

REGISTERED



ORDER

GOVERNMENT OF THE PUNJAB
SPECIAL EDUCATION DEPARTMENT

SO(Estt)40-473/2018: WHEREAS, Deputy Director (Admn.), Directorate General of Special Education Punjab vide letter dated 01.11.2023 forwarded letter of District Education Officer (Spl. Edu.), Rawalpindi dated 21.10.2023 and absence report dated 16.10.2023 made by the Headmaster, Govt. Special Education Centre, Daultala, Tehsil Gujar Khan, Rawalpindi, through these documents it was informed that **Ms. Samina Yasmeen**, Junior Special Education Teacher (MC Field) (BS-16), Govt. Special Education Centre, Daultala, Tehsil Gujar Khan, Rawalpindi, Resident of Mohallah Habit Khel, P/O Khas, Shahbaz Khel Pakka, Tehsil and District Mianwali; and House No. 855/59, Ward No. 21, Bismillah Colony Khanewal Road, Multan (**'accused officer'**) has been found absent from duties w.e.f. 02.10.2023 to date without any intimation / prior approval of leave by the Competent Authority which shows her careless attitude and also depicts that her conduct is unbecoming of an officer.

2. **AND WHEREAS**, keeping in view the willful absence of the accused officer, related facts of the case and on account of availability of sufficient documentary evidence on record, *while dispensing with regular inquiry in terms of Section 5 of the PEEDA Act, 2006*, disciplinary proceedings were initiated against the accused officer vide Show Cause Notice dated **01.01.2024** under Section 7(b) read with Section 5(1)(a) of the PEEDA Act, 2006 (**'Act'**) on the following charge of misconduct on account of absence from duty:

"You have been found absent from duty w.e.f. 02.10.2023 to date without any intimation or prior permission of the Competent Authority".

3. **AND WHEREAS**, through the above said Show Cause Notice, the accused officer was directed to submit her defence reply within 07-days. But despite lapse of considerable time, she failed to submit her reply. Therefore, in order to finalize the disciplinary proceedings, it was decided to afford an opportunity of personal hearing to the accused officer under Section 7(d) of Act *ibid* and for said purpose, vide letter dated 26.01.2024, **Section Officer (Estt.), Special Education Department** was appointed as Hearing Officer under Section 7(d) of the Act *ibid* and the accused officer was directed to appear before the Hearing Officer on 15.02.2024.

4. **AND WHEREAS**, the Hearing Officer submitted hearing report stating therein that the accused officer did not appear on the date fixed for personal hearing i.e., 15.02.2024 despite intimation through service of notices of personal hearing on her residential address. To meet the ends of justice and to provide full, complete and fair opportunities of hearing to the accused officer, she was afforded 2nd opportunity of personal hearing and she was directed to appear on 05.03.2024 but again she did not

The Hearing Officer further stated that the hearing notices were served to the accused officer on her residential address and copies of the same were also sent to District Education Officer (Special Education) concerned and Headmaster concerned to ensure the delivery of notice to the accused officer. The hearing notices were also uploaded on the official website of the department, but despite meticulous adherence to all procedural, legal, and regulatory formalities, and despite proper information/service of notices, the accused officer failed to attend the scheduled personal hearing proceedings.

5. **AND WHEREAS**, the Hearing Officer after consulting record, observed that the accused officer was appointed as Junior Special Education Teacher (MC Field / BS-16) on contract basis for a period of five years and posted at Govt. Special Education Centre, Daultala, Tehsil Gujar Khan, District Rawalpindi vide order dated 08.01.2021 and she is still a contract employee and her services are governed in accordance with the provisions of Contract Appointment Policy, 2004 read with terms and conditions duly accepted by the accused officer at the time of joining service, contained in offer of appointment. The Hearing Officer further observed that the accused officer failed to furnish her written reply in response to the Show Cause Notice dated 01.01.2024. Clause-05 of the Show Cause Notice provides that *"your reply to Show Cause Notice should reach the undersigned, within the said period failing which it shall be presumed that you have no defence to offer and you have admitted the charge"*, failure on the part of accused officer to file reply to Show Cause Notice tantamounts to admission of charge, hence the charge leveled against the accused officer stands proved.

