The appeal of Syed Shahin Shah Deputy Director Finance DG, LG&RDD Peshawar received today i.e. on 25.04.2022 is incomplete on the following score which is returned to the appellant for completion and resubmission within 15 days.

Page nos. 21 & 23 of the appeal are illegible which may be replaced by legible/better one.

No. 952 /S.T,

Dt. 26-4- /2022

REGISTRAR
SERVICE TRIBUNAL
KHYBER PAKHTUNKHWA
PESHAWAR.

Syed Shahinshah Appellant.

Legible/better copies are affixed in the file with mess.

Registry,
Service Tribunal,
KP, Pesh.

(SYED SHAHINSHAH)
17301-9406669-3
27-4-22

BEFORE THE HON'BLE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR.

Service Appeal No. 634/2022

Syed Shahin Shah.....(Appellant)

VERSUS

The Government of Khyber Pakhtunkhwa through Chief Secretary and others.....(Respondents)

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Appellant
(in person)

Dated: 25/04/2022

SYED SHAHIN SHAH
(Appellant)
Cell No. 0334-9006361

(1)

BEFORE THE HON'BLE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR.

Service Appeal No. _____/2022

Syed Shahin Shah

(Deputy Director Finance/ Accounts) C/O Directorate General LG & RD, Plot No. 20, Phase-V, Hayatabad, Peshawar.....(Appellant)

VERSUS

1. The Government of Khyber Pakhtunkhwa through Chief Secretary, Civil Secretariat, Khyber Road, Peshawar.
2. The Secretary to Government of Khyber Pakhtunkhwa Finance Department, Civil Secretariat, Khyber Road, Peshawar.
3. The Government of Khyber Pakhtunkhwa through Secretary Establishment Department, Civil Secretariat, Khyber Road, Peshawar.
4. The Government of Khyber Pakhtunkhwa through Secretary Local Government, Civil Secretariat, Khyber Road, Peshawar.....(Respondents)

SERVICE APPEAL U/S 4 OF KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974 READ WITH JUDGMENT OF THE SUPREME COURT OF PAKISTAN AS THERE

IS NO LIMITATION RUN IN THE FINANCIAL MATTERS ALONG WITH OTHER JUDGMENTS OF THE APEX COURT AS WELL AS SECTION 54 OF THE LAW OF EVIDENCE, 1984, BY DECLARING THE NON ACTION ON THE REPRESENTATION OF THE APPELLANT AS ILLEGAL, VOID-AB-INITIO, DISCRIMINATORY AND UNCONSTITIONAL AND AGAINST THE FUNDAMENTAL RIGHTS OF THE APPELLANT.

Respectfully Sheweth:

1. That appellant is citizen of Pakistan and regular civil servant of Khyber Pakhtunkhwa Government.

2. That appellant is working under Civil Servant Act No. VIII, 1973.

3. That appellant like others and all civil servants has taken the charge for the pleasure of the Governor Khyber Pakhtunkhwa as per Section 4 of the Civil Servant Act, VIII, 1973.

4. That appellant is the professional officer and has selected & appointed through Khyber Pakhtunkhwa Public Service Commission on the basis of Master Degree.

5. That Provincial Cabinet of the Government of Khyber Pakhtunkhwa ignored the grant of Executive Allowance at the rate of 1.5 basic pay to the appellant w.e.f. 02/12/2018 and grant of such type of allowance at the rate of 150% w.e.f. 01/07/2021 and Directorate General Allowance at the rate of 30% w.e.f. 01/01/2013.

6. That appellant submitted its representation to the respondents on equally and quality basis but his representation was filed in the record of waste.

7. The Provincial Cabinet of the Government approved and granted special allowance to PMS/PCS officers from BPS-17-21 w.e.f. 02/12/2018.

8. That Provincial Government approved and granted "Technical Allowance" at the rate of 1.5 initial basic

pay to engineers working in all the civil departments w.e.f. 01/11/2018.

9. That like the Executive a Allowance and technical allowance to engineers, The Provincial Government also approved and granted similar allowance to Planning Officers at the rate of 1.5 of initial basic pay w.e.f. 11/11/2019.

10. That similar type of allowance is also granted to qualified doctors employed in Provincial Government Health care organizations and Civil Judges/ Civil-Servants employed in the sub ordinate judiciary.

11. That similarly IT Professionals were also given the benefit of IT Allowance at the rate of 1.5 pay of their basic pay w.e.f. 01/07/2021.

12. That those above mentioned allowances are not the regular allowances of the salary but specific allowances as additions to salaries.

13. That the Executive Allowance at the rate of 150% of pay of w.e.f 01/07/2021 are also reckonable for 2nd pension benefit.

14. That likewise the Provincial Government has been granting Secretariat allowance at 30% and utility allowance to the civil servants in Secretariat.

GROUNDS:

A. That the appellant is citizen of Pakistan and his rights are protected in Article 4, 10-A, 25, 27 and 38 (e) of the Constitution of Islamic Republic of Pakistan, 1973.

B. That Provincial Government did not treat the appellant on equal basis under the Constitution and failed to follow the principles of policy of the Constitution to increase the pay and remove the disparity of pay among the employees.

C. That respondents ignored the representation and committed gross irregularity of not upholding the Constitution of Pakistan.

D. That in the vein of granted allowance at the rate of 1.5 to employees of the Civil Secretariat, similar type of allowances was also granted to corporate/ statutory bodies like PDA and Local Council Board, KP to benefit their employees and remove the disparity in the pay of their employees.

E. That professional officers in the field and at Directorate Level monitor and supervise the employees and scrutinize their work at Directorate (HQ) before the recommending the work/ output to the scheduled posts officers sitting in the chair at Directorate General and at Secretariat level.

F. That professional work/ output of the officers of the Directorate General include general duty of Administration, Budgeting & Accounting affairs of the District Government/ TMAs, Developmental works and its scrutiny according to planning commissions report (PC-1s) and working with Advocate General office with disciplinary & recovery matters against the defaulting employee.

G. That Government and the respondents under it ignored the huge difference of important work carried out by the officers, of Local Government at Directorate and in field.

H. That up-gradation of employees was main drive behind the grant of executive allowance etc whereas the appellant was never upgraded and there is benefit of Rs. 2000/- only in up-gradation if any.

I. That the special allowance and disparity allowance are only Rs. 24000/- viz a viz Rs. 154000/- of Executive Allowance. There is no comparison at all.

J. That judgment of Superior Courts is also not heeded by the Government and the respondents under it. These are:

(1), Civil Appeal No. 189 of 1999 tilted "Mubarak Ali..VS..The Govt of Punjab" dated 05/05/1991.

(2). Civil Appeal No. 79 of 1991 titled "Govt of Punjab..VS..Mubarak Ali" dated 29/06/1992.

(3). C.P.L.A No. 52 of 1992 titled "Province of Baluchistan..VS..Javed Iqbal etc" dated 29/06/1992.

(4). C.P.L.A No. 26-P/1992 titled "Govt of NWFP..VS..Bashir Ahmad etc" dated 29/06/1992.

K. That Section 54 of the Evidence Act 1994 is attached for barring further litigation on the same issue.

L. That minor intelligence is required to understand the bigger difference in allowance as proved discrimination.

M. That other grounds will be raised at the time of arguments with the prior permission of this Hon'ble Court.

It is, therefore, humbly prayed that on acceptance of this Service Appeal by directing the respondents to grant the Executive Allowance at the rate of 1.5 of the notified basic pay, 2017 w.e.f. 02/02/2018 and 150% such Executive Allowance w.e.f. 01/07/2021 as well as 30% Directorate Allowance w.e.f. 01/01/2018 on the analogy of Secretariat Allowance and 10% Utility Allowance w.e.f. 01/01/2013 and declaring the non-action of

the respondents under the government as unconstitutional, illegal, void-ab-initio, malicious, discriminatory and against the fundamental rights of the appellant in the light of the above mentioned judgments.

Appellant
(in person)

Dated: 25/04/2022

SYED SHAHIN SHAH
(Appellant)

(40)

BEFORE THE HON'BLE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR.

Service Appeal No. _____/2022

Syed Shahin Shah.....(Appellant)

V E R S U S

The Government of Khyber Pakhtunkhwa through Chief Secretary and others.....(Respondents)

AFFIDAVIT

I, Syed Shahin Shah (Deputy Director Finance/ Accounts) C/O Directorate General LG & RD, Plot No. 20, Phase-V, Hayatabad, Peshawar, solemnly affirm and declare that the contents of the **Service Appeal** are true and correct to the best of my knowledge and belief and nothing has been concealed from this Hon'ble Tribunal.

25-4-22

KHALID MAHMOOD ADVOCATE ATTESTED NOTARY PUBLIC PESHAWAR HIGH COURT

DEPONENT
CNIC: 17301-9406669-3
Cell No. 0334-9006361

(11)

BEFORE THE HON'BLE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR.

Service Appeal No. _____/2022

Syed Shahin Shah.....(Appellant)

V E R S U S

The Government of Khyber Pakhtunkhwa through Chief Secretary and others.....(Respondents)

ADDRESSES OF THE PARTIES

APPELLANT:

Syed Shahin Shah
(Deputy Director Finance/ Accounts) C/O Directorate General LG & RD, Plot No. 20, Phase-V, Hayatabad, Peshawar.

RESPONDENTS:

1. The Government of Khyber Pakhtunkhwa through Chief Secretary, Civil Secretariat, Khyber Road, Peshawar.
2. The Secretary to Government of Khyber Pakhtunkhwa Finance Department, Civil Secretariat, Khyber Road, Peshawar.
3. The Government of Khyber Pakhtunkhwa through Secretary Establishment Department, Civil Secretariat, Khyber Road, Peshawar.
4. The Government of Khyber Pakhtunkhwa through Secretary Local Government, Civil Secretariat, Khyber Road, Peshawar.

Appellant
(in person)

Dated: 25/04/2022

SYED SHAHIN SHAH
(Appellant)

(121)

GOVERNMENT OF KHYBER PAKHTUNKHWA
FINANCE DEPARTMENT
(REGULATION WING)

Dated Peshawar the 02/02/2018

NOTIFICATION

No.FD/SOSR-III/8-7/2016-17. The Government of Khyber Pakhtunkhwa has been pleased to sanction Executive Allowance to the tune of 1.5 Initial Basic Pay per month as per Pay Scale 2017 to PAS, PCS and PMS officers working against scheduled posts of Establishment and Administration Department as per rates mentioned against each in the following table with immediate effect:-

S #	Pay Scale	Initial Basic Pay	Rate of Executive Allowance Per Month
01.	PAS/PCS/PMS officers in BS-21	Rs.76,720/-	Rs.1,15,080 /-
02.	PAS/PCS/PMS officers in BS-20	Rs.69,090/-	Rs.1,03,635 /-
03.	PAS/PCS/PMS officers in BPS-19	Rs.59,210/-	Rs.88,815/-
04.	PAS/PCS/PMS officers in BS-18	Rs.38,350/-	Rs.57,525/-
05.	PAS/PCS/PMS officers in BS-17	Rs.30,370/-	Rs.45,550/-

The above allowance will be admissible subject to the following conditions:-

1. It will be admissible to PAS, PCS and PMS officers working against scheduled posts only.
2. Officers of other cadres working against scheduled posts are not entitled to the above allowance.
3. PAS, PCS and PMS officers posted against scheduled post and are in receipt of such allowances other than regular allowances shall be entitled to one of the allowances, whichever is more beneficial.
4. Executive Allowance shall not be counted towards pension and gratuity.
5. Executive Allowance will not be admissible to OSD posts and officers who are on leave reserve posts

SECRETARY TO GOVERNMENT
OF KHYBER PAKHTUNKHWA
FINANCE DEPARTMENT

ENDST: NO. & DATE EVEN.

1. The Accountant General, Khyber Pakhtunkhwa, Peshawar.
2. Principal Secretary to Chief Minister, Khyber Pakhtunkhwa.
3. Principal Secretary to Governor, Khyber Pakhtunkhwa.
4. The Senior Member Board of Revenue.
5. The Additional Chief Secretary FATA.
6. The Additional Chief Secretary P&D Department.
7. The Secretary KP-Public Service Commission, Peshawar.
8. All the Administrative Secretaries to Govt. of Khyber Pakhtunkhwa.
9. All the Divisional Commissioners in Khyber Pakhtunkhwa.
10. All the Deputy Commissioners in Khyber Pakhtunkhwa.
11. All the District Account Officers in Khyber Pakhtunkhwa.
12. Director, FMIU Finance Department.
13. PSO to Chief Secretary, Khyber Pakhtunkhwa, Peshawar.
14. Budget Officer-IV, Finance Department.
15. The PS to Secretary Finance Department.
16. The PS to Special Secretary Finance Department.
17. The PA to Additional Secretary (Regulations), Finance Department.
18. Master File.

