

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

BEFORE: **KALIM ARSHAD KHAN** ... **CHAIRMAN**
MUHAMMAD AKBAR KHAN ... **MEMBER (Executive)**

Service Appeal No.168/2022

Date of presentation of Appeal.....28.01.2022
Date of Hearing.....21.10.2024
Date of Decision.....21.10.2024

Mr. Asad Iqbal, Ex IT Lab Incharge, GHS, Sheraki, FR Kohat
.....(***Appellant***)

Versus

1. **The Director** Elementary & Secondary Education Department, Khyber Pakhtunkhwa, Peshawar.
2. **The Agency Education Officer**, FR, Kohat.
3. **The Agency Accounts Officer** FR Kohat.....(***Respondents***)

Present:

Mr. Umar Farooq Mohmand, Advocate.....For the appellant
Mr. Muhammad Jan, District Attorney.....For respondents

SERVICE APPEAL UNDER SECTION 4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974 AGAINST THE IMPUGNED ORDER DATED 25.10.2018 WHICH HAS COMMUNICATED ON 15.09.2021 DURING COURT PROCEEDINGS WHEREBY THE APPELLANT WAS REMOVED FROM THE EDUCATION DEPARTMENT FR KOHAT HAS BEEN IMPOSED ON THE APPELLANT AND AGAINST THE IMPUGNED INACTION OF THE RESPONDENTS BY NOT DECIDING THE DEPARTMENTAL APPEAL OF THE APPELLANT WITHIN THE STATUTORY PERIOD OF NINETY DAYS.

JUDGMENT

KALIM ARSHAD KHAN, CHAIRMAN: Appellant's case as reflected from the record, in brief is that he was appointed as I.T Lab Incharge in the respondent department on contract basis vide order



dated 09.06.2006; that later on, his services were regularized vide Notification dated 20.06.2013 and was adjusted at GHS Sheraki FR Kohat; that while serving, his salary was stopped in the month of September, 2014 against which, he filed Service Appeal No.119/2015 and this Tribunal vide judgment dated 18.09.2018 directed the respondents to release the salaries of the appellant and respondents were left at liberty to conduct proper inquiry, if the appellant was involved in any misconduct; that his salary was not released for which he filed implementation petition No.455/2018 and during pendency of the said implementation petition, vide order dated 15.09.2021 he was struck off from service by the department; that feeling aggrieved, he filed departmental appeal on 30.09.2021 which was not responded, hence, the instant service appeal.

2. 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.

3. We have heard learned counsel for the appellant and learned 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 District Attorney controverted the same by supporting the impugned order(s).

5. Record reflects that appellant was serving in the Education Department, when his salary was stopped in the month of September 2014, his salary was stopped by the respondents against which he approached this Tribunal by filing Appeal No.119/2015. The Tribunal vide its judgment dated 19.08.2018 directed the respondents to release the salary of appellant, however, his salary was not released, for which he filed an implementation petition No.455/2018. During the pendency of the said implementation petition the respondents passed the impugned order dated 15.09.2021 for his alleged fake position in the school. The same is reproduced as under:

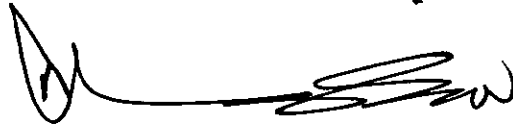
"In the light of inquiry conducted by the principal GHS Ara Khel, Mr. Asad Iqbal Incharge GHS Sheraki is hereby terminated due to his fake position in the school furthermore, it is requested to the court that his abroad traveling in-out may verify through FIA."

6. Perusal findings of inquiry shows that the appellant was absent, while the impugned order of his termination has based fake position in the school. Stance raised in the findings and in the impugned order, are in conflict, which shows that the inquiry has not properly been conducted and the appellant has not been proceeded in accordance with the Khyber Pakhtunkhwa Government Servants (Efficiency and Discipline) Rules, 2011 as they have neither issued charge sheet/statement of allegations preceded by any show cause notice.