6. **AND WHEREAS**, the Hearing Officer further observed that the accused officer was afforded two (02) opportunities of personal hearing with the direction to appear for personal hearing but she failed to attend the personal hearing proceedings which shows that she has no supporting documents to defend her case and justify the charge of unauthorized absence levelled against her. The Hearing Officer, *after evaluating the record connected with the case*, also observed that the accused officer absented herself from duty since 02.10.2023 till date (*this period spans over more than 05 months*) without any intimation or prior permission of the Competent Authority which is deliberate, willful and unauthorized because she is not entitled for such long leave being a contract employee. The Hearing Officer further observed that it can safely be inferred from the record that conduct of the accused officer towards performance of her official duty remained highly prejudicial to good service discipline, unbecoming of an officer and tantamounts to gross misconduct.

7. **AND WHEREAS**, the Hearing Officer also noted that the accused officer earlier tendered resignation from job w.e.f. 01.03.2022 on the ground of her ongoing health issues. But later on, she filed an application for withdrawal of her resignation, hence she was afforded opportunity of personal hearing and vide letter dated 26.11.2022 while showing grace, her request to withdraw resignation was allowed. The Hearing Officer further stated that the accused officer after initiation of disciplinary

Lavina Saad

proceedings again tendered resignation which was forwarded to this department vide letter dated 26.01.2024. The Hearing Officer further stated that the resignation tendered by the accused officer does not merit consideration because S&GAD issued instructions regarding acceptance of resignation during pendency of enquiry proceedings under E&D Rules/PRSO, 2000 bearing No. SOR.I(S&GAD)1-13/2004 dated 16.03.2004 wherein following guidelines were issued;

“xxx. 2.(i) Once disciplinary action is initiated by the Competent Authority, the same must reach its logical conclusion and resignation tendered by the accused, during the conduct or pendency of disciplinary/enquiry proceedings should not be accepted. Only after the conclusion of the disciplinary proceedings and issuance of final orders under the relevant laws/rules by the competent authority, necessary action regarding acceptance of resignation of the civil servant may be taken by the relevant appointing authority.

(iii) Where the disciplinary proceedings have not yet been initiated by the Competent Authority and the charges are not of very serious nature and do not involve any loss to the government or any other individual e.g., absence from duty, Administrative Departments / Appointing Authorities may, in their discretion, accept resignation of the civil servant and disciplinary proceedings may not be initiated against him, if deemed appropriate.

Whereas, vide Circular No. SORI(S&GAD)2-2/2012 dated 10.10.2013 in Para No. 4, the above stated instructions were reiterated in following terms;

“xxx. Once disciplinary action is initiated by the competent authority, the same must reach its logical conclusion and resignation tendered by the accused, during the conduct or pendency of disciplinary / enquiry proceedings, should not be accepted. Only after the conclusion of the disciplinary proceedings and issuance of final orders under the relevant laws / rules by the competent authority, necessary action regarding acceptance of resignation of the civil servants may be taken by the relevant appointing authority.”

The Hearing Officer stated that in view of above, since disciplinary proceedings have already been initiated against the accused officer, therefore, she cannot resign from her job at this stage. Furthermore, Clause-06 of the Instructions issued by S&GAD viz-a-viz acceptance of resignation bearing No. SORI(S&GAD)1-13/2004 dated 16.03.2004 provides *ut infra*;

“xxx. 6. It may be clarified that only that resignation will be accepted by the Competent Authority:

- i. **Where the employee tendering resignation addresses his application to the authority, competent to accept his resignation.**

- ii. *The resignation is not tendered as a protest. The officer / official expresses his own sweet to resign from service."*

The Hearing Officer is of the view that since, the accused officer tendered her resignation addressed to Principal who is admittedly not the Competent Authority of the accused officer, therefore, if the admissibility of the resignation of the accused officer is adjudged on the touchstone of above quoted instructions, there is left no ambiguity to arrive at the conclusion that the resignation tendered by the accused officer is patently defective and has no value in the eye of law. The Hearing Officer concluded that the accused officer being contract employee has been found guilty of misconduct on account of absence from duty w.e.f. 02.10.2023 till date (**for a period more than 05 months**) and the charge stood proved against her. The accused officer is knowingly avoiding to appear for personal hearing and is delaying the finalization of disciplinary proceedings.

8. **AND WHEREAS**, following a comprehensive review of all pertinent aspects and materials pertaining to the case, as well as the report submitted by the Hearing Officer, it has been noticed the accused officer being contract employee remained willfully absent from duty w.e.f. 02.10.2023 till date (*for a period more than 06 months*) and no cogent, convincing and confidence aspiring evidence has been brought on record by the accused officer to substantiate that her absence is neither willful nor unauthorized. After consulting the record, I am tempted to observe that no circumstances extenuating in nature exist in favour of the accused officer through which it can be deduced that absence of the accused officer is due to circumstances which are beyond her control as the accused officer has neither filed any application for sanction of leave nor intimated the department in this regard. The accused officer also failed to file her defense reply in response to the Show Cause Notice dated 01.01.2024. Clause 5 of the Show Cause Notice reads as under;

"5. Your reply to Show Cause Notice should reach the undersigned, within the said period failing which it shall be presumed that you have no defence to offer and have admitted the charge."