SECTION OFFICER (SR.II)

(13) — (09)

GOVERNMENT OF KHYBER PAKHTUNKHWA
FINANCE DEPARTMENT
(REGULATION WING)

Dated Peshawar the: 07-07-2021

NOTIFICATION

No. FD(SOSR-II)2-5/2021-22 (Executive Allow) In supersession of this Department Notification No. FD(SOSR-II)8-7/2016-17 dated 02.02.2018 and Notification No. FD(SOSR-II)8-7/2019, dated 25-07-2019, the Government of Khyber Pakhtunkhwa has been pleased to grant the Executive Allowance to all officers of PAS,PCS,PMS serving under the Government of Khyber Pakhtunkhwa irrespective of whether they are posted against scheduled posts or not, at the rate of 150% of Running Basic Pay per Month with effect from 01.07.2021. Furthermore, Executive Allowance at the rate of 150% of Running Basic Pay shall also be admissible to all officers posted against scheduled posts in the province irrespective of their service cadre. However, 20% of the difference between the running basic pay and the initial basic pay will be deducted as part of "pay as you go" pension contribution and shall be deposited under Object Head C02241-Contribution of Pension & Gratuities in Provincial Account-I (Non-Food).

2. The above allowance will be admissible subject to the following conditions:

i. It will be subject to Income Tax.
ii. It will not be counted towards pension and gratuity.
iii. It will not be admissible in any kind of leave (except casual leave) as well as posting against OSD and Leave Reserve Posts.
iv. Those Officers who are posted against other posts and are in receipt of cadre allowance other than regular allowances shall only be entitled to one of the allowances, whichever is more beneficial.

Sd/-

Secretary to Govt. of Khyber Pakhtunkhwa
Finance Department

Endst: No. & Date even.

A copy of the above is forwarded for information & necessary action to the:

1. The Accountant General, Khyber Pakhtunkhwa.
2. The Principal Secretary to Chief Minister, Khyber Pakhtunkhwa.
3. The Principal Secretary to Governor, Khyber Pakhtunkhwa.
4. All Administrative Secretaries to government of Khyber Pakhtunkhwa.
5. All the Divisional Commissioners in Khyber Pakhtunkhwa.
6. All Deputy Commissioners in Khyber Pakhtunkhwa.
7. All the District Accounts Officers in Khyber Pakhtunkhwa.
8. The Director-FMIU, Finance Deptt. with the request to upload the same on FD's Website.
9. PSO to Chief Secretary, Khyber Pakhtunkhwa.
10. All Section Officers/Budget Officers in Finance Dept. Khyber Pakhtunkhwa.
11. The Manager, Government printing Press, Peshawar.
12. The Private Secretary to Secretary, Finance Deptt. Khyber Pakhtunkhwa.
13. PA to Special Secretary, Finance Department, Khyber Pakhtunkhwa.
14. PAs to Addl. Secretaries/Deputy Secretaries in Finance Dept., Peshawar.
15. Master File.

MM

(Muhammad Ilyas Khattak)
Section Officer (SR: II)

Government of Khyber Pakhtunkhwa
Finance Department
(Regulation Wing)

Dated Peshawar the 19th October, 2018

NOTIFICATION

No FD (SO SR-II) 8-7/2018-19: The Government of Khyber-Pakhtunkhwa has been pleased to sanction Technical Allowance as per the following rates to Engineers holding Engineering qualification from the accredited engineering programme of Higher Education Institutions (HEI) / Universities duly recognized by Higher Education Commission (HEC) and registered with Pakistan Engineering Council (PEC), serving against the sanctioned posts in the C&W, Irrigation, Public Health Engineering and Local Government Departments, Govt. of Khyber-Pakhtunkhwa with effect from 1st November 2018 :-

S.#	Pay Scales	Initial Basic Pay of Pay Scales 2017	Rate of Technical Allowance Per Month (@ 1.5 initial Basic Pays as per Pay Scales 2017)
i.	Engineers in BS - 20	Rs 69,090/-	Rs 1,03,635/-
ii.	Engineers in BS - 19	Rs 59,210/-	Rs 88,815/-
iii.	Engineers in BS - 18	Rs 38,350/-	Rs 57,525/-
iv.	Engineers in BS - 17	Rs 30,370/-	Rs 45,550/-

2. The above allowance will be admissible subject to the following conditions:-
   i. It will not be counted towards pension or gratuity.
   ii. It will not be admissible in any kind of leave as well as posting against OSD and leave reserve posts.
   iii. The Engineers in receipt of such allowances other than regular allowances as classified under major object A012-1 A012-2 shall be entitled to one of the allowances, whichever is more beneficial.
   iv. It will not be admissible to deputationists.

Secretary to Government
of Khyber Pakhtunkhwa
Finance Department

Endst: No & Date Even

1. The Accountant General, Khyber Pakhtunkhwa, Peshawar
2. The Additional Chief Secretary P&D Department
3. The Principal Secretary to Chief Minister, Khyber-Pakhtunkhwa
4. All the Administrative Secretaries to Govt of Khyber-Pakhtunkhwa
5. All the Divisional Commissioners in Khyber-Pakhtunkhwa
6. All The Deputy Commissioners in Khyber-Pakhtunkhwa
7. All the District Accounts Officers in Khyber-Pakhtunkhwa
8. Director, FMIU, Finance Department
9. PSO to Chief Secretary, Khyber-Pakhtunkhwa, Peshawar
10. All Budget Officer, Finance Department
11. PS to Secretary Finance Department
12. PS to Special Secretary Finance Department
13. Assistant Director (HR Data Base) Finance Department
14. PA to Additional Secretary (Regulation) Finance Department
15. PA to Deputy Secretary (Regulation-II), Finance Department

(Naeem Tabassum)
Section Officer (SR-II)
19-10-18

GOVERNMENT OF KHYBER PAKHTUNKHWA
FINANCE DEPARTMENT
(REGULATION WING)

Dated Peshawar, the 11.11.2019

NOTIFICATION.

NO.FD (SOSR-III) 8-7/2019. In pursuance of Cabinet decision held on 22.10.2019, the government of Khyber Pakhtunkhwa has been pleased to sanction planning performance allowance to the tune of 1.5 initial basic pay as per basic pay 2017 to the Planning Cadre Officers working against sanction strength of P&D Department, as per rate against each in the following table with effect from 01.07.2020:-

S.No	Pay Scale	Initial Basic Pay	Rate of Planning Performance Allowance Per Month
2	Planning Officers in BPS-20	Rs.69,090/-	Rs.1,03,635/-
3	Planning Officers in BPS-19	Rs.59,210/-	Rs.88,815/-
4	Planning Officers in BPS-18	Rs.38,350/-	Rs.57,525/-
5	Planning Officers in BPS-17	Rs.30,370/-	Rs.45,550/-

The above allowance will be admissible subject to the following condition:-

1. It will be admissible to Planning Officers working against the sanctioned streng of P&D department only.
2. The Officers of other cadre, working against the Planning cadre post are r entitled to the above allowance.
3. Planning Officers posted against other posts and are in receipt of such allowan other than regular allowance, shall be entitled to one of the allowance whicl more beneficial.
4. Planning Performance Allowance shall not be count towards pension and gratu
5. Planning Performance allowance is not admissible to the officers who are on leave/EOL, deputation or leave reserve posts.

SECRETARY TO GOVERNMI
OF KHYBER PAKHTUNKH
FINANCE DEPARTMENT

Endst No. & date even.

1. Accountant General, Khyber Pakhtunkhwa, Peshawar.
2. Principal Secretary, Chief Minister, Khyber Pakhtunkhwa.
3. Principal Secretary to Governor, Khyber Pakhtunkhwa.
4. PSO to Chief Secretary, Khyber Pakhtunkhwa.
5. The Senior Members Board of Revenue.
6. PS to Additional Chief Secretary, P&D Department, Khyber Pakhtunkhwa.
7. PS to Secretary, Public Service Commission, Khyber Pakhtunkhwa.
8. All Administrative Secretaries, Khyber Pakhtunkhwa.
9. All Divisional Commissioners, Khyber Pakhtunkhwa.
10. All Deputy Commissioners, Khyber Pakhtunkhwa.
11. All District Account Officers, Khyber Pakhtunkhwa.
12. Director, FMIU, Finance Department, Khyber Pakhtunkhwa.
13. PS to Secretary, Finance Department, Khyber Pakhtunkhwa.
14. PS to Special Secretary, Finance Department, Khyber Pakhtunkhwa.
15. PA to Additional Secretary (Regulation), Finance Department, Khyber Pakl
16. Master File.

GOVERNMENT OF KHYBER PAKHTUNKHWA
FINANCE DEPARTMENT
(REGULATION WING)

NOTIFICATION **Dated Peshawar the: 07-07-2021**

No. FD(SO SR-II)2-5/2021-22/IT Prof Allow: The Government of Khyber Pakhtunkhwa has been pleased to accord sanction to IT Professional Allowance to the tune of one initial basic pay per Month as per Basic Pay Scales 2017 to all IT officers (BPS 17 & above) in Khyber Pakhtunkhwa with effect from 01.07.2021:

The above allowance will be admissible subject to the following conditions:

1. It will be subject to Income Tax.
2. It will be admissible to the IT Officers (BPS 17 & above) of all Departments having following designations:

S.No.	Designation
1	ASSISTANT DATABASE ADMINISTRATOR
2	ASSISTANT DIRECTOR (IT)
3	ASSISTANT DIRECTOR (MIS)
4	ASSISTANT DIRECTOR DATABASE
5	ASSISTANT DIRECTOR PROGRAMMING
6	ASSISTANT DIRECTOR (I.T)/NETWORK ADMINISTRATOR
7	ASSISTANT I.T MANAGER
8	DATA ANALYST
9	DATA PROCESSING OFFICER
10	DATABASE ADMINISTRATOR
11	DEPUTY DATABASE ADMINISTRATOR
12	DATABASE MANAGER
13	DEPUTY DIRECTOR – IT
14	DEPUTY DIRECTOR DATABASE
15	DEPUTY DIRECTOR IT/MANAGER IT
16	DEPUTY DIRECTOR OPERATION IT
17	DIRECTOR MIS
18	GIS-CUM-WEB DESIGNER
19	I.T OFFICER/DESKTOP
20	I.T OFFICER/NETWORK
21	I.T OFFICER/WEB
22	M.I.S. MANAGER
23	MANAGER GIS/SYSTEM ANALYST
24	MIS COORDINATOR
25	NETWORK ADMINISTRATOR
26	NETWORK ENGINEER
27	NETWORK MANAGER
28	PROGRAMMER
29	SOFTWARE ENGINEER
30	SYSTEMS ANALYST
31	SENIOR PROGRAMMER
32	WEB ADMINISTRATOR
33	WEB DEVELOPER
34	WEB PORTAL MANAGER
35	LAN ADMINISTRATOR
36	ANDROID DEVELOPER
37	ASSISTANT DIRECTOR(GIS)
38	COMPUTER PROGRAMMER
39	DATA ANALYST/DATA BASE ADMN.
40	DEPUTY DATABASE ADMINISTRATOR
41	DEPUTY DIRECTOR (IT)/MIS MANAGER(IT)
42	HARDWARE ENGINEER
43	INTERNET & INFORMATION SERVICE MANAGER
44	MOBILE APPLICATION DEVELOPER
45	SENIOR PROGRAMMER
46	ASSISTANT DIRECTOR (I.T)/WEB ADMINISTRATOR

(17)

3. The Computer Allowance shall stand discontinued for employees entitled for IT Professional Allowance.
4. Those IT officers who are posted against other posts and are in receipt of IT Professional allowance other than regular allowances shall only be entitled to one of the allowances, whichever is more beneficial.
5. IT Professional Allowance shall not be counted towards pension and gratuity.
6. It will not be admissible in any kind of leave (except casual leave) as well as posting against OSD and Leave Reserve Posts.
7. All Autonomous/Semi-Autonomous/Medical Teaching Institutions/Other Institutions and Authorities under Provincial Government shall adopt this notification within their respective organizations with the approval of concerned Competent Forum subject to availability of their resources.

