

REGISTERED



ORDER

GOVERNMENT OF THE PUNJAB
SPECIAL EDUCATION DEPARTMENT

SO(Estt)36-265/2019: WHEREAS, Headmistress, Govt. Special Education Centre, Yazman vide letter dated 17.08.2023 informed that **Ms. Asma Malik**, Junior Special Education Teacher (MC Field/BS-16), Govt. Special Education Centre, Yazman ('accused officer') has absented herself from duty since November, 2022. Initially the accused officer applied for grant of casual leave for one-week w.e.f. 31.10.2022 till 05.11.2022, where-after she vide Whatsapp message, *without submitting any medical certificate*, requested for grant of medical leave w.e.f. 07.11.2022 till 27.11.2022. After 27.11.2022, neither she resumed her duties and submitted medical certificate for period w.e.f. 07.11.2022 till 27.11.2022 nor filed any application for further leave.

2. **AND WHEREAS**, given the facts of the case and keeping in view willful absence of the accused officer from duty and availability of sufficient documentary evidence on record, Secretary Special Education being Competent Authority, *while dispensing with regular inquiry*, initiated disciplinary proceedings against the accused officer vide Show Cause Notice dated 06.10.2023 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. 07.11.2022 to date without prior permission / sanction of the leave by the Competent Authority."

3. **AND WHEREAS**, through the above said Show Cause Notice, the accused officer was directed to submit her defense reply within 07-days but she did not do so. Therefore, in order to finalize the disciplinary proceedings, the accused officer was afforded an opportunity of personal hearing under Section 7(d) of the Act *ibid* and for said purpose vide letter dated 31.10.2023, she was directed to appear before **Deputy Secretary Special Education / Hearing Officer** appointed under Section 7(d) of the Act *ibid* on **13.11.2023**.

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., 13.11.2023 despite intimation via phone call and service of notice of personal hearing on her residential address. For the sake of justice and to complete the hearing proceedings, the accused officer was afforded 2nd opportunity of personal hearing and she was directed to appear on 21.11.2023 but again she did not appear. The Hearing Officer further stated that as per record, the hearing notice was served to the accused officer on her residential address and copies were also sent to District Education Officer (Special Education) concerned and Headmaster concerned to ensure the delivery of notice to the accused officer. Vide letter dated 21.11.2023, Deputy Director (Admn.) of Director General of Special Education forwarded letters of District Education Officer (Special Education) Bahawalpur dated 07.11.2023 and Headmistress concerned dated 07.11.2023 whereby it was informed that Show Cause Notice and Personal Hearing Notice were delivered to the accused officer at her residential address through special messenger. Despite observing all just, legal and codal formalities and proper intimation the accused officer did not attend the personal hearing proceedings.

Lamina Saheed

5. **AND WHEREAS**, the Hearing Officer after consulting record, observed that the accused officer was appointed as Junior Special Education Teacher (Mentally Challenged Field / BS-16) on contract basis for a period of five years and posted at Govt. Special Education Centre, Yazman, District Bahawalpur vide order dated 17.10.2019 and she is still a contract employee. The Hearing Officer further observed that the accused officer failed to furnish her defense reply in response to the Show Cause Notice dated 06.10.2023. 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 either you have no defence to offer"*, 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. The Hearing Officer further observed that the accused officer was afforded two (02) opportunities of personal hearing with the direction to appear before him but she failed to attend the personal hearing proceedings which shows that she has no supporting documents to defend her case. The Hearing Officer, *after evaluating the record connected with the case*, also observed that the accused officer absented herself from duty since November, 2022. Initially the accused officer applied for grant of casual leave for one-week w.e.f. 31.10.2022 till 05.11.2022 and thereafter she vide Whatsapp message, *without submitting any medical certificate*, requested for grant of medical leave w.e.f. 07.11.2022 till 27.11.2022. After 27.11.2022, neither she resumed her duties and submitted medical certificate for period w.e.f. 07.11.2022 till 27.11.2022 nor filed any application for further leave. The Hearing Officer was of the view that if, *for an instant merely for the sake of arguments*, the period w.e.f. 07.11.2022 to 27.11.2022 *(the period during which the accused officer remained on self-claimed medical leave)* is considered as period spent on authorized medical leave, even then the absence of the accused officer w.e.f. 27.11.2022 till date *(this period also spans over more than one year)* is deliberate, willful and unauthorized because she is not entitled for such long leave being a contract employee. Record further shows that Clause 7(c) of Annex-B of Contract Appointment Policy, 2004 titled Guidelines for Fixing Terms and Conditions of Contract Appointments provides that *"Leave on medical grounds without pay shall be admissible on production of medical certificate by the competent authority as per Punjab Medical Attendance Rules, 1959. However, if medical leave continues beyond 3 months, his contract shall be liable to be terminated"*, if the absence of the accused officer is considered to be due to medical grounds which went for beyond 01 year as she has absented herself from duty without approval of leave w.e.f. 07.11.2022 to date, even then, her contract is liable to be terminated. The Hearing Officer further observed that it can safely be inferred from the record that the 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. The Hearing Officer concluded that the accused officer has been found guilty of misconduct on account of absence from duty 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.

