

PCL error

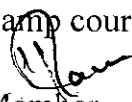
Subsystem: KERNEL


Error: 21.02.2018 IllegalTag

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Position: 349


Appellant in person and Addl. AG alongwith Sohail Ahmad Zaib, Assistant for the respondents present. Appellant seeks adjournment. To come up for arguments on 21.3.2018 before the D.B at camp court, Abbottabad.



Member


Chairman
Camp court, A/Abad.

21.03.2018

None present for the appellant. Mr. Usman Ghani, District Attorney alongwith Saquib Shahzad, Assistant and Malak Muhammad Haroon, AAO for the respondents present. To come up for arguments/further proceedings on 18.04.2018 before the D.B at camp court, Abbottabad.


Member

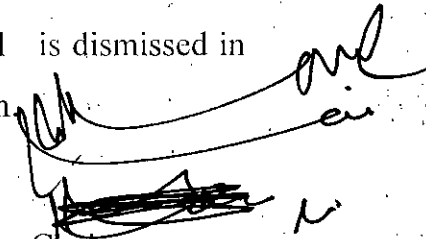

Chairman
Camp court, A/Abad

18.04.2018

None is present for the appellant. Mr. Usman Ghani, District Attorney for the respondents present. On previous date also none was present on behalf of the appellant.

In view of the above, the present appeal is dismissed in default. File be consigned to the record room.


Member


Chairman
Camp Court, A/Abad

ANNOUNCED

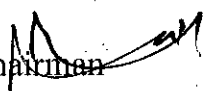
18.04.2018

580/2014

19.10.2017


Appellant in person and Mr. Kabeerullah Khattak, Addl. Advocate General alongwith Mr. Muhammad Bilal, Deputy District Attorney and Sohail Ahmad Zaib, Assistant for the respondents present. The learned AAG seeks adjournment. To come up for arguments on 21.11.2017 before the D.B at camp court, Abbottabad.

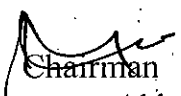

Member


Chairman
Camp court, A/Abad.

21.11.2017

Appellant in person and Addl. AG alongwith Sohail Ahmad Zaib, Assistant for the respondents present. Learned AAG seeks adjournment on behalf of Advocate General and submitted before the court that on the next date, the learned A.G will argue the case. Adjourned. To come up for arguments on 18.01.2018 before the D.B camp court, Abbottabad.



Member


Chairman
Camp court, Abbottabad.

18.01.2018


Appellant in person and Mr. Usman Ghani, District Attorney alongwith Sohail Ahmad Zaib, Assistant for the respondents present. Appellant seeks adjournment. Adjourned. To come up for arguments on 21.02.2018 before the D.B at camp court, Abbottabad.


Member


Chairman
Camp Court, A/Abad

17.11.2014

Appellant present in person. The Tribunal is incomplete. To come up for preliminary hearing at camp court A/Abad on 20.04.2015.


Reader

20.4.2015 Appellant in person present. Record perused according to which this Tribunal has granted advance increments to appellant vide judgment dated 12.5.2009 which was annulled through enactment passed by Provincial Assembly as the Khyber Pakhtunkhwa Cessation of Payment of Arrears on Advance Increments on Higher Educational Qualification Act, 2012. The appellant has challenged the vires of the said Act. Identical appeals including service appeals No. 901 to 903 of 2014 have already been admitted to regular hearing.

Points urged need consideration. Admit. Subject to deposit of security and process fee within 10 days, notices be issued to the respondents for written reply for 15.6.2015 before S.B at Camp Court A/Abad.


Chairman
Camp Court A/Abad



15.6.2015 Appellant in person and Mr. Jamshed Awan, Assistant (lit) alongwith Mr. Muhammad Bilal, G.P. for respondents present. Requested for adjournment. To come up for written reply/comments on 19.8.2015 before S.B at camp court A/Abad.


Chairman
Camp Court A/Abad

Form- A
FORM OF ORDER SHEET

Court of _____

Case No. 578/2014


S.No.	Date of order Proceedings	Order or other proceedings with signature of judge or Magistrate
1	2	3
1	24/04/2014	The appeal of Mr. Samiullah resubmitted today by him, may be entered in the Institution register and put up to the Worthy Chairman for preliminary hearing.  REGISTRAR
2	2-5-14	This case is entrusted to Touring Bench Abbottabad for preliminary hearing to be put up there on <u>17-11-14</u>  CHAIRMAN

The appeal of Mr. Sami Ullah son of Gul Badshah DPE GHSS Nawan Sheher Abbottabad received today i.e. on 08 .04.2014 is incomplete on the following score which is returned to appellat for completion and resubmission within 15 day.

Copy of departmental appeal is not attached with the appeal which may be placed on it.

No. 581 /S.T,

Dt. 08/04 /2014.


REGISTRAR
SERVICE TRIBUNAL
KHYBER PAKHTUNKHWA
PESHAWAR.


Mr. Sami Ullah appellant

Resubmitted with the remarks/request that impugned Act (KPK ACT NO IX OF 2012 dated 15/05/2012) was promulgated and appellat withdrew his execution petition pending before KPK Service Tribunal, with a view to challenge the vires of said Act through Writ Petition.

Initially appellat challenged it, in Constitutional Petition (Writ Petition) before High Court and on 25/03/2014, the Honourable High Court decided the law point in this respect at Para 04 of the its judgment that Service Tribunal has its own jurisdiction to decide the matter involved in said Act. Thus instant Service appeal is filed under the High Court Order

Moreover the requirement of departmental appeal u/s 4 of the KPK Service Tribunal Act is not possible as final authority for promulgation of Act is Governor KPK and there is no appellat authority available in the department who entertained such departmental appeal, and the said issue is resolved by High Court in judgment dated 25/03/2014 which is already annexed with appeal as **Annexure E**.

Under the above circumstances it is requested that instant service appeal may please be fixed for further legal process before Honourable Tribunal.


dated 19/4/2014

Sami Ullah
Appellant

**BEFORE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR.**

Service Appeal No: 578 of 2014

Samiullah S/O Gul Badshah, Director Physical Education, Government Higher Secondary School Nawan Shehr Abbottabad, R/O Village Dallokhel Teh & District Laksi Marwat, presently Nawan Shehr Abbottabad.

Appellant

Versus

Government of Khyber Pakhtunkhwa through Secretary Finance Department Peshawar and 04 Other.

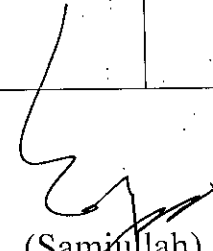
Respondents

SERVICE APPEAL

INDEX

S.No	DESC: OF DOCUMENTS	ANNEXURES	PAGE NO
1	Memo; of Service Appeal	----	1 to 5
2	Copy Judgment Dated 21/7/2009 passed in Service Appeal No 1036 of 2007	A	6 to 7
3	Copy of Act (KPK ACT NO IX OF 2012 dated 15/05/2012)	B	8 to 10
4	Copy of Service Tribunal Order passed in execution Petition	C	11
5	Copy of Peshawar High Court order dated 25/03/2014	D	12 to 20

Dated 05/04/2014


(Samiullah)
Appellant in person

**BEFORE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR.**

Service Appeal No: _____ of 2014

Samiullah S/O Gul Badshah, Director Physical Education, Government Higher Secondary School Nawan Shehr Abbottabad, R/O Village Dallokhel Teh & District Lakhi Marwat, presently Nawan Shehr Abbottabad.

Appellant

Versus

509
08/4/2014

- 1 Government of Khyber Pakhtunkhwa through Secretary Finance Department Peshawar.
- 2 Government of Khyber Pakhtunkhwa through Secretary (Elementary & Secondary Education), Department Peshawar.
- 3 Director of (Elementary & Secondary Education) Department, Khyber Pakhtunkhwa Peshawar.
- 4 Accountant General Khyber Pakhtunkhwa Peshawar.
- 5 District Comptroller of Accounts, Abbottabad.

Respondents

SERVICE APPEAL IS BEING FILED WITH OUT DEPARTMENTAL APPEAL WHICH IS IMPOSSIBLE IN THE CIRCUMSTANCES OF THE CASE AND THE SAME LAW POINT IS ALSO DECIDED BY THE PESHAWAR HIGH COURT, ABBOTTABAD BENCH IN WRIT PETITION NO 159-A OF 2014, FILED BY APPELLANT AND OTHERS AGAINST THE IMPUGNED ACT.

