

30.06.2022

Learned counsel for the appellant present. Mr. Kabir Ullah Khattak, Additional AG for respondents present.

Preliminary arguments heard and record perused

Points raised need consideration. The appeal is admitted for regular hearing subject to all legal objections. The appellant is directed to deposit security and process fee within 10 days. To come up for reply on 18.08.2022 before S.B.



(Fareeha Paul)
Member (E)

18.08.2022

Learned counsel for the appellant present and submitted an application for permission to deposit security and process fee. Application is allowed and learned counsel for the appellant is directed to deposit security and process fee within 03 days. Thereafter notices be issued to the respondents for submission of reply/comments. Adjourned. To come up for reply/comments on 29.09.2022 before S.B.



(Mian Muhammad)
Member (E)

18.01.2022

Counsel for the appellant present. Mr. Muhammad Adeel Butt, Addl: AG for respondents present.

Written reply/comments not submitted. Learned AAG seeks time to contact the respondents for submission of written reply/comments. Adjourned. To come up for reply/preliminary hearing on 15.03.2022 before S.B.


(Mian Muhammad)
Member (E)

15.03.2022

Due to retirement of the Worthy Chairman, the Tribunal is defunct, therefore, case is adjourned to 15.6.2022 for the same as before.


Reader.

15th June, 2022

Counsel for the appellant present. Mr. Kabirullah Khattak, Addl: AG for respondents present.

Written reply/comments not submitted. Last chance is given to the respondents to file written reply/comments within a week. To come up for reply/preliminary hearing on 30.06.2022 before S.B.


(Kalim Arshad Khan)
Chairman

21.09.2021

Clerk of counsel for the appellant present.

Clerk of Learned counsel for the appellant requested for adjournment on the ground that the learned counsel for the appellant is not available today. Adjourned. To come up for preliminary hearing before the S.B on 09.11.2021.


(MIAN MUHAMMAD)
MEMBER (E)

09.11.2021

Clerk of counsel for the petitioner and Mr. Kabirullah Khattak, Addl. AG for the respondents present.

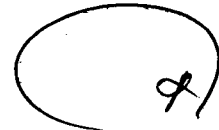
Vide order dated 09.12.2020, the office was required to issue pre-admission notice to the respondents. Case was adjourned to 11.03.2021 for reply/preliminary hearing. The requisite notices were accordingly issued but till date reply/comments have not^A been submitted by the respondents. Instant appeal pertains to the year, 2019 and is still pending at preliminary stage. Learned AAG is required to contact the respondent and facilitate submission of reply on next date positively. Case to come up for reply/preliminary hearing on 18.01.2021 before S.B.

Chairman

09.12.2020

Appellant present through counsel.

Let pre-admission notice be issued to respondents for reply/comments. To come up for reply and preliminary arguments on 11.03.2021 before S.B.



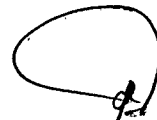
(Rozina Rehman)
Member (J)

11.03.2021

Junior to counsel for appellant present.

Kabir Ullah Khattak learned Additional Advocate General present.

Nemo for the respondents' Department despite notice, therefore, fresh notice be issued to all the respondents with direction to submit reply/comments on or before the next date. To come up for preliminary arguments on 17/06/2021 before S.B.



(Rozina Rehman)
Member (J)

17.06.2021

Junior to counsel for the appellant and Mr. Kabirullah Khattak, Addl. AG alongwith Saleem Khan, S.O for respondents present.

Representative of the respondents requests for time to furnish reply/comments. Request is accepted but respondents are directed to furnish reply/comments on next date positively. To come up for reply/preliminary hearing on 21.09.2021 before S.B.



Chairman

19.03.2020

Clerk to counsel for the appellant present and seeks adjournment as lawyers are on strike on the call of Khyber Pakhtunkhwa Bar Council. Adjourn. To come up for preliminary hearing on 21.04.2020 before S.B.


