

**KHYBER PAKHTUNKHWA SERVICE TRIBUNAL AT CAMP COURT SWAT**

Service Appeal No:4315/2020

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

**Didar Ali, Ex-Sweeper (BPS-03) at GCMHS, District Chitral.**

... (*Appellant*)

**VERSUS**

1. The Government of Khyber Pakhtunkhwa through Chief Secretary at Civil Secretariat Peshawar.
2. Secretary Elementary & Secondary Education (E&SE) Department, Government of Khyber Pakhtunkhwa, Peshawar.
3. Section Officer (R-I), Establishment and Administration Department (Regulation Wing), Government of Khyber Pakhtunkhwa, Peshawar.
4. District Education Officer (Male) Lower Chitral.

.... (*Respondents*)

Syed Ghufran Ullah Shah  
Advocate

... For appellant

Mr. Umair Azam  
Assistant Advocate General

... For respondents

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Date of Institution..... 19.03.2020  
Date of Hearing..... 05.06.2024  
Date of Decision..... 05.06.2024

**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 dated 09.03.2018 of respondent No.2 may kindly be set aside and the appellant may be reinstated to his post (Sweeper, BPS-03) with all back benefits admissible under the law and rules.”**



2. Brief facts leading to the filing of the instant appeal are that the appellant was appointed as Sweeper in the Government High School, Harchin, Chitral by the respondents. That on December 3, 2015, a case FIR No. 145 under section 506, 354 PPC dated 03.12.2015 at Police Station Mastung, Chitral was also lodged against him, in which he was convicted for two years and six months. Later on he was acquitted from the charges by the learned Additional Sessions Judge/Izafi Zilla Qazi, Chitral. Another FIR No. 135, dated 05.08.2016 Under Section 322 PPC was lodge against the appellant at Police Station Mastung, Chitral by Mst. Tahhira Bibi (now deceased), wherein he was acquitted from the charges by the learned Additional Sessions Judge/Izafi Zilla Qazi, Chitral vide judgment dated 03.07.2019. Besides criminal proceedings, departmental proceedings was also initiated against the appellant which resulted into his removal from service vide impugned order dated 09.03.2018. Feeling aggrieved, he filed departmental appeal, which was regretted on 22.01.2020, 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 Assistant 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 Assistant Advocate General controverted the same by supporting the impugned order(s).



6. Perusal of record reveals that appellant was appointed as Sweeper in the Government High School, Harchin, Chitral by the respondents. On 03.12.2015, an FIR No.145 U/S 506, 354 PPC was registered against the appellant at Police Station Mastung, Chitral, in which the appellant was convicted for six months and two years in the above charges respectively by the Judicial Magistrate/Ilaqa Qazi, Chitral on 20.05.2019. However, on appeal the appellant was acquitted of the charges on 03.07.2019 by the learned Additional Sessions Judge/Izafi Zilla Qazi, Chitral. That during the above trial, another FIR No.135 dated 05.08.2016 U/S 322, PPC was lodged against the appellant at Police Station Mastuj, Chitral by Mst. Tahira Bibi (now deceased) wherein the appellant was acquitted of the charge by the learned Additional Sessions Judge/Izafi Zilla Qazi, Chitral vide judgment dated 03.07.2019. That during pendency of the criminal trials disciplinary proceedings were also initiated against the appellant by issuing charge sheet dated 10.03.2019 on the allegation produced as under;

***"You sexually harassed Mst. Tahira Bibi D/O Shaheer Khan on 03-12-2015 when she was on the way to her college. On 05-08-2016 the affectee came to GHS Harchin to protest for no action against you and took poison and died."***

7. Mr. Muhammad Masood Additional Secretary Environment and Said Rehman Principal who submitted their report and finding on 31.05.2017 which read as;

***"So, far as the charge regarding molestation of Mst. Tahira Bibi, Khan by the accused Mr. Didar Ali, the then Sweeper GHS Harchin is co under trial in the court of law in Chitral and the court is competent to de beyond the scope of this inquiry."***


On the basis of which appellant was removed from service vide impugned order dated 09.03.2018.




8. Perusal of inquiry committee report mentioned above reveals that statements/view points of the teachers were recorded by the 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 afforded to appellant, 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 provided opportunity of cross examination to the appellant which render inquiry against the rules.

9. 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.

10. *Pronounced in camp court at Swat and given our hands and seal of the Tribunal on this 5<sup>th</sup> day of June, 2024.*

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

  
(RASHIDA BANO)  
Member (J)  
Camp Court Swat

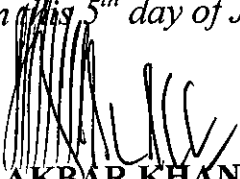
**ORDER**

05.06.2024 1 Learned counsel for the appellant present. Mr. Umair Azam, learned

Assistant 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 5<sup>th</sup> day of June, 2024.*

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

  
(RASHIDA BANO)  
Member (J)  
Camp Court Swat