

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR
AT CAMP COURT, ABBOTTABAD

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

Service Appeal No.1299/2023

Date of presentation of Appeal.....14.03.2023
Date of Hearing.....30.10.2024
Date of Decision.....30.10.2024

Mst. Masooma Begum wife of Atta Ahmad Shah ex-Primary School Teacher GGPS Tiyal Maidan District Upper Kohistan at Dassu.....(*Appellant*)

Versus

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

Present:

Sardar Muhammad Irshad, Advocate.....For the appellant
Mr. Umair Azam, Additional Advocate General.....For respondents

SERVICE APPEAL UNDER SECTION 4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974 AGAINST NOTIFICATION DATED 20.04.2019 OF RESPONDENT NO.3 WHEREBY MAJOR PENALTY OF REMOVAL FROM SERVICE WAS IMPOSED UPON THE APPELLANT WHICH WAS SET ASIDE VIDE JUDGMENT DATED 22.09.2022 IN APPEAL NO.1181/2019 BY THIS TRIBUNAL BUT RESTORED BY RESPONDENT NO.2 VIDE NOTIFICATION DATED 13.02.2023.

JUDGMENT

KALIM ARSHAD KHAN, CHAIRMAN: The appellant was earlier removed from service vide order dated 20.04.2019; the said order was challenged before the Tribunal in Appeal No.1181/2019 and this Tribunal vide its judgment dated 22.09.2022 ordered for reinstatement of the appellant and the respondents were directed to conduct de-novo inquiry; after conducting de-novo inquiry, the Inquiry Officer submitted the report; that on the basis of de-novo inquiry, appellant was removed from service vide Notification dated 13.02.2023; feeling aggrieved, the appellant filed departmental appeal but the same was filed by the respondent No.2, 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 was initially removed from service by an order dated 20.04.2019. This order was subsequently challenged before the

Service Appeal No.1299/2023 titled "Mst. Masooma Begum versus The Government of Khyber Pakhtunkhwa through Secretary Elementary & Secondary Education, Khyber Pakhtunkhwa, Peshawar and others", decided on 30.10.2024 by Division Bench comprising of Mr. Kalim Arshad Khan, Chairman, and Mrs. Rashida Bano, Member Judicial, Khyber Pakhtunkhwa Service Tribunal, Peshawar at Camp Court, Abbottabad

therefore, the impugned order is not sustainable this score too, which is set aside with the direction to the District Education Officer (Female) Kohistan Upper to pass order being competent authority on the recommendations of the Inquiry Committee. In case the District Education Officer disagrees with the recommendations, she shall follow the procedure provided under the Khyber Pakhtunkhwa Government Servants (Efficiency and Discipline) Rules, 2011. Costs shall follow the event. Consign.

8. *Pronounced in open Court at Abbottabad and given under our hands and the seal of the Tribunal on this 30th day of October, 2024.*



KALIM ARSHAD KHAN
Chairman



RASHIDA BANO
Member (Judicial)

Mutazem Shah

Tribunal in Appeal No. 1181/2019, where the Tribunal, through its judgment dated 22.09.2022, directed the reinstatement of the appellant and instructed the respondents to conduct a de-novo inquiry. Following this directive, a de-novo inquiry was carried out, and the Inquiry Officer submitted a report based on which the appellant was removed from service once again via a notification dated 13.02.2023. In response, the appellant filed a departmental appeal; however, the appeal was dismissed by respondent No. 2, prompting the appellant to file the present service appeal. The central issue in this case revolves around the legality of the appellant's removal after the de-novo inquiry and the subsequent dismissal of her departmental appeal.

6. The Inquiry Committee in its report, has stated that:

"1. The service of the teacher may be made intact by restoration her permanently on her designated post with current benefits of salary.

2. The teacher possess no right of back benefits due to not performance any duty from 11.06.2019 up to the reinstatement order issued. Therefore, intervening period may be considered as extraordinary leave (EOL)."

7. The recommendations of the inquiry committee appear to have been misunderstood by the Director, Elementary & Secondary Education, Khyber Pakhtunkhwa, and instead keeping intact the service of the appellant, her punishment order was kept intact. In case the Director was not agreeing with the recommendation of the Inquiry Committee, he ought to have followed the procedure provided under the Khyber Pakhtunkhwa Government. Servants (Efficiency and Discipline) Rules, 2011, but he has not done. Besides, the competent authority was the District Education Officer and not the Director,



KHYBER PAKHTUNKHWA SERVICE TRIBUNAL

Service Appeal No.1299 of 2023

Mst. Masooma Begum

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
Order-08 30 th October, 2024.	<p><u>Kalim Arshad Khan, Chairman</u></p> <p>Present:</p> <ol style="list-style-type: none">1. Mr. Sardar Muhammad Irshad, Advocate, on behalf of appellant.2. Mr. Umair Azam, Additional Advocate General on behalf of respondents. <p>Vide our detailed judgment of today, placed on file, the impugned order is not sustainable, which is set aside with the direction to the District Education Officer (Female) Kohistan Upper to pass order being competent authority on the recommendations of the Inquiry Committee. In case the District Education Officer disagrees with the recommendations, she shall follow the procedure provided under the Khyber Pakhtunkhwa Government Servants (Efficiency and Discipline) Rules, 2011. 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 30th 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.1299/2023

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PRESENT


1. Mr. Afrasiab Khan Wazir, Advocate, for the Appellant
2. Mr. Naseer Ud Din Shah, Assistant Advocate General, 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 30th day of October, 2024.


Rashida Bano
Member (Judicial)


Kalim Arshad Khan
Chairman