Member

21.04.2020

Due to COVID19, the case is adjourned to 22.07.2020 for the same as before.


Reader

22.07.2020

Mr. Imran Khan, Advocate is present and submitted that his colleague Mr. Mubarak Zeb, Advocate has gone to Islamabad due to some urgency and could not attend the Tribunal today. Former request for adjournment. Adjourned to 01.10.2020. To come up for preliminary hearing before S.B.


(MUHAMMAD-JAMAL KHAN)
MEMBER

01.10.2020

Counsel for the appellant present.

Requests for time to further document the brief by placing on record copies of different notifications issued regarding grant/discontinuation of advance increments upon attaining higher qualifications by civil servants.

May do so on or before the next date of hearing. Adjourned to 09.12.2020 before S.B.

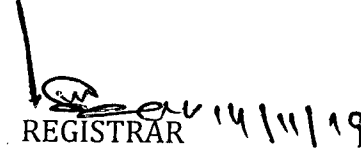




Chairman

Form- A

FORM OF ORDER SHEET

Court of _____

Case No.- 1551/2019

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1-	14/11/2019	<p>The appeal of Mr. Nafees-ud-Din presented today by Mr. Mubarak Zeb Advocate may be entered in the Institution Register and put up to the Worthy Chairman for proper order please.</p> <p> REGISTRAR 14/11/19</p>
2-	20.12.2019	<p>This case is entrusted to S. Bench for preliminary hearing to be put up there on <u>20/12/19</u></p> <p> CHAIRMAN</p> <p>Counsel for appellant present.</p> <p>Learned counsel requests for time to further prepare the brief in view of instrument abolishing the grant of advance increments on attaining higher education as well as the judgments of superior courts on the point.</p> <p>Adjourned to 30.01.2020 before S.B.</p> <p> Chairman</p>
	30.01.2020	<p>Clerk to counsel for the appellant present and seeks adjournment as lawyers community is on strike on the call of Khyber Pakhtunkhwa Bar Council. Adjourn. To come up for preliminary hearing on 19.03.2020 before S.B.</p> <p> Member</p>

**BEFORE THE KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL PESHAWAR**

Service Appeal No. 1551 /2019

Nafces Ud Din, CT, Govt High School, Prang Charsadda
.....Appellant

VERSUS

Govt. of Khyber Pakhtunkhwa through Chief Secretary, Civil
Secretariat, Peshawar and others

..... Respondents

INDEX

S#	Description of Documents	Annexure	Page#
2	Service Appeal and affidavit		1-5
3	Copies of the Educational Documents	A	6-7
4	Copy of the Act no IX of 2012	B	8-10
5	Copy of judgment and order dated 20.06.2019	C	11-15
6	Copy of Departmental Appeal	D	16-17
7	Other relevant documents		18
8	Vakalatnama		19

Appellant

Through


MUBARAK ZEB

Advocate High Court

Office FR , 3-4 Forth Floor

Bilour Plaza Peshawar Cantt.

Cell: 0334-4274247

Email:mubarakzeb13@gmail.com

/

**BEFORE THE KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL PESHAWAR**

Service Appeal No. _____/2019

Nafees Ud Din, CT, Govt High School, Prang Charsadda
.....Appellant

V E R S U S

1. Govt. of Khyber Pakhtunkhwa through Chief Secretary, Civil Secretariat, Peshawar.
2. Govt. of Khyber Pakhtunkhwa through Secretary Finance, Civil Secretariat, Peshawar.
3. Govt. of Khyber Pakhtunkhwa through Secretary Education (E&S), Civil Secretariat, Peshawar

.....Respondents

Appeal under Section 4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974, against the non granting of two annual increments in terms of notification issued by the Provincial Govt dated 11.08.1991, against which his Departmental Appeal dated 23.07.2019 has also been not been responded after the expiry of statutory period of 90 days

