

EP 86/2020

29.12.2021

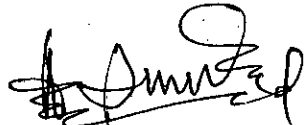
Counsel for the petitioner and Mr. Noor Zaman Khattak, District Attorney alongwith Sohail Ahmad Zaib, Litigation Officer, Naseeb Khan, S.O (Litigation), Farhad Durrani, AAO, Gul Moeed, DAO and Sabir Sultan, Senior Auditor for the respondents present.

Further arguments have been heard. Case to come up for order alongwith EP No. 84/2020 on 19.01.2022 before S.B at Peshawar.


Chairman
Camp Court, A/Abad

19.01.2022 Petitioner in person and Mr. Noor Zaman, District Attorney for the respondents present.

Vide our detailed order of today in Execution Petition No. 84/2020, titled "Muhammad Bashir Vs. the Chief Secretary, Government of Khyber Pakhtunkhwa Peshawar and others", this Petition stands disposed of as per Para-4 of the order. There is no order as to costs. File be consigned to the record room.


(AHMAD SULTAN TAREEN)
Chairman

ANNOUNCED
19.01.2022

29.11.2021

Counsel for the ~~petitioner~~ present. Mr. Muhammad Riaz Khan Painsdakhel, Asstt. AG alongwith Sohail Ahmad Zaib, Litigation Officer, Muhammad Saleem, S.O (Litigation), Naseeb Khan, S.O (Litigation) Sabir Sultan, Senior Auditor for the respondents present.

Partial arguments heard. Representatives of the respondents are directed to produce record pertaining to execution petition at hands. To come up for record and further arguments on 01.12.2021 alongwith E.P No. 84/2020 before S.B at camp court, Abbottabad.

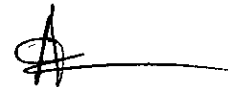


Chairman
Camp Court, A/Abad

01.12.2021

Counsel for the petitioner, Mr. Muhammad Riaz Khan Painsdakhel, Asstt. AG alongwith Sohail Ahmad Zaib, Litigation Officer, Amanatullah Qureshi, Deputy Secretary (Litigation) Finance department, Gul Moveed, Accounts Officer, Sabir Sultan, Senior Auditor for the respondents present.

Case to come up further arguments alongwith EP No. 84/2020 on 27.12.2021 before S.B at camp court, Abbottabad.



Chairman
Camp Court, A/Abad

27.12.2021

Petitioner in person and Mr. Muhammad Rasheed, DDA alongwith Sohail Ahmad Zaib, Litigation Officer, Naseeb Khan, S.O (Litigation), Farhad Durrani, AAO, Gul Moeed, DAO and Sabir Sultan, Senior Auditor for the respondents present.

Case to come up for further arguments alongwith EP No. 84/2020 on 29.12.2021 before S.B at camp court, Abbottabad.



Chairman
Camp Court, A/Abad

08.09.2021

Petitioner in person and Mr. Muhammad Adeel Butt, Addl. AG alongwith Syed Naseerud Din, Assistant for the respondents present.

To come up alongwith connected Execution Petition No. 84/2020, for arguments on 13.10.2021 before S.B.


Chairman

13.10.2021

Learned counsel for the petitioner present. Mr. Kabirullah Khattak, Additional Advocate General for respondents present..

Learned counsel for the petitioner contended that arguments in execution petition have already been heard by the S.B presided by the Hon'ble Chairman vide order sheet dated 05.08.2021^{in EP No 84/2020.} He therefore, requested that the execution petition may be placed before the same S.B. It would be in fitness of the case to post the instant execution petition before the same S.B. To come up for further proceedings before the S.B on 17.11.2021.


(MIAN MUHAMMAD)
MEMBER (E)

17.11.2021

Counsel for the petitioner and Mr. Muhammad Riaz Khan Painsdakhel, Asstt. AG alongwith Naseeb Khan, S.O and Sohail Ahmad Zaib, Litigation Officer for the respondents present.

To come up for arguments alongwith connected Execution Petition No. 84/2020 on 29.11.2021 before S.B at Camp Court, Abbottabad.


Chairman
Camp Court, A/Abad

07.04.2021

Due to demise of the Worthy Chairman the Tribunal is defunct, therefore, case is adjourned to 14.07.2021 for the same as before.


READER

14.07.2021

Petitioner alongwith counsel and Mr. Muhammad Adeel Butt, Addl. AG for the respondents present.

Reply has not been submitted despite last chance. On assurance of learned AAG another chance is given to the respondents to submit reply seven days before the date fixed. To come up for arguments on petition on 05.08.2021 before S.B.


Chairman

05.08:2021

Counsel for the petitioner and Mr. Kabirullah Khattak, Addl. AG for the respondents present.

To come up alongwith connected Execution Petition No. 84/2020 "Muhammad Bashir Versus Accountant General Khyber Pakhtunkhwa, Peshawar and others" for arguments on 08.09.2021 before S.B.


Chairman

25.01.2021

Petitioner is present in person. Mr. Kabirullah Khattak, Additional Advocate General, for the respondents is also present.

According to the petitioner his counsel is suffering from COVID-19 and is confined to bed and cannot attend this Tribunal today. Requested for adjournment. Adjourned to 24.03.2021 on which date file to come up for reply and arguments before S.B.

(MUHAMMAD JAMAL KHAN)
MEMBER (JUDICIAL)

24.03.2021

Petitioner with counsel present.

Kabir Ullah Khattak learned Additional Advocate General alongwith Naseeb Khan S.O for respondents present.

File to come up alongwith C.M No. 84/2020 on 07.04.2021 before S.B.


(Rozina Rehman)
Member (J)

28.09.2020

Counsel for the petitioner present.

Notices be issued to respondents for submission of reply and arguments on 04.11.2020 before S.B.



Chairman

04.11.2020

Petitioner is present in person. Mr. Kabirullah Khattak, Additional Advocate General for the respondents is also present.

Since the Members of the High Court as well as of the District Bar Association, Peshawar, are observing strike today, therefore, learned counsel for petitioner is not available today. Adjourned to 03.12.2020 on which date to come up for reply and arguments before S.B.



(MUHAMMAD JAMAL KHAN)
MEMBER (JUDICIAL)

03.12.2020

Petitioner in person and Nasib Khan, SO for respondents No. 3 alongwith Addl. AG for the respondents present.

Petitioner requests for adjournment as his learned counsel is engaged before the Apex Court today. Adjourned to 25.01.2021 before S.B.







