

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

Service Appeal No. 7088/2021

**BEFORE: MR. KALIM ARSHAD KHAN ... CHAIRMAN
MRS. RASHIDA BANO ... MEMBER (J)**

Mr. Hakim Ullah, Naib Qasid, GHSS Morilasht, District Chitral.

.... (Appellant)

VERSUS

1. The Director (E&SE) Department, Khyber Pakhtunkhwa, Peshawar.
2. The District Education Officer District Chitral.
3. The District Accounts Officer, District Chitral.

... (Respondents)

Mr. Saif Ali Khan
Advocate

... For appellant

Mr. Umair Azam,
Additional Advocate General ... For respondents

Date of Institution.....28.07.2021
Date of Hearing.....04.09.2024
Date of Decision.....04.09.2024

JUDGMENT

RASHIDA BANO, MEMBER (J): The instant service appeal has 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 order dated 21.05.20198 may very kindly be modified/rectified to the extent of adjustment of the appellant w.e.f 27.01.2015 with all back benefits. Any other remedy which this august Tribunal deems fit that may also be awarded in favor of the appellant.”



2. Brief facts as reflected from the record of the case are that appellant was appointed as Naib Qasid vide order dated 20.12.2014; after submitting charge report, he started performing his duties; that vide order dated 27.01.2015, his appointment order was withdrawn by the respondent No.2; that feeling aggrieved, he filed Writ Petition No.66-M/2015 before the Hon'ble Peshawar High Court, Mingora Bench, Swat and the Ho'ble High Court, vide order dated 21.04.2018, ordered the respondents to adjust the appellant on the Class-IV post; that vide order dated 21.05.2018, the appellant was adjusted w.e.f 21.05.2018 and not from the date of appointment i.e. 27.01.2015; that the appellant filed departmental appeal but the same 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 appellant, learned counsel for private respondent 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, for respondents, controverted the same by supporting the impugned order.

6. Perusal of record shows that appellant was appointed as Naib Qasid in the Education Department vide order dated 20.12.2014, however, vide order dated 27.01.2015, his appointment order was withdrawn/cancelled by the District Education Officer, Chitral. Against the said order, he approached the Hon'ble Peshawar High Court Mingora Bench (Dar-Ul-Qaza), Swat by filing Writ Petition



No.66-M of 2015. The Hon'ble Peshawar High Court vide its judgment dated 24.04.2018 ordered for adjustment of the appellant. Relevant Para of the said judgment is as under:

“6 The respondent No.3 i.e. the District Education Officer, Chitral appeared in person in response to an order passed by this Court and when he was confronted with the situation that how after joining the service by the petitioner that too without any objection by the respondents, the withdrawal of the appointment order was passed without observing the coding formalities, he candidly conceded that the petitioner will be adjusted against any vacant post. So, in such circumstances, this writ petition is allowed and the respondents are directed to adjust the petition on any vacant post of Class-IV as early as possible.”


7. Vide order dated 21.05.2018, the District Education Officer (Male) Chitral adjusted the appellant at Government Higher Secondary School Morilasht Chitral, in compliance of the judgment of the Hon'ble Peshawar High Court. In the said order, the appellant was adjusted however, the same was given effect from 24.04.2018. For the purpose of adjustment from back date i.e. 27.01.2015 (the date of withdrawal/cancellation of appointment order), he filed representation before the authorities, however, no heed was given to his representation, therefore, he approached this forum for his adjustment from the date of cancellation of appointment order.

8. The Tribunal has to observe two issues i.e. seniority of the appellant and the second is regarding the back benefits/salaries. As the appellant was not freshly appointed, rather adjusted by the Court order. Therefore, he is rightful to be

placed in the seniority list at a position from where he was dropped by withdrawing/cancelling the appointment order. The second issue is regarding the salaries of intervening period, but the same cannot be granted to the appellant on the established analogy of "No work, no pay".

9. In view of the above, the impugned order dated 21.05.2018 is set aside and the appeal is partially accepted to the extent of seniority of the appellant that his seniority be continued from his initial stage and shall not be disturbed for cancellation/withdrawal of the appointment order. Costs shall follow the event. Consign.

10. *Pronounced in open court in Swat and given under our hands and seal of the Tribunal on this 4th day of September, 2024.*


(KALIM ARSHAD KHAN)
Chairman
Camp Court Swat


(RASHIDA BANO)
Member (J)
Camp Court Swat

Order Sheet

04.09.2024

1. Learned counsel for the appellant present. Mr. Umair Azam, Additional Advocate General alongwith Mr. Ahmad ud Din, ADEO (M) for the respondents present.
2. Vide our detailed judgment of today placed on file, the impugned order dated 21.05.2018 is set aside and the appeal is partially accepted to the extent of seniority of the appellant that his seniority be continued from his initial stage and shall not be disturbed for cancellation/withdrawal of the appointment order. Costs shall follow the event. Consign.
3. *Pronounced in open court in Swat and given under our hands and seal of the Tribunal on this 4th day of September, 2024.*



(KALIM ARSHAD KHAN)
Chairman
Camp Court Swat



(RASHIDA BANO)
Member (J)
Camp Court Swat

Mutazem Shah