PRAYER-IN-APPEAL

On acceptance of this appeal the appellant is entitled to the advance increments on account of higher education in light of the judgment of the Hon;able Peshawar High Court in terms of notification issued by the Provincial Govt dated 11.08.1991, where by the advance increments on account of higher education was allowed, similarly the appellant are discriminated in the matter whereby the advance increments on account of higher education has been allowed to the colleagues / similarly placed employees through order of the court, thus the appellant are also entitled to the

2

same with all back and consequential benefits, the reluctance on the part of respondents by not allowing the advance increment to the appellant is highly illegal, unlawful, discriminatory and in effective upon the rights of the Appellant.

OR

Any other remedy proper not specially asked for may also be allowed.

Respectfully Sheweth:-

1. That the appellant is the employee of the Education Department and performing his duties according to his post duly mentioned in the heading of Appeal and performing his duties with full zeal and devotion.
2. That the respondents (provincial Govt) issued Notification No. FD(PRC)1-1/89 dated 11.08.1991 through which on acquiring higher education the employees were held entitled for Two Advance Increments.
3. That the grant of advance increments on the basis of higher education qualification has been followed in the education as a policy to provide chance to the teaching staff to improve the education qualification and become asset of the department, so that they may produce quality education to the students.
4. That the appellant during his service enhanced his qualification by obtaining Master degree in his relevant subjects which made him eligible for the Two Advance Increments in the light of the Notification issued by the Govt dated 11.08.1991. (Copies of the educational Documents are attached as annexure A)
5. That the colleagues of the appellant are the beneficiary of the same notification i.e two advance increments till 2001 which was latter on stopped by the Govt vide notification dated 03.01.2009.
6. That the Govt; of Khyber Pakhtunkhwa vide Act no IX of 2012, Khyber Pakhtunkhwa Cessation of Payment of Arrears on Advance increments on higher education qualification Act 2012 stopped/ ceased the payment of arrears accrued on account of advance increments on Higher Education, by giving

3

retrospective effect .(Copy of the Act no IX of 2012, Khyber Pakhtunkhwa Cessation of Payment of Arrears on Advance increments on higher education qualification Act 2012 is attached as annexure B)

7. That that ibid Act of 2012 was also challenged in another writ petition no 3081-p/2012 and after hearing both the parties the same was allowed by the Hon;able Peshawar High Court Peshawar vide judgment and order dated 20.06.2019. (Copy of the writ petition and judgment and order dated 20.06.2019 are attached as annexure C)
8. That the appellant filed Departmental Appeal to the respondents for the grant of same relief as granted / allowed to the other similarly placed colleagues of the appellant but the respondents refused to do so.(Copy of Departmental Appeal is attached as annexure D)
9. That being aggrieved from the illegal act of the respondents by not following the order of the Hon;able Peshawar High court Peshawar, the appellant knock the door of this Hon;able tribunal inter alia on the following grounds amongst the others.

GROUND S:

- A. That the appellant has not been treated in accordance with law and his rights secured and guaranteed under the law has been violated.
- B. That the appellant is continuously approaching the department for the release of two advance increments, however they were given dead response, since the matter of pay is a continuous wrong and recurring cause of action hence no limitation is applicable to their case.
- C. That the appellant during their service enhanced their qualification by obtaining Master degree in their relevant subjects which made them eligible for the Two Advance Increments in the light of the Notification issued by the Govt dated 11.08.1991

