

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

Service Appeal No. 861/2024

BEFORE: MR. AURANGZEB KHATTAK... MEMBER (J)
MISS FAREEHA PAUL ... MEMBER (E)

Gul Faraz, son of Shahid Khan, resident of Kach Banda Karak Ex-Deputy
DEO (M) Lakki Marwat presently posted as SDEO Hangu.
.... (*Appellant*)

VERSUS

1. Government of Khyber Pakhtunkhwa through Chief Secretary, Peshawar.
2. Secretary to Government of Khyber Pakhtunkhwa Elementary & Secondary Education Department, Peshawar.
3. Shoukat Ali Jan Teaching Cadre (BPS- 17) Government High School Baru Lakki Marwat, presently serving as Deputy DEO (M) Lakki Marwat.
....(*Respondents*)

Mr.Khalid Mahmood,
Advocate

... For appellants

Mr.Asif Masood Ali Shah
Deputy District Attorney

... For Official respondents

Date of Institution..... 24.06.2024
Date of Hearing..... 11.09.2024
Date of Decision..... 11.09.2024

JUDGMENT

FAREEHA PAUL, MEMBER (E): The instant service appeal has been instituted under section 4 of the Khyber Pakhtunkhwa Service Tribunal, Act 1974 against the notification dated 21.03.2024 issued by respondent No. 2 with the prayer that the service appeal might be allowed and impugned notification dated 21.03.2024 and subsequent order dated 10.06.2024 might be cancelled and as a result thereof, posting of appellant as Deputy DEO (Male) Lakki Marwat vide notification dated 22.11.2022 might be restored.



02. Brief facts of the case, as given in the memorandum of appeal, are that the appellant was serving as Deputy DEO (M) in Education Department. He was lastly transferred and posted as Deputy DEO (M) Lakki Marwat vide notification dated 22.11.2022. While serving in that capacity, vide notification dated 21.03.2024, he was prematurely transferred and placed as OSD at Directorate, Elementary & Secondary Education while private respondent No. 3 was posted vice the appellant. The appellant filed COC Petition No. 161/2024 before the Honourable Peshawar High Court because the respondent department posted a Teaching Cadre Officer against the post of Management Cadre which was violation of judgment dated 18.11.2009 in Writ Petition No. 2937/2009 and the same was pending before the Hon'ble court for adjudication. The appellant filed departmental appeal dated 22.03.2024 against the order dated 21.03.2024. During that period, Respondent No. 2 posted the appellant as SDEO Hangu vide order dated 10.06.2024 against which he preferred departmental appeal on 20.06.2024. The appeal filed on 22.03.2024 was not decided within the statutory period, hence the instant service appeal.

03. Respondents were put on notice. Official respondents No.1 and 2 submitted their joint written reply/comments while private respondents No. 3 submitted separate written reply. We heard the learned counsel for the appellant and learned Deputy District Attorney, for the official respondents, and perused the case file with connected documents in detail.

04. Learned counsel for the appellant, after presenting the case in detail, argued that there were two cadres in the Education Department; Management Cadre, who could only be assigned the duties relating to management of the



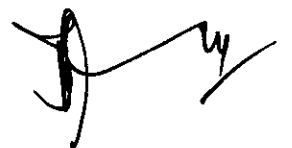
department and the Teaching Cadre, whose duty was to teach the students in the schools and had no concern with management of the department. He referred to a judgment dated 18.11.2019 of the Hon'ble Peshawar High Court in Writ Petition No. 2937/2009 wherein it was observed that the provincial government had taken a firm decision that all those teachers belonging to teaching cadre should be posted in education institutions to teach the students according to their qualifications while those belonging to administrative cadre should hold the post relating to administration. The Honourable court further observed that the petitioners in the Writ Petition must deliver according to the policy of government and because they were highly qualified teachers, it was not befitting to hold administrative posts because they were getting benefits but students were suffering, and therefore they should go to their respective places, where they were required to do the job. He further argued that in view of that judgment, the Establishment Department Khyber Pakhtunkhwa issued letter dated 08.02.2019 directing the Secretary E&SE and others to implement the said judgment in letter and spirit but in utter disregard of the judgment dated 18.11.2009, respondent No. 2 issued notification dated 21.03.2024 vide which respondent No. 3, who belonged to Teaching Cadre, was posted against the post of Management Cadre. He argued that as per policy of the Provincial Government, normal tenure for posting was two years but appellant was prematurely transferred which was against the rules and policy of the Government. He requested that the appeal might be accepted as prayed for.