APPEAL UNDER SECTION 4 OF KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT 1974, AGAINST THE IMPUGNED "KHYBER PAKHTUNKHWA ACT NO. IX of 2012" (KHYBER PAKHTUNKHWA CESSATION OF PAYMENT OF ARREARS ON ADVANCE INCREMENTS ON HIGHER EDUCATIONAL QUALIFICATION ACT, 2012) WHICH IS UNCONSTITUTIONAL, WITHOUT LAWFUL AUTHORITY, ARBITRARY, PERVERSE, DISCREMINATORY' AGAINST THE PRINCIPAL OF NATURAL JUSTICE AND INEFFECTIVE UPON THE APPELLANT'S RIGHTS OF ADVANCE INCREMENTS, GRANTED IN SERVICE APPEAL

8/4/14

no-submitted to-day and filed.

24/4/14

NO 1036 OF 2007 ACCEPTED BY KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PASSED ON 21/07/2009 ALONGWITH ALL BACK BENEFITS WITH EFFECT FROM HIS RELEVANT DATE OF CLAIM.

PRAYER:-

ON ACCEPTANCE OF THE INSTANT SERVICE APPEAL, DECLARED THE SAID ACT (KHYBER PAKHTUNKHWA ACT NO.IX of 2012) AS ILLEGAL UNCONSTITUTIONAL INEFFECTIVE UPON THE APPELLANT'S RIGHTS OF ADVANCE INCREMENTS AND RESPONDENTS BE GRACIOUSLY DIRECTED TO GRANT RELEVANT ADVANCE INCREMENTS (ALREADY DECIDED ON 21/07/2009) TO THE APPELLANT WITH EFFECT FROM THEIR RELEVANT DATES OF CLAIMS WITH ALL BACK BENEFITS.

Respectfully Sheweth,

FACTS

- 1) That appellant being Director Physical Education was granted advance Increments on his higher qualification of (M.A/M.Sc) on the basis of acceptance of his individual Service Appeal by this Honourable Service Tribunal and passed judgment on 21/07/2009 at Camp Court Abbottabad. Copy of said Judgment is annexed as **"Annexure "A"**.
- 2) That when respondents' after passing long time' did not implement the existing judgment of Service Tribunal, appellant filed execution petition before this Tribunal, but an Act "Khyber Pakhtunkhwa cessation of payment of arrears on advance increments on higher education qualification Act" (KPK ACT NO IX OF 2012 dated 15/05/2012) was promulgated/published by the respondents. Copy of Act no IX is annexed as **Annexure "B"**.
- 3) That appellant withdrew his execution petition with the reason, to challenge the vires of impugned Act through Constitution Petition

(Writ Petition) before Peshawar High Court. Copy of Service Tribunal Order passed in execution Petition is annexed as Annexure "C".

- 4) That appellant and others challenged the vires of impugned Act through the Writ petition before Peshawar High Court Abbottabad Bench, which was decided/disposed of, with the law relating to jurisdictional matters in the prevailing issue, and High Court held that remedy by way of Service Appeal before the Service Tribunal is available to the appellant against the impugned Act. Copy of High Court Order is annexed as Annexure "D"
- 5) That in pursuance of law as decided by High Court in appellant's Writ Petition, the instant service appeal is being filed with out departmental appeal, as under the law, it is not possible because the is no appellate departmental authority available, above the Governor KPK who is the promulgating/issuing final authority of impugned Act, Hence this Service appeal inter alia on the following Grounds.

Grounds

- a) That it is undoubted fact that respondents illegally snatched the legal rights of the appellant in an uncivilized way in a very haste manner, which is against the equity and there is no single example is available in the civilized society.
- b) That it is admittedly proved that Service Tribunal passed its judgment on 21/07/2009 and respondents did not implement it after passing long period of 04 years, while 90 % of same cases has already been implemented, thus gross discriminatory treatment is involved in the case of appellant and the said Act is against Article 25 of the Constitution.

- c) That the action of respondents is admittedly arbitrary capricious unjust and against all norms of justice and against Tribunal Judgment and order as well as constitution of Pakistan.
- d) That impugned Act (Khyber Pakhtunkhwa Act No IX) is admittedly against the Article 25 of the Constitution as well as Constitution it self, according to said Act advance increments taken before issuance of Act (15/05/2012) would be legal, correct and valid but the same rights of advance increments (execution Petitions) would stand abated as per impugned Act, Such kind of target date of any Act/Notification /Memorandum/letter is not only illegal, against law but also against the Constitutional rights of the petitioners and in this respect the Learned larger bench of Supreme Court decided the same matters in **(1991 SCMR 1041)** (relevant at para 33 page 1092) thus liable to be declared illegal.
- e) That under the law provincial assembly has no power to change the nature of constitutional rights/Article nor pass any Act which is against to any Article of Constitution and the impugned Act cannot be passed in the presence of Article 25 of the Constitution.
- f) That Constitution cannot allow pick and choose types of colourful activities between the citizens thus impugned Act is unconstitutional.
- g) That it is an admitted fact that under question Act is the matter of great public importance.
- h) That appellant, who is once again dragged into litigation, that his grievances have been solved completely by this Honourable Tribunal by accepting his service appeal on 21/07/2009, but respondents published an illegal impugned Act, thus the conduct of the respondents is uncivilized in the civilized society and as such requires indulgence of this Honourable Tribunal by awarding appropriate punishment to the respondents.

It is, therefore, respectfully prayed that on acceptance of the instant Service appeal, this Honourable Tribunal may please be declared the said Act (Khyber Pakhtunkhwa Act No. IX of 2012) as illegal unconstitutional and respondents be graciously directed to grant two advance increments of (B.A/B.Sc & M.A/M.Sc) to the appellant with effect from his relevant dates of claims, decided in service appeal no 1036 of 2007, with all back benefits in the interest of natural justice.

Any other relief for which the appellant is entitled, and the same is not asked/prayed specifically, may very kindly be granted in favour of the appellant.

Dated 05/04/2014

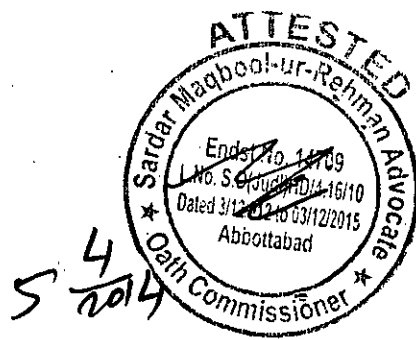
(Samiullah)
Appellant in person

Affidavit

I, Samiullah S/O Gul Badshah, Director Physical Education, Government Higher Secondary School Nawan Shehr Abbottabad, R/O Village Dallokhel Teh & District Lakhi Marwat, presently Nawan Shehr Abbottabad; do here by affirm on oath that contents of instant appeal is correct and true according to my best knowledge and belief and nothing has been suppressed from this Honourable Tribunal and this instant appeal is first appeal & same nature of any other appeal is not pending before Honourable Tribunal

Dated 05/04/2014

(Samiullah)
Appellant in person
DEPONENT



Annexure A

6

BEFORE THE NWFP SERVICE TRIBUNAL CAMP COURT ABBOTTABAD.

Appeal No. 1036/2007

Date of institution - 23.10.2007

Date of decision - 21.07.2009

Samiullah Director Physical Education Government Higher Secondary School,
Nawanshehr Tehsil and District Abbottabad..... (Appellant)

VERSUS

1. Director Secondary Schools and Literacy N.W.F.P. Peshawar.
2. Executive District Officer Schools and Literacy Abbottabad.
3. Secretary Schools and Literacy N.W.F.P. Peshawar.
4. Secretary Finance NWFP Peshawar..... (Respondents)

Appeal under Section 4 of NWFP Service Tribunals Act 1974 for the grant of two advance increments for possessing higher qualification of M.Sc and directing the Respondents to allow the same to the appellant.

Sardar Lal Khan, Advocate For Appellant.

Mr. Jamal Abdul Nasir, A.G.P. For Respondents.

SYED MANZOOR ALI SHAH MEMBER.

MR. BISMILLAH SHAH MEMBER.

JUDGMENT

SYED MANZOOR ALI SHAH, MEMBER : This appeal has been filed by the appellant for grant of two advance increments for possessing higher qualification of M.Sc and directing the Respondents to allow the same to the appellant.