- D. That the grant of advance increments on the basis of higher education qualification has been followed in the education as a policy to provide chance to the teaching staff to improve the education qualification and become asset of the department, so that they may produce quality education to the students.
- E. That it has been consistently held by the superior courts that “if the Service Tribunal or Supreme Court decides a point of law relating to the terms of service of a civil servant which cover not only the case of civil servant who litigated, but also of other civil servants, who may have not taken any legal proceedings, in such a case, the dictates and rules of good demands that the benefit of such judgment by Service Tribunal / Supreme Court be extended to other civil Servants, who may not be parties to the litigation instead of compelling them to approach the Service Tribunal or other Forums” (SCMR 1996 page 1185, PLD 2004 SC 77, 2005 SCMR 499, 2009 SCMR page 1. The respondent department has violated the law and Judgments of the superior Court.
- F. That it is pertinent to point out here that the employees who were similarly placed were allowed the advance increments on higher education, but it was denied to the appellant.
- G. That it is pertinent to point out here that similar placed employee of the respondent department were allowed / granted the Two advance increments on higher education, through Court order and, while the appellant were discriminated, this is sheer discrimination and violation of article 25 of the constitution.
- II. That the acts of the respondents are based on exploitation which is highly unjustified, illegal and against the provision of article 37 and 38 of the constitution of Pakistan. The same is not permissible in the eyes of law.
- I. That the appellant is performing the same duties as is performed by their counterparts in the Education Department, similarly they are also holding the prescribed qualifications, therefore, is entitled for the Two advance increments on higher education.
- J. That by no means the stoppage of the Two advance increments on higher education is justified under any provision of the law,

rules and policy, therefore, it clearly amounts to discrimination and punishing the appellant without any fault, which is against the basic provisions of Constitution of Pakistan as well.

- K. That the case in hand involves the violation of fundamental rights of the Petitioner, and there is disparity and discrimination in grant of pay & allowances which is violative of Article 2, 2A, 3, 9, 14, 18, 20, 25, 27, 30, 31, 37 and 38 of the Constitution of 1973.
- L. That in accordance with the constitution of Islamic Republic Pakistan, 1973 the state is bound to element all forms of exploitation and to apply merit in all forum of service thus violating the due rights of the appellant is infact against the fundamental of this institution and illegal.
- M. That the appellant seeks the permission of this Hon;able Court to rely additional grounds at the time of hearing of this Service Appeal.

It is, therefore most humbly prayed that the Service Appeal may please be allowed as prayed for.

Appellant

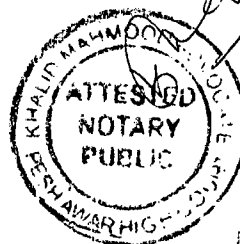
Through

Mubarak Zeb
MUBARAK ZEB
 Advocate High Court

Affidavit

I Nafces Ud Din, CT, Govt High School, Prang Charsadda do hereby solemnly affirm on oath that, the contents of the service appeal are true and correct to the best of my knowledge and belief and no such like service appeal has earlier been filed, nothing has been concealed or kept back or concealed from this Honourable Court.

Deponent





6 ANNEX A

UNIVERSITY OF PESHAWAR
(Pakistan)

Detailed Marks Certificate
Master of Arts (FINAL)
in Islamiyat, Annual Examination, 1999

Private Candidate from Charsadda

Required: Pass Percentage - 40, Aggregate Pass Percentage - 45

Name: *Nafees ud Din*

Gender: *Male*

Roll No. *21244*

Father's Name: *Shahab ud Din*

Reg. No. *87-I-12333*

Papers	Maximum Marks	Marks Obtained		
		In figures	In Words	
Al Quraan Wa Tafseer "2nd Half"	100	63 ✓	Sixty Three <i>Verified & Found Correct</i>	
Study of Comparative Religions	100	60 ✓	Sixty Only <i>M. Iqbal Khan</i>	
Hadith and Principles of Hadith	100	52 ✓	Fifty Two <i>Controller of Examinations, University of Peshawar.</i>	
Philosophy of Islam	100	75 ✓	Seventy Five	
Islamic Economy OR Islamic Politics OR Islam and Science	100	55 ✓	Fifty Five	
Viva Voce	100	40 ✓	Ferty Only <i>Computer Section, Controller of Examinations, University of Peshawar</i>	
M.A Previous Marks	500	267 ✓	Two Hundred and Sixty Seven	
Total:		1100	612	Six Hundred and Twelve

