

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL AT CAMP COURT SWAT

Service Appeal No: 1183/2018

BEFORE: MRS. RASHIDA BANO ... MEMBER (J)
MR. MUHAMMAD AKBAR KHAN ... MEMBER (E)

**Mr. Suhar Wardy, SST General (BPS-16) GHS Sore Laspur District
Chitral.**

.... (*Appellant*)

VERSUS

1. The Government of Khyber Pakhtunkhwa through Chief Secretary at Civil Secretariat Peshawar.
2. Secretary to government of Khyber Pakhtunkhwa, Elementary & Secondary Education Department, Peshawar.
3. Director, Elementary & Secondary Education, Khyber Pakhtunkhwa, Peshawar.
4. Deputy Director (Establishment) Directorate of Elementary & Secondary Education, Khyber Pakhtunkhwa, Peshawar.
5. EDO, Elementary & Secondary Education, District Chitral.
6. Secretary Finance Government of Khyber Pakhtunkhwa at Civil Secretariat, Peshawar.

.... (*Respondents*)

Syed Ghufuran Ullah Shah
Advocate

... For appellant

Mr. Umair Azam
Additional Advocate General

... For respondents

Date of Institution.....09.08.2018
Date of Hearing.....06.06.2024
Date of Decision.....06.06.2024

JUDGMENT

RASHIDA BANO, MEMBER (J): The instant service appeals have been instituted under section 4 of the Khyber Pakhtunkhwa Service Tribunal, Act 1974

with the prayer copied as below:



“On acceptance of the instant appeal, the impugned notification bearing No.SO(S/M)E&SED/4-33/2016 dated 09.03.2018; be set aside and the appellant be allowed for full monitory and service benefits with all sub sequential effects. Any such relief which this honorable Tribunal deems proper and just be granted to the appellant against the respondents keeping in view the circumstances of the case.”

2. Brief facts leading to the filing of the instant appeal are that on December 3, 2015, the appellant while posted as Senior CT BPS-16 at Government High School Harchin, Chitral, a verbal complaint was made against Didar Ali, (Sweeper) of the school, who had criminal allegations with respect to cheating the complainant named Tahira Bibi D/O Shaheer Khan. Upon which the Head Master of the school took action and informed the competent authority through the resolution of Parent Teacher Council and it was recommended to take disciplinary action against the sweeper including his immediate transfer from the school. A case FIR No. 145 dated 03.12.2015 was also lodged against him, in which he was sent behind bars and transferred from GHS Harchin to EDO Office Chitral. On 05.08.2016 the complainant again came to the school with a demand to terminate the accused Sweeper from service. The appellant, alongwith the teachers and Head Master put their possible efforts to satisfy her about the departmental and criminal proceedings against the accused. The demand of the complainant was also intimated to the EDO Office Chitral who assured that strict disciplinary action would be taken against accused, hence she left the school being satisfied. She came back to the school after school time in the



absence of appellant and Headmaster in poisoned condition and acted suicide. The accused Didar Ali was charged in criminal case with effect to causing death of the deceased in case FIR No. 135 dated 05.08.2016. Consequently, the appellant was also proceeded with departmentally and vide impugned order minor penalty of withholding annual increments for three years was imposed upon him. The appellant filed departmental appeal, which was not responded, hence the instant service appeal.

3. On receipt of the appeal and its admission to full hearing, the respondents were summoned. Respondents 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 Additional Advocate General for the respondents.

5. The learned counsel for the appellant reiterated the facts and grounds detailed in the memo and grounds of the appeal while the learned Additional Advocate General controverted the same by supporting the impugned order(s).

6. Perusal of record reveals that on 3rd December, 2015 when appellant was posted as C.T Senior BPS-16 at Government High School, Harchin Chitral, a verbal complaint was made by one Mst. Tahira against Sweeper of the school namely Didar Ali for harassing her upon which Head Master of the school took notice of the matter by informing Competent Authority about the incident and through resolution of Parent Teacher Council (PTC) strict disciplinary action was recommended against the said Sweeper Didar



Ali including his immediate transfer from the School.