2. Brief facts of the case are that the appellant is working in Education Department as a Director Physical Education in B.P.S 16 at Government Higher Secondary School Nawanshehr Abbottabad. The appellant is selectee of the NWFP Public Service Commission as Director Physical Education in B.P.S 16 and was appointed at Government High Secondary School Gumbat Kohat and was subsequently transferred to Government Higher Secondary School Nawanshehr. The prescribed qualification for the post of Director Physical Education is B.A/B.Sc plus/Diploma while the appellant is M.Sc from the Gomal University Dera Ismail Khan NWFP. The appellant is entitled for two advance increments vide Government of NWFP Finance Department Notification No. (SR-V) 2-145/97 VOI dated 14.3.1998 and Notification No. FD (SR-V) 2-145/98 dated 31.8.1999.

Handwritten signature and scribble.

The Education Department has granted two advance increments to the Director Physical Education (s) who are also possessing higher qualification of M.Sc in this regard. The appellant requested to the Department for two advance increments but no positive response has been received. The appellant submitted appeal to departmental appellate authority for grant of increments. The statutory period of 90 days has since elapsed hence this appeal.

3. The respondents were summoned. They appeared through their representatives, submitted written reply, contested the appeal and denied the claim of the appellant.

4. Arguments heard and record perused.

5. The learned counsel for the appellant argued that the denial of increments is an act not covered by any rules and law. The appellant has been discriminated which is against Article 25 of the Constitution. The appellant has been deprived from his right for which he is lawfully entitled. The action of Respondents against the law and is violation of established principles of equity and justice. He prayed that the appeal may be accepted.

6. The learned A.G.P argued that as per rules the appellant is not entitled for 2 advance increments being teaching staff. There is no discrimination on the part of Respondents. The action of the Respondent is under the Law and Rules. There is no violation. He prayed that the appeal may be dismissed.

7. Keeping in view the arguments regarding discriminatory treatment with the appellant, the case is remanded to the respondent department with the directions to consider the case of the appellant for the grant of advance increments and to ascertain that the appellant of this appeal is a person similarly placed with those who had been granted the same advance increments. The parties are, however, left to bear their own costs. File be consigned to the record.

ANNOUNCED.
21.7.2009.

(BISMILLAH SHAH)
MEMBER.

(SYED MANZOOR ALI SHAH)
MEMBER.
Camp Court Abbottabad.

Handwritten signature and scribble

Annexure B,

8 Annex - F

EXTRAORDINARY
GOVERNMENT

REGISTERED NO. PIII

GAZETTE



KHYBER PAKHTUNKHWA

Published by Authority

PESHAWAR, TUESDAY, 15TH MAY, 2012.

PROVINCIAL ASSEMBLY SECRETARIAT
KHYBER PAKHTUNKHWA

NOTIFICATION

Dated Peshawar, the 15th May, 2012.

No. PA/Khyber Pakhtunkhwa/Bills/2012/20711.—The Khyber Pakhtunkhwa Cessation of Payment of Arrears on Advance Increments on Higher Educational Qualification Bill, 2012 having been passed by the Provincial Assembly of Khyber Pakhtunkhwa on 8th May, 2012 and assented to by the Governor of the Khyber Pakhtunkhwa on 11th May, 2012 is hereby published as an Act of the Provincial Legislature of the Khyber Pakhtunkhwa.

**THE KHYBER PAKHTUNKHWA CESSATION OF PAYMENT OF ARREARS ON
ADVANCE INCREMENTS ON HIGHER EDUCATIONAL QUALIFICATION
ACT, 2012.**

(KHYBER PAKHTUNKHWA ACT NO. IX OF 2012)

*(first published after having received the assent of the Governor of the Khyber
Pakhtunkhwa in the Gazette of the Khyber Pakhtunkhwa
(Extraordinary), dated the 15th May, 2012).*

AN
ACT

*to cease the payment of arrears accrued on account of advance increments on
higher educational qualification.*

WHEREAS advance increments have been granted to certain Provincial Government employees on the basis of acquiring or possessing higher educational qualification over and above the prescribe educational qualification from time to time;

893

Assent d
[Signature]

AND WHEREAS the Provincial Government vide Notification No. (PRC)1-1/2001, dated 27.10.2001, had already discontinued the scheme of advance increments on higher educational qualification;

AND WHEREAS due to financial constraints, it is not possible for Provincial Government to pay the claimed and unclaimed arrears accrued from the said increments;

It is hereby enacted as follows:-

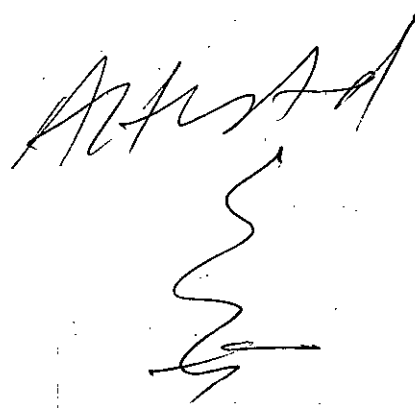
1. **Short title, application and commencement.**— (1) This Act may be called the Khyber Pakhtunkhwa Cessation of Payment of Arrears on Advance Increments on Higher Educational Qualification Act, 2012.

(2) It shall apply to all the employees of the Provincial Government, who were entitled to received advance increments on higher educational qualification.

(3) It shall come into force at once and shall be deemed to have taken effect on and from 1st day of December, 2001.

2. **Cessation of payment of arrears on advance increments on higher educational qualification.**—(1) Notwithstanding anything contained in any decision, judgment and order of any Tribunal or Court including High Court or Supreme Court of Pakistan, for the purpose of any claim for payment of arrears on account of advance increments on higher educational qualification sanctioned in pursuance of any order, letter, office memoranda, notification, instructions and other instruments issued before 1.12.2001, such orders, letters, office memoranda, notifications, instructions and other instruments shall be deemed to be non-existent, ceased or revoked and no further claim whatsoever on the basis of these instruments shall be entertained and all cases in respect of such claims pending in any Court or Tribunal including High Court and Supreme Court of Pakistan shall stand abated.

(2) Any order made, instruction issued, decision, judgment or order of any Court or Tribunal including a High Court or the Supreme Court, implemented immediately before the commencement of this Act, shall be deemed to have been validly made, issued and implemented by the date of commencement of this Act, and any amount already paid there-under on account of advance increments or arrears thereof shall be deemed to have been validly paid and shall not be recoverable from the recipient Government employees.



10

3. **Removal of difficulties.**— If any difficulty arises, in giving effect to the provisions of this Act, the Provincial Government may make such orders as it may deem just and equitable.

4. **Repeal.**— The Khyber Pakhtunkhwa Cessation of Payment of Arrears on Advance Increments on Higher Educational Qualification Ordinance, 2012 (Khyber Pakhtunkhwa Ordinance NO. 1 of 2012), is hereby repealed.

BY ORDER OF MR. SPEAKER

PROVINCIAL ASSEMBLY OF KHYBER
PAKHTUNKHWA

(AMANULLAH)

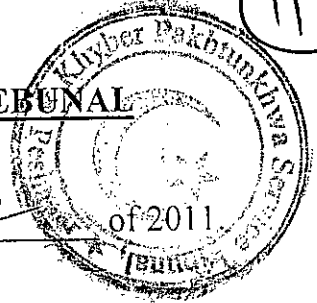
Secretary

Provincial Assembly of Khyber Pakhtunkhwa

Annexure C

11

**BEFORE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR**



Implementation Application No 32

of 2011

IN

Service Appeal No 1036 of 2007.

Samiullah S/O Gul Badshah, Director Physical Education, Government Higher Secondary School Nawan Shehr Abbottabad, R/O Village Dallokhel Teh & District Lakhi Marwat, presently Nawan Shehr Abbottabad.

Applicant

Versus

Director of (Elementary & Secondary Education) Department Khyber PakhtunKhwa Peshawar and 03 other

Respondents

20.01.2014

Petitioner in person, M/S Zubair Ali, ADO for respondents No. 1. to 3 and Irshad Muhammad, Supdt. for respondent No.4 with Mr.Muhammad Tahir Aurangzeb, G.P for the respondents present. Petitioner in implementation petition No.120 of 2012 moved application for withdrawal of the implementation petition on the ground that he is going to move the High Court and challenge vires of Act of 2012, namely Act of Khyber Pakhtunkhwa for Cessation of Payment of Arrears on Advance Increments on acquisition of Higher Educational Qualification.

