide judgment dated 04-06-2024 (Attached as Annex-A).
7. That the appellant is not an aggrieved one, she is liable to perform her services as per satisfaction of the competent authority.
8. The Respondent also submit on the following grounds inter alia.

(2)

GROUND.

- A. **Incorrect and denied** the responded department has acted according to the Law / Policy.
- B. **Incorrect and denied**, the respondent department has acted to the rules, policy and merit based.
- C. **Incorrect and denied**, in light of Section-10 of 1973, the appellant is liable to serve anywhere as per satisfaction of the Competent Authority. Furthermore, this Honorable Tribunal has already decided the identical case vide judgment dated 04-06-2024 rendered in service appeal No. 345/2024.
- D. **Incorrect and denied**, detail reply has already been submitted above under para 4 & 6 on facts above.
- E. **Incorrect and denied**, the responded department has acted according to the Law / Policy.
- F. **Incorrect and denied**, the responded department has acted according to the Law / Policy
- G. **Incorrect and denied**, detail reply has already been submitted above under para 4 & 6 on facts above.
- H. **Incorrect and denied**, detail reply has already been submitted above under para 4 & 6 on facts above.
- I. **Incorrect and denied**, the respondent department has acted to the rules, policy and merit based.
- J. **Incorrect and denied**, the respondent department has acted to the rules, policy and merit based.
- K. Respondents also seek permission of Honorable Tribunal to raised additional grounds at time of hearing.

Prayer:

In the light of the above stated facts, it is requested to dismiss the case of the appellant.



District Education officer (female)

District Kurram

(Respondents No.1)

Zaib-un-Nisa

(3)

BEFORE THE HONORABLE SERVICE TRIBUNAL PESHAWAR.

Service Appeal No.737/2024.

Mst. Shahida Bibi.....Appellant.

Versus

District Education Officer Kurram.....Respondent

Parawise Comments on behalf of Respondent

AFFIDAVIT

I Mst. Zaib Un Nisa District Education Officer Female Kurram do hereby solemnly affirm and declare that the contents of accompanying Parawise comments submitted by respondent are correct to the best of my knowledge and belief and nothing has been concealed from this Honorable Tribunal. It is further stated on oath that in this appeal answering respondents have neither been placed ex-parte nor their defense has been struck off/cost.

Deponent



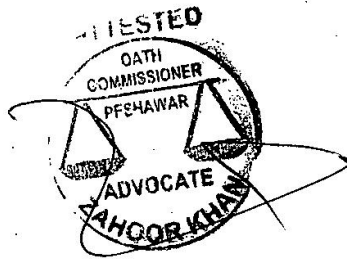
(Zaib-un- Nisa)

District Education officer (female)

District Kurram

CNIC:- 17301-2130701-3

Mob No. 03000966933



02 JUL 2024



DISTRICT EDUCATION OFFICER (FEMALE)

DISTRICT KURRAM AT PARACHINAR

(4)

AUTHORITY LETTER

I, District Education Officer (Female) District Kurram is hereby authorized Mr. Tooti Marjan Focal Person Litigation for filing of Parawise Comments in service appeal No. 737/2024 Tilted Shahida Bibi Vs Govt. of Khyber Pakhtunkhwa and others.

Zain

**District Education Officer (Female)
District Kurram**

Zain-un-nisa

5

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

Amended Service Appeal No. 345/2024

BEFORE: KALIM ARSHAD KHAN ... CHAIRMAN
MISS FAREEHA PAUL ... MEMBER(E)

Muhammad Ayyaz S/O Muhammad Ashraf R/O Mohallah Rasoliyaan
House No. 044 P.O Nawanshehr Chatri Tehsil and District Abbottabad
(CT, GHS Jabbrian District Abbottabad).

.....(Appellant)

Versus

1. Director Elementary and Secondary Education Khyber Pakhtunkhwa,
Peshawar.
 2. District Education Officer (Male) District Abbottabad.
 3. Mr. Zubair Ahmad CT, Government Middle School Sando Gali,
Abbottabad presently CT, GHS Jabbrian, District Abbottabad.
-(Respondents)

Malik Haider Ali Awan,
Advocate

... For appellant

Mr. Asif Masood Ali Shah,
Deputy District Attorney.

... For respondents

Date of Institution..... 12.01.2024

Date of Hearing..... 04.06.2024

Date of Decision..... 04.06.2024

JUDGEMENT

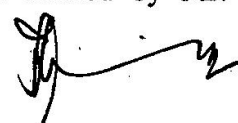
FAREEHA PAUL, MEMBER (E): The service appeal in hand has been instituted under Section 4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974 against the transfer/adjustment order dated 28.10.2023 issued by D.E.O (Male) Abbottabad and Transfer/adjustment order dated 07.12.2023. It has been prayed that on acceptance of the appeal, the impugned orders might be set aside and respondents be directed to transfer/adjust the appellant back to GHS Jabbrian where he was posted.