-Sd-

Secretary to Govt. of Khyber Pakhtunkhwa
Finance Department

Endst: No. & Date even.

A copy of the above is forwarded for information & necessary action to the:

1. The Controller General of Accounts, Islamabad with the request to create G/L head for the said allowance.
2. The Accountant General, Khyber Pakhtunkhwa.
3. The Principal Secretary to Chief Minister, Khyber Pakhtunkhwa.
4. The Principal Secretary to Governor, Khyber Pakhtunkhwa.
5. All Administrative Secretaries to government of Khyber Pakhtunkhwa.
6. The Senior Member, Board of Revenue, Khyber Pakhtunkhwa.
7. The Secretary, Provincial Assembly, Khyber Pakhtunkhwa.
8. All the Divisional Commissioners in Khyber Pakhtunkhwa.
9. All Deputy Commissioners in Khyber Pakhtunkhwa.
10. The Registrar, Peshawar High Court, Peshawar.
11. All Heads of Attached Departments in Khyber Pakhtunkhwa
12. All Heads of Autonomous/Semi-Autonomous Bodies, Khyber Pakhtunkhwa.
13. All the District Accounts Officers in Khyber Pakhtunkhwa.
14. The Director-FMIU, Finance Deptt. With the request to upload the same on FD's Website.
15. PSO to Chief Secretary, Khyber Pakhtunkhwa.
16. All Section Officers/Budget Officers in Finance Department, Khyber Pakhtunkhwa.
17. The Manager, Government printing Press, Peshawar.
18. The Private Secretary to Secretary, Finance Deptt. Khyber Pakhtunkhwa.
19. PA to Special Secretary, Finance Department, Khyber Pakhtunkhwa.
20. PAs to Additional Secretaries/Deputy Secretaries in Finance Department, Peshawar.

(Muhammad Ilyas Khattak)
Section Officer (SR: II)

(18)

DIRECTORATE GENERAL
LOCAL GOVT: & RURAL DEV. DEPARTMENT
KHYBER PAKHTUNKHWA

To

Dated: 31st December, 2021 /20155

4. The Chief Minister, Govt. of Khyber Pakhtunkhwa, CM Secretariat, Peshawar.

5. The Chief Secretary, to Govt. of Khyber Pakhtunkhwa, Civil Secretariat, Peshawar

6. The Secretary, to Local Government, Election and Rural Development Department Khyber Pakhtunkhwa, Peshawar.

Through: **Proper Channel in light of section 39(4) of the Rules of Business, 1985, applicable to Head of Attached Department.**

Subject:- **REPRESENTATION AS PER SECTION 22 OF THE CIVIL SERVANT ACT 1973 FOR THE GRANT OF EXECUTIVE ALLOWANCES & DIRECTORATE ALLOWANCE TO LG REGULAR CIVIL SERVANTS OF LOCAL GOVERNMENT & RURAL DEVELOPMENT DEPARTMENT (ATTACHED DEAPRTMENT), KHYBER PAKHTUNKHWA.**

Dear Sir,

It is submitted with profound honor that we, the regular Civil servants in local government & Rural Development Department are usually appointed through Public Service Commission on a Master Degree. We the regular civil servants belong to the department from appointment to retirement and highly qualified but no Departmental Allowance is granted to us.

The grant of executive allowance @ 1.5 initial basic pay per month to scheduled posts officers vide n Notification No. FD(SOSR-II)8-7/2016-17 dated 02-02-2018 and omitting highly qualified officers of Directorate LG is in-justice done and delivered to the civil servant in Basic Pay-17 and above in Provincial Govt. Departments. It is very strange that how the Provincial Cabinet of the Provincial Govt. working as Federating unit of the state of Islamic Republic of Pakistan ignored Islamic and other provision of Constitution by not granting such type of allowance to regular civil servant of Local Govt. & Rural Development Department on following facts & surrounds.

11. According to general equity, equality shall be provided according to the selection/appointment on basis of education.
12. According to Constitution the Quran and Sunnah are Supreme Law of the State.
13. The deliberate ignorance of highly qualified (master level) Regular Civil Servant is BPS-17 an above is against the Article 4 of the Constitution Islamic Republic of Pakistan which calls for equality of citizens before Law.
14. The deliberate ignorance of Regular Civil Servant in BPS-17 and above is against Article-25 of the Constitution of Islamic Republic of Pakistan which calls for responsibility for each individual working in the services of Pakistan and elected individual to the Provincial Assembly, Federal Assembly and Senate of Pakistan.
15. The deliberate ignorance of highly qualified (master level) Regular Civil Servant is BPS17 and above is against Article 38(e) of the Islamic Republic of Pakistan which calls for increase of pay and allowances on equal basis.
16. It is brought in kind notice that engineers in all Provincial Govt. Departments were given the benefited "Technical Allowance" at rate of 1-5 initial Basic Pay w.e.f 01-11-2018.

17. It is further brought in your kind notice that similar allowance was granted to the Planning Officer in their cadre by the Provincial Government at rate of 1-5 initial Basic Pay w.e.f 01-07-2020. The notification dates 11.11.2019.
18. The request is further extended to bring in your kind notice that such type of Allowance are granted to qualified doctors in Health Department and Judicial Officers (Civil Judges) in subordinated Judiciary.
19. The deliberate ignorance of highly qualified (master level) Regular Civil Servant is BPS-17 and above is so much discriminatory and un-justified that individual servant in BPS-17, on up gradation, after 10 years, get rupees 2870/- per month whereas as holder of the general order scheduled post will get Rs. 45,550/- at rate of 1-5 basic pay per month. There is difference of Rs. 42,630/- per month (1487%)
20. It is also pointed out that Directorate General Local Govt: & Rural Development Department staff has also been deprived of the Directorate Allowance where such type of Allowance is extended to the Civil Secretariat and Local Council Board, Corporate body, staff working in the same vicinity.

Keeping in view of above, I the civil servant of Local Govt. & Rural Development request for grant of the Executive Allowances to us w.e.f 02-12-2018 and Directorate Allowance w.e.f 01.01.2012 to avoid the un-justified un-Islamic and discriminatory difference between the highly qualified civil servant of Provincial Department.

Thanking You

(Syed Shahin Shah)
Deputy Director, F&A
LG&RDD, Khyber Pakhtunkhwa
Peshawar

DIRECTORATE GENERAL

LOCAL GOVT: & RURAL DEV. DEPARTMENT
KHYBER PAKHTUNKHWA

No. DG (LG) 3-1/Establishment/2018-19
Dated Peshawar 19th .February, 2020

To

1. The Chief Minister, Govt. of Khyber Pakhtunkhwa, CM Secretariat, Peshawar.
2. The Chief Secretary, to Govt. of Khyber Pakhtunkhwa, Civil Secretariat, Peshawar.
3. The Secretary, to Local Government Election and Rural Development Department Khyber Pakhtunkhwa, Peshawar.

11-3-2020

GOVT. DESK
Diary No 2338
Date 11/3/2020

Trough: Proper Channel

Subject: REPRESENTATION AS PER SECTION 22 OF THE CIVIL SERVANT ACT 1973 FOR THE GRANT OF DEPARTMENTAL ALLOWANCES & DIRECTORATE ALLOWANCE TO LG REGULAR CIVIL SERVANTS OF LOCAL GOVERNMENT & RURAL DEVELOPMENT DEPARTMENT (ATTACHED DEPARTMENT), KHYBER PAKHTUNKHWA.

Dear Sir,

It is submitted with profound honor that We, the Regular Civil Servants in Local Government & Rural Development Department are usually appointed through Public Service Commission on a Master Degree. We, the regular civil servants belong to the department from appointment to retirement and highly qualified but no Departmental Allowance is granted to us.

The grant of executive allowance @ 1.5 initial basic pay per month to scheduled posts officers vide n Notification No. FD(SOSR-II)8-7/2016-17 dated 02.02.2018 attached **Annexure "A"** and omitting highly qualified officers of Directorate LG is in-justice done and delivered to the civil servant in Basic Pay-17 and above in Provincial Govt Departments . It is very strange that how the Provincial Cabinet of the Provincial Govt working as Federating unit of the state of Islamic Republic of Pakistan ignored Islamic and other provision of Constitution by not granting such type of allowance to regular civil servant of Local Govt: & Rural Development Department on following facts & surrounds.

1. According to general equity, equality shall be provided according to the selection/ appointment on basis of education
2. According to Constitution the Quran and Sunah are Supreme Law of the State.
3. The deliberate ignorance of highly qualified (master level) Regular Civil Servant is BPS-17 and above is against the Article 4 of the Constitution of Islamic Republic of Pakistan which calls for equality of citizens before Law.
4. The deliberate ignorance of Regular Civil Servant is BPS-17 and above is against Article-25 of the Constitution of Islamic Republic of Pakistan which calls for responsibility for each individual working in the services of Pakistan and elected individual to the Provincial Assembly, Federal Assembly and Senate of Pakistan.
5. The deliberate ignorance of highly qualified (master level) Regular Civil Servant is BPS-17 and above is against the Article 38(e) of the Islamic republic of Pakistan which calls for increase of pay and allowances on equal basis.
6. It is brought in kind notice that engineers scheduled and Applied in all provincial Govt departments were given the benefited "Technical allowance" at rate of 1-5 initial Basic Pay w.e.f 01.11.2018 is attached as **Annexure "B"**

7. It is further brought in [illegible] kind notice that similar allowance was granted to the Planning Officer in their cadre in the Provincial Government at rate of 1-5 of their Basic Pay w.e.f 01.07.2020. The notification dated 11.11.2020 is attached as Annexure "C"

8. The request is further extended to bring in your kind Notice that such type of Allowance is granted to qualified doctors in Health Department and Judicial officers (Civil Judges) in subordinated Judiciary.

9. The deliberate ignorance of Highly qualified (master level) Regular Civil Servant in BPS-17 and above is so much discriminatory and un-justified that individual civil servant in BPS-17, on up gradation, after 10 years, get rupees 2870/- per month whereas as holder of the general order scheduled post will get Rs. 45,500/- at rate of 1-5 basic pay per month. There is difference of Rs. 42,630/- Per month (1487 %)

10. It is also pointed out that Directorate General, Local Govt & Rural Development Department staff has also been deprived of the Directorate Allowance where such type of Allowance is extended to the Civil Secretariat and Local Council Board, corporate body, staff working in the same vicinity.

Keeping in view of above, we the civil servants of Local Govt & Rural Development request for grant of the **Departmental Allowance** w.e.f 07.12.2018 and **Directorate Allowance** w.e.f 01.01.2012 to avoid the un-justified [illegible] and discriminatory difference between the highly qualified civil servant of Provincial Department.

Thanking you

S#	Name of the officers/ EPS	Designations	Signature
1	SHERAZ AHMAD	[illegible]	
2	Faz Rabbi	[illegible]	
3.	Akhtar Nawaz	[illegible]	
4	[illegible]	[illegible]	
5	Riaz Ahmad	[illegible]	
6	Abdur Rashid	[illegible]	
7	Dr. Sadaqat Ullah	[illegible]	
8	Nisar Ahmad	[illegible]	
9	Faiz Ahmad	[illegible]	
10	Kashif ur Rehman	[illegible]	
11	AD Manzar Nawaz	AD LG&RD	
12	Dilawar Khan	AD LG&RD	
13	Muhammad Ilyas	[illegible]	
14	Muhammad Alam	[illegible]	

Subject: Representation as per section 22 of Civil Servant Act 1973 for grant of Departmental Allowances & Director Allowances.