Chairman

Form- A

FORM OF ORDER SHEET

Court of _____

Case No.- _____ /2020

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1-	22/04/2020	<p>The Misc. application of Mr. Wajid Ali Shah presented today by Mr. Sardar Muhammad Ghazi, Advocate, may be entered in the relevant Register and put up to Court for proper order please.</p> <p> REGISTRAR</p>
2-	09.06.2020	<p>This Misc. Application be put up before S. Bench for preliminary hearing to be put up on <u>09/06/2020</u>.</p> <p> MEMBER</p> <p>Nemo for the appellant.</p> <p>Notices be issued to appellant/learned counsel for the next date of hearing.</p> <p>Adjourned to 11.08.2020 before S.B.</p> <p> Chairman</p>
	11.08.2020	<p>Nemo for the petitioner.</p> <p>On the last date of hearing notice was ordered to be issued to the petitioner/counsel for today. The record, however, is bereft of copy of such notice. Office shall issue the requisite notice for 28.09.2020 without fail.</p> <p>Adjourned accordingly.</p> <p> Chairman</p>

**BEFORE THE HONOURABLE KHYBER PAKHTUNKHWA SERVICE
TRIBUNAL, PESHAWAR.**

C.M. No. 86 /2020

in

Service Appeal No. 1276/2007

Wajid Ali Shah

.....Applicant

VERSUS

Accountant General KPK and others

.....Respondents

**CIVIL MISC. APPLICATION UNDER SECTION OF CIVIL
SERVANT ACT, 1973**

**APPLICATION U/S 151 CPC SEEKING
DISPENSATION TO FILE CERTIFIED COPIES OF
CERTAIN DOCUMENTS**

INDEX

S.NO.	DESCRIPTION OF DOCUMENTS	PAGES
1	Civil Misc. application along with affidavit	1-8
2	Judgment of Supreme Court dated 28-11-2019 passed in CPs No. 5128, 5129 & 5130/2017	9-10
3	Judgment of KPK Service Tribunal, Peshawar in Appeal No. 1276/2007 dated 12-05-2009 titled, " Muhammad Akram V/s Distt. Coordination affairs Abbottabad and others	11-21
4	Judgment of Supreme Court dated 19-07-2007 in CPLA No. 525/2007	22-24
5	Grounds of CPLA No. 5128/2017	
6	Grounds of CPLA No. 5129/2017	25-29
7	Grounds of CPLA No. 5130/2017	
8	Application for dispensation with affidavit	30-31
9	Vakalatnama	

through :-

Applicant



(Sardar Muhammad Ghazi)

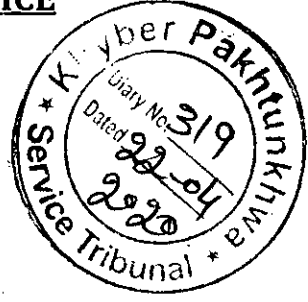
Advocate Supreme Court of Pakistan
office No.12, First Floor,
Mali Plaza, Saddar Rawalpindi
Cell No. 0300-8562850

Dated:- 12-03-2020

-/-

**BEFORE THE HONOURABLE KHYBER PAKHTUNKHWA SERVICE
TRIBUNAL, PESHAWAR.**

C.M. No. 86 /2020
in
Service Appeal No. 1276/2007



Wajid Ali Shah, S/o Muzammal Shah Senior CT. Teacher
Government High Secondary School Bandi Dhundan Abbottabad,
R/o Village & Post Office Banda Pir Khan Tehsil and Distt.
Abbottabad.

.....Applicant

Versus

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

**CIVIL MISC. APPLICATION UNDER SECTION _____ OF CIVIL
SERVANT ACT, 1973**

Respectfully Sheweth:-

1. Based on the judgment, delivered by Hon'ble Supreme Court of Pakistan in CPLA No. 525/2007 (RASHID IQBAL KHAN V/S DISTRICT Coordination officer, Abbottabad and others) , this Hon'ble Service Tribunal of KPK was pleased to allow Appeal No. 1276/2007, "tilted Muhammad Akram V/s District Co-Ordination

- 2 -

Officer , Abbottabad and others” vide judgment dated 12-05-2009 along with 267 appeals (including the applicant) whereby benefit of four (4) advance increments for obtaining MA/ MSc qualification was extended to all the appellants (267 in number) including the applicant.

2. Operative paragraphs of Supreme Court judgment dated 19-07-2007 and Service Tribunal, KPK ,dated 12-05-2009 (A&B), are reproduced hereunder:-

JUDGMENT OF SUPREME COURT DATED 19-07-2007

“3. Learned Additional Advocate General attempted to argue in view of the higher scale granted to Elementary School Teachers in pursuance of the circular letter dated 07-08-1991, which was personal to them, the petitioners would not be entitled to the incentive of advance increments contemplated by circular letter dated 11-08-1991 but he is unable to cite any principle of law or authority for placing this interpretation. we find that , while circular letter dated 07-08-1991 exclusively deals with the scales of pay of school teachers in different categories, circular letter dated 11-08-1991 provides for the revision

of basic pay scales and grant of annual increments and advance increments for all provincial civil servants in NWFP without any exception. Since the teachers or the employees in Education Department have never been expressly or taken by the Tribunal being erroneous cannot be sustained at law. In fact, it suffers from clear misconception of law and misconstruction of the circular letter (supra)”

4. For the aforesaid facts, circumstances and reasons, we, are of the considered view that the Tribunal committed a serious error of law, therefore, the impugned judgment is liable to be set-aside . Consequently , we convert these petitions into appeals and, on acceptance, declare that the petitioners would be entitled to four advance increments with effect from the date of qualifying MA/ MSc. exam”

SERVICE TRIBUNAL KPK JUDGMENT DATED 12-05-2009 PARA NO.7 & 8 REPRODUCED:

“7. The official respondents in the above mentioned appeals as well as the other concerned officers/ officials in the Province are directed to follow the above quoted judgments in their true letter and spirit and without compelling the

respective right holders to enter into litigation with the respective official respondents , otherwise the costs of their litigation shall be recovered from the pay and pension as well as person and property of the defaulting concerned officer, through after fixation of responsibility on them as a result of proper enquiry.