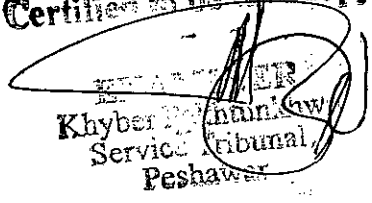
In view of the above, this implementation/execution petition is disposed of as withdrawn. File be consigned to the record. *M/11*

ANNOUNCED
20.01.2014

Chairman
Comptroller & Auditor

Handwritten notes:
Date of Presentation of Application: 29.1.2014
Number of Petitions: 4
Copies of Petitions: 2
Urgent: 6
Total: 2
Name of Officer: Zubair Ali
Date of Disposal: 29.1.2014
Date of Drafting: 29.1.2014

Certified to be true copy



Annexure D,

12

1

BEFORE THE PESHAWAR HIGH COURT ABBOTTABAD BENCH

Writ Petition No. 159/A of 2014

- 1) Muhammad Fayaz Awan S/O Muhammad Urfan, Junior Pharmacy Technician, Ayub Teaching Hospital, Abbottabad. R/O: House No K: 240/10, Kunj Jadeed, Abbottabad.
- 2) Muhammad Daud Qureshi S/O Masood Ur Rehman, Junior Pharmacy Technician, Ayub Teaching Hospital, Abbottabad. R/O: House No (1452) Behind Masjid Abu Bakkar, Kholah Kehal, Teh; & Distt; Abbottabad.
- 3) Arshad Khan S/O Mir Afzal Khan C.T teacher Government High School No 3 (English Medium), Abbottabad R/o village, Ghumawan, Post Office Nawan Shehr, Tehsil & District Abbottabad.
- 4) Samiullah S/O Gul Badshah, Director Physical Education, Government Higher Secondary School Nawan Shehr Abbottabad, R/O Village Dallokhel Teh & District Lakhi Marwat, presently Nawan Shehr Abbottabad.
- 5) Hafiz Muhammad Iqbal Khan Qureshi, S/O Muhammad Yousaf Qureshi, Theology Teacher, (T.T) Government Centennial Model Secondary (GHS No 02) Abbottabad R/O: KL 166, Mohallah Upper Kehal, Tehsil & District, Abbottabad.
- 6) Qazi Masood-ur-Rehman S/O Qazi Ghulam Jilani, (Ex PTC teacher) C.T teacher, Government Middle School Khoi Maira, Haripur. R/O: Village & Post Office Khoi Nara, Tehsil & District, Haripur.
- 7) Nazira Begum D/O Jhangir Khan, (w/o Jamshed Khan) D.M teacher Government Girls High School Kuthiala, District Abbottabad. R/O: Village and Post Office Kuthiala, Tehsil & District, Abbottabad.

Petitioners

Versus

1. Government of Khyber Pakhtunkhwa through Secretary Finance Department, Peshawar.
2. Government of Khyber Pakhtunkhwa through Secretary Health Department, Peshawar.
3. Government of Khyber Pakhtunkhwa through Secretary (Elementary & Secondary Education), Department Peshawar.
4. Accountant General Khyber Pakhtunkhwa Peshawar.
5. Director General, Health & Services Khyber Pakhtunkhwa, Peshawar.

Verified to be True Copy

3/3/14
Peshawar High Court
Abbottabad Bench
Authorized Under Sec 75 Act 1973

- 6 Director of (Elementary & Secondary Education) Department, Khyber Pakhtunkhwa Peshawar.
- 7 Chief Executive, Ayub Medical Complex, Abbottabad.
- 8 Medical Superintendent, Ayub Teaching Hospital, Abbottabad.
- 9 Director Finance, Ayub Teaching Hospital, Abbottabad.
- 10 District Education Officer, Elementary & Secondary Education Department Abbottabad.
- 11 District Education Officer, Elementary & Secondary Education Department Haripur.
- 12 District Accounts Officer Abbottabad.
- 13 District Accounts Officer Haripur.

Respondents

WRIT PETITION UNDER ARTICLE 199 OF THE CONSTITUTION OF ISLAMIC REPUBLIC OF PAKISTAN 1973, FOR DECLARATION THAT "KHYBER PAKHTUNKHWA CESSATION OF PAYMENT OF ARREARS ON ADVANCE INCREMENTS ON HIGHER EDUCATIONAL QUALIFICATION ACT, 2012. (KHYBER PAKHTUNKHWA ACT NO.IX of 2012) IS INEFFECTIVE UPON THE RIGHTS OF THE PETITIONERS, UNCONSTITUTIONAL, WITHOUT LAWFUL AUTHORITY, ARBITRARY, PERVERSE, DISCREMINATORY AND AGAINST THE PRINCIPAL OF NATURAL JUSTICE AND LAW AS SETTLED BY SUPREME COURT AND INEFFECTIVE UPON THE RIGHTS OF ADVANCE INCREMENTS OF THE PETITIONERS WHICH IS GRANTED BY KHYBER PAKHTUNKHWA SERVICE TRIBUNAL IN THEIR INDIVIDUAL SERVICE APPEALS WITH EFFECT FROM THEIR RELEVANT DATES OF CLAIM.

PRAYER:-

ON ACCEPTANCE OF THE INSTANT WRIT PETITION, THIS HONOURABLE COURT BE DECLARED THE SAID ACT (KHYBER PAKHTUNKHWA ACT NO.IX of 2012) AS ILLEGAL UNCONSTITUTIONAL AND RESPONDENTS BE GRACIOUSLY DIRECTED TO GRANT ADVANCE INCREMENTS TO THE PETITIONERS WITH EFFECT FROM THEIR RELEVANT DATES OF CLAIMS WITH ALL BACK BENEFITS.

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Executive
Peshawar High Court
Abbottabad Bench

13/3/14
13/3/14

14

Judgment Sheet

IN THE PESHAWAR HIGH COURT,
ABBOTTABAD BENCH.

JUDICIAL DEPARTMENT

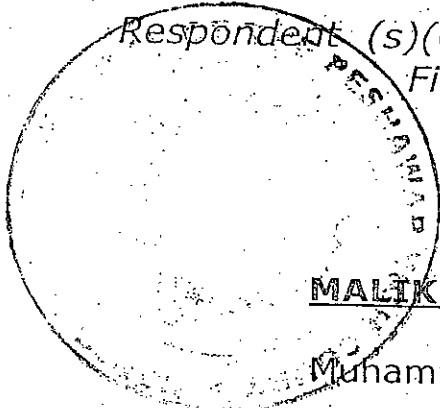
WP No.159-A of 2014

JUDGMENT

Date of hearing.....25/03/2014.....

Petitioner(s)(Muhammad Fiaz Awan and others)
Petitioner No.1 in person.....

Respondent (s)(Govt. of KPK through Secretary
Finance Department etc).....



MALIK MANZOOR HUSSAIN, J:-

Muhammad Fiaz Awan and six others

petitioners seek the constitutional

jurisdiction of this Court-praying that:

*"It is, therefore, respectfully
prayed that on acceptance of
instant Writ Petition, this
Honourable Court may please
be declared the said Act
(Khyber Pakhtunkhwa Act
No.IX of 2012) as illegal,
unconstitutional and
respondents be graciously
directed to grant advance
increments of higher
qualification to the
petitioners with effect from
their relevant dates of claims*

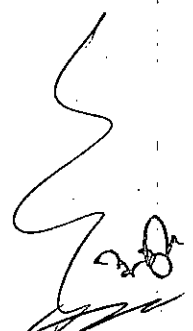
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Examiner
Peshawar High Court
Abbottabad Bench
Authorized Under Sec. 20-A of the
Peshawar High Court Act, 1973

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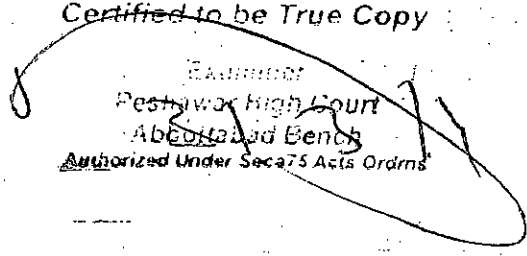
with all backs benefits in the interest of natural justice."