S.No	Name	Designation	Signature
18	Syed Shamsul Shah BP 18	Deputy Director (F/A)	
19	Israrullah	DD Director (OPS) LG KP	Israrullah
20	Noor Muhammad	DD (OPS) LG KP	
21	Asadullah Khan	Deputy Director (Admn) LG	
22)	Ahmad Sultan	AD LG RDD (NMD) Kohat	

PESHAWAR HIGH COURT, PESHAWAR

(23)

ORDER

Dated Peshawar, 13th February 2020

In pursuance of Article [illegible] regarding separation of Judiciary from executive coupled with judgment of Hon'ble Supreme Court of PLD 1994 SC 105 and observing the Principle of equality before law as enshrined in Article [illegible] of the Constitution of Pakistan 1973 as also the Principle that equals must be treated equally as guaranteed in Article 4 of the Constitution of Pakistan and in exercise of Powers conferred by the Finance Department Notification No SO(A/Cs)FD/2-1/96 dated 27-12-19[illegible] and all other enabling powers, further in compliance with the direction of National Judicial Policy Making Committee which mandates to remove the disparity in salaries & allowances, the Hon'ble Chief Justice has been pleased to revise the rate of Utility Allowance in favour of the Staff of Judiciary Khyber Pakhtunkhwa w.e.f 01-12-2019 as per the following rates

Sr.No	BPS	Current rate of Utility Allowance	Revised rate of Utility Allowance
1.	BPS-01 to BPS-06	Rs.2100	Rs.6000/-
2.	BPS-07 to BPS-08	Rs.2800/-	Rs.6000/-
3.	BPS-09 to BPS-14	Rs.2800/-	Rs.8000/-
4.	BPS-15	Rs.2800/-	Rs.10000/-
5.	BPS-16	Rs.2800/-	Rs.12000/-
6.	BPS-17	Rs.5000/-	Rs.15000/-

The expenditure involved will be met out of the sanctioned budget grant under head 03-Public Order & Safety Affairs-0311-Law Courts-03110-Courts-Justice Sessions/Civil/ATC Co-ordinated for the year 2019-2020 & onwards

By Order of Hon'ble the Chief Justice

Registrar

Endst No. 2[illegible]/R&I Dated, Peshawar, the 13/2/2020

Copy forwarded for information and necessary action to:-

1. The Chief Secretary to Govt of Khyber Pakhtunkhwa
2. The Secretary Govt of Khyber Pakhtunkhwa Finance Department, Peshawar
3. The District & Sessions Judge [illegible] Khyber Pakhtunkhwa.
4. The Senior Civil Judges [illegible] Peshawar
5. The Judge Labour Court [illegible] Khyber Pakhtunkhwa
6. The Director General [illegible] Khyber Pakhtunkhwa Peshawar
7. The PMU to Hon'ble the Chief Justice Peshawar High Court, Peshawar
8. The Deputy Secretary [illegible] Peshawar
9. The Director [illegible] Peshawar
10. The Budget Officer [illegible] Peshawar
11. The Treasury & Account Officer [illegible] Khyber Pakhtunkhwa Peshawar

Registrar

(24)

LAHORE HIGH COURT, LAHORE

ORDER

In pursuance of Article 175 (3) regarding separation of Judiciary from executive coupled with Judgment of Hon'ble Supreme Court in PLD 1994 SC 105, Judgement of Lahore High Court in 1990 CLC 136 and observing the principle of equality before law as enshrined in Article 25 of the Constitution of Pakistan 1973 as also the principle that equals must be treated equally as guaranteed by Article 3 of the Constitution of Pakistan and in exercise of powers conferred by sub-para (ii) of Notification No. Judl-1-X (Home)/89, dated 8.10.1995 of the Finance Department, Government of the Punjab as well as relevant provisions of the Punjab Delegation of Financial Powers Rules, 2016, further in compliance with the direction of National Judicial (Policy Making) Committee which mandates to remove the disparity in salaries and allowances, the Hon'ble Chief Justice has been pleased to revise the rate of Utility Allowance in favour of the members of the establishment of Lahore High Court, Lahore (Principal Seat and its allied Benches), w.e.f 01.12.2019 as per following criteria:-

Sr. No.	Designation / BPS	Current rate of Utility Allowance (Rs.)	Revised rate of Utility Allowance (Rs.)
1	BS-03 to BS-06	3,000	6,000
2	BS-07 to BS-08	4,000	6,000
3	BS-09 to BS-14	4,000	8,000
4	BS-15	4,000	10,000
5	BS-16	4,000	14,000
6	BS-17	5,000	15,000
7	BS-18	5,000	20,000
8	BS-19	8,000	25,000
9	BS-20 & above	8,000	30,000

2. *The expenditure involved will be met out of the existing budget grant under function No. PC24011-Administration of Justice-031101-Courts/Justice-LQ4112-Lahore High Court.*

(ASHTAR ABBAS)
REGISTRAR

(25)

Endst.No. 2399 -B/1-A-2(a) 2019-2020 Dated 08/02/2020

Copy forwarded for information and necessary action to:-

1. The Chief Secretary, Government of the Punjab.
2. The Accountant General Punjab (Pay Roll X), Lahore.
3. The Director General, (Directorate of District Judiciary), Lahore High Court, Lahore.
4. The District & Sessions Judge (HR-DJ), Lahore High Court, Lahore.
5. The Senior Additional Registrar (Budget & Finance), Lahore High Court, Lahore.
6. The Senior Additional Registrars Rawalpindi, Bahawalpur & Multan.
7. All the Additional Registrars/Deputy Registrars, Lahore High Court, Lahore and its allied Benches.
8. The Secretary/Private Secretary-I to Hon'ble Chief Justice, Lahore High Court, Lahore.
9. The Secretary, Government of the Punjab, Finance Department, Lahore.
10. All the Gazetted Officers, Lahore High Court, Lahore.
11. The Budget Officer-I & II, Government of the Punjab, Finance Department, Lahore.
12. The Staff Officer to Registrar, Lahore High Court, Lahore.
13. The Assistant Registrars:-
    i) Bills ii) HR-I-II-III-IV, Lahore High Court, Lahore.
14. The District Accounts Officers, Bahawalpur, Multan and Rawalpindi.
15. The Budget Assistant-I &II, Expenditure (Current) Branch, Lahore High Court, Lahore.

REGISTRAR

P L D 1993 Supreme Court 375

Present. Nasim Hasan Shah, Shafiur Rahman, Saad Saood Jan
Abdul Shakurul Salant and Ajmal Mian, JJ

26

Civil Appeal No.78 of 1991

GOVERNMENT OF THE PUNJAB through Secretary,
Finance Department, Lahore --- Appellant

versus

MUBARIK ALI KHAN and 8 others --- Respondents

(On appeal from the judgment of Lahore High Court, Lahore dated 5-5-1991 passed in Intra-Court Appeal No.189 of 1989).

Civil Petition for Leave to Appeal No.52 of 1W2

PROVINCE OF BALOCHISTAN through
Secretary Finance, Quetta--Petitioner

versus

JAVED IQBAL, REGISTRAR and 17 others--Respondents

(On appeal from the judgment of High Court of Balochistan, Quetta dated 12-9-1991 passed in Constitution Petition No.148 of 1990).

Civil Petition for Leave to Appeal No.26-P of 1992

GOVERNMENT OF N.-W.F.P. through
Secretary, Finance Department, Peshawar --- Petitioner

versus

BASHIR MUHAMMAD and 10 others--Respondents

(On appeal from the order -of Pe ' shawar High Court dated 23-12-1991 passed in Writ Petition No. 2029/91 and C.M. 2094/91 and Order dated 12-1-1992 passed in Writ Petition No.2029/91 and C.M.2094/91).

Civil Appeal No. 78' of 1991, Civil Petitions for Leave to Appeal Nos.52 and 26-P of 1992, decided on 30th March, 1993'.

(a) **Constitution of Pakistan (1973)---**

--- Arts. 185(3), 212(3) & 199 ---Leave to appeal was granted to Provincial Government to examine whether the question of grant of 20% of the pay as Secretariat Allowance to the employees of Lahore High Court Establishment in a Constitutional petition was in accord with law notwithstanding? the provisions of Art. 212(3) of the Constitution excluding jurisdiction of the High Court in such matters and there being proper classification available for distinguishing the case of the High Court Establishment from those of the Secretariat employees.

(b) Constitution of Pakistan (1973)---

---- Art. 260----"Service of Pakistan"---Dermition --- Employees of the High Court establishment would fall within the definition of service of Pakistan and have been taken to be employed in connection with the affairs of a Province.

Definition of "service of Pakistan" itself divides those included into it into two broad categories i.e. one of those employed in connection with the affairs of the Federation and the other of those employed in connection with the affairs of a Province. Applying this definition, the employees of the High Court establishment would fall within the definition of service of Pakistan and have been taken to be employed in connection with affairs of a Province.

(c) Constitution of Pakistan (1973)---

---Arts. 240 & 208 --- Legislature had not been given any role to determine the terms and conditions in the matter of the officers and servants employed in the establishment of the Supreme Court of Pakistan and the High Court which would include their remuneration also --- Such an exclusionary role was attributed to the requirement of maintaining the independence of judiciary.

(27)

Supreme Court Employees Welfare Association v. Union of India and others AIR 1990 SC 334 ref.

(d) High Court Establishment (Appointment and Conditions of Service) Rules---

---- Rr. 17 & 22 --- Pay and Allowances of High Court Establishment --- No separate dispensation with the approval of the Governor having taken place in respect of pay and allowances, residuary R.22 would be attracted.

(e) Civil service ---

----- Secretariat Allowance --- High Court Establishment-- -In the absence of any reason forthcoming on the record after the enforcement of the unified Pay Scales to all categories of employees, reversion to old categories would be discriminatory and in the matter of pension and pay no such discrimination can, take place.

IA. Sharwani and others v. Government of Pakistan through Secretary, Finance Division and others 1991 SCMR 1041 ref.

(f) Constitution of Pakistan (1973)---

---- Arts. 199 & 212 --- Civil service --- Constitutional jurisdiction of High Court --? Factual question of equivalence of duties, responsibilities, confidentialities etc. is ordinarily not a fit subject for adjudication by the High Court but has to be determined initially by a full-fledged exercise to be undertaken by the National Pay Commission, as such.

(g) Civil service....

---- Secretariat Allowance --- High Court employees --- Employees of Federal Shariat Court and the Supreme Court of Pakistan having been allowed Secretariat Allowance and High Court employees performing almost identical functions as do the employees of the said Courts, High .Court employees could not be discriminated against --- Necessary provision of Secretariat/Personal Allowance had to be made in respect of such employees as was made in the case of Federal Shariat Court and the Supreme Court employees.

Ch. Muhammad Abdus Saleem, Advocate instructed by Ch. Muhammad Aslam, Advocate-on-Record for Appellant (in CA. No.78 of 1991) and for Petitioner (in C.P.L.A. No.52 of 1992).

Hamid Saeed Malik, Additional Advocate-General and Haji MA. Qayyum. Mazhar, Advocate-on-Record for Petitioner (in C.P.L.A. No.26-P of 1992).

Dr. Abdul Basit, Advocate for Respondents Nos. 1 to 8 (in CA. No.78 of 1991). Faqir Muhammad Kholkhar,, Deputy Attorney-General and Ch. Muhammad Aslam. Chatha, Advocate-on-Record for Respondent No.9 (in CA.No.78 of 1991).

Muhammad Aslam Chishti Advocate and SA.M. Quadri, Advocate? on-Record for Respondents Nos. 1 to 8 (in C.P.L.A. No.52 of 1992). Mian Shakirullah Jan, Advocate-on-Record for Respondents Nos. 1 to 10 (in C.P.L.A.No.26-P of 1992).

Date of hearing: 29th June, 1992.

JUDGMENT

SHAFIUR RAHMAN, J.---This judgment will dispose of one appeal (No. 78 of 1991) filed by the Government of the Punjab and two petitions for leave to appeal (Nos.52 of 1992 and 26-P of 1992) riled by the Provinces of Balocbistan and N.-W.F.P. respectively.

Leave to appeal was granted to the Government: of the Punjab to examine whether the question of grant of 20% of the Pay as Secretariat Allowance to the employees of the Lahore High Court establishment in a Constitution Petition was in accord with law notwitlistanding the provisions of Article 212 (3) of the Constitution excluding the jurisdiction of the High Court in such matters and there being proper classification available for distinguishing the case of the High Court establishment from those of the Secretariat employees.

2. From 1-7-1988, the Government of Pakistan granted vide Office Memorandum No. F. 1 (32)-IMP-11/88, dated 1st July, 1988) 20% of basic pay to the employees serving in the Federal Secretariat, President's Secretariat, Prime Minister's Secretariat, National Assembly Secretariat, Senate Secretariat and the Central Board of Revenue, known as 'Secretariat Allowance. The Government of the Punjab issued an Office Memorandum (No.FD.PG2-1/88) on the 8th August, 1988 in the following terms, granting/allowing the Secretariat Allowance to its own employees in terms as hereunder:--

"I am directed to refer to the sub ect noted above and to say that the Governor of the Punjab has been pleased to decide that Secretariat Allowance @ 20% of basic pay to all employees in Punjab Government Secretariat, Governor's Secretariat, Chief

Minister's Secretariat and Punjab Provincial Assembly Secretariat shall be granted with effect from 1-7-1988.