2. Brief facts of the case, as given in the memorandum of appeal, are that the appellant was serving in the Education Department since 09.04.2005. He was posted in Government High School Jabbrian District Abbottabad. He filed two complaints against one Ishtiaq Hussain, Naib Qasid. An enquiry was conducted in the school whereas another was conducted by the Deputy Director Education and last enquiry was conducted by the Principal GHSS No. 1 in that regard and Ishtiaq Hussain was found guilty. After the inquiries, DEO (Male) Abbottabad transferred the appellant to GMS Banda Qazi, Abbottabad vide an order dated 28.10.2023, which was against the law and circumstances. Feeling aggrieved, he filed departmental appeal before respondent No. 1 on 13.11.2023 which was not responded. He filed a writ petition before the honourable Peshawar High Court in which directions were issued to the respondent to decide the fate of the appeal pending before him within one month but the same was not done; hence the instant service appeal.

3. Respondents were put on notice. Official respondents No. 1 & 2 submitted written reply/comments on the appeal. Private respondent No. 3 despite proper service did not appear nor his written reply was received, hence he was placed ex-parte vide order dated 03.05.2024. We heard the learned counsel for the appellant as well as learned Deputy District Attorney for the official respondents and perused the case file with connected documents in detail.

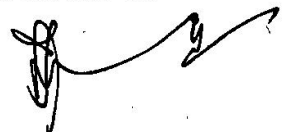
4. Learned counsel for the appellant, after presenting the case in detail, argued that Ishtiaq Ahmad, Naib Qasid was backed by Mr.



Muhammad Arshad, Head Master of the said school. He argued that the appellant, being complainant, was awarded the same punishment like accused who was found guilty during the inquiries, hence the impugned order was not maintainable. It was clearly mentioned in all the findings of the enquiry reports that Ishtiaq Hussain, Naib Qasid used to misbehave with the teachers of the school but the management (Head Master) did not take any action against him, instead the appellant was transferred from the said school through the impugned order dated 28.10.2023, which was premature and caused severe mental agony and damaged his reputation. He further argued that instead of considering the appeal filed by the appellant, respondent No. 2 deliberately transferred private respondent No. 3 to GHS Jabbrian vide order dated 07.12.2023, impugned through the amended service appeal. He requested that the appeal might be accepted as prayed for.

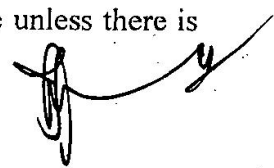
5. Learned Deputy District Attorney, while rebutting the arguments of learned counsel for the appellant, argued that under Section 10 of the Khyber Pakhtunkhwa Civil Servants Act, 1973, the respondent department was empowered to transfer the appellant in the province and he could not refuse compliance and the desired posting was not his perpetual right. He requested that the appeal might be dismissed.

6. The appellant was transferred from Government High School Jabbrian Abbottabad to Government Middle School Banda Qazi Abbottabad vide impugned order dated 28.10.2023. Arguments and record presented before us show that some issue arose between the



appellant, while posted as C.T at GHS Jabbrian, and a Naib Qasid, Ishtiaq Hussain, of that school. The matter was inquired and it was found that both, the appellant and the Naib Qasid, created problems for the school administration and in view of that, both of them were transferred out of that school by the District Education Officer (Male) Abbottabad. Through the same order dated 28.10.2023, one Raja Khizar C.T was transferred to GHS Jabbrian, in place of the appellant. On 07.12.2023, Mr. Zubair Khan, respondent No. 3 (of amended appeal), was transferred as C.T at GHS Jabbrian, and the appellant has impugned that order also before us, with the prayer to set aside both the orders and direct the respondents to transfer him to GHS Jabbrian.


7. Here we refer to Section 10 of the Khyber Pakhtunkhwa Civil Servants Act, 1973 according to which a government servant is bound to serve anywhere within the province, in this case the district, in the best public interest and without raising any objection. The appellant, being a civil servant, cannot claim transfer of his own choice, rather he has to serve where his competent authority wants him to serve in the best public interest and exigency of service. In case of the appellant, it has been noted that he was transferred not just within the same district, but he was not even transferred out of the city of Abbottabad, therefore, the point of completing tenure does not hold ground. Moreover, posting/transfer is an exclusive domain of the executive and the competent authority is fully empowered to transfer a civil servant anywhere according to the exigency of service. We feel that this Tribunal should not interfere in this domain of executive unless there is




any breach of law. In the case in hand, we do not see any violation of law or rules.

8. In view of the above discussion, the appeal in hand is dismissed being devoid of merit. Cost shall follow the event. Consign.

9. *Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal on this 04th day of June, 2024.*


(FAREEHA PAUL)
Member (E)


(KALIM ARSHAD KHAN)
Chairman

FazleSubhan, P.S


(10)

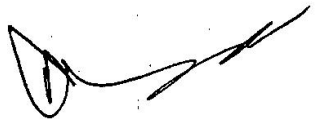
SA 345/2024

04th June, 2024 01. Malik Haider Ali Awan, 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 05 pages, the appeal in hand is dismissed being devoid of merit. Cost shall follow the event. Consign.

03. *Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal on this 04th day of June, 2024.*


(FARIEHA PAUL)
Member (E)


(KALIM ARSHAD KHAN)
Chairman

Fazal Subhan PS