8. *The remaining similarly placed persons may submit applications/ representations to their concerned authorities directly, who shall have to decide their cases as above within a reasonable time."*

- 3. That in view of above judgment of KPK Service Tribunal the respondents granted four (4) advance increments of MA/ MSC, revised the pay of the applicant and paid entire arrears of 4 increments . The respondents continued to pay the salary including 4 increments until March, 2016
- 4. That the respondent No.2 without any notice given to applicant erroneously deducted 02 advance increments out of four (4) increments w.e.f. 01-04-2016.
- 5. That the applicant , under the legal advice of his advocate , instead of filing contempt application filed Service Appeal No. 827/2016, titled " Abdul Majid V/o Advocate General KPK Peshawar and others." with following prayer:-

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" It is ,therefore, respectfully prayed that on acceptance of instant service appeal , impugned action in respect of recovery / deduction of 02 advance increments out of 04 may please be set-aside and in case amount refunded / deducted from the salary of appellant, may be ordered the refund of same and continue recovery/ deduction if any may also be suspended till the final disposal of titled service appeal and may please be imposed heavy cost against the responsible respondents"

That a learned Bench of KPK Service Tribunal, unfortunately while dismissing another service appeal No. 826/2016 titled "Muhammad Saleem Abbasi V/s Accountant General KPK Peshawar also dismissed applicant's appeal No. 827/2016.

6. That the applicant filed CPLA No. 5128/2017 before Supreme Court of Pakistan who was pleased to pass the following order:-

*" **Gulzar Ahmed, J.**:- The grievance of the petitioner is that on attaining the Master's Degree , the petitioners were granted four increments and subsequently, the respondents have tried to reduce that four increments to two increments. The Tribunal in the impugned judgment has allowed the petitioners four increments, which judgment of the Tribunal has not been challenged by the respondents before this Court and thus, has attained finality , to the extent of the respondents. The very grievances of the petitioners having been redressed by the Tribunal*

8-

*and there being no further claim by the "petitioner"
side, the petitions, thus fail and are dismissed"*

7. That the Hon'ble Supreme Court had clearly observed that the Service Tribunal KPK had granted 4 Increments to applicants through judgment dated 12-05-2009 which was not challenged and had attained finality . The observation thus holds that the respondent No.2 could not deduct 2 increments out of 4 increments for MA/ MSc Qualification allowed by Hon'ble Supreme Court and followed by service Tribunal KPK in its judgment dated 12-05-2009

8. that order of Supreme Court passed in CPLA No. 5128 to 5130/2017 is manifestly clear and un-ambiguous and holds that the respondents could not deduct 2 advance increments from 4 advance increments already allowed by Supreme Court and followed by Service Tribunal KPK . Respondents act of deduction of 2 increments is not only illegal, arbitrary and without legal justification but is clear violation of the above judgments.

PRAYER

It is therefore, prayed that this Hon'ble Tribunal may implements its earlier judgment dated 12-05-2009 passed in Service Appeal No. 1276/2007 titled " Muhammad Akram V/s District Co-Ordination Officer, Abbottabad and along with other 267 appeals" including the

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applicant , having attained finality , in letter and spirit and in compliance of latest judgment of Supreme Court of Pakistan dated 28-11-2019

2. It is further prayed that respondents act of illegal deduction of two increments w.e.f. 01-04-2016 may be declared as unlawful and in violation of this Hon'ble Tribunal earlier judgment dated 12-05-2009
3. The respondents be directed to refund the amount so deducted w.e.f. 01-06-2016.
4. Any other relief deemed appropriate may be granted to applicant

through :-

Waqar
Applicant

Waqar

(Sardar Muhammad Ghazi)
Advocate Supreme Court of Pakistan
office No.12, First Floor ,
Mall Plaza , Saddar Rawalpindi
Cell No. 0300-8562850

Dated:- 12-03-2020

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**BEFORE THE HONOURABLE KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL, PESHAWAR.**

C.M. No. _____/2020
in
Service Appeal No. 1276/2007

Wajid Ali Shah

.....Applicant

VERSUS

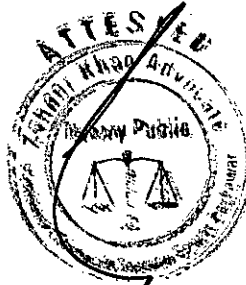
Accountant General KPK and others

.....Respondents

**CIVIL MISC. APPLICATION UNDER SECTION _____ OF CIVIL
SERVANT ACT, 1973**

AFFIDAVIT

I, Wajid Ali Shah, S/o Muzammal Shah Senior CT. Teacher Government High Secondary School Bandi Dhundan Abbottabad , R/o Village & Post Office Banda Pir Khan Tehsil and Distt. Abbottabad, do hereby solemnly declare and affirm that the contents of the accompanying MP are true and correct to the best of my knowledge, information and belief and nothing material has been concealed therefrom.



Dated: 12.03.2020


DEPONENT

105/19 2 -

SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

PRESENT:

Mr. Justice Gulzar Ahmed
Mr. Justice Maqbool Baqar

C.Ps.No.5128-5130 of 2017

[Against the judgment dated 19.10.2017, passed by the Khyber Pakhtunkhwa Service Tribunal, Camp Court, Abbottabad in Appeal No.826 of 2016]

Abdul Majid.

(in C.P.No.5128)

Muhammad Bashir.

(in CP No.5129)

Wajid Ali Shah.

(in CP No.5130)

...Petitioner (s)

Versus

Accountant General KP Peshawar & others: *(in all cases)*

...Respondent(s)

For the Petitioner (s)
(in all cases)

: Sardar Muhammad Ghazi, ASC

For the Respondent(s)

: Mr. Muhammad Atif, Addl.A.G. KP
Shahid Pervaiz Bhatti, District
Controller of Accounts, Abbottabad
Javed Khan, Addl.Secretary,
Finance, KP

Date of Hearing

: 28.11.2019

ORDER

Gulzar Ahmed, J:- The grievance of the petitioners is that on attaining the Master's Degree, the petitioners were granted four increments and subsequently, the respondents have tried to reduce the four increments to two increments. The Tribunal in the impugned judgment has allowed the petitioners four increments, which judgment of the Tribunal has not been challenged by the respondents before this Court and thus, has attained finality, to the extent of the respondents. The very grievance of the petitioners having been redressed by the Tribunal and there being no further

ATTESTED

Senior Court Associate
Supreme Court of Pakistan
Islamabad

claim by the petitioners' side, the petitions, thus, fail and are dismissed.