2. Admittedly, petitioners are Government employees, serving in Health and Education departments of the Government of KPK, as Junior Pharmacy Technician and Teachers Computer Operator at Abbottabad and Haripur. The petitioners have earlier filed separate appeals before the Khyber Pakhtunkhwa Service Tribunal, Peshawar praying for grant of advance increments on acquiring higher qualification, which were accepted vide order dated 12.05.2009, 21.07.2009 and 21.12.2009. The respondents did not file appeal against the said decisions of the Tribunal. However, when the said judgments of the KPK Tribunal could not be implemented, the petitioners filed petitions for implementation of the said decisions before the Tribunal and in the meanwhile, the respondents promulgated **'Khyber Pakhtunkhwa Cessation of Payment of Arrears on Advance Increments on**

Attorney


Certified to be True Copy

Exhibitor
 Peshawar High Court
 Abbottabad Bench
 Authorized Under Sec 75 Acts Ordms



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Higher Education Qualification Act, 2012' (Khyber Pakhtunkhwa Act No.IX of 2012) published in the Gazette of the Khyber Pakhtunkhwa (Extraordinary) dated 15th May, 2012. Thereafter, the apex Court in Civil Petition No.360 of 2013 involving similar dispute of implementation of judgment passed by Service Tribunal has given the following observation:-

"A bare reading of the above sections from Khyber Pakhtunkhwa Act No.IX of 2012 makes it crystal clear that whatever benefit the petitioner was claiming through the judgment dated 12.5.2009, has been nullified by the legislature through clear intendment in unequivocal terms, while vires of the said Act have not been challenged before any forum."

(Emphasis provided)

The petitioners in view of the said observation, withdrawn their implementation / execution petitions pending before Service Tribunal with a view to challenge the vires of said Act through instant Constitutional petition.

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Secretary
Abbottabad Bench
(Witnesses under Sec. 5 of Act 19 of 2012)

petitioners before the Service Tribunal, who is competent legal forum to decide the grievance of the petitioners. In the aforementioned case, the apex Court has observed that:

"From the above-cited cases, it is evident that it has been consistently held inter alia by this Court that a civil servant if is aggrieved by a final order, whether original or appellate, passed by a departmental authority in respect of his terms and conditions, his remedy, if any, is by way of an appeal before the Service Tribunal even where the case involves vires of a particular Service Rule or a notification or the question, whether an accused civil servant can claim the right to be represented by a counsel before the Enquiry Officer. We are inclined to hold that if a statutory rule or a notification adversely affects the terms and conditions of a civil servant, the same can be treated as an order in terms of subsection (1) of section 4 of the Act in order to file an appeal before the Service Tribunal. However, in the present case, the petitioner's case is founded solely on the ground of discriminatory treatment in violation of Article 25 of the Constitution and not because of any breach of any

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Examined to be True Copy
Examiner
Peshawar High Court
Abbottabad Bench
Authorized Under Sec 27(1) of the Ordinance

provision of the Civil Servants Act or any service rule. Furthermore, the question involved is of public importance as it affects all the present and future pensioners and, therefore, falls within the compass of clause (3) of Article 184 of the Constitution. However, we may clarify that a civil servant cannot bye-pass the jurisdiction of the Service Tribunal by adding a ground of violation of the Fundamental rights. The Service Tribunal will have jurisdiction in case which is founded on the terms and conditions of the service even if it involves the question of violation of the Fundamental Rights."

(Emphasis provided)

In view of the aforementioned principle laid down by the apex Court, the petitioners may approach to the Service Tribunal, if so advised. This Court in Constitutional Jurisdiction under Article 199 of the Constitutional of Islamic Republic of Pakistan, 1973 and the bar contained in Article 212 of the Constitution of, 1973, as the matter relates to 'terms and conditions' of the service of the petitioners is not competent to assume jurisdiction, when

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Certified to be True Copy
 Examiner
 Peshawar High Court
 Abbottabad Bench
 Authorized Under Socy75 Acts Ordms

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remedy by way of appeal before the Service Tribunal is available to the petitioners against the vires of the Act (ibid) or infringement of fundamental rights guaranteed in Article 25 of the Constitution.

5. Accordingly, for the reasons stated hereinabove, this petition is disposed of in the above terms.

Announced:
Dt.25.03.2014.

/M.S.Awan/

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3.3.14
Examiner
Peshawar High Court
Abbottabad Bench
(Authorised Under Section 25 of the Ordinance)

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR.

Service Appeal No.578/2014
Sami Ullah, DPE, Abbottabad.

...

Appellant

VERSUS

1. The Secretary Finance Department, Khyber Pakhtunkhwa, Peshawar.
2. The Secretary, Elementary & Secondary Education Department, Khyber Pakhtunkhwa, Peshawar.
3. Director (Elementary & Secondary Education), Khyber Pakhtunkhwa, Peshawar.
4. District Education Officer, Elementary & Secondary Education, District Abbottabad.
5. The Accountant General, Khyber Pakhtunkhwa, Peshawar.
6. District Comptroller of Accounts, Abbottabad.

...

Respondents

JCI PARAWISE COMMENTS ON BEHALF OF RESPONDENT NO.1

Preliminary Objections:

- i) That the appellant has no cause of action.
- ii) That the appellant has no locus standi.
- iii) That the appeal in hand having no merits is not maintainable.
- iv) That appeal is time barred.
- v) This Honourable Tribunal lacks jurisdiction to entertain the appeal.
- vi) That the appeal is bad for mis-joinder and non-joinder of necessary parties.

Facts:

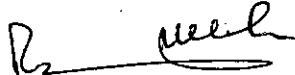

- 1) Need no Comments by Respondent No.1.
- 2) Incorrect. The Bill regarding cessation of Payment of Arrears on Advance Increments on Higher Educational Qualification Bill, 2012 has been passed by the Provincial Assembly, Khyber Pakhtunkhwa, assented to by the Governor, Khyber Pakhtunkhwa and notified by Secretary, Provincial Assembly vide Notification No.PA/Khyber Pakhtunkhwa/Bills/2012/20711 dated 15.05.2012, in the shape of Khyber Pakhtunkhwa Act No.IX of 2012 and has attained the status of law. The said Act has not been promulgated by the Respondent No.1.
- 3) Need no comments by Respondent No.1.
- 4) Need no comments by Respondent No.1.
- 5) Incorrect. The mentioned Act has been notified/promulgated by the Secretary, Provincial Assembly and not by the Respondent No.1.

Cont'd Next Page-(2)

Grounds:

- a) Incorrect. No legal right of the appellant has been snatched by the Respondent No.1 rather the mentioned Act has been notified/promulgated by the Secretary Provincial Assembly after approval by the Governor, Khyber Pakhtunkhwa in the best interest of public exchequer/public at large.
- b) Incorrect. Appellant has not been subjected to discrimination by the Respondent No.1
- c) Incorrect. As mentioned in preceding Paras.
- d) Incorrect. As mentioned in preceding Paras.
- e) Incorrect. Being legislative/law making body, the Provincial Assembly has the constitutional power to make fresh law/amend the existing law in the larger interest of public. Hence the Act passed by the Provincial Assembly is as per law and constitution of the country. The august Supreme Court of Pakistan, Peshawar High Court as well as this Honorable Tribunal has disposed/dismissed numerous cases regarding grant of arrears in light of above cited Act.
- f) Incorrect. As mentioned in above Paras.
- g) As replied in above paras.
- h) Incorrect. No illegality has been committed by the Respondent No.1.

It is therefore, humbly prayed that appeal of the appellant may be dismissed being without merit.


SECRETARY TO GOVERNMENT
OF KHYBER PAKHUNKHWA
FINANCE DEPARTMENT
(RESPONDENT NO.1) 

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR.

Service Appeal No.578/2014
Sami Ullah, DPE, Abbottabad.

...

Appellant

VERSUS

1. The Secretary Finance Department, Khyber Pakhtunkhwa, Peshawar.
2. The Secretary, Elementary & Secondary Education Department, Khyber Pakhtunkhwa, Peshawar.
3. Director (Elementary & Secondary Education), Khyber Pakhtunkhwa, Peshawar.
4. District Education Officer, Elementary & Secondary Education, District Abbottabad.
5. The Accountant General, Khyber Pakhtunkhwa, Peshawar.
6. District Comptroller of Accounts, Abbottabad.

...

Respondents

PARAWISE COMMENTS ON BEHALF OF RESPONDENT NO.1

Preliminary Objections:

- i) That the appellant has no cause of action.
- ii) That the appellant has no locus standi.
- iii) That the appeal in hand having no merits is not maintainable.
- iv) That appeal is time barred.
- v) This Honourable Tribunal lacks jurisdiction to entertain the appeal.
- vi) That the appeal is bad for mis-joinder and non-joinder of necessary parties.

