

**KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR CAMP COURT D.I.KHAN.**

**SCANNED
KPST
Peshawar**

**BEFORE: KALIM ARSHAD KHAN --- CHAIRMAN
SALAH UD DIN --- MEMBER(J)**

Service Appeal No.137/2022

Mst. Shamshad Bibi, SDEO (Female) Paharpur, Education Department, D.I.Khan.

.....(**Appellant**)

Versus

1. **Government of Khyber Pakhtunkhwa, through Secretary Elementary & Secondary Education Department, Khyber Pakhtunkhwa Peshawar.**
2. **Chief Secretary, to government of Khyber Pakhtunkhwa Elementary & Secondary Education Department, Peshawar.**
3. **Secretary, Elementary & Secondary Education Department, Khyber Pakhtunkhwa, Peshawar.**
4. **Director Education, Department (E&SE) Khyber Pakhtunkhwa Peshawar.**
5. **District Education Officer (Female), Dera Ismail Khan.**
6. **District Education Officer (Female), Tank.**
7. **District Account Officer, D.I.Khan.**
8. **Mst. Sonia Nawaz, SDEO, (Female), Tank.**

.....(**Respondents**)

Present:

Mr. Ahmad Ali,
Advocate.....For appellant.

Mr. Muhammad Adeel Butt,
Additional Advocate General.....For official respondents.

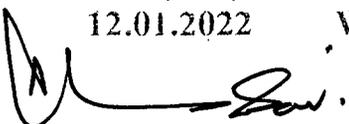
Mr. Noman Ali Bukhari,
Advocate.....For private respondent No.8

Date of Institution.....31.01.2022

Date of Hearing.....30.09.2022

Date of Decision.....30.09.2022

APPEAL UNDER SECTION 4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974 AIMED AGAINST THE IMPUGNED NOTIFICATION BEARING NO. SO (MC)/E&SED/4-16/2021/POSTING/TRANSFER/MC DATED 12.01.2022 WHEREBY THE APPELLANT WAS



TRANSFERRED TO DISTRICT TANK, WHEREAS RESPONDENT NO.8 ON THE BASIS OF FAVOURITISM, WAS BROUGHT TO PAHARPUR, D.I.KHAN IN VIOLATION OF LAW, RULES AND POLICY IN VOGUE BY THE PROVINCIAL GOVERNMENT.

JUDGMENT

KALIM ARSHAD KHAN CHAIRMAN: Facts, to the extent necessary, are that the appellant is serving as Sub-Divisional Education Officer (SDEO) (Female) in the Education Department, Khyber Pakhtunkhwa and previously, she was posted as such at Munda, District Dir Lower vide notification dated 21.02.2019; that vide notification dated 09.08.2019, the petitioner was transferred from the post of SDEO(F) Munda Dir Lower to the post of SDEO(F) Tank; that thereafter on 07.10.2021, the appellant was transferred from the post of SDEO(F) Tank to the post of SDEO(F) Paharpur, District D.I.Khan; that, just after three months of transfer of the appellant to Paharpur, D.I.Khan, the respondents issued another impugned transfer notification dated 12.01.2022, vide which the appellant was transferred back to District Tank whereas private respondent No.8 was transferred in her place at Paharpur District D.I.Khan; that the appellant felt herself aggrieved from the order dated 12.01.2022 and filed departmental appeal, which was not responded and the appellant then filed this appeal in this Tribunal.

02. On receipt of the appeal and its admission to full hearing, the respondents were summoned, who, on putting appearance, contested the appeal by filing reply/comments mainly on the grounds that under section 10 of the Khyber Pakhtunkhwa Civil Servants Act, 1973, every civil servant was liable to serve anywhere within or outside the province; that the

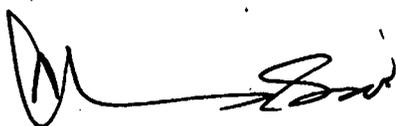


impugned order was acted upon, therefore, the appeal had rendered infructuous; that the private respondent No.8 was posted back to Paharpur on acceptance of her representation and totally on humanitarian grounds. The defence setup was a total denial of the claim of the appellant.

03. We have heard learned counsel for the appellant, learned Additional Advocate General for official the respondents and counsel for private respondent No.8.

04. Learned counsel for the appellant argued that the appellant was transferred back to the District Tank and consequent thereof respondent No.8, on the basis of favoritism, was brought back to the Paharpur D.I.Khan is against the law, rules and regulations framed there-under, thus is not maintainable and is liable to be declared void ab-initio. Learned counsel further argued that the impugned transfer order is pre-mature and against the posting/transfer policy of the Provincial Government. He contended that the impugned order is based on malafide and is due to the political victimization. At the end he requested that the impugned order is set aside the appellant might be allowed to complete her normal tenure as per policy.