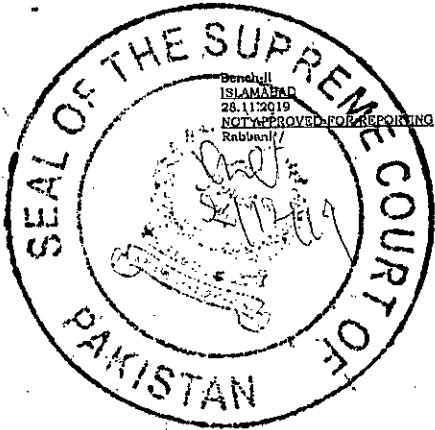
Sd/-J

Sd/-J

Certified to be True Copy

26/2/20

Senior Court Associate
Supreme Court of Pakistan
Islamabad



GR No: 4416/20 Civil/Criminal

Date of Presentation: 25-02-20

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Date of Completion of Copy: 26-2-20

Date of delivery of Copy: 27-2-20

Compared by/Prepared by: M

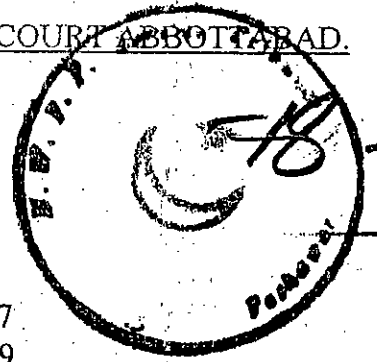
Received by: M.A. Sheikh

BEFORE THE NWFP SERVICE TRIBUNAL, CAMP COURT ABBOTTABAD.

Appeal No. 1276/2007

Date of institution – 27.12.2007

Date of decision - 12.05.2009



Muhammad Akram, S/O Sikandar Khan, C.T. Teacher, Government High School,
Kuthwal, Abbottabad.....(Appellant)

VERSUS

1. District Coordination Officer, Abbottabad.
2. Executive District officer (S &L) Abbottabad.
3. District Accounts Officer, Abbottabad.
4. Director (S&L) Department, Peshawar.
5. Secretary to Government of NWFP (S&L) Department Peshawar.
6. Accountant General NWFP Peshawar.
7. Secretary to Government of NWFP Finance Department, Peshawar.

Appellant in person present.

Arshad Alam, A.G.P.....For respondents.

MR. ABDUL JALIL.....MEMBER.

MR. BISMILLAH SHAH.....MEMBER.

JUDGMENT.

ABDUL JALIL, MEMBER : This judgment/order will dispose of this Service Appeal No. 1276 of 2007, by Muhammad Akram and the following Service Appeals. The reason is that the broad facts and the legal issues in all the below mentioned appeals are the same, and need consolidated judgment and joint disposal.

<u>Sr. No.</u>	<u>Appeal No.</u>	<u>Name of appellant.</u>
1.	1277/2007	Saidur Rahman,
2.	1278/2007	Munibur Rahman,
3.	1279/2007	Muhammad Siddique,
	01/2008	Maroof Khan
	02/2008	Amjad Hussain Awan

EXAMINER
NWFP SERVICE TRIBUNAL
PESHAWAR
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6.	03/2008	Muhammad Sarwar Khan,
7.	04/2008	Syed Arif Hussain Shah,
8.	09/2008	Sultan Khan,
9.	10/2008	Shafqat Hussain,
10.	17/2008	Muhammad Sabir Hussain,
11.	18/2008	Tanveer Hussain Awan,
12.	19/2008	Shafqat Samdani,
13.	20/2008	Arshad Khan,
14.	21/2008	Shahid Iqbal,
15.	22/2008	Muhammad Saleem Raza,
16.	28/2008	Iftikhar Ahmad Shah,
17.	29/2008	Shah Zaman,
18.	30/2008	Muhammad Tahir,
19.	34/2008	Muhammad Younis,
20.	35/2008	Abdul Wadood,
21.	150/2008	Rizwana Kousar,
22.	266/2008	Mamoon-ur-Rasheed,
23.	267/2008	Haroon-ur-Rasheed,
24.	268/2008	Fazal-e-Qadir,
25.	327/2008	Dilawar Khan,
26.	338/2008	Abdul Wahab,
27.	440/2008	Liaqat Ali,
28.	502/2008	Ali Asghar,
29.	541/2008	Liaqat Ali,
30.	542/2008	Abdul Quddus,
31.	570/2008	Shahzad Ahmad,
32.	571/2008	Chan Zeb,
33.	572/2008	Abdul Hakeem,
34.	573/2008	Muhammad Siddique,
35.	574/2008	Sarfaraz
36.	575/2008	Muhammad Ajmal,
37.	576/2008	Gul Faraz,
38.	577/2008,	Muhammad Yousaf,
39.	578/2008	Altaf Hussain,
40.	579/2008	Ahjaz Ahmad,
41.	580/2008	Muhammad Safdar,

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EXAMINER
WVFP SECTION TRIBUNAL
PESHAWAR

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42. 595/2008 Abdur Razzaq,
43. 596/2008 Abdur Razzaq,
44. 597/2008 Shaukat Ali Abbasi,
45. 598/2008 Abdul Hamid Lodhi,
46. 599/2008 Umar Khatab,
47. 680/2008 Abdul Majid
48. 681/2008 Muhammad Saleem,
49. 682/2008 Bashir Ahmad,
50. 714/2008 Mazhar Khan,
51. 715/2008 Muhammad Saeed,
52. 716/2008 Manzoor Ahmad,
53. 717/2008, Zulfiqar,
54. 718/2008 Sardar Irshad Ali,
55. 739/2008 Khursheed Ahmad,
56. 759/2008 Muhammad Daud Qureshi
57. 760/2008 Muhammad Fayaz Awan
58. 798/2008 Naheem Akhtar,
59. 812/2008 Muhammad Siddique,
60. 813/2008 Sajjad Ahmad,
61. 814/2008 Abdul Hameed,
62. 815/2008 Raza Hussain Shah,
63. 816/2008 Shakeel Ahmad,
64. 817/2008 Muhammad Majid Mirza,
65. 819/2008 Rab Nawaz
66. 820/2008 Aftar,
67. 821/2008 Niaz Hussain,
68. 822/2008 Muhammad Iqbal,
69. 823/2008 Jamshed Khan,
70. 824/2008 Muhammad Shafi,
71. 825/2008 Muhammad Qasim,
72. 826/2008 Sajjad Ahmad,
73. 827/2008 Gul Siraj,
74. 828/2008 Muhammad Khursheed,
75. 829/2008 Mst. Zakia Sultana,
76. 853/2008 Mst. Shahnaz,
77. 854/2008 Mushtaq Hussain,

