

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,PESHAWAR

BEFORE: **KALIM ARSHAD KHAN** ... **CHAIRMAN**
FAREEHA PAUL ... **MEMBER(Executive)**

Service Appeal No.4897/2021

Date of presentation of Appeal.....29.03.2021
Date of Hearing.....30.09.2024
Date of Decision.....30.09.2024

Muhammad Javed son of Kala Khan Ex-Naib Qasid of Government Girls Higher Secondary School Trangri, Residence of Chanyal PO Parahina Tehsil and District Mansehra(***Appellant***)

Versus

1. **Secretary, Elementary & Secondary Education Department, Peshawar.**
2. **Director, Elementary & Secondary Education Department, Peshawar.**
3. **District Education Officer (Female) Mansehra...(*Respondents*)**

Present:

Mr. Muhammad Ali Khan, Advocate.....For the appellant
Mr. Asif Masood Ali Shah, Deputy District Attorney....For respondents

SERVICE APPEAL UNDER SECTION 4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974 AGAINST THE IMPUGNED NOTIFICATION ENDSTT: NO.7806-10 DATED 01.11.2020 WHEREBY APPELLANT WAS REMOVED FROM SERVICE, WHICH IS ILLEGAL UNLAWFUL BASED ON MALAFIDE, THE SAME IS LIABLE TO BE SET ASIDE AND ALSO AGAINST NOT TAKING ACTION ON THE DEPARTMENTAL APPEAL OF THE APPELLANT WITHIN STATUTORY PERIOD.

JUDGMENT

KALIM ARSHAD KHAN CHAIRMAN: Facts of the case of the appellant, gathered from memorandum and grounds of appeal are that the appellant was appointed as

Class-IV through Employment Registration Card issued on 10.11.2014 by the Manager Employment Exchange Mansehra, vide order dated 29.01.2016; that he was adjusted in GGHSS Trangri Mansehra against vacant post; that on 01.10.2020, he was issued show cause notice that he was appointed against disabled quota, being not disabled; that vide order dated 01.11.2020, he was removed from service; that feeling aggrieved, he filed departmental appeal on 27.11.2020, but the same was not responded, hence, the instant service appeal.

2. On receipt of the appeal and its admission to full hearing, the respondents were summoned, who 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.

3. We have heard learned counsel for the appellant, learned Deputy District Attorney for respondents.

4. The learned counsel for the appellant reiterated the facts and grounds detailed in the memo and grounds of the appeal while the learned Deputy District Attorney controverted the same by supporting the impugned order(s).

5. In the case in hand, the appellant was appointed as a Class-IV employee based on an Employment Registration Card issued on November 10, 2014, admittedly issued by the Manager of the Employment Exchange in Mansehra,

with a formal order of adjustment to GGHSS Trangri Mansehra on January 29, 2016. On October 1, 2020, the appellant received a show cause notice asserting that his appointment was invalid as that was made against a seat reserved for disabled quota whereas he was not disabled. Consequently, he was removed from service on November 1, 2020. Following this, the appellant filed a departmental appeal on November 27, 2020, which went unanswered, prompting him to lodge the current service appeal. The central issues for determination involve the validity of the appointment, the procedural fairness of the removal, and the lack of response to the departmental appeal. However, appellant claimed that he had not applied against the disabled quota as he was not disabled.

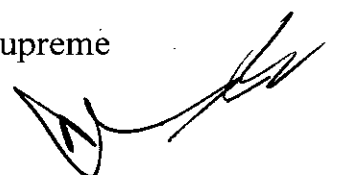
6. In the matter before us, the appellant contests his removal from service following an appointment as a Class-IV employee, asserting that the actions taken against him were unjust and procedurally flawed.

7. Record shows that the appellant was appointed based on a Employment Registration Card, and his adjustment to GGHSS Trangri Mansehra he was duly appointed on January 29, 2016. The subsequent show cause notice issued on October 1, 2020, questioning the legitimacy of his appointment under the disabled quota raises significant concerns regarding the basis for such claims. The appellant

maintained that he had not applied for this quota, as he does not identify as disabled, thus challenging the validity of the notice. It is undisputed that the appellant was a candidate; that he participated in the selection process, the Departmental Selection Committee not only selected but recommended him for appointment against Class-IV employees seat though against the quota seat reserved for the disabled, yet the above facts are undisputed. There appears, thus, no fault on the part of the appellant rather it was the DSC who might have acted negligently. There is nothing on record that the appellant was otherwise ineligible for appointment against any Class-IV set. Yes, if the quota seat was filled by appointment of the appellant that could be filled from available general seats, while removal of the appellant selected and appointed in a duly conducted selection process and that too after more than four years of service to none of the fault of the appellant would be inappropriate, unjust and impermissible.

