

BEFORE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

Service Appeal No. 872/2022

BEFORE: MR. AURANGZEB KHATTAK ... MEMBER (J)
MRS. RASHIDA BANO ... MEMBER (J)

**Mst. Arshia Latif D/o of Abdul Latif R/o Mohallah Ustad Qadirabad
Wala, Muryali, Tehsil & District Dera Ismail Khan.**

.... (*Appellant*)

VERSUS

1. The Government of Khyber Pakhtunkhwa through Secretary Education, Peshawar.
2. The Director Education, Elementary and Secondary Education, Khyber Pakhtunkhwa, Peshawar.
3. The District Education Officer, (Female), Dera Ismail Khan.
4. S.D.E.O (Female), Education Department, Dera Ismail Khan.

.... (*Respondents*)

Mr. Mohsin Ali
Advocate`

... For appellant

Mr. Naseer ud Din Shah,
Assistant Advocate General

... For respondents

Date of Institution.....16.05.2022
Date of Hearing.....09.10.2024
Date of Decision.....09.10.2024

JUDGMENT

RASHIDA BANO, MEMBER (J): The instant service appeal has been instituted under Section 4 of the Khyber Pakhtunkhwa Service Tribunal, Act 1974 with the prayer copied as below:

“On acceptance of this appeal this august court may be pleased to declare the office order/ Notification No.5583-89 dated 27.04.2017 issued by respondent No.3 (vide which the service of the appellant was decalred null & void) as illegal, without lawful



authority, without jurisdiction, void ab initio and ineffective upon the rights of the appellant and is liable to be set aside/quashed and to reinstate the appellant against the subject post with all back benefits on the grounds appearing hereinafter;

Or

Grant any other relief considered just and appropriate under the given circumstances of the case.”

2. Brief facts of the case as per contents of the appeal are that appellant was appointed against the post of PST (BPS-12) in Government Girls Primary School, Muryali, Dera Ismail Khan vide order dated 22.08.2014 on contract basis for one year upon recommendation of DSC, who after submitting her arrival started performing her duties but her contract was not extended and her salary was estopped, which she challenged in writ petition bearing No.609-D/2015, she was given temporary relief as a result of which she was adjusted/reinstated as PST in the said school vide order dated 21.09.2016 till final conclusion of departmental proceeding/court decision. Respondents again vide order dated 27.04.2017 declared appointment of appellant as null and void on the basis of committee report which was constituted for disposal of appeals of different employees. The appellant was neither informed nor served the impugned order dated 27.04.2017 and due to impugned order the nature of case of the appellant was totally changed, the appellant withdrew her writ petition with permission to approach proper forum. She filed departmental appeal on 23.11.2021 which was not responded, hence the present service appeal.



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

4. We have heard learned counsel for the appellant and learned Assistant Advocate General for the respondents.

5. The learned counsel for the appellant reiterated the facts and grounds detailed in the memo and grounds of the appeal, while the learned Assistant Advocate General controverted the same by supporting the impugned order(s).

6. The perusal of the record reveals that the appellant was appointed vide order dated 22.08.2014 on contract basis for one year upon recommendation of DSC, who after submitting her arrival started performing her duties but her contract was not extended and her salary was estopped, which she challenged in writ petition bearing NO.609-D/2015, she was given temporary relief as consequence of which she was adjusted/reinstated vide order dated 21.09.2016 till final conclusion of departmental proceeding/court decision.

7. Respondent again vide order dated 27.04.2017 declared appointment of appellant as null and void on the basis of committee report, which was constituted for disposal of appeals of different employees. The sole ground is that appellant was below merit and was wrongly appointed by ignoring the meritorious candidate Mst. Shafqat Noreen. We are aware of the fact



that appellant service were not regularized but at the same, she was not provided with an opportunity to defend herself and if she was below merit then why she was recommended by the DSC and what action was taken by the department against members of DSC, who recommended her by ignoring others. Respondent even did not issued a show cause notice to appellant and deprived her from employment, which is against the rules and principle of natural justice.

8. Therefore, we are unison to remit the matter to respondent to conduct proper inquiry and to fix responsibility upon all who involved in recruiting process beside providing proper chance to appellant by conducting regular inquiry. Appellant is reinstated for the purpose of inquiry only. Cost shall follow the event. Consign.

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


(AURANGZEB KHATTAK)

Member (J)

*M.KHAN


(RASHIDA BANO)

Member (J)

09/10
2024.

Note

4th October, 2024 The learned counsel requested acceleration of the case telephonically on the ground that he has cases in other court on 8/10/2024 at Peshawar. Hence, the case is accelerated to 9/10/2024 as per counsel's request. Be fixed before D.B on 9/10/2024 at Principal seat Peshawar.


(Habib Ur Rehman Orakzai)
Registrar

ORDER

- 09.10.2024
1. Learned counsel for the appellant present. Mr. Naseer ud Din Shah, learned Assistant Advocate General alongwith Muhammad Imran Shah, Senior Subject Specialist, for respondents present.
 2. Vide our detailed judgment of today placed on file, we are unison to remit the matter to respondent to conduct proper inquiry and to fix responsibility upon all who involved in recruiting process beside providing proper chance to appellant by conducting regular inquiry. Appellant is reinstated for the purpose of inquiry only. Cost shall follow the event. Consign.
 3. *Pronounced in open court at Peshawar and given under our hands and seal of the Tribunal on this 9th day of October, 2024.*


(AURANGZEB KHATTAK)
Member (J)


(RASHIDA BANO)
Member (J)

*M.KHAN

09/10
2024.