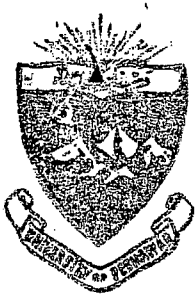
Errors and omissions are subject to subsequent rectification

The examination was passed *By Parts* in *Second division.*
Examination Held in January-February, 2000
Result Declared on June 26, 2000

M. Iqbal Khan
Controller of Examinations
University of Peshawar

Qayyum Jan SST
GHSS No. 2 Rajjar
Charsadda

No. 021554



University of Peshawar 7

(PAKISTAN)

NO. 305/11

Detailed Marks Certificate

M.A. Islamiyat Pra. Examination 1994 (Annual / Supplementary)

Mr./Ms. Nafesuddin

Roll No. 19077

The candidate secured the following marks and has been placed in _____ Division.

SUBJECTS		MARKS ALLOTTED	MARKS OBTAINED	MARKS IN WORDS
papers	I	100	58	Fifty eight
	II	100	65	Sixty five
	III	100	51	Fifty one
	IV	100	42	Forty two
	V	100	51	Fifty one
TOTAL :		500	267	Two Hundred, + Sixty Seven

& omissions are subject to subsequent rectification.

the examination was taken as a **WHOLE / IN-PARTS**

Dated 8/10/95

ACB

Qayyum Jan SST
GHSS No. 2 Rajjar
Charsadda.

CONTROLLED BY EXAMINATIONS
UNIVERSITY OF PESHAWAR

EXTRAORDINARY
GOVERNMENT



8

REGISTERED NO. PII

GAZETTE

Annexure
B

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;

Handwritten signature and initials

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.

CTC
[Signature]

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

CS
Dup



Judgment.
BEFORE PESHAWAR HIGH COURT
PESHAWAR.

Judicial Department.

Writ Petition 3081-P of 2012.

Inayatullah Khan & others.....Petitioners.

Vs

Govt. of Khyber Pakhtunkhwa through Chief Secretary & others.....Respondents

Date of hearing:.....20th June, 2019.....

Petitioner(s) by *M/S Ghulam Nabi & Co. Barrister Mian Tajmool Shah*

Respondent(s) by *Syed Qasim Ali Shah QJ*

WAOAR AHMAD SETH, CJ: - Through this single

judgment / order this Court intend to decide the instant as well as connected writ petition bearing No.1182-P of 2018, being identical in nature.

2. In essence the case of petitioners is that, they being the employees of respondents-department were in receipt of advance increment on account of Higher Education, in light of judgments of this Court / apex Court, however, on promulgation of Khyber Pakhtunkhwa Act No. IX of 2012, i.e. Khyber Pakhtunkhwa Cessation of Payment of Arrears on Advance Increments on Higher Education Qualification Act,

2012, the said benefit was curtailed, hence the instant writ petition.

3. We have heard learned counsel for the parties and available record gone through.

4. At the very outset, learned counsel representing the petitioners while producing judgment dated 8th June, 2017, reported as 2018 PLC (C.S) 174, rendered in writ petition bearing No. 913-P of 2014, states that this Court in the said petition has thoroughly dealt the matter and declared the Act No. IX of 2012, null and void to the extent of section-2 its retrospectivity and struck down the same from the Act, requested for disposal of the writ petition in view of said judgment. Learned AAG present in Court alongwith departmental representative on notice though controverted the stance, but could make reasonable grounds in dissent.

