

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR.

BEFORE: **AURANGZEB KHATTAK ... MEMBER (Judicial)**
MUHAMMAD AKBAR KHAN ... MEMBER (Executive)

Service Appeal No. 936/2024

Date of presentation of Appeal.....02.07.2024
Date of Hearing.....14.10.2024
Date of Decision.....14.10.2024

Mst. Shagufta Bibi W/o Kamran Ali, R/o Buner, PST currently serving at GGPS Gumbat, Buner.**Appellant**

Versus

1. Secretary Elementary & Secondary Education, Khyber Pakhtunkhwa, at Civil Secretariat, Peshawar.
2. Director Elementary and Secondary Education, Khyber Pakhtunkhwa.
3. Office of the District Education Officer (Female), Buner.
4. Miss. Haseena W/o Wali Ulah, R/o Pander P/o Batara District Buner, currently serving as PST at GGPS Ajlai, Tehsil Gagra District Buner.
.....**(Respondents)**

Present:

Mr. Musa Zeb Yousafzai, Advocate.....For appellant
Mr. Asif Masood Ali Shah, Deputy District Attorney.....For official respondents
.....

JUDGMENT

AURANGZEB KHATTAK, MEMBER (JUDICIAL): The facts of the case, are that the appellant was inducted into service on 19-08-2020 in Education Department at Buner District. She was transferred from GGPS Ajlai to GGPS Gumbat and private respondent No. 04 (Miss. Haseena) was transferred from GGCMS Pandir to GGPS Ajlai vide Notification dated 06-03-2024. However, vide impugned order dated 20-03-2024, the transfer order of the appellant dated 06-03-2024 was cancelled. Feeling aggrieved, the appellant preferred departmental

appeal, which was not responded, hence she approached this Tribunal for redressal of her grievance.

2. The respondents were summoned, official respondents contested the appeal by way of filing their written reply/comments, while private respondent No. 4 was placed ex-parte vide order dated 13.09.2024.

3. The learned counsel for the appellant contended that the appellant's transfer was unjustly cancelled through the impugned cancellation order dated March 20, 2024, shortly after the approval of her transfer on March 6, 2024, this abrupt cancellation severely undermines her rights and career advancement. He next contended that the cancellation of the transfer order appears to be influenced by external political pressures, benefitting private respondent No. 4 rather than serving the educational needs, indicating a misuse of discretion by the District Education Officer (Female) Bunir. He further contended that the impugned cancellation order dated March 20, 2024 contradicts established transfer and posting policies, which emphasize equitable treatment and consideration of personal circumstances, such as the appellant's marital situation. He next argued that the appellant's husband serves as a PST at GGPS Ramzay Gulbandi, which aligns with the spouse policy and warrants favorable consideration in transfer decisions, further legitimizing her transfer claim. He further argued that the cancellation order dated March 20, 2024 disregards the best interest of the appellant as well as the school's operational needs, raising questions about the motivations and implications of such a decision. In the last, he argued that the impugned cancellation order dated March 20, 2024 is

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unlawful, thus liable be set aside to rectify the injustices faced during her service.

4. Conversely, learned Deputy District Attorney for official respondents contended that the appellant's performance has been questioned due to reported absences, as documented by the District Monitoring Authority and the Assistant Commissioner. He next contended that the appellant was appointed to serve at GGPS Ajlai and was in violation of her responsibilities upon absencing herself from her assigned post. He further contended that the cancellation of the transfer was a necessary action to ensure the continuity of education at GGPS Ajlai. 5. He also contended that the cancellation order is lawful, as it adheres to relevant rules and policies designed to serve the community rather than individual interests. He next argued that no policy indicates that personal preferences should override community needs, reinforcing their commitment to the educational standards. He further argued that the appellant's failure to return to GGPS Ajlai following the cancellation order reflects her defiance and failure to meet job obligations, warranting an inquiry into her conduct. He also argued that the decision to cancel the transfer of the appellant was made in the best interests of the students and the school community, illustrating a lawful and logical exercise of discretion by the respondents. In the last, he argued that the actions of official respondents are consistent with their duties and responsibilities, prioritizing the educational needs of the students over individual employee requests.