7. In view of above, impugned order dated 15.09.2021 is set aside. The matter be remitted to the respondents to proceed the appellant strictly in accordance with the Khyber Pakhtunkhwa Government Servants (Efficiency and Discipline) Rules, 2011, wherein, conducting of proper inquiry and giving proper opportunity of defense is must. Appellant is reinstated into service for proper inquiry which is to be conducted within 60 days of the receipt of this judgment. Costs shall follow the event. Cosign.

8. *Pronounced in open Court at Peshawar and given under our hands and the seal of the Tribunal on this 21st day of October, 2024.*



KALIM ARSHAD KHAN

Chairman



MUHAMMAD AKBAR KHAN

Member (Executive)

Muazem Shah

MEMO OF COSTS
KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

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SERVICE APPEAL UNDER SECTION 4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974 AGAINST THE IMPUGNED ORDER DATED 25.10.2018 WHICH HAS COMMUNICATED ON 15.09.2021 DURING COURT PROCEEDINGS WHEREBY THE APPELLANT WAS REMOVED FROM THE EDUCATION DEPARTMENT FR KOHAT HAS BEEN IMPOSED ON THE APPELLANT AND AGAINST THE IMPUGNED INACTION OF THE RESPONDENTS BY NOT DECIDING THE DEPARTMENTAL APPEAL OF THE APPELLANT WITHIN THE STATUTORY PERIOD OF NINETY DAYS.

PRESENT

1. Mr. Umar Farooq Mohmand, Advocate, for the Appellant
2. Mr. Muhammad Jan, District Attorney for respondents.

Appellants	Amount	Respondent	Amount
1. Stamp for memorandum of appeal	Rs. Nil	1. Stamp for memorandum of appeal	Rs. Nil
2. Stamp for power	Rs. Nil	2. Stamp for power	Rs. Nil
3. Pleader's fee	Rs. Nil	4. Pleader's fee	Rs. Nil
4. Security Fee	Rs.100/-	4. Security Fee	Rs. Nil
5. Process Fee	Rs. Nil	5. Process Fee	Rs. Nil
6. Costs	Rs. Nil	6. Costs	Rs. Nil
Total	Rs. 100/-	Total	Rs. Nil

Note: Counsel Fee is not allowed as the required certificate has not been furnished.

Given under our hands and the seal of this Court, this 21st day of October 2024.



Muhammad Akbar Khan
Member (Executive)

Kalim Arshad Khan
Chairman

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL

Service Appeal No.168 of 2022

Asad Iqbal versus Government of Khyber Pakhtunkhwa

S.No. of Order & Date of proceeding	Order or other proceedings with signature of Chairman/Member(s)/Registrar and that of parties or counsel where necessary
<u>Order-14</u> 21 st October, 2024.	<p>Present:</p> <ol style="list-style-type: none">1. Mr. Umar Farooq Mohmand, Advocate on behalf of appellant.2. Mr. Muhammad Jan, District Attorney for the respondents.3. Vide our detailed judgment of today, placed on file, impugned order dated 15.09.2021 is set aside. The matter be remitted to the respondents to proceed the appellant strictly in accordance with the Khyber Pakhtunkhwa Government Servants (Efficiency and Discipline) Rules, 2011, wherein, conducting of proper inquiry and giving proper opportunity of defense is must. Appellant is reinstated into service for proper inquiry which is to be conducted within 60 days of the receipt of the judgment. Costs shall follow the event. Cosign.4. <i>Pronounced in open Court at Peshawar and given under our hands and the seal of the Tribunal on this 21st day of October, 2024</i> <p style="text-align: center;"> (Muhammad Akbar Khan) Member (E)</p> <p style="text-align: center;"> (Kalim Arshad Khan) Chairman</p> <p><small>*Mutazem Shah*</small></p>

SA 168/22

18.07.2024

01. Junior to counsel for the appellant present. Mr. Muhammad Jan, District Attorney for the respondents present.

02. Former requested for adjournment as learned counsel for the appellant is indisposed today. Adjourned. To come up for arguments on 21.10.2024 before the D.B. PP given to the parties.



(Rashida Bano)
Member(J)



(Kalim Arshad Khan)
Chairman

Fazle Subhan. P.S

SCANNED
KFCST
Peshawar