EXAMINED
ATTESIED

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- 78. 899/2008 Muhammad Hanif,
- 79. 906/2008 Noor Elahi,
- 80. 907/2008 Muhammad Irshad,
- 81. 950/2008 Abdul Haleem Lodhi,
- 82. 951/2008 Jahangir Iqbal,
- 83. 952/2008 Gul Hameed,
- 84. 953/2008 Muhammad Imran,
- 85. 954/2008 Muhammad Ishtiaq,
- 86. 955/2008 Muhammad Ashraf,
- 87. 956/2008, Asif Ali,
- 88. 957/2008 Abdul Hamid,
- 89. 958/2008 Muhammad Hanif,
- 90. 959/2008 Muhammad Kabria Khan,
- 91. 960/2008 Rashed Latif,
- 92. 961/2008 Syed Amjad Hussain Shah,
- 93. 962/2008 Muhammad Shoaib,
- 94. 963/2008 Muhammad Bashir,
- 95. 964/2008 Niaz Ahmad,
- 96. 965/2008 Syed Iftikhar Hussain Shah,
- 97. 967/2008 Muhammad Siddique,
- 98. 981/2008 Mst. Robina Awan,
- 99. 982/2008 Sadaqat Khan,
- 100. 983/2008 Mst. Tahseen Bibi,
- 101. 984/2008 Tariq Mahmood,
- 102. 985/2008 Mst. Saeeda Bano
- 103. 1025/2008 Miss Tanveer Akhtar,
- 104. 1026/2008 Mst. Imtiaz Kiani,
- 105. 1027/2008 Naveed Ahmad,
- 106. 1032/2008 Mst. Sajida Bibi,
- 107. 1049/2008 Banaras Khan,
- 108. 1050/2008 Javed Iabal,
- 109. 1051/2008 Muhammad Haroon,
- 110. 1110/2008 Raja Waheed Murad (Health)
- 111. 1111/2008 Aurangzeb Khan,
- 112. 1112/2008 Qazi Saeed-ur-Rahman,
- 113. 1113/2008 Muhammad Imtiaz,

ATTESSED
EXAMINER
 NWFP Service Tribunal
 Peshawar

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- 114. 1135/2008 Muhammad Hamayun,
- 115. 1136/2008 Shahid Farooq
- 116. 1137/2008 Abdul Waheed,
- 117. 1206/2008 Nascem Akhtar,
- 118. 1207/2008 Syed Arshad Hussain Shah,
- 119. 1208/2008 Naveed,
- 120. 1209/2008 Sadaqat Ali,
- 121. 1234/2008 Saeed Akhtar,
- 122. 1235/2008 Anwar-ul-Haq,
- 123. 1236/2008 Syed Husnain Ali Shah,
- 124. 1242/2008 Muhammad Niaz,
- 125. 1243/2008 Muhammad Anwar,
- 126. 1268/2008 Syed Sadaqat Hussain Shah,
- 127. 1274/2008 Shah Jehan,
- 128. 1355/2008 Ahmad Farooq,
- 129. 1356/2008 Muhammad Younas,
- 130. 1357/2008 Muhammad Shafique,
- 131. 1379/2008 Tariq Mehmood,
- 132. 1380/2008 Muhammad Yousaf,
- 133. 1381/2008 Waqar Ahmad,
- 134. 1382/2008 Muhammad Azhar,
- 135. 1383/2008 Muhammad Aftaz Aziz,
- 136. 1384/2008 Muhammad Assad,
- 137. 1385/2008 Rashid Khan,
- 138. 1386/2008 Mirza Yasir Jamil Baig,
- 139. 1387/2008 Javed Ibrahim,
- 140. 1388/2008 Muhammad Nawaz,
- 141. 1402/2008 Fida Muhammad,
- 142. 1403/2008 Shah Faisal Khan,
- 143. 1404/2008 Nasir Bakhtiar Khan,
- 144. 1405/2008 Tahir Mahmood,
- 145. 1406/2008 Ajmal Nazir,
- 146. 1407/2008 Uzair Jadoon,
- 147. 1425/2008 Muhammad Adnan Khan,
- 148. 1426/2008 Zahoor Khan,
- 149. 1427/2008 Wajid Ali Shah,

EXAMINER
NWFR Service Tribunal
Peshawar

ATTESSED

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- | | | |
|------|------------|------------------------|
| 150. | 1428/2008 | Mahmoob Ali, |
| 151. | 1429/2008 | Bibi Rizwana, |
| 152. | 1430/2008 | Kousar Shaheen, |
| 153. | 1441/2008 | Amanullah, |
| 154. | 1442/2008 | Gul Khitab Ahmad Turk, |
| 155. | 1443/2008 | Muhammad Saeed, |
| 156. | 1444/2008 | Muhammad Aslam, |
| 157. | 1445/2008 | Mubashar Hassan, |
| 158. | 1446/2008 | Wajid Khan, |
| 159. | 1452/2008 | Bibi-Gul-E-Shahwar, |
| 160. | 1453/2008 | Abdur Razzaq, |
| 161. | 1454/2008 | Mehrban Khan, |
| 162. | 1455/2008 | Ajaz Ahmad Khan, |
| 163. | 1456/2008 | Shujjah Ali, |
| 164. | 1457/2008 | Muhammad Nawaz, |
| 165. | 1458/2008 | Gul Khitab, |
| 166. | 1459/2008 | Mst. Isma Shaheen, |
| 167. | 1562/2008 | Mazhar-UI-Haq, |
| 168. | 1563/2008 | Muhammad Rifaqat, |
| 169. | 1599/2008 | Qazi Masood-ur-Rahman, |
| 170. | 1600/2008 | Shakeel Ahmad, |
| 171. | 1601/2008 | Abid Shah, |
| 172. | 1602/2008 | Ghulam Farooq, |
| 173. | 1603/2008 | Abdur Rashid, |
| 174. | 1641/2008 | Haider Zaman, |
| 175. | 1686/2008 | Muhammad Rafique, |
| 176. | 1687/2008 | Faqir-ud-Din, |
| 177. | 1688/2008 | Azhar Ali Khan, |
| 178. | 1689/2008 | Fida Muhammad, |
| 179. | 1690/2008 | Zafar Iqbal, |
| 180. | 1691/2008 | Muhammad Riaz, |
| 181. | 1697/2008, | Sher Afzal, |
| 182. | 1998/2008 | Shabir Ahmad, |
| 183. | 1699/2008 | Ishtiaq Ahmad, |
| 184. | 1700/2008 | Mst. Robina Shaheen, |
| 185. | 1701/2008 | Mst. Nasim Akhtar, |

EXAMINER
 WWFP Services Tribunal
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ATTESTED