It is observed that failure of the accused officer to respond to the Show Cause Notice constitutes an admission of the charge. Therefore, the charge against the accused officer is deemed to be substantiated. As per record, the accused officer was provided ample opportunities of personal hearings but wilful and intentional non-appearance of the accused officer for personal hearing shows that she is avoiding to appear for personal hearing and is delaying the finalization of disciplinary proceedings. If the willful absence of accused officer from duty being contract employee, *which spans over more than 06 months*, is adjudged on the touchstone of provisions of Contract Appointment Policy, 2004, it makes it abundantly clear that she is not entitled for such long leave and as per provisions of Contract Appointment Policy, 2004 her contract is liable to be terminated. There is no cavil to the proposition that absence from duty without approval of leave by Competent Authority tantamounts to misconduct as defined under Section

2(n)(vii) of the PEEDA Act, 2006 and constitutes culpable wrongdoing. Record fully corroborates that the accused officer has been found guilty of charge of absence from duty w.e.f. 02.10.2023 till date (for more than six months) without prior approval / permission of Competent Authority.

9. **NOW THEREFORE, I, Saima Saeed**, Secretary, Special Education Department and the Competent Authority in the present matter, having thoroughly reviewed all pertinent aspects and materials related to the case, hold the opinion that the accused officer tendered resignation after initiation of disciplinary proceedings (*during pendency of disciplinary proceedings on the charge of absence from duty*) and that too addressed to an authority who is neither competent nor appointing authority of the accused officer, hence the resignation of the accused officer cannot be acceded to being contrary to standing instructions issued by S&GAD (*reproduced hereinabove*) and also being patently defective. Resultantly, the resignation of the accused officer is hereby declined. Moreover, the records unequivocally establish that the accused officer has been found guilty of misconduct due to her absence from duty from 02.10.2023, onwards. This absence is willful, unauthorized, and falls outside the purview of the Contract Appointment Policy, 2004. As a result of the accused officer's absence from duty, special students were deprived of their fundamental right to education. It is evident that the conduct and nonchalant attitude displayed by the accused officer towards the fulfillment of her official obligations indicate a lack of interest in performing Government duties. Additionally, retaining her in Government service would not serve any beneficial purpose for the department or the special students. Therefore, *keeping in view the gravity of proven charge and in exercise of powers vested upon me under the PEEDA Act, 2006 and for reasons recorded hereinabove*, major penalty of "**Removal from service**" in terms of Section 4(1)(b)(v) of the PEEDA ACT, 2006 is hereby imposed upon the accused officer and accordingly as per Clause 3(XVIII)(8) of the Contract Appointment Policy, 2004 her contract is hereby terminated.

Saima Saeed
(SAIMA SAEED)

SECRETARY to
GOVERNMENT OF THE PUNJAB
SPECIAL EDUCATION DEPARTMENT /
COMPETENT AUTHORITY

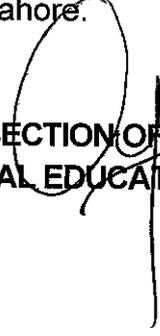
Dated Lahore, the
April 03th/2024

No. & Date Even:

A copy is forwarded for information and necessary action to the:-

1. Accountant General Punjab, Lahore.
2. Director General, Special Education Punjab, Lahore.
3. District Education Officer (Special Education), Rawalpindi.

4. Headmaster / Headmistress, Govt. Special Education Centre, Doultala, Tehsil Gujar Khan, Rawalpindi to ensure delivery of this order to the accused officer at her residential and official address through all possible means including email at her official email address under intimation to this Department.
5. Statistical Officer, Directorate General of Special Education, Punjab, Lahore.
6. Accused officer concerned / **Ms. Samina Yasmeen**, Junior Special Education Teacher (MC Field) (BS-16), Govt. Special Education Centre, Doultala, Tehsil Gujar Khan, Rawalpindi, Resident of **Mohallah Habit Khel, P/O Khas, Shahbaz Khel Pakka, Tehsil and District Mianwali; and House No. 855/59, Ward No. 21, Bismillah Colony Khanewal Road, Multan.**
7. PS to Secretary Special Education Department, Lahore.


SECTION OFFICER (ESTT.)
SPECIAL EDUCATION DEPARTMENT