5. Before going to the merits of the case, it is worth mentioning to go through the comments, so filed by the respondents. In para-7 of the comments (on facts) they contended that Government has already discontinued the said scheme since 2001 as mentioned in the said Act No. IX of 2012, and that the law helps the diligent and not indolent. If a person has been negligent in prosecuting his remedy / rights

ATTESTED
EXAMINER
Peshawar High Court
06 JUL 2019

before the proper forum well in time, he is not entitled to indulgence of Court. The petitioners kept mum till decades on payment of claimed increments. In para-9, they further stated that Government had already discontinued the scheme of the advance increments on acquiring higher qualification since 27.10.2001 and the present petitioners did not objected / challenged the same before any proper legal forum, since the promulgation of Ordinance on 27.3.2012, enacted by the Provincial Government on 15.5.2012. The stance so taken by the respondents-departments in their comments on the face of record suggests they intentionally avoid to give benefits to petitioners on same footings, as given to others, which is in contravention with the plethora of judgments of apex Court whereby it was repeated held that *Once a judicial determination, be it of a point of fact or of a point of law, has been made and if such a determination covers not only the ones litigating before the courts but some others also, then the dictates of justice would command that the benefits accruing from such a determination should not be restricted only to the litigating parties but should be extended even to those who had not indulged in litigation unless there were some extraordinary un-exceptionable reasons to the contrary and that all powers, including the powers inherent in the courts be invoked for the purpose—Such would*

ATTESTED
JUDICIAL OFFICER
HONORABLE HIGH COURT

05 JUL 2019

not only ensure justice for all but would also have the effect of eliminating un-necessary litigation.

6. On merits, perusal of available record would depict that on the same cause of action / grounds other employees of respondents-department had filed several petitions wherein this court through consolidated judgment dated 8.6.2017, rendered in writ petition No. 913-P of 2014, has dealt the matter elaborately by discussing each and every aspect of the case in reference to the earlier judgments, apex Court on account of cause accrued to the petitioners-employees due to Notification No. FD (PRC) 1-1/89 dated 11.8.1991. This Court through above judgments had declared the notification dated 3.1.2009, discriminatory and violative of law, whereby those who were entitled but have not availed the facilities of advance increments; were refused, followed by Act No. IX of 2012, to the extent of section-2, therefore, the present petitioners of the instant writ petition as well as connected writ petitions being at par with that of earlier petitioners of writ petitioners need alike treatment.

7. For the reasons recorded hereinabove, this and the connected writ petitions are allowed in terms of identical writ petition quoted above, reported as 2018 PLC (C.S) 174 by

ATTESTED
EXAMINER
Peshawar High Court
06 JUL 2019

15

directing the respondents to provide the petitioners the benefits of two advance increments according to the notification dated 11.8.1991, in accordance with law, then in field.

Announced.
20.06.2019


Chief Justice

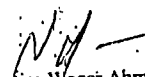


Judge

CERTIFIED TO BE TRUE COPY

EXAMINER
Peshawar High Court, Peshawar
Authorised Under Article 87 of
The Qanun-e-Shahadat Order 1984

06 JUL 2019


DB Mr. Justice Waqar Ahmad Seth, Chief Justice & Mr. Justice Abdul Shakoor, HI.
Tariq Jan, PS.

No. 26130
Date of Presentation of Application 6/7/19
No of Pages 12
Copying fee 100
Total 981
Date of Preparation of Copy 6/7/19
Date of Delivery of copy 6/7/19
Received By [Signature]

To,

The Secretary Education (E&S),
Civil Secretariat, Peshawar,
Govt of Khyber Pakhtunkhwa Peshawar,

Subject: **DEPARTMENTAL APPEAL/REPRESENTATION FOR ADVANCE INCREMENTS ON ACCOUNT OF HIGHER EDUCATION IN LIGHT OF THE JUDGMENTS OF AUGUST SUPREME COURT OF PAKISTAN AND HON;ABLE PESHAWAR HIGH COURT PESHAWAR IN TERMS OF NOTIFICATION ISSUED BY THE GOVT DATED 11.08.1991.**

Respectfully Sheweth:

The appellant very humbly submit the following few lines for your kind and sympathetic consideration:

FACTS:

1. That the appellant is the employee of the Education Department and performing his duties according to his post with full zeal and devotion.
2. That the Provincial Govt issued Notification No. FD(PRC)1-1/89 dated 11.08.1991 through which on acquiring higher education the employees were held entitled for Two Advance Increments.
3. That the appellant during his service enhanced his qualification by obtaining Master degree in their relevant subjects which made him eligible for the Two Advance Increments in the light of the Notification issued by the Govt dated 11.08.1991.
4. That the Govt; of Khyber Pakhtunkhwa vide Act no IX of 2012, Khyber Pakhtunkhwa Cessation of Payment of Arrears on Advance increments on higher education qualification Act 2012 stopped/ ceased the payment of arrears accrued on account of advance increments on Higher Education, by giving retrospective effect and the colleagues of the appellant challenged the ibid ACT before the Peshawar High Court in Writ Petition no 913-p/2014, writ petition no 3081-p/2012 which was allowed vide judgment and order dated 08.06.2017 and 26.06.2019. Copy attached

- A. That the appellant has not been treated in accordance with law and their rights secured and guaranteed under the law has been violated.
- B. That the appellant is continuously approaching the department for the release of two advance increments, however they given dead response, since the matter of pay is a continuous wrong and recurring cause of action hence no limitation is applicable to their case.
- C. That it has been consistently held by the superior courts that " if the Service Tribunal or Supreme Court decides a point of law relating to the terms of service of a civil servant which cover not only the case of civil servant who litigated, but also of other civil servants, who may have not taken any legal proceedings, in such a case, the dictates and rules of good demands that the benefit of such judgment by Service Tribunal / Supreme Court be extended to other civil Servants, who may not be parties to the litigation instead of compelling them to approach the Service Tribunal or other Forums" (SCMR 1996 page 1185, PLD 2004 SC 77, 2005 SCMR 499, 2009 SCMR page 1. The respondent department has violated the law and Judgments of the superior Court.
- D. That it is pertinent to point out here that the employees who were similarly placed were allowed the advance increments on higher education, but it was denied to the appellant.

it is therefore, requested that on acceptance of this appeal/representation, advance increments on account of higher education in light of the judgments of August Supreme Court of Pakistan and Hon;able Peshawar high court Peshawar in terms of notification issued by the govt dated 11.08.1991 may kindly be allowed to the appellants with back benefits.

Your's Obediently



Nafces Ud Din, CT, Govt High School, Prang
Charsadda.

Date: 23-07-2019

0315-9201678
GHSS PRAN 4. 18

Dist. Govt. NWFP-Provincial
District Accounts Office Charsadda
Monthly Salary Statement (June-2019)



Personal Information of Mr NAFEES UD DIN d/w/s of SHAHAB UD DIN

Personnel Number: 00150530 CNIC: 99993170318 NTN:
Date of Birth: 25.01.1970 Entry into Govt. Service: 01.04.1993 Length of Service: 26 Years 03 Months 001 Days

Employment Category: Vocational Permanent

Designation: CERTIFICATED TEACHER §0001068-DISTRICT GOVERNMENT KHYBE

DDO Code: CA6048-PRINCIPAL GOVERNMENT HIGH SCHOOL PR CHARSADEA

Payroll Section: 001 GPF Section: 001 Cash Center: 3

GPF A/C No: EDUCHD 2877 Interest Applied: Yes **GPF Balance:** 151,719.00

Vendor Number: -

Pay and Allowances: Pay scale: BPS For - 2017 Pay Scale Type: Civil BPS: 15 Pay Stage: 20

Wage type		Amount	Wage type		Amount
0001	Basic Pay	42,720.00	1000	House Rent Allowance	2,349.00
1210	Convey Allowance 2005	2,856.00	1300	Medical Allowance	1,500.00
2148	15% Adhoc Relief All-2013	918.00	2199	Adhoc Relief Allow @10%	659.00
2211	Adhoc Relief All 2016 10%	3,367.00	2224	Adhoc Relief All 2017 10%	4,272.00
2247	Adhoc Relief All 2018 10%	4,272.00			0.00