186.	1702/2008	Muhammad Ajmal,
187.	1703/2008	Muhammad Anwar Adil,
188.	1704/2008	Syed Abbas Ali Shah,
189.	1746/2008	Tanveer Ahmad,
190.	1747/2008,	Aurangzeb,
191.	1748/2008	Rasheed Ahmad,
192.	1749/2008	Muhammad Daud,
193.	1750/2008	Sajjad Ahmad,
194.	1751/2008	Ayyaz UR Rehman,
195.	1752/2008	Syed Zakir Hussain Shah,
196.	1753/2008	Abdul Rashid,
197.	1754/2008	Rizwan Khan,
198.	1755/2008	Hasrat Saeed,
199.	1784/2004	Muhammad Saif ur Rehman,
200.	1785/2008	Shah Ali Mardan,
201.	1786/2008	Abdul Qayum Shah,
202.	1822/2008	Nisar Ahmad Shakir,
203.	13/2009	Khalid Khan,
204.	18/2009	Saeed Alam,
205.	31/2009	Muhammad Ashfaq,
206.	32/2009	Sajawal Khan,
207.	33/2009	Muzaffar Ali,
208.	34/2008	Muhammad Zia-ul-Haque,
209.	68/2009	Sagheer Ahmad,
210.	77/2008	Samina Mir Alam,
211.	78/2009	Tasleem Bibi,
212.	79/2009	Farkhanda Sadiq,
213.	138/2009	Abdus-Salam Khan,
214.	139/2009	Hafiz Muhammad Iqbal Khan Qureshi,
215.	140/2009	Hafeez Khan,
216.	141/2009	Muhammad Abid,
217.	142/2009	Abdul Ghafoor,
218.	226/2009	Muhammad Ilyas,
219.	227/2009	Muhammad Iqbal,
220.	228/2009	Qadir Ahmad,

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ATTESTED

221.	229/2009	Nasir Ali,
222.	230/2009	Ali Nawaz,
223.	231/2009	Wajid Hussain,
224.	232/2009	Waheed Khan,
225.	233/2009	Muhammad Saleem,
226.	234/2009	Mujtaba Ahmad Hashmi,
227.	235/2009	Khalid Muhammad,
228.	246/2009	Abid Saeed Khan,
229.	237/2009	Imran Jalani,
230.	238/2009	Asif Awan,
231.	239/2009	Aurangzeb
232.	240/2009	Khalid Mahmood,
233.	241/2009	Muhammad Naeem,
234.	242/2009	Khurshid Qamar,
235.	243/2009	Nawazish Hussain
236.	244/2009	Syed Zafar Ali Shah,
237.	245/2009	Muihammad Ishaq,
238.	246/2009	Muhammad Pervez,
239.	247/2009	Masroor Hussain
240.	248/2009	Muhammad Sadique
241.	249/2009	Muhammad Younas
242.	250/2009	Muhammad Imtiaz
243.	251/2009	Maqbool Shah
244.	252/2009	Moazzam Khan
245.	414/2009	Tahir Usman
246.	415/2009	Mir Muhammad
247.	416/2009	Naheem Kausar
248.	246/2009	Khalida Bibi
249.	418/2009	Abida Bibi
250.	419/2009	Azim Shah
251.	433/2009	Ghazala Bibi
252.	434/2009	Riaz Khan
253.	500/2009	Mumtaz Khan
254.	501/2009	Lal Afsar
255.	502/2009	Badri Zaman
256.	503/2009	Liaqat

NWFP-Service
 Tribunal
 Examiner
 Peshawar

ATTESTED


257.	504/2009	Muhammad Shamraiz
258.	505/2009	Ali Bahadur
259.	506/2009	Muhammad Haroon
260.	523/2009	Naureena Maqsood
261.	524/2009	Yasmeen Akhtar
262.	525/2009	Shabana Nazir
263.	681/2009	Nighat Bibi
264.	682/2009	Waseem Sultan
265.	683/2009	Bibi Hajra
266.	684/2009	Abdul Razaq
267.	685/2009	Fatiha Gul

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2. The appellant of Service Appeal No. 1276 of 2007, contended that he was appointed as untrained P.E.T. Teacher in Education Department on 27.6.1990. The appellant being C.T trained, was adjusted against the C.T post on 06.05.1996 on regular basis. He acquired higher qualification of M.A on 25.08.1999. The appellant was entitled to advance increments in the light of the Finance Department notification dated 11.8.1991. The same was not given to him. Some of the teachers came to this Tribunal whose Service Appeals were dismissed in Service Appeal No. 498 of 2006 decided on 24.4.2007. The August Supreme Court of Pakistan, while deciding C.P.L.A No. 525 of 2007 and CPLA No. 526 of 2007 decided that all the teachers were entitled to the advance increments like all other civil servants. On the request of the appellant, the same benefit was not given to him. Hence, he filed the present Service Appeal. As already mentioned, the broad facts and the legal issues in all other appeals are almost on the same lines.

3. The respondents contested the appeal and contended that either the appellants had not submitted applications or their applications were time-barred. And there was no judgment in favour of the appellants.

4. We heard the arguments and perused the record.

5. The judgment in CPLA Nos. 525 of 2007 and 526 of 2007 is as under:-

3. *Learned Additional Advocate General attempted to argue that in view of the higher scale granted to Elementary School Teachers in*

NWFP Service Tribunal
 Peshawar

EXAMINER

ATTESTED

pursuance of the circular letter dated 07.8.1991, which was personal to them, the petitioners would not be entitled to the incentive of advance increments contemplated by circular letter dated 11.8.1991 but he is unable to cite any principle of law or authority for placing this interpretation. We find that, while circular letter dated 7.8.1991 exclusively deals with the scales of pay of school teachers in different categories, circular letter dated 11.8.1991, provides for the revision of basic pay scales and grant of annual increments and advance increments for all Provincial civil servants in NWFP without any exception. Since the teachers or the employees in Education Department have never been expressly or impliedly excluded from the operation of the circular letter, view taken by the Tribunal being erroneous cannot be sustained at law. In fact, it suffers from clear misconception of law and misconstruction of the circular letter (supra)."

While disposing of the C.R.P No. 216 and 217 of 2007 in C.P Nos. 525 and 526 of 2007, the August Supreme Court of Pakistan held:-

"The learned Addl. Advocate General has contended that this Court while interpreting the circulars in question has taken a view contrary to the correct legal position, according to which private respondents were not entitled to the benefit of advance increments. We are afraid, the learned Addl. A.G instead of pointing out any mistake of law and fact in the judgment made an attempt to re-open the case on merits. The scope of review is very limited and the points already considered in the judgment under review cannot be allowed to be re-agitated in review jurisdiction. These review petitions being without any substance are accordingly dismissed."

