

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL AT CAMP COURT ABBOTTABAD

Service Appeal No. 87/2023

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

Muhammad Ibrar S/O Mabar Khan R/O Ahmad Abad, Tamea, Tehsil & District
Batagram. (Appellant)

VERSUS

1. The Government of Khyber Pakhtunkhwa through Chief Secretary, Civil Secretariat, Peshawar.
2. The Director General Health Services Department, Khyber Pakhtunkhwa, Peshawar.
3. The Government of Khyber Pakhtunkhwa through Secretary Health, Civil Secretariat, Peshawar.
- 4.
5. The District Health Officer, Battagram. (Respondents)

Mr. Amjid Hasan Tanoli
Advocate ... Forappellant

Mr. Asif Masood Ali Shah
Deputy District Attorney ... Forrespondents

Date of Institution..... 06.01.2023
Date of Hearing..... 22.07.2024
Date of Decision..... 22.07.2024

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:

“That on acceptance of this appeal, the impugned orders dated 23.08.2021 and 28.08.2021 by respondent No.2 be declared as illegal, unlawful, against the factual position, contra legume against the recognized rights of the appellant, passed under political influence of the ruling party and their representatives, bases on motives other than legal. The respondents may please

be directed to withdraw the impugned notification/order and allow the appellant to perform his duties as per their initial appointment orders and payment of arrears /back benefits.”

2. Brief facts leading to filing of the instant appeal are that respondent No. 4 advertised various posts of para-medical staff in daily newspaper. Appellant being eligible applied alongwith others candidates. After short listing he was called for interview to appear before the DSC and thereafter he was appointed against the vacant post of PHCT (MP) vide order dated 17.08.2021. He submitted his arrival report and started to perform his duty. In the meanwhile, vide office order dated 23.08.2021, appointment order of the was cancelled and an inquiry was ordered to be conducted in the matter. Feeling aggrieved, he filed writ petition before the Peshawar High Court and the Peshawar High Court, vide order dated 15.09.2022 transmitted the writ petition to the respondents for treating the same as departmental appeal. But the respondents did not respond to the departmental appeal, hence, the instant service appeals.

4. We have heard learned counsel for the appellants and Mr. Asif Masood Ali Shah, Deputy District Attorney for the respondents and have gone through the record and the proceedings of the case in minute particulars.

5. Learned counsel for the appellants argued that the impugned orders dated 23.08.2021 and 28.08.2021 were against law, facts and norms of natural justice. He submitted that the respondents had violated Articles-4 & 25 of the Constitution of Islamic Republic of Pakistan, 1973. Further submitted that no inquiry had been conducted before passing of the impugned orders which was against law and rules. Lastly, he concluded that the action taken against the appellants was arbitrary and malafide, therefore, he requested for acceptance of the instant service appeals.



6. Conversely, learned Deputy District Attorney submitted that the respondents had treated in accordance with law, rules and principles of natural justice. Further submitted that a fact finding inquiry had been conducted before passing of impugned orders; that the appellants were appointed without conducting of ETEA test. Further submitted that irregularities had been committed in the process of appointments of the appellants due to which their appointments were cancelled. Therefore, he requested for dismissal of the instant service appeals.

7. Perusal of record reveals that appellant applied for the post in consequence of advertisement published in newspaper for different posts of JCT Radiology, JCTC Surgical, JCT Pulmonology, PHCT(EPI) and EPI Vaccinator advertised by respondent No.3. Appellant was considered by the DPC duly constituted and attended by the respondent No.3 as Chairman, Dr. Ahmad Faisal representative of DGHS and Mr. Mustafa Khan representative of DC Battagram as members held on 14.07.2021 upon recommendation of DSC, appellant was appointed vide order dated 17.08.2021 by respondent No.3.

8. Appellant assumed charge of his post on 20.08.2021 and started performing official duties but appointment order was withdrawn by Director General Health vide order dated 23.08.2021 followed by order of respondent No.3 dated 27.08.2021 on the grounds of irregularities committed during appointing/recruitment process. Appellant approached worthy Peshawar High Court, Peshawar by filling writ petition bearing No.956/2021, 955/2021, which was considered as departmental appeal vide order dated 15.09.2022 by considering appellant as civil servant and send it to the respondent to decide it.

The order of worthy Peshawar High Court is reproduced as under:




“Since the matter squarely falls within the jurisdiction of service tribunal, as such, jurisdiction of this court is bar under Article 212 of The Constitution of Islamic Republic of Pakistan.”

9. In view thereof copy of the memorandum of this writ petition be transmitted to the respondents/department and be treated as department appeal for decision in accordance with law. On the completion of 90 days the petitioner would be at liberty to approach service tribunal subject to all just and legal exceptions. Respondent after receipt of order of worthy Peshawar High Court alongwith writ petition did not get decided the matter within 90 days.

10. It is also pertinent to mention here that appointment order was cancelled as per representative of respondent upon report of respondent No.3 who reported that local MPA Mr. Zubair forcefully snatched entire record of appointments/recruitments of appellant at gun point from him as he wants to appoint his blue eyed who was not appointed. When respondent No.3 reported incident of snatching of record legal proceeding must be initiated against the said MPA but instead of doing so, appointment order was cancelled without providing opportunity to direct effectees i.e. present appellant which is against the settled norms and rules upon subject which is not sustainable in the eye of law.


11. Moreover it is mentioned in cancellation order dated 27.08.2021 local in-charge are directed not to accept the arrival of any of appointee/candidate but present appellant submit his arrival on 20.08.2021 and also assumed charge. So,


 when appellant assumed charge then he became civil servant and he will have to

be dealt with in accordance of rules and law, otherwise too worthy Peshawar High Court considered appellant as civil servant.

12. Therefore, it would be appropriate in the circumstance to provide chance to the appellant to defend himself as he is the appointee of the process in which irregularities were allegedly committed. Hence the impugned orders are set-aside and the appellant is reinstated into service for the purpose of inquiry with direction to the respondents to associate the appellant with the inquiry proceedings by providing chance of defense and hearing. Respondent are further directed to conduct and conclude the inquiry within sixty days after receipt of this order. Costs shall follow the event.

13. *Pronounced in camp court at Abbottabad and given our hands and seal of the Tribunal on this 22nd day of July, 2024.*



(**FARZHA PAUL**)
Member (E)
Camp Court Abbottabad



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

ORDER

22.07.2024

1. Learned counsel for the appellant present. Mr. Asif Masood Ali Shah, learned Deputy District for the respondents present.
2. Vide our detailed judgment of today placed on file, the impugned orders are set-aside and the appellant is reinstated into service for the purpose of inquiry with direction to the respondents to associate the appellant with the inquiry proceedings by providing chance of defense and hearing. Respondent are further directed to conclude the inquiry within sixty days after receipt of this order. Costs shall follow the event.
3. *Pronounced in camp court at Abbottabad and given our hands and seal of the Tribunal on this 22nd day of July, 2024.*


(FAREEHA PAUL)
Member (E)
Camp Court Abbottabad


(RASHIDA BANO)
Member (J)
Camp Court Abbottabad