

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 7668/2021

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

✓
Ahmad Shah S/O Suliman Shah, Ex-SST (G) R/O Village Sheikh Kalli, P.O
Agra, Tehsil & District Charsadda. ... (Appellant)

VERSUS

1. Government of Khyber Pakhtunkhwa through Secretary Elementary & Secondary Education, Civil Secretariat Peshawar.
2. Director Elementary & Secondary Education Department, Khyber Pakhtunkhwa Peshawar.
3. District Education Officer, Ghalanai.
4. District Education Officer, Khyber.

... (Respondents)

Bilal Ahmad Kakazai
Advocate

... For appellant

Mr. Muhammad Jan
District Attorney

.... For respondents

Date of Institution.....22.10.2021

Date of Hearing.....27.09.2024

Date of Decision.....27.09.2024

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, the order dated 22.06.2021 may please be set aside and the appointment order dated 22.05.2012 issued in favour of appellant be declared as genuine and validly issued by the competent authority and in consequence whereof



appellant be reinstated in service with all back benefits and wages, with such other relief as may deem fit in the circumstance of the case may also be granted."

2. Brief facts of the case as given in the memorandum of appeal are that the appellant was inducted into service against the post of Secondary School Teacher (BPS-16) upon the recommendation of Khyber Pakhtunkhwa Public Service Commission in the year 2012 and served the department for nine years upto the entire satisfaction of his superiors and was receiving his salaries. The appellant was transferred to different schools by the Respondent's Department during the peak of militancy in the Khyber Agency from 2012 onwards, yet he continued his service. During his employment, the appellant completed his M-Phil degree and received an allowance upon submitting verified degrees. In 2019, the department disowned certain employees over allegations of fake appointment orders, but the appellant was not initially affected. This Tribunal reinstated the disowned employees and ordered an inquiry, during which the appellant's records were requisitioned, and he was summoned for a hearing. Without observing the codal formalities appointment order of the appellant was disowned and he was also declared bogus employee by the department vide notification dated 22.06.2021. Feeling aggrieved, he preferred departmental appeal on 12.07.2021, which was not responded to, hence, the present service appeal.

3. Respondents were put on notice who submitted written replies/comments on the appeal. We have heard the learned counsel for the appellant as well as the learned District Attorney and perused the case file with connected documents in detail.



4. Learned counsel for appellant argued that the impugned notifications dated 22.06.2021 is against law, facts, norms of justice and material on record, therefore, not tenable and liable to be set aside. He further argued that appellant was appointed in accordance with law and rules by following the prescribed procedure which cannot be held as fake appointment. He further argued that neither proper regular inquiry was conducted nor he was associated with the inquiry proceedings. He contended that neither statement was recorded nor he was given the chance of cross examination and without final show cause notice the impugned order was passed which is against the law and principle of natural justice. He submitted that no opportunity of personal hearing was afforded to him and he was condemned unheard. He also referenced the case law 2011 SCMR 1581; 2004 SCMR 303; 2016 SCMR 1299 and 2010 PLD SC 483.

5. Conversely learned District Attorney appearing on behalf of respondents, controverted the contentions of learned counsel for appellant by contending that appellant has got himself inducted through fake and bogus order dated 25.05.2012 with a fake claim of the recommendation of the Khyber Pakhtunkhwa Public Service Commission, therefore, his appointment was declared fake & bogus and have been disowned by the Department vide notifications dated 22.6.2021. He further argued that no appeal has been filed by the appellant against the impugned notification, hence got finality under the law of limitation, therefore, instant appeal is not maintainable.

6. The perusal of record reveals that appellant was appointed as SST on the recommendations of Khyber Pakhtunkhwa Public Service Commission and placement of their services at the disposal of Director Education FATA vide



Director, E&SED Khyber Pakhtunkhwa's Notification No. 3506-13/File No.2/A-14/SST(F)/PSC/Apptt dated 25.05.2012, the appellant was adjusted vide order dated 30.05.2012. In the year 2019, certain employees were disowned by the department following allegations of fake appointment orders. However, the appellant was not initially impacted by this decision. The Tribunal subsequently reinstated the disowned employees and directed that an inquiry be conducted. During the inquiry, the appellant's records were requisitioned, and he was summoned for a hearing. Without adhering to the codal formalities, the appellant's appointment order was disowned vide notification dated 22.06.2021. Before disowning his appointment order, neither any show cause notice was served upon the appellant nor any personal hearing as well as regular inquiry was conducted by the respondents, which was the necessity of law and his appointment order was straight away disowned by the respondents. The hurry shown by the department in disowning the appellant's appointment order was not in accordance with law. Appellant must be provided with opportunity of personal hearing and cross examination for fulfilling purpose of fair trial. Respondent awarded major penalty of disowning appellant's appointment order who served for long eight years.