8. In the issue involved in this case, the Apex Court's guidelines are necessary. Therefore, reliance is placed on 2007 S C M R 1451 titled "ASIM KHAN and others Versus ZAHIR SHAH and others" wherein, the august Supreme Court of Pakistan has held that:

"Respondents secured their appointment regarding posts in question as PTC teachers after recommendations of Departmental Selection Committee duly constituted by competent authority---Later on the appointment



letters were withdrawn by the authorities on the ground that respondents did not have valid domicile certificates of category "A"---High Court in exercise of constitutional jurisdiction restored the appointment letters of respondents---Validity-- Respondents had secured vested right, which right could not be taken or withdrawn without fulfilling the requirement of principles of natural justice---Order passed by the authority, withdrawing appointment letters being in violation of principles of natural justice, therefore, High Court was justified to accept their constitutional petition---Principles of natural justice must be read in each and every statute unless and until the same were excluded from the wording of the statute itself---Creation of classification among domiciled candidates was discriminatory---No infirmity or illegality in the judgment of High Court was found---Authorities failed to raise any question of public importance-- -Constitutional jurisdiction being equitable jurisdiction, Supreme Court declined to exercise its discretion in favour of authorities"

9. Besides, reliance is also placed on 2009 S C M R 663 titled "DISTRICT COORDINATION OFFICER, DISTRICT DIR LOWER and others Versus ROZI KHAN and others". The Supreme Court of Pakistan has held in the said case as:

"Civil servants, in the present case, were qualified and their appointments were made by the competent authority after observance of due process of law---No proper inquiry, such as issuing of charge -sheet/statement of allegations, show-cause notice, had been issued to the civil servants while terminating/withdrawing their services---Judgment of the Service Tribunal was based on valid and sound reasons and was entirely in consonance with the settled law---Neither there was misreading, nor misconstruction of facts and law was found in the said judgment of Service Tribunal---Any irregularity, whatsoever, if committed by the appointing department itself, the appointee could not be harmed, damaged or condemned subsequently when it occurred to the department that it had itself committed some irregularities qua any appointment---Petition for leave to appeal by the department was dismissed by the Supreme Court, in circumstances"

10. Furthermore, the Supreme Court has held in 2011 P L C (C.S.) 942 titled " DISTRICT COORDINATION OFFICER, DISTRICT DIR LOWER and others Versus ROZI KHAN and others" as under:

"7. The respondents were qualified and their appointments were made by the competent authority after observance of due process of law. No proper inquiry such as issuing of charge sheet/statement of allegations, show-cause notice has been issued to the respondents. The impugned judgment is based on valid and sound reasons and is entirely in consonance with the law laid down by this Court. Neither there is misreading or non-reading of material evidence, nor misconstruction of facts and law. Needless to emphasize that for any irregularity whatsoever, if committed by the department itself, the appointee cannot be harmed, damaged or condemned subsequently when it occurs to the department that it had itself committed some irregularities qua any appointment. This Court has held in Collector of Customs and Central Excise, Peshawar and 2 others v. Abdul Waheed and 7 others 2004 SCMR 303 that for the irregularities committed by the department itself qua appointment of a candidate, the appointees cannot be condemned subsequently. It was observed:---

"Obviously the appointments so made, were made by the Competent Authority and in case prescribed procedure was not followed by concerned authority, the appointees/respondents could be blamed for what was to be performed and done by the Competent Authority before having verified the qualification and suitability and observance of the due process before issuing the appointment orders."

8. Having considered the matter from all angles in the light of material on file, we find that learned Tribunal in the impugned judgment has discussed all aspects of the matter in a proper manner and has assigned cogent and sound reasoning in the impugned judgment before arriving at the conclusion. Neither any misreading or non-reading of the evidence on record could be pointed out in the impugned judgment, justifying interference by this Court. Even otherwise no substantial question of law of public importance is involved.