Deductions - General

Wage type		Amount	Wage type		Amount
3015	GPF Subscription - Rs2890	-2,390.00	3501	Benevolent Fund	-600.00
3609	Income Tax	-50.00	3990	Emp.Edu. Fund KPK	-125.00
4004	R. Benefits & Death Comp:	-1,052.00			0.00

Deductions - Loans and Advances

Loan	Description	Principal amount	Deduction	Balance
6505	GPF Loan Principal Instal	70,000.00	-2,000.00	54,000.00

Deductions - Income Tax

Payable: 1,000.00 Recovered till JUN-2019: 600.00 Exempted: 400.00 Recoverable: 0.00

Gross Pay (Rs.): 62,913.00 Deductions: (Rs.): -6,717.00 Net Pay: (Rs.): 56,196.00

Payee Name: NAFEES UD DIN

Account Number: 8004-7

Bank Details: NATIONAL BANK OF PAKISTAN, 230410 TEHSIL BAZAR, Charsadda. TEHSIL BAZAR, Charsadda., Charsadda

Leaves: Opening Balance: Aailed: Earned: Balance:

Permanent Address: SDEO M CHARSADEA

City: CHARSADEA

Domicile: NW - Khyber Pakhtunkhwa

Housing Status: No Official

Temp. Address:

City:

Email: nafees00150530@gmail.com

(Signature)
Gavium Jan 2019
GHSS No. 2 Rajjar
Charsadda

POWER OF ATTORNEY

In the Court of Khyber Pakhtunkhwa Service Tribunal Peshawar
Majeed ud din

} For
} Plaintiff
} Appellant
} Petitioner
} Complainant

VERSUS

Court of KP & others

} Defendant
} Respondent
} Accused
}

Appeal/Revision/Suit/Application/Petition/Case No. _____ of _____
Fixed for _____

I/W, the undersigned, do hereby nominate and appoint

MUBARAK ZEB ADVOCATE HIGH COURT PESHAWAR my true and lawful attorneys, for me in my same and on my behalf to appear at service - Tribunal and plead, act and answer in the above Court or any Court to which the business is transferred in the above matter and is agreed to sign and file petitions. An appeal, statements, accounts, exhibits. Compromise or other documents whatsoever, in connection with the said matter or any matter arising there from and also to apply for and receive all documents or copies of documents, depositions etc, and to apply for and issue summons and other writs or sub-poena and to apply for and get issued and arrest, attachment or other executions, warrants or order and to conduct any proceeding that may arise there out; and to apply for and receive payment of any or all sums or submit for the above matter to arbitration, and to employ any other Legal Practitioner authorizing him to exercise the power and authorizes hereby conferred on the Advocate wherever he may think fit to do so, any other lawyer may be appointed by my said counsel to conduct the case who shall have the same powers.

AND to all acts legally necessary to manage and conduct the said case in all respects, whether herein specified or not, as may be proper and expedient.

AND I/we hereby agree to ratify and confirm all lawful acts done on my/our behalf under or by virtue of this power or of the usual practice in such matter.

PROVIDED always, that I/we undertake at time of calling of the case by the Court/my authorized agent shall inform the Advocate and make him appear in Court, if the case may be dismissed in default, if it be proceeded ex-parte the said counsel shall not be held responsible for the same. All costs awarded in favour shall be the right of the counsel or his nominee, and if awarded against shall be payable by me/us

IN WITNESS whereof I/we have hereto signed at _____
the _____ day to _____ the year _____
Executant/Executants _____
Accepted subject to the terms regarding fee _____

Mubarak Zeb
MUBARAK ZEB

Advocates High Court Peshawar
ADVOCATES, LEGAL ADVISORS, SERVICE & LABOUR LAW CONSULTANT
FR-3, Fourth Floor, Bilour Plaza, Saddar Road, Peshawar Cantt
Mobile-0334-4274247