(2)????? All officers/officials, working in the Secretariat, as described in para. 1, who are already in receipt of any Special Pay/Allowance (except the categories of Private Secretaries/Personal Assistants to Governor, Chief Minister, Ministers, Chief, Secretary, Chairman, R&D Board, Additional Chief Secretary, Secretaries and Additional Secretaries will also be allowed to exercise their option to draw Secretariat Allowance mentioned above. or to 'continue drawing their existing Special Pay/Allowance.

(3)???? All Officers/officials deputed from other services/departments to work in the Secretariat, as described in para. 1 and who are getting Special Pay/Allowance will be similarly allowed to exercise their option to draw Secretariat Allowance @ 20% of their basic pay or to continue to draw their existing Special Pay/Allowance, if any.

(4)???? As mentioned in paras. 2 and 3 above, option either to retain Special Pay/Allowance, Governor's Secretariat Allowance/Chief Minister's Secretariat Allowance or to receive the Secretariat Allowance may be exercised by employees in writing and communicated to the Audit Office through administrative department on the form at Annex. A by September 8, 1988. A Government servant who fails to exercise option within the prescribed period shall be deemed to have opted for the Secretariat Allowance."

3??????? The Federal Government as well as the Provincial Government made additions to the category of employees who were treated as Secretariat employees for the purposes of this Allowance. The Federal Government included amongst the beneficiaries the employees of the Pakistan Television and the employees of the Pakistan Broadcasting Corporation besides Central Board of Revenue. The Provincial Government enlarged the category of the recipients of this allowance by including the employees of the Provincial Board of Revenue.

4. The grant of this allowance to the Secretariat employees to the exclusion of others generated a lot of dissatisfaction and claims both from amongst the Federal Government employees and the Provincial Government employees who were denied such an Allowance. Such dissatisfaction and claims had three visible effects.

Firstly, the Federal Government itself revised the policy of grant of Secretariat Allowance and made the Allowance already granted a part of the pay as 'Personal Allowance' of the officers/officials in receipt of it and only limited it to the actual service in the Secretariat or in the other departments treated as Secretariat. This will be clear from the Finance Division's Office Memorandum No. F.7(15)-R.13/88(Pt) dated 1-2-1990, as hereunder:--

"Subject: DISCONTINUANCE OF SECRETARIAT ALLOWANCE FOR THE NEW INCUMBENTS

In suppression of this Division's Office Memoranda of even number, dated the 18th December and 26th December, 1989 the undersigned is directed to say that the Federal Government has decided that 20% Secretariat Allowance admissible under this Division's O.M. No.F.1 (32)-Imp. 11/88, dated the 1st July, 1988 and subsequent amendments made thereto will not be admissible to the new incumbents to, the Secretariat, CBR, PTV and PBC etc. with effect from 11-12-1989. However, the existing recipients of the Secretariat. Allowance have been allowed to' retain it as 'personal Allowance' subject to the following conditions:--

(i)????? The amount of Secretariat Allowance being drawn by the existing recipients as on 10-12-1089 would be frozen.

(ii)???? It will be subject to income-tax and House Rent recovery.

It will be admissible during leave and entire period of leave preparatory to retirement except during extraordinary leave.

(iv)?? It would not be 'admissible during the period of suspension, and

(v) It will not remain admissible to the recipients on their transfer from? the Secretariat, CBR, PTV and PBC etc." it was modified' by another Office Memorandum dated 21-8-1991, as ?hereunder:--

'Subject: GRANT OF SECRETARIAT/PERSONAL ALLOWANCE

n partial modification of this Division's Circular O.M. No.F. 7 (15) R.13/88 (Pt), dated the 1st February, 1990, the undersigned s directed to state that the Federal Government has decided that with effect from 1st June, 1991 the Personal Allowance (in lieu f formerly allowed Secretariat Allowance) will be admissible at the rate of 20% of pay to the following:--

i) officials already drawing this allowance as a Personal Allowance in accordance with this Division O.M. No.F.7(15) .13/88(Pt), dated 1st February, 1990.

i)???? Officials who have already drawn Secretariat or Personal Allowance in lieu and have been/ are reposted to Secretariat.

(29)

(iii)??? Officers transferred from Provincial Government who would have been eligible for this allowance in the Provincial Secretariats.".

These two hold the field today.

This action of the Federal Government of allowing/granting, of **extending and of discontinuing the Secretariat Allowance attracted at** one stage the attention of the Wafaqi Mohtasib (Ombudsman) also as reported in the Frontier Post dated 1-11-1992, as hereunder:--

"The Ombudsman further said that he had 70 complaints involving 84 persons who have protested about the discrimination and have sought his intervention.

The Mohtasib while tracing the history of the Secretariat allowance opined that an element of injustice was created righty at the time when the ' Secretariat allowance was sanctioned on the July 1, 1988. The Mohtasib said that discriminatory nature of the allowance is apparent from the fact that right in 1988 the allowance was also given to the employees of the Central Board of Revenue, which is clearly an attached department and employees of Pakistan Television Corporation and Pakistan Broadcasting Corporation, which are autonomous Corporations and have nothing to do with the Secretariat.

A further discriminatory element was introduced when at the time of stopping the allowance with effect from December 11, 1989, the Government servants who were getting the allowance under the provincial governments were allowed to draw it again in the Federal Government, the Mohtasib observed."

The second feature of the grant of such an allowance was that a large number of employees, Provincial and Federal, belonging to Departments not treated as Secretariat approached the Courts or the Service Tribunals for grant of similar relief for one reason or the other. Apart from the case before us of the employees of the High Courts of Punjab, N.-W.F.P. and Balochistan, the employees of the Punjab Public Service Commission (1992 SCMR 1847), Federal Shariat Court (1992 SCMR 1852), Attorney-General's office (CPiA 1118-L/91), Advocate-General's office (W.P. No. 9111/91) and Central Board of Film Censors (1991 SCMR 12t8) also approached either the Service Tribunal or the High Court for grant of such an allowance.

The third consequence of the grant of this allowance and the denial of it to others was that the other authorities competent to grant it, for example, the Chief Justice of the Federal Shariat Court vide order dated 13-7-1988 and the Chief Justice of Supreme Court of Pakistan vide Notification dated 17-2-1993 granted it in respect of their employees w.e.f. 1-7-1988.

C.A. 78/91:

5. In this background of events, eight employees of the Lahore High Court filed a Constitution Petition (Writ Petition No. 1624 of 1989) claiming that they be treated as Secretariat employees and granted the Secretariat Allowance made available to the employees of the Provincial Secretariat. This petition was seriously contested. At first, the High Court allowed a number of opportunities to the parties to amicaby settle the matter. It did not succeed. A second attempt thereafter was made in the light of exercise undertaken for amicably settling the matter by demonstrating the equivalence of the duties and the responsibilities of the two categories of employees.

Preliminary objection to the competence of the Constitution Petition in view of Article 212 of the Constitution was brushed aside by reference to the decision of the same Court in Manzoor Hussain and 37 others v. Province of the Punjab (1989 PLC (CS) 42) followed by refusal to grant leave in the same vide Civil Petition for Leave to Appeal No. 1027 of 1988 and dismissal of the Civil Review Petition No. 6-R of 1989 arising out of it on 8-10-1989.

???????????????? It was held on the strength of Article 208 of the Constitution that the employees of the High Court were not civil servants. It was further held that employees and servants of the High Court were similarly situated and working in similar circumstances as those working in the Secretariat of the Punjab Government and other institutions to which the notification allowing

Secretariat Allowance has been made applicable. The Court placed reliance on D.S. Nakara and others v. Union of India (AIR 1983 SC 130), considered the discrimination established and directed the Government of the Punjab to make available all the benefits under the Memorandum dated 8-8-1988 to the employees of the High Court w.e.f. 1-7-1988. The arrears were ordered to be paid within three weeks.

6. An Intra-Court appeal was filed by the Government of the Punjab which did not succeed. It was held that the disputed allowance was not confined to the Secretariat employees but had also been made available to the Provincial Assembly Secretariat and the Board of Revenue.

7. Rule 22 of the High Court Establishment (Appointment and Conditions of Service) Rules invoked by the learned Judges, while seized of the matter was held to provide the basis for grant of such an allowance to the High Court employees as well on the reasoning as hereunder:--

'Under this rule the allowances admissible to all the civil servants generally under the relevant rules are admissible to the employees of the Establishment of the High Court though there are no rules with the nomenclature 'Civil Service Rules Punjab)' as used in Rule 22. The intention is, however, implicit that whatever allowances etc. are admissible to the civil

servants would automatically be allowed to the members of Establishment of High Court. The question arises whether the members of the High Court Establishment could claim any allowance which has not been granted to all the civil servants generally but to some of them as a class working in the Secretariat. In our view the respondents would be justified in claiming such an allowance as a matter of right as per force of said Rule 22 if the class of employees in the Government Secretariat to whom such an allowance was allowed was similarly placed as regards the nature of duties and the functions which they perform."

The appeal Bench undertook detailed scrutiny of the charts of the duties and affirmed the finding of the learned Judge in chambers with regard to the equivalence. The appeal Bench concluded as hereunder:--

"For this additional reason we are constrained to hold that the denial to the respondents of the allowance in question is not only highly arbitrary but the denial of their right to get the allowance under Rule. 22 of the High Court Establishment (Appointment and Conditions of Service) Rules, is also violative of Article 25 of the Constitution which guarantees equal protection of law to all the citizens and we uphold the view taken by the learned Single Judge."

CA. 26-P/92:

8. Ten employees of the High Court of Peshawar by a Constitution Petition (No. 2029 of 1991) claimed the Secretariat Allowance at the rate of 20% which had been granted by the Government of North-West Frontier Province (N.-W.F.P.) from an earlier date i.e., from July, 1987. Heavy reliance was placed for making out a claim for the grant of such an Allowance on the judgment of the Lahore High Court in Writ Petition referred to. An application for interim order claiming such an Allowance came up for consideration of the Peshawar High Court on 23-12-1991 in the presence of the Additional Advocate-General and was disposed of with the following order:--

"The respondents are directed to pay the 20% allowance to the employees of the Peshawar High Court regularly with the monthly pay, from the 1st January 1992 till the final disposal of the writ petition. The question of arrears will be considered on the next date of hearing."

This order was modified on 12-11-1992, as hereunder:--

The order dated 23-12-1991 passed by this Court is modified to the extent that the employees of the Peshawar High Court are entitled to receive 20% allowance with their monthly pay from 1st of January, 1992 payable on 1st of February, 1992, regularly, till the final disposal of the writ petition. So far as the question of arrears is concerned, the learned counsel for the petitioners is not pressing it at the moment, therefore, it will be decided at the time, of final disposal of the writ petition.

On the request of the learned Advocate-General let the main writ petition. be fixed for final hearing within two months."

The proceedings were at this stage in the High Court when this petition for leave to appeal was filed and was ordered to come up with Civil Appeal No. 78 of 1991.

C.P. 52 of 1992: -

9. Seventeen employees of the establishment of the High Court of Balochistan filed a Constitution Petition (No. 148 of 1990) claiming in circumstances similar to those pointed out in the above two matters. The &ant of the Secretariat Allowance which had been made available to the employees in the Balochistan Secretariat, Governor's Secretariat, Chief Minister's Secretariat and Balochistan Provincial Assembly Secretariat vide notification dated 4th of September, 1988.

There was another Constitution Petition filed by the drivers who claimed the enhanced overtime Allowance made available to the Governor's and Chief Minister's establishment drivers.

10. The High Court of Balochistan examined the claim of the employee of the High Court for the Secretariat Allowance in the light of the decision given by the Lahore High Court and decided the matter as hereunder-

"Indeed the refusal of Government of Balochistan to extend the benefits of Notification C. P. 148/90 Notification F. No. 1(32) IMP. 11/88, dated 1st July, 1988 and Notification No.FD(R) 11-28/88 3454-3484 dated 4th September, 1988. C.P. 105/90, Notification No.SGA (SC B&A) 2-14/87, dated 4th February, 1989 to the employees of High Court of Balochistan infringes the provisions of Article 25 of the Constitution of Pakistan.

In such view of the fact we accept the petition and direct the Government of Balochistan to make 'available all benefits of Notification F. No. 1(32)AMP. 11/88 dated 1st July 1988 and Notification FD (R) 11-28/88/3454-3484, dated 4th September, 1988 to the employees of High Court of Balochistan; in C.P. No. 148 of 1990 with effect from 1st July 1988 and benefits of Notification No.SGA (SC B&A) 2-14/87, dated the 4th February, 1989 to the petitioners-drivers in C.P. No. 105/90 with effect from 23rd January, 1989. The arrears of the allowances be also paid to the petitioners within a period of one month. A copy of this judgment be sent to the Accountant-General Balochistan at Quetta."