05. Learned Deputy District Attorney, while rebutting the arguments of learned counsel for the appellant, argued that the appellant was posted as Deputy District Education Officer (Male) Lakki Marwat vide notification dated



22.11.2022 in his own pay scale. He argued that through the notification dated 21.03.2024, he was not transferred but in fact his services were placed at the disposal of the Directorate E&SE for further posting. Later on he was posted as SDEO (Male) Hangu against the vacant post vide order dated 10.06.2024. He further argued that against the impugned notification dated 21.03.2024, no departmental appeal was preferred before the competent authority and the departmental appeal filed against the notification dated 10.06.2024 was yet to be decided and hence the instant service appeal was premature. He argued that under section 10 of the Khyber Pakhtunkhwa Civil Servants Act, 1973, the respondents were empowered to post a Teaching Cadre officer against the post of Management Cadre in the best public interest. He requested that the appeal might be dismissed.


06. Through the instant service appeal, the appellant had impugned a Notification dated 21.03.2024, vide which his services were placed at the disposal of Directorate of Elementary & Secondary Education and Mr. Shoukat Ali Khan, private respondent no. 3, was transferred in his place. From the arguments and record presented before us, it transpires that the appellant belonged to the Management Cadre whereas respondent No. 3 was from Teaching Cadre. Appellant was SDEO, but posted against the position of DDEO (Male) Lakki Marwat in his own pay and scale before issuance of the impugned order. He was aggrieved on two accounts; first when his services were placed at the disposal of Directorate of Elementary and Secondary Education and that too without allowing him to complete his normal tenure of posting of two years; and second, when an official from Teaching Cadre was posted in his place, at the post belonging to the management cadre. As far as his first grievance regarding his




services being placed at the disposal of Directorate of E&SE and not allowing him to complete the tenure of two years was concerned, he himself in his appeal brought it to our notice that he was transferred as SDEO (Male) Hangu vide a notification dated 10.06.2024 and it was stated that he had already taken over the charge of his new position therefore, his plea regarding premature transfer became infructuous. As regards his second grievance, there was no second opinion on the fact that under Section 10 of the Khyber Pakhtunkhwa Civil Servants Act 1973, the competent authority could post any civil servant at a position in the best public interest, and therefore the appellant could not raise any objection or observation on such posting. However, it was observed that despite various judgments and orders of different judicial fora, including the Service Tribunal, the respondent department was still posting officials of Teaching Cadre on the positions of Management Cadre. The reason for such postings, as stated by the learned Deputy District Attorney, was shortage of Management Cadre officers.

07. In view of the above discussion, the appeal in hand is dismissed, being groundless. Costs shall follow the event. Consign.

08. *Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal on this 11th day of September, 2024.*


(FAREEHA PAUL)
Member (E)


(AURANGZEB KHATTAK)
Member (J) 11/09/2024

SA 861/24

11.09.2024

01. Mr. Khalid Mahmood Advocate for the appellant present. Mr. Asif Masood Ali Shah, Deputy District Attorney for the official respondents present. Arguments heard and record perused.

02. Vide our detailed judgment consisting of 05 pages, the appeal in hand is dismissed, being groundless. Cost shall follow the event. Consign.

03. *Pronounced in open court in Abbottabad and given under our hands and seal of the Tribunal on this 11th day of September, 2024.*


(FAREEHA PAUL)
Member (E)


(AURANGZEB KHATTAK)
Member (J) 11/09/2024

Fazle Subhan, P.S