6. **AND WHEREAS**, after having considered all aspects and material related to the case and report of Hearing Officer, it has been noticed the accused officer remained willfully absent from duty w.e.f. 07.11.2022 till date and no cogent, convincing and confidence inspiring evidence has been brought on record by the accused officer to substantiate that her absence is neither willful nor unintentional. After consulting the record, I am tempted to observe that no circumstances extenuating in nature exists 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. It is further noted that Section 7(f) of the PEEDA Act, 2006 provides as under;

- (f) impose any one or more penalties mentioned in section 4, by an order in writing, if the charge or charges are proved against the accused:

Provided that—

- (i) where charge or charges of grave corruption are proved against an accused, the penalty of dismissal from service shall be imposed, in addition to the penalty of recovery, if any; and

(ii) where charge of absence from duty for a period of more than one year is proved against the accused, the penalty of compulsory retirement or removal or dismissal from service shall be imposed upon the accused.

It is noted that the if the accused officer requested the Headmistress concerned for grant of medical leave but never joined back, *if for the sake of arguments*, the absence of the accused officer is considered to be due to medical reasons even than it is noticed that nothing had estopped the accused officer to at-least inform the department but as per record she neither applied for leave nor informed this department and preferred to remain on leave without obtaining prior sanction of leave by Competent Authority. It is also not out of place to mention here that Clause 7(c) of Guidelines for Fixing Terms and Conditions of Contract Appointments (Annex-B) of the Contract Appointment Policy-2004 provides as under;

- (c) Leave on medical grounds without pay shall be admissible on production of medical certificate by the competent authority as per Punjab Medical Attendance Rules, 1959. **However, if medical leave continues beyond 3 months, his contract shall be liable to be terminated.**

(Emphasis provided)

If the willful absence of accused officer from duty, *which spans over more than one year*, is adjudged on the touchstone of above stated clause of Contract Appointment Policy-2004, it makes it abundantly clear that contract of the accused officer 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 Act *ibid* and constitutes culpable wrongdoing. Record fully corroborates that the accused officer has been found guilty of charge of absence from duty w.e.f. 07.11.2022 **(for more than one year)** without prior approval / permission of Competent Authority.

7. **NOW THEREFORE**, I, **Saima Saeed**, Secretary Special Education / Competent Authority in the instant case, *for reasons recorded herein above*, am of the view that record fully corroborates that the accused officer has been found guilty of charge of absence from duty and it is established from record that the absence of the accused from duty w.e.f. 07.11.2022 till date is willful and intentional. The conduct of the accused towards performance of her official duty remained prejudicial to good service discipline and tantamounts to gross misconduct, therefore, keeping in view the gravity of proven charge, in exercise of powers vested upon me under the Section 7(f) read with

Saima Saeed

Section 4 of the Act *ibid*, major penalty of "Removal from service" in terms of Section 4(1)(b)(v) 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)
SECRETARY to

GOVERNMENT OF THE PUNJAB
SPECIAL EDUCATION DEPARTMENT /
COMPETENT AUTHORITY

Dated Lahore, the
December 20th /2023

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), Bahawalpur.
4. Headmistress, Govt. Special Education Centre, Yazman 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. PS to Secretary Special Education Department, Lahore.
6. Statistical Officer, Directorate General of Special Education, Punjab, Lahore.
7. Accused officer concerned / Ms. Asma Malik, Junior Special Education Teacher (MC Field/BS-16), Govt. Special Education Centre, Yazman Resident of House and Street No. 2, Khakwani Colony, Barbar Mahal Road, Bahawalpur.


SECTION OFFICER (ESTT.)
SPECIAL EDUCATION DEPARTMENT