Facts:

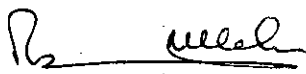
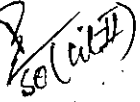
- 1) Need no Comments by Respondent No.1.
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- 3) Need no comments by Respondent No.1.
- 4) Need no comments by Respondent No.1.
- 5) Incorrect. The mentioned Act has been notified/promulgated by the Secretary, Provincial Assembly and not by the Respondent No.1.

Cont'd Next Page-(2)

Grounds:

- a) Incorrect. No legal right of the appellant has been snatched by the Respondent No.1 rather the mentioned Act has been notified/promulgated by the Secretary Provincial Assembly after approval by the Governor, Khyber Pakhtunkhwa in the best interest of public exchequer/public at large.
- b) Incorrect. Appellant has not been subjected to discrimination by the Respondent No.1
- c) Incorrect. As mentioned in preceding Paras.
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- e) Incorrect. Being legislative/law making body, the Provincial Assembly has the constitutional power to make fresh law/amend the existing law in the larger interest of public. Hence the Act passed by the Provincial Assembly is as per law and constitution of the country. The august Supreme Court of Pakistan, Peshawar High Court as well as this Honorable Tribunal has disposed/dismissed numerous cases regarding grant of arrears in light of above cited Act.
- f) Incorrect. As mentioned in above Paras.
- g) As replied in above paras.
- h) Incorrect. No illegality has been committed by the Respondent No.1.

It is therefore, humbly prayed that appeal of the appellant may be dismissed being without merit.


SECRETARY TO GOVERNMENT
OF KHYBER PAKHUNKHWA
FINANCE DEPARTMENT
(RESPONDENT NO.1) 

**BEFORE THE HONORABLE KHYBER PAKHTUNKHWA SERVICE
TRIBUNAL PESHAWAR CAMP COURT ABBOTTABAD.**

Appeal No. 578/2014

Samiullah.....Appellant

VERSUS

Govt: of Khyber Pakhtunkhwa & Others.....Respondents

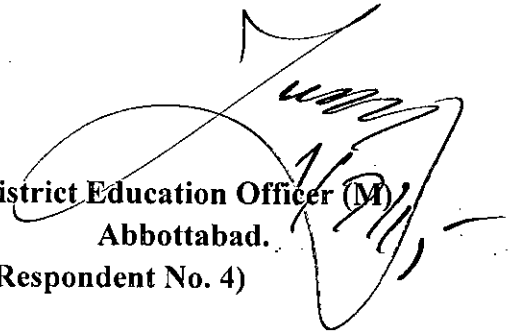
Para wise Comments on behalf of Respondents No. 2 to 4.

INDEX

Sr.No	Description	Page Nos	Annexures
1	Comments alongwith affidavit.	1 to 3	
2	Copy of judgment.	4 to 6	"A"

Dated: /07/15

**District Education Officer (M)
Abbottabad.
(Respondent No. 4)**



**BEFORE THE HONORABLE KHYBER PAKHTUNKHWA SERVICE
TRIBUNAL PESHAWAR CAMP COURT ABBOTTABAD.**

Appeal No. 578/2014

Samiullah.....Appellant

VERSUS

Govt: of Khyber Pakhtunkhwa & Others.....Respondents

Para wise Comments on behalf of Respondents No. 2 to 4.

Respectfully Sheweth:-

Comments on behalf of respondents are submitted as under:-

PRELIMINARY OBJECTION:-

1. That the appellant has no cause of action to file the instant appeal.
2. That the appeal of the appellant is time barred. Hence liable to be dismissed.
3. That the instant appeal is not maintainable as there is no final order.
4. That the appellant has filed the present appeal to pressurize the respondents.
5. That the appellant has not come to this Honorable tribunal with clean hands.
6. That the appellant is estopped to sue due to his own conduct.
7. That the instant appeal is not maintainable due to non-joinder and mis-joinder of necessary parties.
8. That this Honorable Tribunal hasn't got jurisdiction to entertain the present petition/ appeal as this Honorable Tribunal is not a Constitutional Court, hence this appeal is liable to be dismissed.
9. That the vires of Act were challenged in the appeal, the Act was promulgated in the best public interest & the advance increments were not settled to be paid at the time of joining of service.
10. That the legislator has authority to legislate as they have mandate to do so by a recognize process and services law do not provides the provision of judicial review, hence appeal is not tenable.
11. That the appellant is at liberty to join service after due process of law equivalent to his qualification & the Government is not bound to pay advance increment.

Factual objections:-

1. In reply to Para No.1 of the appeal it is submitted that judgment of honorable tribunal has lost its efficacy for the purpose of implementation by clear intendment through sections 1 & 2 of Khyber Pakhtunkhwa cessation of payment arrears on advance increments on higher education qualification Act No. IX of 2012.

2. That para No.2 of the appeal is incorrect as composed hence, denied. The Act was passed by the Provincial Assembly and assented by the Governor KPK who isn't party in the present appeal. The answering respondents are bound to obey the will of the legislature & cannot deviate from any provision of enactment.
3. That para No. 3 of the instant appeal relates to the judicial record.
4. In reply to para No. 4, it is submitted that due to the promulgation of Khyber Pakhtunkhwa cessation of payment arrears on advance increments on higher education qualification Act No. IX of 2012, all the execution/implementations petitions were dismissed by this honorable tribunal. It is further submitted that Mr. Muhammad Haroon had filed Civil Petition No 360 of 2013' before the August Supreme Court of Pakistan against the order dated 30/01/2013, passed by this Honorable tribunal and the same was dismissed on 29/08/2013. Copy of the said judgment is annexed as Annexure "A".
5. That para No.5, of the appeal is subject to proof. Further added that it is the rule of the administration of justice that things should be done in particular manner & not by any other means, any deviation from the same amounts illegality.
6. That the respondents seek leave of this Honorable tribunal to agitate additional grounds at the time of arguments.

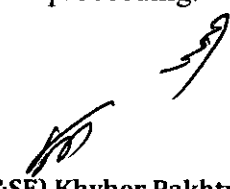
Grounds:

- a. That ground a. is incorrect hence, denied. Respondents have never snatched any legal rights of the appellent.
- b. That complete reply has already been given in above para No. 1 of the factual objections.
- c. That ground c. is incorrect hence, denied.
- d. That ground d. does not relate to answering respondents.
- e. That ground e. does not relate to answering respondents.
- f. That ground f. does not relate to answering respondents.
- g. That ground g. does not relate to answering respondents.
- h. That complete reply has already been given in above para No. 3 of the factual objections.
- i. That the respondents seek leave of this Honorable Tribunal to agitate additional grounds at the time of arguments.

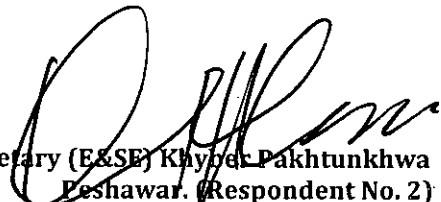
Under the circumstances, it is humbly prayed that the instant appeal is meritless against the law and facts, hence liable to be dismissed without further proceeding.


District Education Officer (M)

Abbottabad.
(Respondent No. 4)


Director (E&SE) Khyber Pakhtunkhwa
Peshawar.

(Respondent No. 3)


Secretary (E&SE) Khyber Pakhtunkhwa
Peshawar. (Respondent No. 2)

*Checked subject to annexures
M. L. ...
06/07/15*

**BEFORE THE HONORABLE KHYBER PAKHTUNKHWA SERVICE
TRIBUNAL PESHAWAR CAMP COURT ABBOTTABAD.**

Appeal No. 578/2014

Samiullah.....Appellant

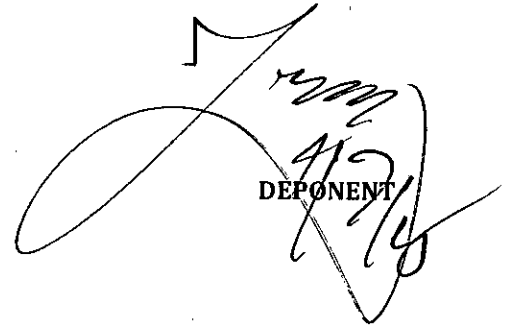
VERSUS

Govt: of Khyber Pakhtunkhwa & Others.....Respondents

Para wise Comments on behalf of Respondents No. 2 to 4.

