

**KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR**  
**AT CAMP COURT, ABBOTTABAD**

BEFORE: **KALIM ARSHAD KHAN** ... **CHAIRMAN**  
**RASHIDA BANO** ... **MEMBER (Judicial)**

*Service Appeal No.135/2022*

Date of presentation of Appeal.....06.01.2022  
Date of Hearing.....29.10.2024  
Date of Decision.....29.10.2024

**Bibi Hawa**, Ex-Primary School Teacher GGPS Away Sach Kal Kot,  
Tehsil Dassu, District Kohistan Upper.....(*Appellant*)

Versus

1. **The Director** Elementary & Secondary Education, Khyber Pakhtunkhwa, Peshawar.
2. **The District Education Officer (Female)** District Kohistan Upper at Dassu.....(*Respondents*)

Present:

Mr. Abdul Saboor Khan, Advocate.....For the appellant  
Mr. Asif Masood Ali Shah, Deputy District Attorney.....For respondents

**SERVICE APPEAL UNDER SECTION 4 OF THE  
KHYBER PAKHTUNKHWA SERVICE TRIBUNAL  
ACT, 1974 AGAINST THE IMPUGNED ORDER  
DATED 07.12.2021, PASSED BY RESPONDENTS  
RESPECTIVELY WHEREBY IMPOSED AND  
UPHELD MAJOR PENALTY OF REMOVAL FROM  
SERVICE UPON THE APPELLANT ON THE  
GROUND OF ALLEGED ABSENCE FROM DUTY.**

**JUDGMENT**

**KALIM ARSHAD KHAN, CHAIRMAN**: Brief facts of the case,  
as per averments of the appeal, are that appellant was serving as  
Primary School Teacher; that vide order dated 20.04.2019, she was  
removed from service on the allegation of absence; that the said order

was assailed by her through departmental appeal dated 24.04.2019; that in the meanwhile, the appellant alongwith two others filed a Writ Petition No. 1026-A of 2020 before the Hon'ble Peshawar High Court, Abbottabad Bench; that in view of decision in the said writ petition, she was given upgradation from BPS-04 to BPS-12 and was adjusted at GGPS Afsar Abad, vide office order dated 22.10.2020; that the office order dated 22.10.2020 had neither been withdrawn nor the appellant was allowed to perform her duty at the ordered place of duty; that she filed an application dated 17.11.2021 for decision of her departmental appeal already filed for her reinstatement; that vide impugned order dated 07.12.2021, her departmental appeal was rejected, 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 Additional Advocate General 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 Additional Advocate General controverted the same by supporting the impugned order(s).

5. The appellant, a Primary School Teacher, was removed from service on 20.04.2019 on the grounds of alleged absence. She

challenged this decision through a departmental appeal filed on 24.04.2019. Simultaneously, the appellant, along with two others, filed Writ Petition No. 1026-A of 2020 before the Hon'ble Peshawar High Court, Abbottabad Bench. In light of the decision in the writ petition, the appellant was granted upgradation from BPS-04 to BPS-12 and was directed to be posted at GGPS Afsar Abad, as per the office order dated 22.10.2020. However, despite this order, the appellant's posting was not implemented, as the order was neither withdrawn nor did she assume her duties at the designated place of posting. Subsequently, the appellant filed an application on 17.11.2021 seeking a resolution of her pending departmental appeal. The appeal was rejected by the impugned order dated 07.12.2021, prompting the present service appeal.

6. At the very outset, learned Deputy District Attorney raised a preliminary objection on the issue of limitation. The impugned order 20.04.2019 and some other orders passed on different dates in the year 2019 were challenged in different appeals earlier, which were decided through judgment dated 24.05.2023 passed in Service Appeal No.1972/2019. During the pendency of the said appeal, the instant service appeal was filed on 06.01.2022. Against the impugned order dated 20.04.2019, departmental appeal was filed on 24.04.2019 and this appeal has been filed after passage of order dated 07.12.2021, whereby, application dated 17.11.2021 of the appellant made after requesting the respondents to decide the departmental appeal of the appellant, was dismissed.



7. Since other appeal against the same order of 20.04.2019 was within time, therefore, this appeal is also considered to be within time.

The other appeal was decided in the following manner:

*"6. A perusal of the record would show that the appellant was proceeded against on account of willful absence from duty with effect from 01.01.2019. The procedure to be adopted in case of willful absence has been provided in Rule-9 of Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011, which is reproduced as below:-*

**"9. Procedure in case of willful absence:**  
*Notwithstanding anything to the contrary contained in these rules, in case of willful absence from duty by a government servant for seven or more days, a notice shall be issued by the competent authority through registered acknowledgement on his home address directing him to resume duty within fifteen days of issuance of the notice. If the same is received back as undelivered or no response is received from the absentee within stipulated time, a notice shall be published in at least two leading newspapers directing him to resume duty within fifteen days of the publication of that notice, failing which an ex-parte decision shall be taken against the absentee. On expiry of the stipulated period given in the notice, major penalty of removal from service may be imposed upon such Government servant".*