While disposing of Cri. O.P. No. 66 & 67 of 2007, it was held by the August Supreme Court of Pakistan:-

"The learned Addl. A.G. has given an undertaking for implementation of the judgment of this Court within a period of two weeks and in view thereof, this criminal original is disposed of with the direction that the

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judgment should be implemented in letter and spirit within two weeks under intimation to the Registrar of this Court."

6. In the above circumstances, and in view of the judgment in rhyme by the August Supreme Court of Pakistan, and keeping in view the provisions of Article 189 of the Constitution of Islamic Republic of Pakistan, we have no other alternative but to declare that all the appellants, after ascertainment that they are the persons similarly placed with the appellants who had previously litigated and in whose favour the judgment mentioned above was given by the August Supreme Court of Pakistan, are entitled to the same benefits as have been given to the appellants of the judgments quoted above. The appeals of such similarly placed persons, after such ascertainment, stands accepted without costs. Each party will bear the cost of the litigation.

7. The official respondents in the above mentioned appeals as well as the other concerned officers/officials in the province are directed to follow the above quoted judgments in their true letter and spirit and without compelling the respective right holders to enter into litigation with the respective official respondents, otherwise the costs of their litigation shall be recovered from the pay and pension as well as person and property of the defaulting concerned officer, though after fixation of responsibility on them as a result of proper enquiry.

8. The remaining similarly placed persons may submit applications/representations to their concerned authorities directly, who shall have to decide their cases as above within a reasonable time.

ANNOUNCED.
12.05.2009.

Jd
(BISMILLAH SHAH)
MEMBER.

Jd
(ABDUL JALIL)
MEMBER.
CAMP COURT ABBOTTABAD.

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24-00-2
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17/7/09

Jd
Sd/-
Sd/-

19-7-2007 D 22-12
Page 3
In the Supreme Court of Pakistan
(Appellate Jurisdiction)

Present:

Mr. Justice Rana Bhagwandas, ACJ
Mr. Justice Sardar Muhammad Raza Khan

C.P.L.A No.525 of 2007 OA 1504-1505/07

(On appeal from judgment of NWFP Service Tribunal, Peshawar dated 24.4.2007 passed in Service Appeal No.494 of 2006)

Rashid Iqbal Khan

Petitioner

Versus

District Coordination Officer, Abbottabad & others

Respondents

Petitioner:

Rashid Iqbal Khan, in person

For the respondents:

Sardar Shaikat Hayat Khan,
Additional Advocate General, NWFP,

C.P.L.A No.526 of 2007

(On appeal from judgment of NWFP Service Tribunal, Peshawar dated 24.4.2007 passed in Service Appeal No.499 of 2006)

Muhammad Haroon Qureshi

Petitioner

Versus

District Coordination Officer, Abbottabad & others

Respondents

Petitioner:

Muhammad Haroon Qureshi, in person

For the respondents:

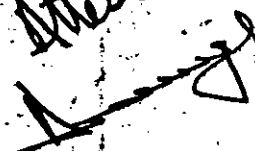
Sardar Shaikat Hayat Khan,
Additional Advocate General, NWFP.

Date of hearing:


19.7.2007

Judgment

Rana Bhagwandas, ACJ - Sole grievance of the petitioners before the NWFP Service Tribunal (hereinafter referred to as the Tribunal) appears to be that after induction in BPS-14 as Elementary School Teachers, in terms of NWFP Government Circular dated 7.8.1991 they are entitled to four advance increments in terms of NWFP Government circular letter No.FD(PRC)1.1/89 dated 11.8.1991 on acquiring higher qualification MA/MSc. They have been non-suited by the Tribunal vide judgment dated

Attested


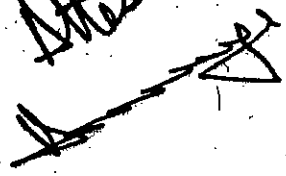
ATTESTED


Superintendent
Supreme Court of Pakistan
ISLAMABAD


24.4.2007 on the premise that they had been placed in higher grade i.e. BPS-14 on acquiring BA/BSc Second Division in terms of Finance Division circular letter No.FD(PRC)1-1/89 dated 7.8.1991, therefore, the provisions of circular letter dated 11.8.1991 issued by the Finance Department would not be applicable to teachers. Tribunal has expressed the view that this circular would be applicable only to ministerial staff, as such, the petitioners were not entitled to the relief claimed by them. Petitioners being aggrieved seek leave to appeal.

2. We have heard the petitioners, who argued their case in person whereas learned Additional Advocate General, NWFP has appeared on Court notice issued to the respondents. With the assistance of learned Additional Advocate General, we have examined both the circulars, which do not exclude the teachers in the Education Department from the benefits accruing out of circular letter dated 11.8.1991, as on its plain reading it applies to all civil servants in BPS 1 to 15 serving under the Provincial Government. Para 5 of the said circular provides mechanism for grant of advance increments to officials for possessing/attaining higher educational qualification. Para 5, clause (c) caters for the grant of four advance increments on attaining MA/MSc where prescribed qualification is FA/FSc. It would be seen that the petitioners were placed in BS-14 by reason of having acquired the qualification of BA/BSc, Second Division which is the prescribed qualification for the post of Elementary School Teacher. It is not the case of respondent-Government that the petitioners have already drawn advance increments on acquiring higher qualification of MA/MSc.

3. Learned Additional Advocate General attempted to argue that in view of the higher scale granted to Elementary School Teachers in pursuance of the circular letter dated 7.8.1991, which was personal to them, the

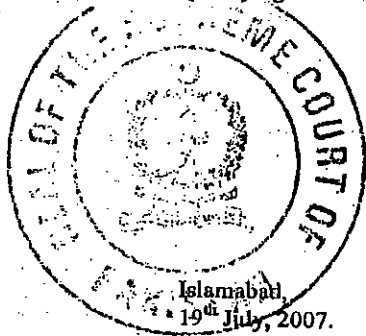
Attested


ATTESTED


Superintendent
Supreme Court of Pakistan
ISLAMABAD

petitioners would not be entitled to the incentive of advance increments contemplated by circular letter dated 11.8.1991 but he is unable to cite any principle of law or authority for placing this interpretation. We find that, while circular letter dated 7.8.1991 exclusively deals with the scales of pay of school teachers in different categories, circular letter dated 11.8.1991 provides for the revision of basic pay scales and grant of annual increments and advance increments for all Provincial civil servants in NWFP without any exception. Since the teachers or the employees in Education Department have never been expressly or impliedly excluded from the operation of the circular letter, view taken by the Tribunal being erroneous cannot be sustained at law. In fact, it suffers from clear misconception of law and misconstruction of the circular letter (supra).

