

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
CAMP COURT, ABBOTTABAD.

BEFORE: MR. KALIM ARSHAD KHAN ... CHAIRMAN
MISS FAREEHA PAUL ... MEMBER(E)

Service Appeal No. 348/2021

Tabinda D/O Hakeem Dad R/O Kolai Tehsil Palas District Kohistan.

.....(Appellant)

Versus

1. Government of Khyber Pakhtunkhwa through Secretary Elementary & Secondary Education Department, Peshawar.
2. Director Elementary & Secondary Education, Peshawar.
3. District Education Officer (Female) District Kolai Palas Kohistan.

.....(Respondents)

Mr. Waqar Orakzai,
Advocate

... For appellant

Mr. Asif Masood Ali Shah,
Deputy District Attorney

... For respondents

Date of Institution..... 13.02.2023

Date of Hearing.....24.09.2024

Date of Decision..... 24.09.2024

JUDGEMENT

FAREEHA PAUL, MEMBER (E): The instant service appeal has been instituted under section 4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974 against the order dated 03.06.2021 whereby the appellant was removed from service. It has been prayed that on acceptance of the appeal, the impugned order dated 03.06.2021 might be set aside and respondents might be directed to reinstate the appellant as Arabic Teacher at Government Girls Middle School, Maidaan Kolai.

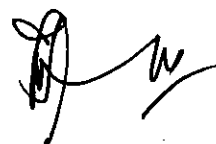
02. Brief facts of the case, as given in the memorandum of appeal, are that the appellant was appointed as Arabic Teacher in Elementary & Secondary Education Department on 20.05.2014. She assumed the charge at Government

Middle School Maidaan - Kolai District Kohistan on 24.05.2014. On 26.09.2020, the District Education Officer (Female) Kohat issued show cause notice to the appellant with the charge of willful absence from duty. Later on, notice for personal hearing was issued to her vide letter dated 01.10.2020, however, she never received that notice and the matter was proceeded ex-parte by issuing a final notice through publication in Daily Newspapers i.e. Mashrq, Aaj and Shamal vide letter dated 17.12.2020. Vide impugned order dated 03.06.2021, major penalty of removal from service was imposed upon her. Feeling aggrieved, she preferred departmental appeal to respondent No. 3 on 09.08.2021 which was not replied; hence the instant service appeal.

03. Respondents were put on notice who submitted written replies/comments on the appeal. We heard the learned counsel for the appellant and learned Deputy District Attorney for the 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 the impugned order was illegal, unlawful and against the principles of natural justice. He argued that it was incumbent upon the authorities to provide an opportunity of hearing to the appellant before passing the impugned order but she was condemned unheard. He stated that the appellant belonged to an under developed and hard area and imposing on her major penalty of removal from service would amount to discouraging the female education in the area. 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 neither the department nor the



students were satisfied by the performance of the appellant. She did not perform her duties in the way she was required. The inefficiency and negligence of the appellant was proved from the attendance register wherein no attendance was found from 23.05.2016 to 03.06.2021. She was called for personal hearing but she could not satisfy the competent authority nor she joined her duty. According to the learned Deputy District Attorney, the department issued final notice regarding her negligence in leading newspapers for resuming her duty but she failed to do so and had rightly been removed from service after fulfilling all the codal formalities. He requested that the appeal might be dismissed.

06. Arguments and record presented before us transpired that the appellant was removed from service on the basis of absence from duty. No proper enquiry was conducted by the respondent department which meant that action was taken under Rule 9 of the Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules 2011. When asked from the learned Deputy District Attorney whether the show cause notice was served upon her at her home address, he could not confirm. When further asked to produce the notice issued in two leading newspapers, he could produce only one notice. It was noted the respondent department had not fulfilled the legal requirements under Rule 9 of the Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011 before imposing major penalty of removal from service.

07. In view of the above discussion, the case is referred back to the respondent department for conducting proper enquiry under the Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011.



The appellant is reinstated into service for the purpose of enquiry. The entire process shall be completed within a period of sixty days of the receipt of copy of this judgment. Back benefits shall be subject to the outcome of the enquiry. Cost shall follow the event. Consign.

08. *Pronounced in open court at Camp Court, Abbottabad and given under our hands and seal of the Tribunal on this 24th day of September, 2024.*



(FAREEHA PAUL)
Member(E)
Camp Court Abbottabad



(KALIM ARSHAD KHAN)
Chairman
Camp Court, Abbottabad

Fazle Subhan, P.S


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24.09 2024

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

02. Vide our detailed judgment consisting of 04 pages, the case is referred back to the respondent department for conducting proper enquiry under the Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011. The appellant is reinstated into service for the purpose of enquiry. The entire process shall be completed within a period of sixty days of the receipt of copy of this judgment. Back benefits shall be subject to the outcome of the enquiry. Cost shall follow the event. Consign.

03. *Pronounced in open court at Camp Court, Abbottabad and given under our hands and seal of the Tribunal on this 24th day of September, 2024.*


(FAREEHA PAUL)
Member (E)
Camp Court, A/Abad


(KALIM ARSHAD KHAN)
Chairman
Camp Court, A/Abad

Fazle Subhan PS