7. The record so submitted by the respondents would show that instead of issuing notice to the appellant through registered acknowledgement on her home address directing her to resume her duty, the competent Authority had issued final show-cause notice to the appellant on her school address on

*01.02.2019 i.e the date on which the school was already closed on account of winter vacations. Moreover, final show-cause notice issued to the appellant would show that she was found guilty of habitual absence and not willful absence. Furthermore, final show-cause notice is issued to a delinquent officer/official in case he is proceeded against on the allegations of habitual absence. There is no concept of issuing final show-cause notice in case of proceedings against a government servant on account of willful absence from duty. According to the available record, the proceedings against the appellant were conducted in a haphazard manner without complying relevant procedure prescribed under Rule-9 of Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011.*

*8. Moreover, it has been alleged by learned counsel for the appellant that the appellant has been proceeded against on account of absence from duty with effect from 01.01.2019, which is the date on which the schools in the region were already closed on account of winter vacations. In this respect, he produced Notification dated 17.12.2018, which has not been denied by learned Assistant Advocate General.*



9. In view of the above discussion, the impugned order is set-aside and the appellant is reinstated in service with the directions to the competent Authority to conduct de-novo inquiry in the matter strictly in accordance with the relevant law/rules within a period of 60 days of receipt of copy of this judgment. Needless to mention that the appellant shall be associated with the inquiry proceedings and fair opportunity be provided to her to defend herself. The issue of back benefits shall be subject to outcome of de-novo inquiry. Parties are left to bear their own costs. File be consigned to the record room."

8. Being similar in nature, instant service appeal is also decided in terms of the above judgment. Costs shall follow the event. Consign.

9. Pronounced in open Court at Abbottabad and given under our hands and the seal of the Tribunal on this 29<sup>th</sup> day of October, 2024.



**KALIM ARSHAD KHAN**  
Chairman




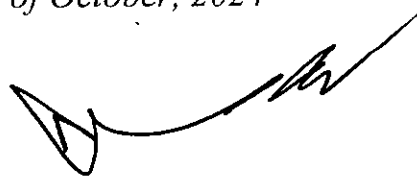
**RASHIDA BANO**  
Member (Judicial)

\*Mutazem Shah\*

**KHYBER PAKHTUNKHWA SERVICE TRIBUNAL**

Service Appeal No.135 of 2022

Bibi Hawa ~~XXXXXXXXXX~~ versus Government of Khyber Pakhtunkhwa

S.No. of Order & Date of proceeding	<b>Order or other proceedings with signature of Chairman/Member(s)/Registrar and that of parties or counsel where necessary</b>
Order-17 29 <sup>th</sup> October, 2024.	<p>Present:</p> <ol style="list-style-type: none"><li>1. Mr. Abdul Saboor Khan, Advocate, on behalf of appellant.</li><li>2. Mr. Asif Masood Ali Shah, Deputy District Attorney on behalf of respondents.</li></ol> <p><b><u>Kalim Arshad Khan, Chairman:</u></b> Vide our detailed judgment of today, placed on file, the impugned order is set-aside and the appellant is reinstated in service with the directions to the competent Authority to conduct de-novo inquiry in the matter strictly in accordance with the relevant law/rules within a period of 60 days of receipt of copy of the judgment. Needless to mention that the appellant shall be associated with the inquiry proceedings and fair opportunity be provided to her to defend herself. The issue of back benefits shall be subject to outcome of de-novo inquiry. Costs shall follow the event. Consign.</p> <p>2. <i>Pronounced in open Court at Abbottabad and given under our hands and the seal of the Tribunal on this 29<sup>th</sup> day of October, 2024</i></p> <p style="text-align: center;"> (Rashida Bano) Member (J)</p> <p style="text-align: center;"> (Kalim Arshad Khan) Chairman</p> <p><small>*Mutazem Shah*</small></p>

**MEMO OF COSTS**  
**KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR**

**Service Appeal No.135/2022**

Date of presentation of Appeal      06.01.2022  
Date of hearing                              29.10.2024  
Date of Decision                              29.10.2024

**Bibi Hawa, Ex-PST GGHS Away Sach Kal Kot District Upper Kohistan**  
.....**Appellant**

Versus

1. Director Secretary Elementary & Secondary Education, Khyber Pakhtunkhwa, Peshawar.
2. The DEO (Female) Upper Kohistan.

---  
APPEAL UNDER SECTION 4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL  
ACT, 1974


**PRESENT**

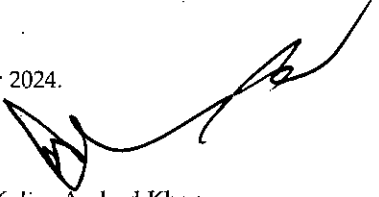
1. Mr. Sardar Muhammad Irshad, Advocate, for the Appellant
2. Mr. Asif Masood Ali Shah, Deputy District Attorney, for respondents

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
<b>Total</b>	<b>Rs. 100/-</b>	<b>Total</b>	<b>Rs. Nil</b>

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 29<sup>th</sup> day of October 2024.

  
Rashida Bano  
Member (Judicial)

  
Kalim Arshad Khan  
Chairman