8. It is a well settled legal proposition, that regular inquiry is must before imposition of major penalty, whereas in case of the appellant, no such inquiry was conducted. The Supreme Court of Pakistan in its judgment reported as 2008 SCMR 1369 have held that in case of imposing major penalty, the principles of natural justice required that a regular inquiry was to be conducted in the matter and opportunity of defense and personal hearing was to be provided to the civil servant proceeded against, otherwise civil servant would be condemned unheard




and major penalty of dismissal from service would be imposed upon him without adopting the required mandatory procedure, resulting in manifest injustice. In the absence of proper disciplinary proceedings, the appellant was condemned unheard, whereas the principle of '*audi alteram partem*' was always deemed to be embedded in the statute and even if there was no such express provision, it would be deemed to be one of the parts of the statute, as no adverse action can be taken against a person without providing right of hearing to him/her. Reliance is placed on 2010 PLD SC 483.

9. As a sequel to above discussion, we set aside the impugned notification and reinstate the appellant for the purpose of de-novo inquiry and remand the case back to the respondents to conduct de-novo inquiry within a period of sixty days, by providing proper opportunity of self-defense and cross examination to the appellant. The issue of back benefits shall be decided subject to the outcome of de-novo inquiry. Costs shall follow the event. Consign.

10. *Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal on this 27th day of September, 2024.*


(AURANGZEB KHATTAK) 9
Member (J) 27-09
2024.


(RASHIDA BANO)
Member (J)

MEMO OF COSTS
KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

Service Appeal No.7668/2021

Date of presentation of Appeal 22.10.2021
Date of hearing 27.09.2024
Date of Decision 27.09.2024

Ahmad Shah, S/O Sulaiman Shah, Ex. SST (General), R/O Village Sheikh kali, P/O Agra,
Tehsil & District Charsadda. ... (Appellant)

Versus

The Government of Khyber Pakhtunkhwa through Secretary, Elementary & Secondary
Education Department, Civil Secretariat, Peshawar.

The Director, Elementary & Secondary Education, Khyber Pakhtunkhwa, Peshawar.
... (Respondents)

APPEAL UNDER SECTION 4 OF THE KHYBER PAKHTUNKHWA SERVICE
TRIBUNAL ACT, 1974 AGAINST THE ORDER NO. 10071-77 DATED
22.06.2021, WHEREBY THE APPOINTMENT ORDER DATED 25.05.2012
ISSUED IN FAVOR OF THE APPELLANT HAS BEEN DECLARED AS FAKE
& BOGUS AND THEN DISOWNED BY THE DEPARTMENT, ALONG WITH
THE DIRECTION OF RECOVERY OF SALARIES AND OTHER ALLIED
BENEFITS FROM THE APPELLANT.

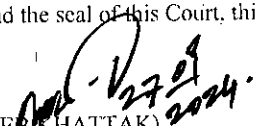
PRESENT


1. Mr. Bilal Ahmad Kakazai, Advocate for the appellant
2. Mr. Muhammad Jan, District Attorney for the 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 27th day of September 2024.


(AURANGZEB KHATTAK)
Member (J)


(RASHIDA BANO)
Member (J)

ORDER

27.09.2024

1. Learned counsel for the appellant present. Mr. Muhammad Jan, District Attorney for the respondents present.

2. Vide our detailed judgment of today placed on file, we set aside the impugned notification and reinstate the appellant for the purpose of de-novo inquiry and remand the case back to the respondents to conduct de-novo inquiry within a period of sixty days, by providing proper opportunity of self-defense and cross examination to the appellant. The issue of back benefits shall be decided subject to the outcome of de-novo inquiry. Costs shall follow the event. Consign.

3. *Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal on this 27th day of September, 2024.*


(AURANGZEB KHATTAK)

Member (J)

27th
2024.


(RASHIDA BANO)

Member (J)