

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR.

Service Appeal # 1229/2024

Mst. Shaista Sikandar.....Appellant.

VERSUS

Govt: of Khyber Pakhtunkhwa & others.....Respondents.

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Deponent

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BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR.

In Service Appeal No. 1229/2024

Mst. Shaista Sikandar, Senior Subject Specialist (BPS-18).....Appellant

VERSUS

Chief Secretary to Govt of KPK Peshawar..... Respondents.

PARAWISE COMMENTS ON BEHALF OF THE RESPONDENTS NOS. 01 & 02.

Respectfully Sheweth,

**Khyber Pakhtunkhwa
Service Tribunal**

Diary No. 16023

Dated 23-09-24

Preliminary Objections:

1. The appellant has not come to this Tribunal with clean hands.
2. The appellant is not an aggrieved person nor has any locus standi to file the present appeal.
3. That the appellant has concealed material facts from this Tribunal.
4. That the appellant is estopped by his own conduct to file the present appeal.
5. That the present appeal is against the prevailing law and rules.
6. That the appellant is not entitled for any relief, he has sought from this Honorable Tribunal.
7. That the present appeal is liable to be dismissed being devoid of any merits.
8. That the present appeal is hopeless time barred, hence liable to be dismissed.
9. That the present appeal is just filed by the appellant to pressurize the respondents for getting illegal and unlawful benefits.
10. That the appellant is just wasting the precious time of this Honorable Tribunal through the instant frivolous appeal.

On Facts

- 1 Pertains to record.
- 2 Para No.2 is regarding the appellant promotion from BPS-17 to BPS-18 as Senior Subject Specialist (BPS-18) vide order dated 08.11.2023 which has no concern with the matter agitated in the instant service appeal, therefore , needs no comments.
- 3 Para no.3 is incorrect and denied. It is submitted that the posting of the appellant and private respondent , no doubt was made vide order dated 19.02.2024 in the same school, but the posting of the private respondent as per remarks at S.No.23 in order dated 19.02.2024 was made against the post which was vacated in the consequential transfer mad at S.no.207 of the said order as the transferee Miss Dur-e-Shawar SS was holding the wrong posting against the post of BPS-18. In the same order dated 19.02.2024 the posting of the appellant was made against the vacant post of SS Economics BPS-18 evident from the remarks at

S.No.167 of the order dated 19.02.2024. Believably there was no vacant post of SS Economics of BS-18 at GGHSS Havelian at the time of the posting of the appellant. In view of the above the appellant has no cause of action to challenge the positing in question under the facts and law.

- 4 Para 4 Incorrect and denied. The appellant has not submitted her arrival report/ charge assumption report to the Competent Authority. Moreover the appellant has not mentioned / annexed any documentary proof which support the claim of the appellant regarding her submission of charge report. The appellant was transferred by the Competent Authority by exercising powers u/s 10 of Civil Servant Act, 1973, which is as under:-

“Every civil servant shall be liable to serve anywhere within or outside the Province in any post under the Federal Government, or any Provincial Government or local authority, or a corporation or body set up or established by any such Government.

Provided that nothing contained in this section shall apply to a civil servant recruited specifically to serve in a particular area or region:

Provided further that where a civil servant is required to serve in a post outside his service or cadre, his terms and conditions of service as to his pay shall not be less favorable than those to which he would have been entitled if he had not been so required to serve”

Therefore, in light of Section-10, desired posting is not the perpetual right of a civil servant and the department concerned can transfer any civil servant to serve at the given place as mentioned in the transfer/posting order, while the civil servant cannot refuse compliance.

It is further added that transfer and posting could not be claimed as matter of right and only competent authority could determine as to which officer was suitable for which place (2013 PLC (CS) 864 and 1991 PLC (CS) 374:) & Civil Servant could not claim posting at a particular station or at the place of his choice (2004 PLC (CS) 705.

- 5 That Para-5 is incorrect and denied. The appellant had not submitted any application to the Competent Authority for posting against the post of SS Economics BS-18. It is further added that it is the description of the Competent Authority under Section-10 CSA, 1973 to post a Civil Servant where his/her service are required in the public interest. Moreover, a Civil Servant has no vested right for posting against station of his/her choice, therefore, the instant appeal is liable to be dismissed.

- 6 Incorrect and denied. The appellant has neither assumed the charge nor performed duty against the post of SS-Economics BPS-18 at GGHSS Havilian Abbottabad. The appellant has neither annexed any documentary proof regarding activation of her pay nor pay roll which shows that she was working against the post of SS-Economics BPS-18 at GGHSS Havilian Abbottabad.
- 7 Incorrect and denied as per reply at Para-06 above.
- 8 Incorrect & denied. The Additional Secretary is not the competent authority to issue direction regarding posting/transfer of the appellant or private respondent in light of Civil Servant Act, APT Rules, 1989 and posting/transfer policy of the Provincial Government. This shows the lack of interest of the appellant regarding her primary duty of teaching but rather frequent visiting of posing of her choice, which is totally against the existing Laws/Rules & Policies.
- 9 Incorrect hence denied desired posting is not the perpetual right of a civil servant and the department concerned can transfer any civil servant to serve at the given place as mentioned in the transfer/posting order, while the civil servant cannot refuse compliance
- 10 Incorrect hence denied as no dairy and dispatch no is available on her Departmental appeal.
- 11 Need no comments.
- 12 The Respondents seeks dismissal of the instant service appeal on the following grounds inter-alia:-

On Grounds:

- a. Incorrect & denied. The Notifications dated 12.02.2024 and dated 08.04.2024 are as per Section 10 of CSA, 1973, therefore, liable to be maintained and the service appeal of the appellant may kindly be dismissed.
- b. Incorrect & denied. The Notifications dated 12.02.2024 and dated 08.04.2024 are as per Section 10 of CSA, 1973 and are issued by the Competent Authority in the best public interest.
- c. Incorrect hence denied, it is the discretion of the Competent Authority to place suitable officers where his/her services are required keeping the best interest of the public. Furthermore, the appellant pertains to Provincial Cadre and his services are transferable across the province.

d. Incorrect hence denied the service of the appellant was placed at the disposal of directorate for further posting. therefore, the ground of not treating on the Principals of Natural justice agitated by the appellant is misconceived/miss-leading and a deliberate attempt for illegal and getting posting of his choice which is against the spirit of Section-10 of CSA, 1973, therefore, the instant service appeal is liable to dismissed.

It is further added that transfer and posting could not be claimed as matter of right and only competent authority could determine as to which officer was suitable for which place (2013 PLC (CS) 864 and 1991 PLC (CS) 374:) & Civil Servant could not claim posting at a particular station or at the place of his choice (2004 PLC (CS) 705.

E. incorrect hence denied. The Notifications dated 12.02.2024 and dated 08.04.2024 are as per Section 10 of CSA, 1973 and are issued by the Competent Authority in the best public interest.

F-I incorrect hence denied. Reply of ground F-I in Para B,C,D.

It is therefore, most humbly requested that the appeal in hand being meritless may kindly be dismissed with cost.

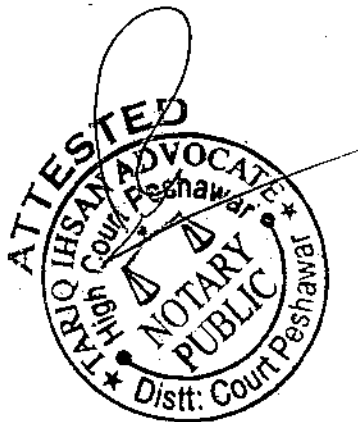
(Fiaz Alam)

Additional Secretary (E), E&SED

On behalf of

SECRETARY E&SED

(Respondent No. 01 & 02)



BEFORE THE HON'BLE SERVICE TRIBUNAL PESHAWAR

Service Appeal # 1229/2024

Mst. Shaista Sikandar..... Appellant

VERSUS

Secretary E&SE Govt. of Khyber Pakhtunkhwa & others..... Respondents

AFFIDAVIT

I, **Fiaz Alam**, Additional Secretary (Estab), Elementary & Secondary Education, Department do hereby solemnly affirm and declare that the contents of the accompanying para-wise comments, submitted by the respondents, are true and correct to the best of my knowledge and belief and nothing has been concealed from this Honorable Court.

It is further, stated on oath that in this appeal the answering Respondents have neither been placed ex-parte nor has their defense been struck off.



(Fiaz Alam)
Additional Secretary (Estab)
E&SE Department
on behalf of
SECRETARY E&SED
(Respondent No. 01&02)

.....



**GOVERNMENT OF KHYBER PAKHTUNKHWA
ELEMENTARY & SECONDARY EDUCATION DEPARTMENT**

Block "A" Civil Secretariat, Peshawar

Phone No. 091-9211128

AUTHORITY LETTER

It is certified that **Mr. Sajid Ullah, Section Officer (Litigation-II)** Elementary & Secondary Education Department, Government of Khyber Pakhtunkhwa, Peshawar is hereby authorized to submit parawise comments on behalf of Secretary Elementary & Secondary Education Department Peshawar in **Service Appeal # 1229/2024 Case Titled Mst. Shaista Sikandar vs Government of Khyber Pakhtunkhwa through Secretary Elementary & Secondary Education Department Khyber Pakhtunkhwa, Peshawar & Others.**

(Fiaz Alam)

**Additional Secretary (Estab)
E&SE Department
on behalf of
SECRETARY E&SED
(Respondent No. 01&02)**



**GOVERNMENT OF KHYBER PAKHTUNKHWA
ELEMENTARY & SECONDARY EDUCATION DEPARTMENT**

Block "A" Civil Secretariat, Peshawar

Phone No. 091-9211128

Dated Peshawar, the 27-08-2024.

NOTIFICATION

NO.SO(Lit-II)/E&SED/1-5/2021. I, Mr. Masood Ahmad, Secretary Elementary & Secondary Education Department is pleased to authorize Mr. Fiaz Alam, Additional Secretary (Establishment) Elementary & Secondary Education Department to sign parawise comments, replies, implementation reports, objection petitions, civil miscellaneous applications etc on my behalf for submission before various courts of law/tribunals in the best public interest.


(MASAOOD AHMAD)

SECRETARY TO THE
GOVERNMENT OF KHYBER PAKHTUNKHWA

Endst: of even No. & date.

Copy forwarded to the:-

1. Chief Secretary Khyber Pakhtunkhwa.
2. Advocate General Khyber Pakhtunkhwa.
3. Secretary Law Department.
4. Registrar Peshawar High Court Peshawar (with one each Spare copy for the Honorable Judges).
5. Registrar Service Tribunal Peshawar (with one each Spare copy for the Honorable Chairman/Members).
6. All Section Officers (Litigation) E&SE Department.
7. PS to Secretary, E&SE Department.
8. PA to Additional Secretary (General) E&SE Department.
9. PA to Deputy Secretary (Legal-I&II) E&SE Department.


SECTION OFFICER (Lit-II)