Petition for leave to appeal was filed against this decision. It has also come up for hearing alongwith the other matters.

11. This petition is shown to be barred by 93 days. The explanation given for the condonation of delay is as hereunder and it does not appear to us to be satisfactory:--

"The judgment was drawn later on and announced on 12-9-1991. The copy of this judgment was received by the Finance Department,

(2)???? That the deponent sent the case to Law Department for advice as to whether the case should be taken to Supreme Court or not. The advice was received back on 12-12-1991.

(3)???? That immediately the deponent under the orders of Finance Secretary contacted all the 12 Advocates-on-Record of Quetta, one after the other to file the civil petition for special leave to appeal in Supreme Court. Each of the Advocates-on-Record kept the case for two or three days and ultimately refused to file the case in the matter related to High Court employees. The Additional Advocate-General was also reluctant to draw the case and advised verbally against the filing of civil petition for special leave to appeal.

(4)???? That ultimately the Finance Secretary through deponent has to request the Finance Secretary, Government of Punjab in order to file present petition through their counsel. Hence this petition is being riled within few days."

However, as the question is being dealt with on its own merits also, the decision will follow the other matters properly initiated in this Court.

12. The view taken by the Lahore High Court that the employees of the High Court are not civil servants is based on the decision given by a Division Bench in the case of Manzoor Hussain and 37 others (supra) who were serving as Private Secretaries in the Lahore High Court and had by a Constitution Petition claimed up-gradation of their post from BPS-16 to 17 w.e.f. 1-7-1983 on the basis of a Memorandum of the Government of the Punjab, dated 18th of March, 1986. A similar objection with regard to the jurisdiction was taken. It was indeed rejected and the employees of the High Court Establishment were held to be not civil servants. The reasoning given appears as hereunder:--

"The expression 'civil servant' has been defined in section 2 (b) of the Punjab Civil Servants Act (VIII of 1974). According to this definition, a civil servant means a person who is a member of a civil service of the -Province or who holds a civil post in connection with the affairs of the Province. The Punjab Civil Servants Act (VIII of 1974) has been enacted to regulate the appointment to, and the terms and conditions of service in respect of the service of the Province of the Punjab. This law has been enacted pursuant to Article 240 of the Constitution of Islamic Republic of Pakistan, which empowers the Provincial Legislature to make law to determine the conditions regarding appointment and other terms and conditions of service in case of services of the province. It is, however, noteworthy that the law thus to be made by the Provincial Legislature is subject to the Constitution as provided in the opening words of Article 240 supra. Article 208 ibid speaks of officers and servants of the Supreme Court and of a High Court. This Article empowers a High Court to make rules providing for the appointment by the Court of officers and servants of the Court and for their terms and conditions of employment. Such rules are, of course, to be made with the approval of the Governor concerned. In case of this High Court, such rules have already been framed in the form of the High Court Establishment (Appointment and Conditions of Service) Rules.

Prospects of promotion and upgradation of a post have never been considered a term and condition of service for which the Service Tribunal has exclusive jurisdiction. In this behalf reference may be made to the case of Dr. Ehsan-ul-Haq v. The Province of Punjab and others (1980 SCMR 972).

In the light of the above discussion, it is concluded that the petitioners, being officers and servants of the High Court, do **not fall** within ambit of expression 'civil servant' as occurring in section 2(b) of the Punjab Civil Servants Act (VIII of 1974) and, therefore, according to their terms and conditions of service, the jurisdiction of the High Court is not excluded."

This judgment did come up to this Court, twice; once by means of a petition for leave to appeal and next by way of Civil Review Petition No. 6-R/1989 alongwith other connected matters (C.R.P. 34-R and 35-R of 1989 and C.P.L.As. Nos.10 and 11 of 1989) but at no stage this question was attended to directly or indirectly. The petitions for leave to appeal as well as the review petitions arising out of them were disposed of on the question of limitation, and not considered on merits at all. The view taken by the High Court that the employees of the Provincial High Courts are not civil servants for the purpose of Civil Servants Act and the Service Tribunals Act is correct.

13. In the Constitution of Pakistan, 1973 "service of Pakistan" has been defined in Article 260, as hereunder:---

"'Service of Pakistan' means any service, post or office in connection with the affairs of the Federation or of a Province, and includes an All-Pakistan Service, service in the Armed Forces and any other service declared to be a service of Pakistan by or under Act of Majlis-e-Shoora (Parliament) or of a Provincial Assembly, but does not include service as Speaker, Deputy Speaker, Chairman, Deputy Chairman, Prime Minister, Federal Minister, Minister of State, Chief Minister, Provincial Minister, Attorney-General, Advocate-General, Parliamentary Secretary or Chairman or member of a Law Commission, Chairman or member of the Council of Islamic Ideology, Special Assistant to the Prime Minister, Advisor to the Prime Minister, Special Assistant to a Chief Minister, Advisor to a Chief ?Minister or member of a House or a Provincial Assembly."

This definition of "service of Pakistan" itself divides those included into it into two broad categories i.e., one of those employed in connection with the affairs of the Federation and the other of those employed in connection with the affairs of a Province. Applying this definition, the employees of the High Court establishment would fall within the definition of service of Pakistan and have been taken to be employed in connection with the affairs of a province.

Article 240 of the 1973 Constitution reads as hereunder:--

"240. Appointments to service of Pakistan and conditions of service.--?Subject to the Constitution, the appointments to and the conditions of service of persons in the service of Pakistan shall be determined---

(a)???? in the case of the services of the Federation, posts in connection with the affairs of the Federation and All-Pakistan Services, by or under Act of Majlis-e-Shoora (Parliament); and

(b)??????????? in the case of the services of a Province and posts in connection with the affairs of a Province, by or under Act of the Provincial Assembly.

Explanation.--In this Article, 'All-Pakistan Service' means a service common to the Federation and the Provinces, which was in existence immediately before the commencing day or which may be created by Act of Majlis-e-Shoora (Parliament)."

Article 208 of the 1973 Constitution provides as hereunder:-

"208. Officers and servants of Courts.--The Supreme Court and, the Federal Shariat Court, with the approval of the President and a High Court, with the approval of the Governor concerned, may make rules providing for the appointment by the Court of officers and servants of **the Court and** for their terms and conditions of employment."

14.??????????? In -the 1962 Constitution, Article 127 dealt similarly with the same subject, as hereunder:--

"127. Officers and servants of Courts.--(1) In this Article, 'Court' means the Supreme Court or a High Court.

(2)???? A Court may (with the approval of the President in the case of the Supreme Court, and of the Governor in the case of a High Court) make Rules providing for the appointment by the Court of officers . and servants of the Court and for their terms and conditions of employment."

The comparable provision in the Indian Constitution is Article 146 and it reads as hereunder:--

"146.Officers and servants and the enenses of the Supreme Court.--(I) Appointments of officers and servants of the Supreme Court shall be made by the Chief Justice of India or such other Judge or officer of the Court as he may direct:

Provided that the President may by rule require that in such cases as may be specified in the rule, no person not already attached to the Court shall be appointed to any office connected with the Court, save after consultation with the Union Public Service Commission.

(2)???? Subject to the provisions of any law made by Parliament, the conditions of service of officers and servants of Supreme Court shall be such as may be prescribed by rules made by the Chief Justice of India or by some other Judge or Officer of the Court authorised by the Chief Justice of India to make rules for the purpose:

Provided that the rules made under this clause shall, so far as they relate to salaries, allowances, leave or pensions, require the approval of the President.

(3)???? The administrative expenses of the Supreme Court, including all salaries, allowances and pensions payable to or in respect of the officers and servants of the Court, shall be charged upon the **Consolidated Fund of India, and** any fees or other moneys taken by the Court shall form part of that Fund."

15. In the context of the Constitutional provisions reproduced above, it is clear that in the matter of the officers and servants employed in the establishment of the Supreme Court of Pakistan and the High Courts the legislature had not been given any role to determine the terms and conditions of the employees which of course would include their remuneration also. Such an exclusionary role was attributed to the requirement of maintaining the independence of judiciary in the case of Supreme Court Employees' Welfare Association. v. Union of India and others (AIR 1990 SC 334). In exercise of this or its predecessor pro-vision both the Supreme Court and the High Courts have framed Rules. Rules 17 and 22 of these Rules in respect of the High Court are as hereunder:--

"17.?? Members of the High Court Establishment shall be entitled to pay (including Special pay) and allowances as fixed by the Chief Justice, from time to time, with the approval of the Governor to these rules.

22????? In respect of salaries, allowances, leave or pension; the members of the establishment shall be governed by the Civil Service Rules (Punjab) as amended from time to time."

16. It is admitted that under Rule 17, no separate dispensation with the approval of the Governor has taken place in respect of

pay and allowances. For D this reason the residuary Rule 22 gets attracted.

17.? A survey of the Pay Scales for the last fifty years on the sub-continent establishes for certain that for a long time in the past the Secretariat staff had preferential pay scales over other departments and offices of the Government. In India this practice still continues* as would be apparent from the following decisions of the Indian Supreme Court:--

(1)???? Umesh Chandra Gupta and others v Oil and Natural Gas Commission and others AIR 1989 SC 29;

(2)???? V. Markendeya and others v. State of Andhra Pradesh and others AIR 1989 SC 1308; and

(3)???? Federation of All India Customs and Central Excise Stenographers (Recognised) and others v. Union of India and others AIR 1988 SC 1291.

18.????? In Pakistan, however, the admitted position is that this distinction between the Secretariate staff en bloc and others was abolished when National Pay Scales were introduced in 1972. From 1977 classification was made and established criteria for allowances notified as hereunder:--

"(i) Geographical Allowances.--Compensation according to the geographical hardship, of the employees e.g. Kashmir Compensatory Allowance, Northern Area allowance, Hill? Allowance, Hard Area allowance, Special Area Compensatory Allowance and? agency. allowance

(ii)???? Qualification Allowances.--Granted in recognition to academic ability? specific qualifications and skill of the employees e.g. Ph. D.). Allowance, Computer Allowance, N.D.C. Allowance and Languagep Allowance.

(iii)??? Service Allowances.--These are attached with the specific services in n recognition to the type and color? of service and requirements of their? assignment e.g. allowances attached to the Army personnel like? disturbance allowance, Kit allowance etc. Superior Judiciary Office~e Allowance, admissible to the Judiciary, Railways Running Allowance, ~, admissible only in Railways Services, Non-Practice Allowance allowed d to the Doctors only, Aviation Allowance meant for Aviation services,s, Secretariat Allowance payable to Secretariat employees.

(iv)??? Hazard AllOwances.--These are meant to compensate for the hazards Is of the job encountered by the employees e.g. Nuclear Power Generation Allowance, Danger Money Allowance, Bomb Disposal ~ Allowance, Heat Allowance, Spray Allowance etc.

(v????? Allowances according to the nature of .--Shift Allowance, Research h Allowance, Design Allowance, Project Allowance, Technical Allowance, Instructional Allowance, Night Duty Allowance and d Anasthesia Allowance.

(vi)?? Compensatory Allowances.:-To compensate the expenses required to o be incurred by the employees e.g. House Rent Allowance, Conveyance ~e Allowance, Washing Allowance, Uniform Allowance, Entertainment it Allowance, Education Allowance, etc.

(vii) Costs of Living Allowances.--Foreign Allowance paid in Foreign n Missions, which varies from Mission to Mission according to the costs? of living prevailing at those places.

(viii) Allowances specific to the Houses of Head of the S(alc and thee Governments .--Prime Minister's House Allowance, President's House Allowance, Governor's House Allowance etc., where special allowance is admissible in addition to the subsidies prov ded in the utilities like e water, fuel, electricity and furnishings, etc."