9. Pursuant to above, finding no substance in these petitions, we dismiss the same and decline to grant leave"



11. Reliance is also placed on 2012 P L C (C.S.) 749 titled "DISTRICT EDUCATION OFFICER (MEE), BAHAWALNAGAR and others Versus Mst. FOUZIA NAZIR and 2 others", the same is as under:

"2. The facts briefly stated are that in Civil Appeal No. 112-L of 2011, the respondent No. 1 applied for the post of Elementary School Educator (ESE) as also for the post of Senior Elementary School Teacher (SESE). After due process and in terms of the merit list prepared, she was declared successful and entitled to appointment against those posts. She opted for the post of SESE. However, subsequently on an application made by respondent No. 2, the merit list was reviewed and the latter was found to have a better merit list than respondent No.1 and her appointment order therefore, was withdrawn. She filed the constitutional petition, which was allowed vide the impugned judgment as the learned High Court was of the view as follows:--

"It is an admitted position that petitioner was selected against two posts upon initial recruitment list one for the post of ESE at Chak No. 126-Murad and second post for SESE Arts in Chak No. 126-Murad, Tehsil Chishthan (sic.). The petitioner was issued appointment letter by the respondents for the post of SESE. She joined the post and continuously worked for the period of one and half year. Later on, on the application of some other appellants the department again scrutinized the list and fresh merit list was prepared in which petitioner was not on the top of merit list. Hence, the appointment letter issued to the petitioner was withdrawn and ultimately appointment letter was issued to one Shafqat Yaqoob who joined the post. It is admitted fact that in wrong calculation of the merit list there is no fault on the part of petitioner if there is any negligence the same is on the part of officials. Moreover, if the department prepared his list in accordance with law and policy the petitioner should not have to face the agony of litigation. Although the petitioner joined the post of SESE the respondents did not offer her for appointment against ESE even after the rectification of merit by the department. The respondents have to issue appointment letter to petitioner first against the post of ESE, and after her refusal the second position holder should be offered but department's officials have not acted so and after withdrawal of petitioner's order for the post of ESE respondents were bound to make offer to petitioner for the post of ESE which he did not joined only

due to act and conduct of officials of department. At this stage, as respondent No.5 who joined the post where the petitioner was on top of merit I do not want to disturb him as there is no fault on his part, it is the departmental officials who are responsible for wrong calculation/preparation of merit list."

3. In Civil Appeals Nos. 111-L and 113-L of 2011, respondent No.1 had applied for the post of ESE and they were selected on account of the merit list. However, subsequently on the application of respondent No. 2 in both the appeals, the merit list was reviewed, as a consequence of which, respondent No. 2 were selected and the appointment orders of the respondent No.1 in both the appeals, were recalled. They also challenged the order of withdrawal by way of constitution petitions and the learned High Court, allowed the same mainly on the ground that the appointments made earlier on, were pursuant to the merit list prepared by the department; that the department was responsible for the lapse and respondent No. 1 could not be made to suffer. However, it was observed that respondent No. 2 should also not be disturbed. Leave was granted by this Court in all the appeals inter alia to consider as to whether the learned High Court could direct that notwithstanding the revised merit list, respondent No.1 in all these appeals should be accommodated. However, the learned Additional Advocate-General was directed to get in touch with the concerned authorities and examine the desirability of some departmental dispensation, which may satisfy the canons of equity. Learned Law Officer has appeared today and stated on instructions that in Civil Appeal No. 111-L of 2011, respondent No.1 Mst. Fouzia Nazir and in Civil Appeal No. 112-L of 2011, respondent No.1 Mst. Adila Muneer have been appointed and they shall not be disturbed. So far as respondent No.1 in Civil Appeal No. 113-L of 2011 Mst. Shakeela Yasmeen is concerned, he submits on instructions that she would also be given similar treatment. Learned Law Officer added that although the learned High Court travelled beyond its jurisdiction in granting relief to the respondent No. 1 in all these appeals, yet the Government at its own level has decided to accommodate these respondents as it found that there was a requirement of additional seats. He has also placed on record a judgment of this Court reported in Government of Sindh through Secretary Education and Literacy Department and others v. Nizakat Ali and others (2011 SCMR 592), wherein this Court notwithstanding the serious jurisdictional issue with the learned High Court, did not intervene.

4. In view of the fair stand taken by appellant Government and learned Law Officer, these appeals have practically become in fructuous and they are being disposed of accordingly. Respondent No. 2 in all these appeals shall not be disturbed except through due process of law. Before parting with the order, we may like to observe that ex facie, there was some lapse on the part of some officials which led to the whole issue. This order shall not prevent the competent authority to proceed in this regard as mandated in law".