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5. We have heard the arguments of learned counsel for the appellant as well as learned Deputy District Attorney for the official respondents and have perused the record.

6. The perusal of case file show that the appellant was transferred from GGPS Ajlai to GGPS Gumbat and private respondent No. 04 (Miss. Haseena) was transferred from GGCMS Pandir to GGPS Ajlai vide Notification dated 06.03.2024. However, vide impugned order dated 20.03.2024, the said Notification was cancelled, which according to the appellant was influenced by political pressure, benefiting private respondent No. 4. Section-10 of the Khyber Pakhtunkhwa Civil Servants Act, 1973 requires that is the prerogative of the government/Authority to direct her to serve anywhere within or outside the province. Section-10 is reproduced 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 favourable than those to which he would have been entitled if he had not been so required to serve.”

7. It is established under Section-10 of the Khyber Pakhtunkhwa Civil Servants Act, 1973, that a civil servant does not possess a vested right to remain posted at a location of their choice. Transfer is an inherent aspect of civil servant, essential for fulfilling administrative


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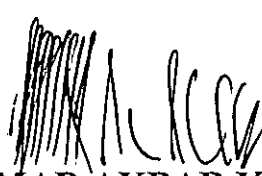
Service Appeal No.936/2024 titled "Mst. Shagufta Bibi Versus Secretary Elementary & Secondary Education, Khyber Pakhtunkhwa, at Civil Secretariat, Peshawar and others", decided on 14.10.2024 by Division Bench comprising of Mr. Aurangzeb Khattak, Member Judicial and Mr. Muhammad Akbar Khan, Member Executive. Khyber Pakhtunkhwa Service Tribunal, Peshawar.

requirements and maximizing the utility of the civil servant's skills. The department retains full discretion over transfer decisions to ensure that the organization benefits optimally from the civil servant's capabilities. The appellant's claim that the transfer was due to mala fide intentions and political pressure was reviewed. However, the claims lacked substantial evidence or documentation to support these serious allegations. As per legal precedent, specific and cogent evidence is required to prove mala-fide intentions or political influence, which is absent in this case. The appeal lacks sufficient merit, particularly regarding the arguments of political influence, unauthorized absence and breach of service obligations by the appellant. While it is understandable that personal circumstances impact professional duties, in this case, the primary consideration must remain the educational requirements of the students and the operational needs of the educational system.

8. Consequently, the appeal in hand stands dismissed being devoid of merit. Parties are left to bear their own costs. File be consigned to the record room.

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


AURANGZEB KHATTAK
Member (Judicial)


MUHAMMAD AKBAR KHAN
Member (Executive)

Nacem Amin

07th Oct, 2024

Learned counsel for the appellant present. Mr. Naseer-ud-Din Shah, Assistant Advocate General for official respondents present.

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Learned counsel for the appellant seeks some time for preparation of brief. Granted. To come up for arguments on 14/10/2024 before the D.B. Parcha Peshi given to the parties.



(Rashida Bano)
Member (Judicial)



(Aurangzeb Khattak)
Member (Judicial)

Naeem Amin

ORDER

14th Oct, 2024

1. Learned counsel for the appellant present. Mr. Abid Usman, ADEO (F) alongwith Mr. Asif Masood Ali Shah, Deputy District Attorney for the respondents present. Arguments heard and record perused.
2. Vide our judgment of today placed on file, the appeal in hand stands dismissed being devoid of merit. Parties are left to bear their own costs. File be consigned to the record room.
3. *Pronounced in open Court at Peshawar and given under our hands and the seal of the Tribunal on this 14th day of October, 2024.*



(Muhammad Akbar Khan)
Member (Executive)



(Aurangzeb Khattak)
Member (Judicial) 14/10
2024-

Naeem Amin