05. Learned Additional Advocate General contradicted the arguments of learned counsel for the appellant and raised preliminary objection on the maintainability of the service appeal under Section-4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974. He further argued that as per Section-10 of the Khyber Pakhtunkhwa Civil Servants Act, 1973, every civil servant shall be liable to serve anywhere within or outside the province. He requested that the appeal might be dismissed with cost.



06. Learned counsel for private respondent No.8 submits that the instant appeal is not maintainable under Section-4 of the Service Tribunal Act 1974 on the ground that the statutory period of ninety days was not lapsed, hence premature which should be rejected. He further contended that the appellant has been treated in accordance with law and rules, therefore, the instant appeal is being devoid of merit might be dismissed.

07. In order to streamline and regulate the postings and transfers of the Civil Servants, the Government of Khyber Pakhtunkhwa introduced a posting/transfer policy. Main conditions of the same relevant to the instant appeal are as under:-

i. All the postings /transfers shall be strictly in public interest and shall not be abused/misused to victimize the Government servants.

iv. The normal tenure of posting shall be three years subject to the condition that for the officers /officials posted in unattractive areas, the tenure shall be two years and for hard areas the tenure shall be one year. The unattractive and hard areas will be notified by the Government.

08. It is observed at the very outset that the reply of the official respondents has urged that the private respondent No.8 was transferred back on humanitarian grounds on acceptance of her departmental representation but neither such humanitarian ground was explained nor any public interest or exigency was stated in the reply of the respondents in transferring back the private respondent No.8.

09. The posting and transfer policy specifically fixes a normal tenure for the civil servants. In the case in hand it is two years but just in three months of the transfer of the appellant she was re-transferred to the previous place of posting without allowing her to complete normal tenure as per the Government's own decision found in the above policy.

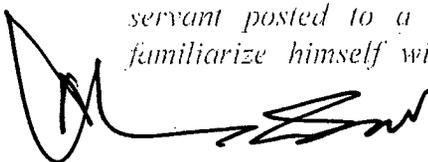


10. Tenure was originally created to give teachers academic freedom. Civil Servants do not have stability of tenure, particularly and especially in the Education Department where transfers and postings are made frequently at the whims and fancies of the executive head for political and other considerations, and not in the public interest; a fixed minimum tenure would not only enable Civil Servants to achieve their professional targets, but also help them function as effective instruments of public policy; repeated shuffling/transfer of officers is deleterious to good governance; minimum assured service tenure ensures efficient service delivery, and increased efficiency; and Civil Servants can also prioritize various social and economic measures intended to implement for the poor and marginalized sections of society.

11. In 2018 S C M R 1411 titled "Khan Muhammad Versus Chief Secretary, Government of Balochistan Quetta and others", the august Supreme Court of Pakistan was pleased to have found as under:---

"18. Under section 10 of the Act a civil servant cannot insist to be posted or transferred to a particular post but this does not mean that a civil servant can be made to serve under a subordinate. Moreover, while section 10 does not prescribe a minimum period during which a civil servant must serve at his post it does not mean that the Government without assigning any reason can move a civil servant from the place he was posted to after a month or subject the civil servant to repeated postings in a short period of time because this would amount to punishing him. Such postings also adversely affect the public interest and result in the wastage of scarce resources and constitute bad governance.

19. The Rules designate certain posts as 'tenure posts' (rule 22 read with Schedule IV of the Rules) and prescribe a period of three years for an incumbent to serve on such posts. Such prescribed tenure may therefore be categorized as the ideal duration for which a civil servant should serve at a particular post. The post of Divisional Director however is not a tenure post but the principle of serving for a particular duration at this post should be followed. In the present case the petitioner was posted for a little over a month when he was again posted. Any civil servant posted to a particular post requires some time to familiarize himself with the workings of the office and the



requirements of the post whereafter he will be best placed to acquit himself of the responsibilities of the post. However, a one month posting, as in the case of the petitioner, would not serve the interest of the people."

12. The upshot of the above discussion is that impugned order dated 07.10.2021 was not issued in public interest or exigencies of service and as such is not tenable in the eyes of law. Pre-mature transfer is clear violation of Clause I and IV of Posting and Transfer Policy notified by the provincial government. It is also violative of instructions circulated vide letter dated 27.02.2013 pertaining to tenure in posting/transfer. Ordinary tenure for posting has been specified in the law or rules made there-under, such tenure must be respected and cannot be varied, except for compelling reasons. It should be recorded in writing and are judicially reviewable.

13. As a sequel to the above, the service appeal is allowed with the directions to the respondent-department to allow the appellant to continue on her present station of posting till completion of her normal tenure. The appeal is accepted in the above term. Costs shall follow the event. Consign.

14. *Pronounced in open Court at Camp Court D.I.Khan and given under our hands and the seal of the Tribunal on this 30th day of September, 2022.*



KALIM ARSHAD KHAN

Chairman

Camp Court D.I.Khan



SALAH UD DIN

Member Judicial

Camp Court D.I.Khan.