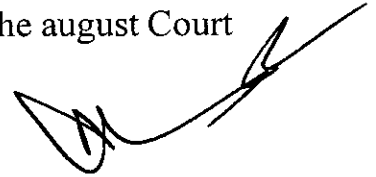
12. Reliance can further be placed on 2024 S C M R 1155

"GOVERNMENT OF BALOCHISTAN though Secretary Forest and Wildlife Department, Quetta and another"

Versus GHULAM RASOOL and others". The august Court

has rendered as:

"6. The record articulates that the drastic action of withdrawing appointments letters and terminating service was carried out without issuing any show cause notice and without affording any opportunity of hearing to the terminated employees. The philosophy of natural justice is meant for affording a right of audience before any detrimental action is taken by any quasi-judicial authority, statutory body, or any departmental authority regulated under some law. The right to a fair trial is a fundamental right, while the vested right, by and large, is a right that is unqualifiedly secured and does not rest on any particular event or set of circumstances. The doctrine of locus poenitentiae sheds light on the power of receding till a decisive step is taken, but it is not a principle of law that an order once passed becomes irrevocable and a past and closed transaction. Indubitably, if the order is found illegal, no perpetual right can be claimed on the basis of such an illegal order, but in this case, nothing was articulated to allege that the respondents by hook and crook managed their appointments or committed any misrepresentation or fraud or they were not eligible for the posts on which their appointment was recommended by the Departmental Recruitment Committee of five members where each case was considered diligently, and after a burdensome exercise, the names were recommended by the Departmental Recruitment Committee. Therefore, it cannot be construed that the respondents were appointed without fulfilling the codal formalities. Rather, on their appointments with due process, some vested rights have been created in their



favour which could not have been withdrawn in a perfunctory manner.

7. *What can a desperate job seeker do? At best, he can apply for the job in response to the advertisements of vacant posts, submit his credentials according to the job requirements, and join the competitive process through written tests and interviews, then wait for the result and final call. It is not in his dominion to conduct due diligence, before making a formal application, on whether the recruitment process by means of advertisement in the newspaper for vacant situations is issued by the competent authority or not. The record reflects that the advertisement was published on 30.07.2016, the last date of submission of the application was 22.08.2016, the date of test/interviews was fixed on 19th and 20th September, 2016, and the applicants were again informed through a notice published in the newspaper on 27.08.2016, and a meeting of the Departmental Recruitment Committee was convened on 29.08.2016. In the case at hand, if the process was allegedly initiated wrongly, then why were the concerned government departments under a deep slumber or ignorance? Why, at very initial stage, was the entire recruitment process not scraped? Why was the Departmental Recruitment Committee constituted? Why were appointment orders issued with postings? And why were service books made? All of these questions are shrouded in a mystery and no logical justification was pleaded as to why the entire recruitment process was undone suddenly.*

8. *As an ultimate fact-finding forum, the learned Service Tribunal has already dealt with all the relevant features of the case and also relied on a judgment of this Court reported as Inspector General of Police, Quetta and another v. Fida Muhammad and others (2022 SCMR 1583) in which a somewhat similar bone of contention was dealt with and the ratio of the judgment is quite applicable in this case. We have also noted that in paragraph 19 of the impugned judgment, the learned Tribunal, while allowing appeals of the respondents, fairly articulated that the department should not compromise on the requisite academic qualifications, and all academic certificates, testimonials, domiciles, CNICs etc. were directed to be verified from the concerned institutions/departments before activation of salaries and payment of back benefits and in tandem, the department was also allowed to hold an inquiry to ascertain whether the respondents were gainfully employed or not during the intervening period.*

9. *The learned A.A.G. could not point out any illegality or infirmity in the impugned judgment calling for any interference, therefore, leave is declined and aforesaid civil petitions are dismissed."*

13. Keeping in view the circumstances and the precedents of the Apex Court, impugned order of removal is set aside and the appeal in hand is accepted. Appellant stands reinstated into service, however, the period he remained out of duty, shall be treated as without pay on the analogy of having not worked. Costs shall follow the event. Consign.

14. *Pronounced in open Court at Peshawar and given under our hands and the seal of the Tribunal on this 30th day of September, 2024.*



KALIM ARSHAD KHAN
Chairman



FARZEHA PAUL
Member (Executive)

Mutazem Shah