AFFIDAVIT

I, Mr.Zia-ud-Din, District Education Officer (M) Abbottabad, do hereby affirm and declare that contents of forgoing comments are correct and true according to the best of my knowledge and belief and nothing has been suppressed from this Honorable Court.


DEPONENT

In the Supreme Court of Pakistan
(Appellate Jurisdiction)

Annexure "A"

Present:
Mr. Justice Anwar Zaheer Jamali
Mr. Justice Khilji Arif Hussain
Mr. Justice Ijaz Ahmed Chaudhry

Civil Petition No.360 of 2013.
(on appeal from judgment of KPK Service Tribunal, Peshawar
dated 30.1.2013, passed in Implementation Petition No.49/2012)

Muhammad Haroon

...Petitioner

Versus

Executive District Officer, Elementary & Secondary Education Dept. Haripur, etc.

... Respondents

Petitioner:

In person.

For official respondents:

Mr. Naveed Akhtar Khan, Addl.A.G. KPK.
Mr. Saeed-ur-Rehman, ADO (Edu.), Haripur.

Date of hearing:

29.8.2013

JUDGMENT

Anwar Zaheer Jamali, J.- By this petition under Article 212(3) of the Constitution of Islamic Republic of Pakistan, 1973, leave to appeal is sought by petitioner Muhammad Haroon against the order dated 30.1.2013, passed by the Khyber Pakhtunkhwa Service Tribunal, Peshawar (in short "the Tribunal"), whereby his implementation application No.49/2012, in service Appeal No.506/2009, was dismissed in view of sections-1 & 2 of Khyber Pakhtunkhwa Cessation of Payment of Stipends on Advance Increments on Higher Educational Qualification Act, 2012 (Khyber Pakhtunkhwa Act No.IX of 2012).

2. We have heard the arguments of petitioner. He has placed reliance on the earlier judgment of the Tribunal dated 12.5.2009, whereby he was held entitled for the benefit of advance increments on the basis of higher qualification. For this purpose, he has also placed reliance upon the judgment of this Court, reported as PIA Corporation v. Aziz-ur-Rehman Chaudhry (2011 SCMR 219).

3. As against it, learned Additional Advocate General KPK, Mr. Naveed Akhtar Khan, strongly contends that benefit of earlier judgment dated 12.5.2009,

ATTESTED

Superintendent
Supreme Court Pakistan
ISLAMABAD

through implementation application No.49/2012 filed before the Tribunal, cannot be allowed to the petitioner in view of the clear language of section-1 of Khyber Pakhtunkhwa Act No.IX of 2012, which has made its section-2 applicable with retrospective effect from 01.12.2001 and, thus, made the said judgment unimplementable.

4. We have considered the above noted submissions made before us by the petitioner and the learned Addl. A.G KPK and seen that indeed as per judgment of the Tribunal dated 12.5.2009, the petitioner was held entitled for the benefit of advance increments on the basis of his higher qualification, but such judgment has lost its efficacy for the purpose of implementation by clear Intendment through sections 1 and 2 of Khyber Pakhtunkhwa Act No.IX of 2012, which read as under:-

"1. Short title, application and commencement. - (1) This Act may be called the Khyber Pakhtunkhwa Cessation of Payment of Arrears on Advance Increments on Higher Educational Qualification Act, 2012.

(2) It shall apply to all the employees of the Provincial Government, who were entitled to received advance increments on higher educational qualification.

(3) It shall come into force at once and shall be deemed to have taken effect on and from 1st day of December, 2001.

2. Cessation of payment of arrears on advance increments on higher educational qualification.-- (1) Notwithstanding anything contained in any decision, judgment and order of any Tribunal or Court including High Court or Supreme Court of Pakistan, for the purpose of any claim for payment of arrears on account of advance increments on higher educational qualification sanctioned in pursuance of any order, letter, office memoranda, notification, instructions and other instruments issued before 1.12.2001, such orders, letters, office memoranda, notifications, instructions and other instruments shall be deemed to be non-existent, ceased or revoked and no further claim whatsoever on the basis of these instruments shall be entertained and all cases in respect of such claims pending in any Court or Tribunal including High Court and Supreme Court of Pakistan shall stand abated.

(2) Any order made, instruction issued, decision, judgment or order of any Court or Tribunal including a High Court or the Supreme Court, implemented immediately before the commencement of this Act, shall be deemed to have been validly made, issued and implemented by the date of commencement of this Act, and any amount already paid there-under on account of advance increments or arrears thereof shall be deemed to have been validly paid and shall not be recoverable from the recipient Government employees."

ATTESTED

Sub-Registrar
Supreme Court
ISLAMABAD

CP-360 of 2013

5. A bare reading of the above sections from Khyber Pakhtunkhwa Act No.IX of 2012 makes it crystal clear that whatever benefit the petitioner was claiming through the judgment dated 12.5.2009, has been nullified by the legislature through clear Intendment in unequivocal terms, while vires of the said Act have not been challenged before any forum.

6. This being the position, leave to appeal is refused and this petition is



Sd/- Anwar Zaheer Jamali, J.
Sd/- Khilji Arif Hussain, J.
Sd/- Ijaz Ahmed Chaudhry, J.
Certified to be True Copy

[Handwritten Signature]
4/9/13
Superintendent
Supreme Court of Pakistan
ISLAMABAD

10565/3

CP No:	10565/3	Civil/Criminal
Date of Filing:	28.8.13	
No. of Pages:	90	
Registration Fee Paid:	5.00	
Copy Fee Paid:	5.00	
Court Fee Paid:	10.00	
Date of Copy Issued:	4/9/13	
Date of Entry:	5/9/13	
Case No.:		
Advocate:		

**BEFORE THE HONORABLE KHYBER PAKHTUNKHWA SERVICE
TRIBUNAL PESHAWAR CAMP COURT ABBOTTABAD.**

Appeal No. 578/2014

Samiullah.....Appellant

VERSUS

Govt: of Khyber Pakhtunkhwa & Others.....Respondents

Para wise Comments on behalf of Respondents No. 2 to 4.

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Dated: /07/15

**District Education Officer (M)
Abbottabad.
(Respondent No. 4)**

**BEFORE THE HONORABLE KHYBER PAKHTUNKHWA SERVICE
TRIBUNAL PESHAWAR CAMP COURT ABBOTTABAD.**

Appeal No. 578/2014

Samiullah.....Appellant

VERSUS

Govt: of Khyber Pakhtunkhwa & Others.....Respondents

Para wise Comments on behalf of Respondents No. 2 to 4.

Respectfully Sheweth:-

Comments on behalf of respondents are submitted as under:-

PRELIMINARY OBJECTION:-

1. That the appellant has no cause of action to file the instant appeal.
2. That the appeal of the appellant is time barred. Hence liable to be dismissed.
3. That the instant appeal is not maintainable as there is no final order.
4. That the appellant has filed the present appeal to pressurize the respondents.
5. That the appellant has not come to this Honorable tribunal with clean hands.
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11. That the appellant is at liberty to join service after due process of law equivalent to his qualification & the Government is not bound to pay advance increment.

Factual objections:-

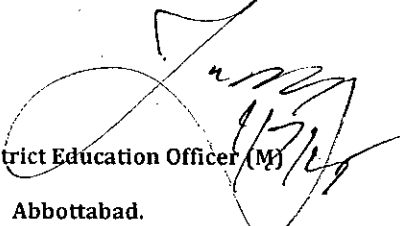
1. In reply to Para No.1 of the appeal it is submitted that judgment of honorable tribunal has lost its efficacy for the purpose of implementation by clear intendment through sections 1 & 2 of Khyber Pakhtunkhwa cessation of payment arrears on advance increments on higher education qualification Act No. IX of 2012.

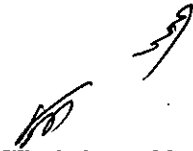
2. That para No.2 of the appeal is incorrect as composed hence, denied. The Act was passed by the Provincial Assembly and assented by the Governor KPK who isn't party in the present appeal. The answering respondents are bound to obey the will of the legislature & cannot deviate from any provision of enactment.
3. That para No. 3 of the instant appeal relates to the judicial record.
4. In reply to para No. 4, it is submitted that due to the promulgation of Khyber Pakhtunkhwa cessation of payment arrears on advance increments on higher education qualification Act No. IX of 2012, all the execution/implementations petitions were dismissed by this honorable tribunal. It is further submitted that Mr.Muhammad Haroon had filed Civil Petition No 360 of 2013' before the August Supreme Court of Pakistan against the order dated 30/01/2013, passed by this Honorable tribunal and the same was dismissed on 29/08/2013. Copy of the said judgment is annexed as Annexure "A".
5. That para No.5, of the appeal is subject to proof. Further added that it is the rule of the administration of justice that things should be done in particular manner & not by any other means, any deviation from the same amounts illegality.
6. That the respondents seek leave of this Honorable tribunal to agitate additional grounds at the time of arguments.