There were certain posts and certain officers who were compensated separately. Non-Secretariat officers appointed Deputy Secretary were allowed Special Pay of Rs.400 w.e.f. 1-7-1983. It was extended in 1985 to make it 20% to Deputy Secretaries and equivalent in Federal Secretariat including President/Prime Minister/National Assembly and Senate Secretariats with effect from 1-11-1985. In 1987, recommendations were made by the National Pay Commission but the Government did not accept it and fro7e 20% Special Allowance of existing Deputy Secretaries and equivalent in secretariats and for future this allowance was allowed at a fixed rate of Rs.300 p.m. with effect from 1-7-1987. All this is culled out from the material provided by the Government of ' Pakistan in Government of Pakistan through Secretary, Ministry of Finance, Islamabad v. M.I. Cheema and others (Civil Appeal No.16 of 1992. decided on 29-6-1992) 1992 SCMR 1852, where a specific direction was given to the following effect on the day leave was granted in the case:--

"The Advocate-General, Punjab and the Deputy Attorney-General for Pakistan should be called upon to rile a self-contained exhaustive note supported by all the official instructions that have issued during the last fifty years, if not more, with regard to the Secretariat and non? Secretarial Scales of Pay from time to time, within one month, to be available to the parties before hearing of the appeals."

19. In spite of the direction given no material has been placed before this Court or was placed before any of the High Courts showing any reason whatsoever for the re- emergence of categories of Secretariat and non ?Secreteriate employees and for assimilating certain non-Secretariat Offices as Secretariat Offices for the purpose of this Allowance. In the absence of any reason forthcoming on the record after the enforcement of the Unified Pay E Scales to all categories of employees, such a reversion to old categories would appear to be discriminatory.

20.- The legal question that in the matter of pension and pay no such discrimination can take place has been answered by this Court in IA. Sharwani ?and others v. Government of Pakistan through Secretary, Finance Division and others (1991 SCMR 1041). The factual question of equivalence of the duties, responsibilities, confidentialitiess etc. is ordinarily not a fit subject for adjudication by the High Court but has to be determined initially by a full- 6 fledged exercise to be undertaken by the National Pay Commission, as such. For the employees of the High Court the position is far better. The employees of the Federal Shariat Court and the Supreme Court of Pakistan have been allowed such an Allowance. The High Court employees perform almost identical functions as do the employees of these two other Courts perform. The employees of all the three Courts have been dealt with constitutionally by the H same provision reproduced above. In the circumstances, the High Court's employees cannot be discriminated against. The necessary provision of Secretariat/Personal Allowance had to be made in respect of such employees as was made in the case of the Federal Shariat Court and the Supreme Court, employees.

21. In the circumstances, no case is made out for our interference in the impugned judgments/orders of the High Courts. Hence, the appeal is dismissed with no order as to costs and leave to appeal is refused in the two other petitions.

(34)

Government of Khyber Pakhtunkhwa
Local Government, Elections and Rural Development Department

NOTIFICATION

Dated Peshawar, 12th October, 2018

No.SO(LG-I)2-128/2018.- The Competent Authority on the recommendations of Provincial Selection Board has been pleased to promote Syed Shahinshah, Accounts Officer (BPS-17) to the post of Deputy Director (Finance and Accounts) BPS-18 in Directorate General, Local Government and Rural Development Department, Khyber Pakhtunkhwa Peshawar with immediate effect.

2. On his promotion, the officer will remain on probation, in terms of Khyber Pakhtunkhwa Civil Servants (Appointment, Promotion & Transfer) Rules, 1989.

3. Consequent upon his promotio 0 n, Syed Shahinshah is posted against the vacant post of Deputy Direct (Finance & Accounts) BPS-18 in Directorate General, Local Government and Rural Development Department, Khyber Pakhtunkhwa, Peshawar with immediate effect.

SECRETARY TO GOVT.OF KHYBER
PAKHTUNKHWA, LG,E&RDD

Endst No. SO(LG-I)2-128/2018 Dated Pesh: 12th October, 2018

Copy is forwarded to:-

1. The Secretary to Government of Khyber Pakhtunkhwa, Establishment Department.
2. The Accountant General, Khyber Pakhtunkhwa, Peshawar.
3. The Director General, LG&RDD, Khyber Pakhtunkhwa, Peshawar.
4. All Assistant Directors, LG&RDD in Khyber Pakhtunkhwa.
5. Syed Shahinshah, Accounts Officer,Directorate General, LG&RDD, KP, Hayatabad, Peshawar
6. The Manager, Government Printing Press, Peshawar.
7. Personal file of the officer concerned.
8. The PS to Secretary, LG,E&RDD.
9. Office order file.

Attested by
Petitioner in person

(HAJI MUHAMMAD)
SECTION OFFICER (ESTAB)
Ph: # 091-9213224

این ڈبلیو ایف پی پبلک سروس کمیشن

اشتہار نمبر ۵/۹۴

درج ذیل اسامیوں کے لئے پاکستان شہریت کے حامل صوبہ سرحد کے ڈومیسائل ہولڈر امیدواران سے ۲۵ ستمبر ۱۹۹۴ تک (بیرون ملک مقیم امیدواران سے ۱۰ اکتوبر ۱۹۹۴ تک) درخواستیں مطلوب ہیں۔

۱) محکمہ صحت میں فیزیولوجی میں ایک اسسٹنٹ پروفیسر
قابلیت:۔ (اے) ایم بی بی ایس یا مساوی میڈیکل قابلیت تسلیم شدہ از کونسل اور (بی) متعلقہ مضمون میں ایف سی پی ایس / ایم ایس / ایم فل یا [illegible] جو کونسل سے منظور شدہ ہو یا مساوی قابلیت (سی) درج ذیل تجربہ کی بنیاد پر متعلقہ مضمون میں تین سالہ تجربہ ۱) تدریسی تجربہ (۲) پوسٹ گریجویشن کے بعد عملی تجربہ (۳) پوسٹ گریجویشن سے قبل عملی تجربہ
عمر کی حد:۔ ۲۷-۳۵ سال شرح تنخواہ بی پی ایس-۱۸
اہلیت:۔ دونوں جنس

۲) خیبر کالج آف ڈینٹسٹری پشاور کے لئے ڈینٹل میٹیریل اور لیبارٹری ٹیکنیکس میں ایک اسسٹنٹ پروفیسر
قابلیت:۔ اے) ایم ڈی ایس (پاکستان) ایم فل یا مساوی پوسٹ گریجویٹ قابلیت تسلیم شدہ از کونسل جو متعلقہ بنیادی مضامین میں ہو یا ایم ڈی ایس (پاک) / ایم فل (جو متعلقہ کلینیکل ٹیکنیکس میں ہو) یا (بی) متعلقہ مضمون میں جو کونسل سے منظور شدہ ہو میں پوسٹ گریجویٹ [illegible] ڈپلومہ معہ پوسٹ گریجویٹ [illegible] لیکچرر / [illegible] تین سالہ تدریسی تجربہ یا [illegible] یا مساوی قابلیت معہ متعلقہ بنیادی مضامین میں [illegible] تدریسی تجربہ یا کلینیکل اور [illegible] پریکٹس میں سات سالہ تدریسی تجربہ عمر کی حد:۔ ۲۷-۴۰ سال شرح تنخواہ بی پی ایس-۱۸ اہلیت دونوں جنس نوٹ پوسٹ گریجویٹ قابلیت [illegible] امیدواروں کو صرف اور صرف اس صورت میں غور ہوگا اگر اعلیٰ قابلیت حامل افراد دستیاب نہ ہوں۔

۳) خیبر میڈیکل کالج پشاور کے لئے ایک بائیو کیمسٹ
قابلیت:۔ سیکنڈ ڈویژن میں ایم ایس سی (بائیو کیمسٹری) [illegible] تسلیم شدہ یونیورسٹی) عمر کی حد:۔ ۲۱-۳۲ سال شرح تنخواہ بی پی ایس-۱۷ اہلیت دونوں جنس علاقائی تخصیص میرٹ

۴) محکمہ صحت ایبٹ آباد میں ایک ڈپٹی ڈائریکٹر (ٹیکنیکل)
قابلیت:۔ ۱) ایم بی بی ایس [illegible] تسلیم شدہ یونیورسٹی (۲) میڈیکل سائنس کے کسی برانچ میں پوسٹ گریجویٹ ڈگری / ڈپلومہ متعلقہ مضمون میں کم از کم تین سالہ تجربہ تکمیل از یا بعد از پوسٹ گریجویشن [illegible] میں تجربہ ہو [illegible] جولائی میں [illegible] ٹریننگ رکھنے والوں کو ترجیح دی جائے گی عمر کی حد:۔ ۳۴-۴۰ سال شرح تنخواہ بی پی ایس-۱۸ اہلیت:۔ دونوں جنس

۵) محکمہ صحت ایبٹ آباد میں چار لیکچرر میڈیکل آفیسرز
قابلیت:۔ اے) ایم بی بی ایس اور (بی) میڈیکل سائنسز کے کسی برانچ میں پوسٹ گریجویٹ ڈگری یا ڈپلومہ معہ [illegible] تکمیل از یا بعد از گریجویشن ایک سالہ تجربہ (سی) میڈیکل سائنسز کے کسی برانچ میں ماسٹرز ڈپلومہ معہ [illegible] تکمیل از یا بعد از پوسٹ گریجویشن تین سالہ تجربہ امیدواران کی جو [illegible] یا [illegible] میں [illegible] کو ترجیح دی جائے گی ۲۳-۳۰ سال شرح تنخواہ بی پی ایس-۱۸

۶) محکمہ تعلیم میں [illegible] میں ایک لیکچرر [illegible]
قابلیت:۔ (اے) متعلقہ مضمون میں [illegible] تسلیم شدہ [illegible] یونیورسٹی میں سات سالہ تدریسی [illegible] یا (بی) متعلقہ مضمون میں ایم فل (پاک) یا [illegible] ماسٹر کی ڈگری [illegible] یونیورسٹی [illegible] سالہ تدریسی اور یا [illegible] تجربہ یا (سی) متعلقہ مضمون میں سیکنڈ کلاس ماسٹر کی ڈگری [illegible] تسلیم شدہ [illegible] تحقیقی تجربہ عمر کی حد:۔ [illegible] سال شرح تنخواہ بی پی ایس-۱۸

۷) محکمہ تعلیم میں [illegible] کے لئے تین لیکچرر [illegible] اسسٹنٹ پروفیسرز [illegible] ایک

[illegible]

(۱۱) ٹیکنیکل ایجوکیشن ڈیپارٹمنٹ [illegible]

(۱۲) ٹیکنیکل ایجوکیشن ڈیپارٹمنٹ [illegible]

(۱۳) ٹیکنیکل ایجوکیشن ڈیپارٹمنٹ [illegible]

(۱۴) [illegible]

(۱۵) [illegible]

(۱۶) [illegible]

Attested by
Petitioner in Person

36

[illegible]

(۱۷) [illegible] ریسرچ افسر [illegible]

قابلیت: ایم ایس سی [illegible] (آنرز) [illegible] ایف ایس سی کے بعد چار سالہ [illegible] عمر کی حد ۲۱-۳۰ سال شرح تنخواہ بی پی ایس-۱۷ قابلیت دونوں جنس تقسیم زون ۱

(۱۸) [illegible]

قابلیت: ایم ایس سی (آنرز) [illegible] (جو ایف ایس سی کے بعد تعلیمی ہدایات کے چار سال بعد حاصل کی [illegible]) [illegible] عمر کی حد ۲۱-۳۵ سال شرح تنخواہ بی پی ایس-۱۷

قابلیت دونوں جنس تقسیم زون ۱

(۱۹) [illegible] میں ایک [illegible] سائل کنزرویشن

اسسٹنٹ: قابلیت [illegible] ایف ایس سی کے بعد تعلیمی [illegible] تسلیم شدہ [illegible] عمر کی حد ۲۱-۳۵ سال شرح تنخواہ بی پی ایس-۱۷ تقسیم زون ۱

(۲۰) [illegible] لیکچرر

قابلیت: [illegible] ایم ایس سی [illegible] ایک مضمون [illegible] تسلیم شدہ یونیورسٹی عمر کی حد ۲۱-۳۵ سال شرح تنخواہ بی پی ایس ۱۶ تقسیم زون ۱

(۲۱) [illegible] میں ایک اسسٹنٹ [illegible]

قابلیت: سیکنڈ ڈویژن میں ایم ایس سی زوالوجی [illegible] ترجیح دی جائے گی [illegible] عمر کی حد ۲۱-۲۸ سال شرح تنخواہ بی پی ایس-۱۶ قابلیت [illegible] تقسیم زون ۱

(۲۲) [illegible] میں ایک اسسٹنٹ چیف

قابلیت: [illegible] تسلیم شدہ [illegible] ماسٹر کی ڈگری [illegible] عمر کی حد [illegible] شرح تنخواہ بی پی ایس ۱۸ قابلیت دونوں جنس

