

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

Service Appeal No. 993/2024

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

Muhammad Usman SST (Maths Physics) Government High School Dapoor
Dir Lower. (Appellant)

Service Appeal No. 994/2024

Islam Gul SST (Maths Physics) Government High School Osakai Dir
Lower..... (Respondents)

VERSUS

1. The Secretary Elementary and Secondary Education, Government of Khyber Pakhtunkhwa, Civil Secretariat Peshawar.
2. The Director Elementary and Secondary Education Khyber Pakhtunkhwa Peshawar.(Respondents)

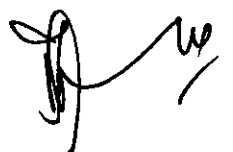
Syed Numan Ali Bukhari,
Advocate ... For appellants

Mr. Asif Masood Ali Shah
Deputy District Attorney ... For respondents

Date of Institution..... 18.07.2024
Date of Hearing.....01.10.2024
Date of Decision..... 01.10.2024

CONSOLIDATED JUDGMENT

FAREEHA PAUL, MEMBER (E): Through this single judgment, we intend to dispose of the instant appeal as well as the connected Service Appeal No. 994/2024, titled "Islam Gul Versus Secretary Elementary and Secondary Education, Government of Khyber Pakhtunkhwa, Civil Secretariat Peshawar



and others”, as in both the appeals common questions of law and facts are involved.

02. The service appeals have been instituted by the appellants under section 4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974 against the cancellation order dated 23.04.2024 and against the order dated 20.06.2024 whereby their departmental appeals were rejected. It has been prayed that on acceptance of the appeals, the impugned orders might be set aside and the respondent department be directed not to transfer the appellants in violation of the posting/transfer policy and they be allowed to complete their normal tenure, alongwith any other remedy which the Tribunal deemed fit and appropriate.

03. Brief facts of service appeal No 993/2024 , as given in the memorandum of appeal, are that the appellant Muhammad Usman was serving as SST (Maths/ Physics) in the respondent department. He was transferred from SST GHS Dapoor Dir Lower to ASDEO Circle Kumber Dir Lower vide order dated 21.06.2023. Thereafter, he was transferred from ASDEO Circle Kumber to SST (M/P) GHS Jawzo against the vacant post. Upon the approval of the competent authority, the transfer order dated 19.03.2024 was issued wherein the appellant was transferred from GHS Jawzo Dir Lower to GHS, Dapoor Dir Lower. Thereafter the respondents suddenly withdrew the transfer order dated 19.03.2024. Feeling aggrieved, he filed departmental appeal which was rejected vide order dated 20.06.2024, hence the instant service appeal.

04. Brief facts of service appeal No 994/2024 , as given in the memorandum of appeal, are that the appellant Islam Gul was serving as SST (Maths/Physics) in the respondent department. Upon the approval of the competent authority, the



transfer order dated 19.03.2024 was issued wherein he was transferred from GHS, Dapoor Dir Lower to GHS Osakai Dir Lower. Thereafter the respondents suddenly withdrew the transfer order dated 19.03.2024. Feeling aggrieved, he filed departmental appeal which was rejected vide order dated 20.06.2024, hence the instant service appeal.

05. Respondents were put on notice who submitted written replies/comments on the appeals. We heard the learned counsel for the appellants and learned Deputy District Attorney for the respondents and perused the case file with connected documents in detail.

06. Learned counsel for the appellants, after presenting the case in detail, argued that the impugned transfer order was premature and was passed due to political interference. He argued that the appellants were transferred during the period when the ban on posting/transfer was imposed by the Government. He further argued that the transfer order of the appellants had been withdrawn without any reason which was neither in the exigencies of service nor in the public interest. He requested that the appeals might be accepted as prayed for.

07. Learned Deputy District Attorney, while rebutting the arguments of learned counsel for the appellants, argued that posting and transfer was the prerogative of the competent authority and under Section 10 of the Khyber Pakhtunkhwa Civil Servants Act, 1973, every civil servant was bound to serve anywhere in the exigencies of service. He further argued that under the provision of Section 21 of General Clauses Act 1897, respondent No. 2 was competent to withdraw the order. He requested that the appeals might be dismissed.



08. Instant service appeals have been preferred against order dated 23.04.2024 vide which a transfer/posting order dated 19.03.2024 was recalled/withdrawn. Arguments and record presented before us transpired that the appellants were transferred vide order dated 19.03.2024 and they took over charge at their respective place of postings on the very next day of the issuance of the order i.e on 20.03.2024, but after passage of one month the orders were recalled/withdrawn which according to the respondent department was done under section 21 of General Clauses Act, 1897. Other than that no cogent reason could be put forwarded by the respondent department in the reply or by the Deputy District Attorney during the course of arguments. The order of 23.04.2024 showed that the respondent department did not give any heed to the posting/transfer policy according to which tenure should have been taken into consideration.

09. In view of the above discussion, the appeals are allowed and the order dated 23.04.2024 is set aside with the direction to the respondent department to allow the appellants to complete their normal tenure of posting at their place of posting vide order dated 19.03.2024. Cost shall follow the event. Consign.

10. *Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal on this 01st day of October, 2024.*


(FAREEHA PAUL)
Member (E)


(AURANGZEB KHATTAK)
Member (J)

SA 993/2024

01.10.2024 01. Syed Numan Ali Bukhari, 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 appeal is allowed and the order dated 23.04.2024 is set aside with the direction to the respondent department to allow the appellant to complete his normal tenure of posting at his place of posting vide order dated 19.03.2024. Cost shall follow the event. Consign.

03. *Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal on this 01st day of October, 2024.*


(FARIEHA PAUL)
Member (E)


(AURANGZEB KHATTAK)
Member (J)

Fazle Subhan, P.S