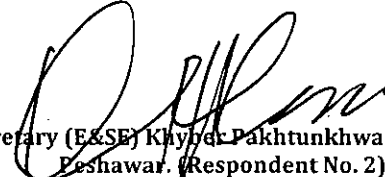
Grounds:

- a. That ground a. is incorrect hence, denied. Respondents have never snatched any legal rights of the appellant.
- b. That complete reply has already been given in above para No. 1 of the factual objections.
- c. That ground c. is incorrect hence, denied.
- d. That ground d. does not relate to answering respondents.
- e. That ground e. does not relate to answering respondents.
- f. That ground f. does not relate to answering respondents.
- g. That ground g. does not relate to answering respondents.
- h. That complete reply has already been given in above para No. 3 of the factual objections.
- i. That the respondents seek leave of this Honorable Tribunal to agitate additional grounds at the time of arguments.

Under the circumstances, it is humbly prayed that the instant appeal is meritless against the law and facts, hence liable to be dismissed without further proceeding.


District Education Officer (M)
Abbottabad.
(Respondent No. 4)


Director (E&SE) Khyber Pakhtunkhwa
Peshawar.
(Respondent No. 3)


Secretary (E&SE) Khyber Pakhtunkhwa
Peshawar. (Respondent No. 2)

*Noted subject to annexures
M. J. J. J.
06/07/15*

**BEFORE THE HONORABLE KHYBER PAKHTUNKHWA SERVICE
TRIBUNAL PESHAWAR CAMP COURT ABBOTTABAD.**

Appeal No. 578/2014

Samiullah.....Appellant

VERSUS

Govt: of Khyber Pakhtunkhwa & Others.....Respondents

Para wise Comments on behalf of Respondents No. 2 to 4.

AFFIDAVIT

I, Mr.Zia-ud-Din, District Education Officer (M) Abbottabad, do hereby affirm and declare that contents of forgoing comments are correct and true according to the best of my knowledge and belief and nothing has been suppressed from this Honorable Court.


DEPONENT

In the Supreme Court of Pakistan
(Appellate Jurisdiction)

Present:

Mr. Justice Anwar Zaheer Jamali
Mr. Justice Khilji Arif Hussain
Mr. Justice Ijaz Ahmed Chaudhry

Civil Petition No.360 of 2013.

(on appeal from judgment of KPK Service Tribunal, Peshawar
dated 30.1.2013, passed in Implementation Petition No.49/2012)

Muhammad Haroon

...Petitioner

Versus

Executive District Officer, Elementary & Secondary Education Dept. Haripur, etc.

... Respondents

Petitioner:

In person.

For official respondents:

Mr. Naveed Akhtar Khan, Addl.A.G. KPK.
Mr. Sa'eed-ur-Rehman, ADO (Edu.), Haripur.

Date of hearing:

29.8.2013

JUDGMENT

Anwar Zaheer Jamali, J. - By this petition under Article 212(3) of the Constitution of Islamic Republic of Pakistan, 1973, leave to appeal is sought by petitioner Muhammad Haroon against the order dated 30.1.2013, passed by the Khyber Pakhtunkhwa Service Tribunal, Peshawar (in short "the Tribunal"), whereby his implementation application No.49/2012, in service Appeal No.506/2009, was dismissed in view of sections-1 & 2 of Khyber Pakhtunkhwa Cessation of Payment of Awards on Advance Increments on Higher Educational Qualification Act, 2012 (Khyber Pakhtunkhwa Act No.IX of 2012).

We have heard the arguments of petitioner. He has placed reliance on the earlier judgment of the Tribunal dated 12.5.2009, whereby he was held entitled for the benefit of advance increments on the basis of higher qualification. For this purpose, he has also placed reliance upon the judgment of this Court, reported as PIA Corporation v. Aziz-ur-Rehman Chaudhry (2011 SCMR 219).

As against it, learned Additional Advocate General KPK, Mr. Naveed Akhtar Khan, strongly contends that benefit of earlier judgment dated 12.5.2009,

ATTESTED

Superintendent
Supreme Court, Pakistan
ISLAMABAD

through implementation application No.49/2012 filed before the Tribunal, cannot be allowed to the petitioner in view of the clear language of section-1 of Khyber Pakhtunkhwa Act No.IX of 2012, which has made its section-2 applicable with retrospective effect from 01.12.2001 and, thus, made the said judgment unimplementable.

4. We have considered the above noted submissions made before us by the petitioner and the learned Addl. A.G KPK and seen that indeed as per judgment of the Tribunal dated 12.5.2009, the petitioner was held entitled for the benefit of advance increments on the basis of his higher qualification, but such judgment has lost its efficacy for the purpose of implementation by clear Intendment through sections.1 and 2 of Khyber Pakhtunkhwa Act No.IX of 2012, which read as under:-

"1. Short title, application and commencement. - (1) This Act may be called the Khyber Pakhtunkhwa Cessation of Payment of Arrears on Advance Increments on Higher Educational Qualification Act, 2012.

(2) It shall apply to all the employees of the Provincial Government, who were entitled to received advance increments on higher educational qualification.

(3) It shall come into force at once and shall be deemed to have taken effect on and from 1st day of December, 2001.

2. Cessation of payment of arrears on advance increments on higher educational qualification. - (1) Notwithstanding anything contained in any decision, judgment and order of any Tribunal or Court including High Court or Supreme Court of Pakistan, for the purpose of any claim for payment of arrears on account of advance increments on higher educational qualification sanctioned in pursuance of any order, letter, office memoranda, notification, instructions and other instruments issued before 1.12.2001, such orders, letters, office memoranda, notifications, instructions and other instruments shall be deemed to be non-existent, ceased or revoked and no further claim whatsoever on the basis of these instruments shall be entertained and all cases in respect of such claims pending in any Court or Tribunal including High Court and Supreme Court of Pakistan shall stand abated.

(2) Any order made, instruction issued, decision, judgment or order of any Court or Tribunal including a High Court or the Supreme Court, implemented immediately before the commencement of this Act, shall be deemed to have been validly made, issued and implemented by the date of commencement of this Act, and any amount already paid there under on account of advance increments or arrears thereof shall be deemed to have been validly paid and shall not be recoverable from the recipient Government employees."

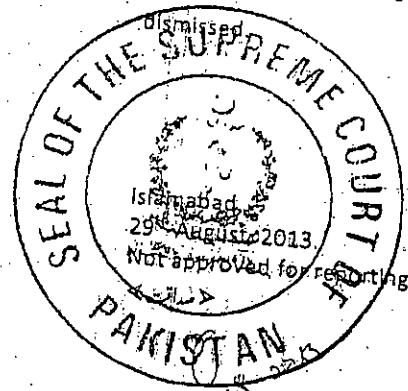
ATTESTED

Superintendent
Supreme Court
ISLAMABAD

CP-360 of 2013

5. A bare reading of the above sections from Khyber Pakhtunkhwa Act No.IX. of 2012 makes it crystal clear that whatever benefit the petitioner was claiming through the judgment dated 12.5.2009, has been nullified by the legislature through clear intendment in unequivocal terms, while vires of the said Act have not been challenged before any forum.

6. This being the position, leave to appeal is refused and this petition is dismissed.



Sd/- Anwar Zaheer Jamali, J
Sd/- Khilji Arif Hussain, J
Sd/- Ijaz Ahmed Chaudhry, J
Certified to be True Copy
[Signature]
Superintendent
Supreme Court of Pakistan
ISLAMABAD

10565/13

Case No.	10565/13	Civil/Criminal
Date of Pre. Judgment	28.8.13	
No. of Words	3	910
No. of Pages		
Registration Fee Rs.	5.00	
Copy Fee Rs.	5.00	
Court Fee Rs.	10.00	
Name of Court	479113	
Date of case	28.8.13	
Case No.	10565/13	
Received by	<i>[Signature]</i>	