7. The Incident was reported to the local police on the basis of which FIR No.135 U/S 506/354 PPC on 03.12.2015 at Police Station Mastung, Chitral was lodged against the accused Didar Ali. Accused was arrested and he was also transferred from the said school after his release from the Jail. Appellant was witness in the criminal case, therefore, his statement was recorded by Police, complete challan was submitted. After about 08 months of the complaint the same complainant once again came to the School on 05.08.2016 with demand to terminate the accused Sweeper from service. The appellant alongwith respectable teachers of the School and Head Master of the school put their generous possible effort to satisfy her about the departmental and criminal proceedings against the accused.

8. The demand of the complainant was also intimated to the DEO Office Chitral through phone DDEO namely Ihsan ul Haq also assured her to take strict administrative action against the accused according to the law; hence, she left the school being satisfied. The Complainant came back to school after school timing in absence of the appellant and Head Master, in poisoned condition and committed suicide to this effect FIR No.135 dated 05.08.2016 U/S 322 was lodged at Police Station Mastung Chitral, show cause notice was issued to the appellant, reply of which was submitted by the appellant after which authority issued charge sheet and statement of allegation and appointed Mr. Muhamamd Masood, Additional Secretary Environment Department and Mr. Said Rehman principal GHS No.2 Batkhela, Malakand and to probe the matter by conducting inquiry, inquiry committee submitted their finding to the authority on 31.01.2017 which read as under;



"The conclusion drawn by previous two inquiries noted above states that circumstantial evidence might suggest that he instigated the girl to lodge FIR with police because his name has been associated with the story from the very first complaint of molestation by MS Tahira against Didar Ali, he figures in the list of witness in the court of law and subsequently under mounting pressure of public resentment he was also transferred from GHS Harchin to pacify the people of the area. So, he appears to have a finger in the pie. Therefore, we agree with the conclusion drawn by the previous two inquiries that circumstantial evidences suggest that he might have instigated the deceased Tahira Bibi to lodge complaint with the police."


9. Perusal of inquiry committee report mentioned above the statements/view points of the teachers were recorded by committee namely Hidayat Ullah S.A.T, Mr. Sher Faraz SST, Mr. Biffat ud Din SST, Mr. Lal Khan, Laboratory Attendant, Mr. Qayyum Shah, GHS Harchin, but perusal of statement annexed with the inquiry reveals that said statement were recorded on 09.08.2016, 28.09.2016, 29.09.2016, 22.11.2016 and 17.03.2017 in the Court of Jamil Faqir before order of inquiry of both the inquiry committee which means that no statement were recorded by the inquiry committee and no opportunity of self-defense by providing chance of cross examination upon the witness provided which is not in accordance with rules and against the settled norms on the subject. Inquiry committee relied upon the statement recorded during fact finding inquiry, by the Ilaqa Magistrate and Governor Inspection Team and themselves did not bother to




record even a single statement which is clear cut violation of the rules and law. Inquiry committee had not afforded opportunity of self defence to the appellant which render inquiry against the rules.

10. For what has been discussed above, we are unison to set aside the impugned order and directed the respondents to conduct proper regular inquiry by providing opportunity to appellant to defend himself. Costs shall follow the event. Consign.

11. *Pronounced in camp court at Swat and given our hands and seal of the Tribunal on this 6th day of June, 2024.*


(MUHAMMAD AKBAR KHAN)
Member (E)
Camp Court Swat



(RASHIDA BANO)
Member (J)
Camp Court Swat


ORDER

06.06.2024 1 Learned counsel for the appellant present. Mr. Umair Azam, learned Additional Advocate General, for the respondents present.

2. Vide our detailed judgment of today placed on file, we are unison to set aside the impugned order and directed the respondents to conduct proper regular inquiry by providing opportunity to appellant to defend himself. Costs shall follow the event. Consign.

3. *Pronounced in camp court at Swat and given our hands and seal of the Tribunal on this 6th day of June, 2024.*


(MUHAMMAD AKBAR KHAN)
Member (E)
Camp Court Swat


(RASHIDA BANO)
Member (J)
Camp Court Swat