(۲۳) پلاننگ [illegible] ڈیپارٹمنٹ میں ایک [illegible] سٹیٹسٹکس

قابلیت: [illegible] سٹیٹسٹکس [illegible] ماسٹر کی ڈگری [illegible] ایک سالہ ٹریننگ [illegible] عمر کی حد ۲۲-۳۵ سال شرح تنخواہ بی پی ایس-۱۷ قابلیت مرد تقسیم میرٹ

(۲۴) [illegible] میں تین اسسٹنٹ [illegible] اور ایک [illegible] (ویٹرنری)

قابلیت: [illegible] ویٹرنری سائنس یعنی ویٹرنری [illegible] ایم ایس سی (آنرز) [illegible] عمر کی حد ۲۱-۲۸ سال شرح تنخواہ بی پی ایس-۱۷ قابلیت مرد تقسیم میرٹ پر ایک [illegible]

(۲۵) لائیو سٹاک [illegible] ویٹرنری افسران [illegible]

قابلیت: ڈی وی ایم [illegible] عمر کی حد ۲۱-۲۸ سال شرح تنخواہ بی پی ایس ۱۷ قابلیت دونوں جنس تقسیم میرٹ پر سات، زون ۱، ۲ اور ۳ (ہر ایک) کے لئے چار چار اور زون ۴ اور ۵ کیلئے تین تین

(۲۶) ویٹرنری ریسرچ [illegible] میں ایک ویٹرنری افسر (ریسرچ)

قابلیت: ڈی وی ایم یا بی ایس سی (اے ایچ) عمر کی حد ۲۱-۲۸ سال شرح تنخواہ بی پی ایس ۱۷ قابلیت دونوں جنس تقسیم زون ۲

42509

S. No. 54 927

(۲۷) [illegible] مواصلات و تعمیرات [illegible] افسر

قابلیت: اکنامکس [illegible] ماسٹر کی ڈگری [illegible] تسلیم شدہ [illegible] عمر کی حد ۲۵-۳۵ سال شرح تنخواہ بی پی ایس ۱۷ قابلیت مرد تقسیم میرٹ پر ایک اور زون ۱ کیلئے ایک

N.O. [illegible] S. 10

(۲۸) [illegible] آفیسر

قابلیت (کامرس / بزنس ایڈمنسٹریشن میں سیکنڈ کلاس ماسٹر کی ڈگری یا پاکستان [illegible] عمر کی حد ۲۱-۳۰ سال شرح تنخواہ بی پی ایس [illegible] قابلیت [illegible] میرٹ

(۲۹) [illegible] اسسٹنٹ [illegible]

قابلیت: [illegible] ڈگری [illegible] عمر کی حد [illegible] شرح تنخواہ بی پی ایس-۱۶ قابلیت دونوں جنس [illegible] تقسیم میرٹ

[illegible] امتحان

قابلیت: [illegible] عمر کی حد [illegible] ۱۹۹۳ [illegible]

[illegible]

[illegible] تمام امیدواروں [illegible] درخواست فارم [illegible] ۱۰۵ روپے [illegible] امیدواروں کیلئے [illegible] پبلک سروس کمیشن [illegible] ۱۲/۱۱/۸۵ [illegible] کمیشن [illegible]

۱) صدر بازار [illegible] (۲) [illegible] (۳) [illegible] (۴) [illegible] (۵) [illegible] (۶) [illegible] (۷) [illegible] (۸) [illegible] (۹) [illegible] (۱۰) [illegible] (۱۱) [illegible]
۱۲) تیمر گرہ برانچ

عبد السلیم

[illegible]

279679/270065

[illegible]

Attested
[illegible] in Person

(37)

Pay protection

IN THE SUPREME COURT OF PAKISTAN
(APPELLATE JURISDICTION)

PRESENT:
MR. JUSTICE GULZAR AHMED, CJ
MR. JUSTICE IJAZ UL AHSAN
MR. JUSTICE SAYYED MAZAHAR ALI AKBAR NAQVI

CIVIL APPEAL NO. 39 OF 2021
(On appeal against the judgment dated 27.12.2019 passed by the Khyber Pakhtunkhwa Service Tribunal, Peshawar in Service Appeal No. 980/2016)

Government of KPK through Chief Secretary, KPK and others ...Appellant(s)

VERSUS

Muhammad Ismail and another ...Respondent(s)

For the Appellant(s): Mr. Atif Ali Khan, Addl. A.G.

For the Respondent: Mr. Muhammad Asif Yousafzai, ASC

Date of Hearing: 27.04.2021

...

JUDGMENT

SAYYED MAZAHAR ALI AKBAR NAQVI, J.- Through this appeal by leave of the Court under Article 212(3) of the Constitution of Islamic Republic of Pakistan, 1973, the appellants have assailed the judgment dated 27.12.2019 passed by the Khyber Pakhtunkhwa Service Tribunal whereby the Service Appeal filed by the respondent No. 1 was accepted and he was allowed pay protection.

2. Succinctly stated the facts of the matter are that on 25.03.2002, the respondent No. 1 was appointed as Master in Pak Studies/Lecturer (BPS-17) in Cadet College Razmak, North Wazirstan. Later on, pursuant to the advertisement issued by the Khyber Pakhtunkhwa Public Service Commission for the posts of Subject Specialist (BPS-17), he applied through proper channel for the said post. The appellant passed through the selection criterion as such he was selected vide notification dated 19.09.2006, hence, posted at Government Higher Secondary School, Sheikhan, Peshawar. On 04.06.2011, the Finance Department, Government of KPK, issued a notification whereby it allowed pay protection to the employees of the autonomous bodies who had adopted pay scales of the Provincial Government. To get the benefit, the respondent filed departmental

ATTESTE

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appeal but it was rejected vide order dated 20.04.2016. Being aggrieved, he filed Service Appeal before the KPK Service Tribunal, which has been allowed vide impugned judgment. Hence, this appeal by leave of the Court.

3. Learned Additional Advocate General, KPK, inter alia contended that the respondent was appointed as Subject Specialist (BPS-17) on 19.09.2006 whereas the notification on the basis of which the respondent claimed pay protection came on 04.06.2011 which was prospective in nature, therefore, the respondent was not entitled for the relief in question; that for the first time, the respondent claimed the relief of pay protection on 05.11.2015 through departmental appeal after more than four years of issuance of notification dated 04.06.2011 and the same was barred by laches; that the learned Tribunal did not take into consideration this aspect of the matter and passed the impugned judgment, which may be set aside.

4. On the other hand, learned counsel for the respondent No. 1 has supported the impugned judgment. He mainly contended that the respondent applied through proper channel after proper departmental permission, therefore, under the law and rules, he is legally entitled to pay protection because the Cadet College Razmak had also adopted the Basic Pay Scale and that if the respondent is deprived of the benefit in question, it would be against the principles of justice and fair play.

5. We have heard learned Law Officer as well as learned counsel for the respondent No. 1 and have perused the record.

6. On our specific query, learned Additional Advocate General conceded that the Cadet College Razmak where the respondent was earlier working as Master in Pak Studies/Lecturer (BPS-17) had adopted the Basic Pay Scales and the respondent had applied through proper channel after getting permission from the department for the post of Subject Specialist. The only point on which he emphasized is that the notification dated 04.06.2011 on the basis of which the respondent claimed pay protection is prospective in nature and it does not allow retrospective claims. However, we do not tend to agree with the learned Law Officer. While passing the impugned judgment, the learned Service Tribunal has relied upon a judgment of this Court dated 27.1.2019 passed in Civil Appeal No. 1308/2019. In that case the respondent was appointed as Lecturer in the University of Engineering and Technology, Peshawar on 03.12.1986. Later on he applied for the post of Inspector in

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the Mines Department through proper channel and was got selected vide order dated 21.06.1989. On the basis of the notification dated 04.06.2011 referred above, he claimed pay protection which was ultimately granted by the Service Tribunal and appeal against the order of the Tribunal was dismissed by this Court. It would be advantageous to refer to the relevant portion of the order dated 27.11.2019 passed by this Court, which reads as under:-

> 2. Learned Additional Advocate General has stated that the respondent was appointed as a Lecturer in the University of Engineering and Technology, Peshawar on 03.12.1986. The respondent applied for being appointed as Inspector Mines through proper channel in the Mines Department and ultimately, succeeded in the same and was appointed as an Inspector Mines vide order dated 21.06.1989. Learned Addl. AG further contends that by virtue of the letter dated 04.06.2011, as reproduced above, the respondent was not entitled to pay protection. This letter has been considered by the Service Tribunal in its impugned judgment and even on our own reading, we are unable to agree with the learned Addl. AG that this has affected the case of the respondent, for that, the very letter used the word "henceforth" and provides to discontinue the benefit of pay protection of the employees of autonomous bodies. However in the last line it gives such benefit of pay protection to the employees of such autonomous organizations who have adopted the Scheme of Basic Pay Scale in toto on their appointment in Government Offices. In the first place, the very letter shows that it will apply from 04.06.2011 and will not affect the employees who have already been employed in Government service from the autonomous organizations and the case of the respondent being that of appointed on 21.06.1989, the same is not affected. Further, it is also an admitted fact that the University, in which the respondent was working, has adopted the Scheme of Basic Pay Scale in toto in the Government service. Besides, the respondent has applied for the post through proper channel, therefore, the condition of applying through proper channel has been satisfied."

7. In the above referred case, almost in similar circumstances as in the present case, the benefit of pay protection was given retrospectively, therefore, the respondent being standing on the same pedestal also deserves the same treatment to be meted out in the spirit of Article 25 of the Constitution of Islamic Republic of Pakistan, 1973. So far as the issue of laches is concerned, this point was specifically taken by the appellants before the learned Service Tribunal and the same was rightly discarded by the Tribunal in paragraph No. 5 of the impugned judgment by holding that being a financial matter, limitation will not have any adverse implication on respondent's claim.

8. For what has been discussed above, we are of the candid view that the learned Service Tribunal has passed a well reasoned

(40)

judgment to which no exception can be taken. This appeal having no merit is accordingly dismissed.

Sd/CJ

Sd/J

Sd/J

Islamabad, the
27th of April, 2021
Not Approved For Reporting
Zahoor

Certified to be True Copy

Senior Court Associate
Supreme Court of Pakistan
Islamabad

CR No:	7790/21 Civil/Criminal
Date of Presentation:	27-04-21
No of Words:	1200
No of Folios:	12
Requisition:	5-00
Copy For:	7-44
Court Fee:	12-44
Date of:	7/5/21
Date of Del:	17-5-21

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HOW MUCH OF A STATEMENT IS TO BE PROVED

53. What evidence to be given when statement forms part of a conversation, document, book or series of letters or papers.---When any statement of which evidence is given forms part of a longer statement, or of a conversation or part of an isolated document, or is contained in a document which forms part of a book, or of a connected series of letter papers, evidence shall be given of so much and no more of the statement, conversation, document, book or series of letters or papers as the Court considers necessary in that particular case to the full understanding of the nature and effect of the statement, and of the circumstances under which it was made.

JUDGMENTS OF COURTS OF JUSTICE WHEN RELEVANT

54. Previous judgments relevant to bar a second suit or trial.---The existence of any judgment, order or decree which by law prevents any Court from taking cognizance of a suit or holding a trial, is a relevant fact when the question is whether such Court ought to take cognizance of such suit or to hold such trial.

55. Relevancy of certain judgments in probate etc., jurisdiction.---A final judgment, order or decree of a competent Court in the exercise of probate matrimonial, admiralty or insolvency jurisdiction, which confers upon or takes away from any person any legal character, or which declares any person to be entitled to any such character, or to be entitled to any specific thing, not as against any specified person but absolutely, is relevant when the existence of any such legal character, or the title of any such person to any such thing, is relevant.

Such judgment, order or decree is conclusive proof-

that any legal character which it confers occurred at the time when such judgment, order or decree came into operation :

that any legal character, to which it declares any such person to be entitled, accrued to that person at the time when such judgment, order or decree declares it to have accrued to that person.

Form- A

FORM OF ORDER SHEET

Court of_____

Case No.-_____634/**2022**_____

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1-	27/04/2022	The appeal of Syed Shahin Shah resubmitted today by him may be entered in the Institution Register and put up to the Worthy Chairman for proper order please. REGISTRAR
2-		This case is entrusted to Single Bench at Peshawar for preliminary hearing to be put there on _____.Notices be issued to appellant for the date fixed. CHAIRMAN

13.05 2022 Appellant in person present and requested for adjournment in order to further prepare the brief. To come up for preliminary hearing before the S.B on 20.07.2022.

(Kalim Arshad Khan)
Chairman