4 For the aforesaid facts, circumstances and reasons, we are of the considered view that the Tribunal committed a serious error of law, therefore, the impugned judgment is liable to be set aside. Consequently, we convert these petitions into appeals and, on acceptance, declare that the petitioners would be entitled to four advance increments with effect from the date of qualifying MA/MSc exam.



Not approved for reporting.

10/8/07

Attested
[Signature]

Off. Rana Shauqat Ullah, Secy
Off. President Mohammad Raza Khan

Certified to be true copy

[Signature] 28/11/2007
Superintendent
Supreme Court of Pakistan
ISLAMABAD
28/11/07

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140/16
IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

Presented today by
Please Check and report.
Amirul Islam
C.P.L.A. No. 5130/2017

Wajid Ali Shah son of Muzammal Shah, Senior C.T.
Teacher, Government Higher Secondary School Bandi
Dhundun, Abbottabad, resident of Village and PO Banda
Pir Khan, Tehsil and District Abbottabad

.....Petitioner

VERSUS

1. Account General Khyber Pakhtunkhwa, Peshawar
2. District Controller of Accounts, Abbottabad
3. Government of Khyber Pakhtunkhwa through
Secretary Finance Department, Peshawar
4. Government of Khyber Pakhtunkhwa through
Secretary Elementary and School Education
Department, Peshawar

.....Respondents

CIVIL PETITION FOR LEAVE TO APPEAL UNDER
ARTICLE 212(3) OF CONSTITUTION OF THE
ISLAMIC REPUBLIC OF PAKISTAN, 1973

FROM THE JUDGMENT DATED 19.10.2017 PASSED
BY THE LEARNED KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL, PESHAWAR IN SERVICE
APPEAL NO. 1305/2014

Respectfully Sheweth:

LAW POINTS:-

1. The important questions of law involved in the
instant petition for leave to appeal for determination
of this August Court are as under:-

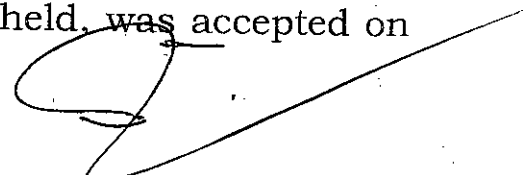
ATTESTED

Senior Court Associate
Supreme Court of Pakistan
Islamabad

- i). Whether the impugned judgment of Service Tribunal Peshawar dated 19.10.2017 upholding the illegal deduction of 02 advance increments out of 04 increments, earlier allowed by the Honourable Supreme Court of Pakistan through its judgment dated 19.07.2007 in CPLA No. 525/2007, is sustainable in law?
- ii). Whether, after implementation of judgment of the Supreme Court dated 19.07.2007 in letter and spirit, respondent No. 2 had any authority to deprive the petitioner of benefits of two advance increments on the principle of locus-poenitentiae and that too without giving any notice to the petitioner?
- iii). Whether the action of respondent No. 2 does not tantamount to committing gross contempt of the judgment of Supreme Court?
- iv). Whether the respondents were not obliged in law to give notice of recovery of amount so deducted illegally?

BRIEF FACTS:-

2. The brief facts forming background of this petition for leave to appeal are as under:-
 - i). That the petitioner is working as C.T. Teacher (BPS-16). His service appeal for grant of four advance increments of higher qualifications (MA/MSc) over and above prescribed qualification of the post held, was accepted on



12.05.2009 by the KPK Service Tribunal. The respondents did not file their appeal before this Honourable Court against the order dated 12.05.2009 and it attained finality. Later, the respondents implemented it in its letter and spirit.

- ii). That according to the judgment of Service Tribunal dated 12.05.2009 respondents not only granted 04 advance increments of MA/MSc and revised the pay of the petitioner, but also paid the entire arrears to the petitioner. After that respondent No. 3 issued a letter dated 15.12.2010 for recovery of 02 advance increments contrary to the judgment of this Honourable Court as well as Service Tribunal.
- iii). That the petitioner was being given his salary without any deduction by the respondents upto 31.03.2013. When the petitioner was promoted from BPS-15 to BPS-16 and his principal fixed his pay in BPS 16 and submitted Pay Amendment form to the office of respondent No. 2, whereupon respondent No. 2 without any notice given to the petitioner or without formal / official written order and under any legal justification deducted two advance increments out of 04 advance increments w.e.f 01.04.2013 In this respect the whole position is shown through table for better understanding:-

ATTESTED

Senior Court Associate
Supreme Court of Pakistan
Islamabad

Pay in Mar '13) BPS-15	Pay fixed by Principal in BPS-16	Fixed by respondent No. 3 after deducting 2 increments
Rs. 26,700/-	Rs. 27,600/-	Rs. 26,800/-

iv). That on coming to know about this illegal action of withholding of 02 advance increments out of 04 by respondent No. 2, the petitioner and others filed writ petition before Peshawar High Court, which was dismissed and its review was also dismissed. Finally, Supreme Court disposed of the petition by directing the petitioner to approach Service Tribunal for redressal of his grievance. The petitioner submitted his departmental appeal dated 04.07.2014 to respondent No. 1 which remained pending without any response. The petitioner then filed Service Appeal No. 1305/2014 before the Khyber Pakhtunkhwa Service Tribunal, Peshawar. However, the same has been dismissed vide judgment dated 19.10.2017.

GROUNDS:-

3. The petitioner assails the impugned judgment of the Khyber Pakhtunkhwa Service Tribunal, Peshawar, inter-alia on the following grounds:-

i). That the judgment of Apex Court dated 19.07.2007 was implemented by respondents in letter and spirit. Review against it was also dismissed. Respondents, thus, could not take away the benefit of 02 advance increments out of 04 granted by the Apex Court under any law / notification. Hence the deduction of two (02) advance increments from basic pay of

ATTESTED

Senior Court Associate
Supreme Court of Pakistan
Islamabad

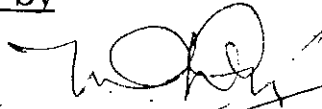
petitioner in violation of judgment of Apex Court dated 19.07.2007 is patently illegal. The impugned judgment suffers from grave legal error and thus it is liable to be set aside.

- ii). That on the principle of locus poenitentiae respondent could not deprive the petitioner of the benefits being enjoyed by the petitioner.
- iii). That illegal act of deduction of two increments was taken against the petitioner without giving him a notice which is against principle of natural justice, hence, liable to be set aside.
- iv). That recovery of arrears of 02 increments so deducted is illegal and without sanction of law.

PRAYER:-


It is, therefore, respectfully prayed that leave to appeal may kindly be granted from the impugned judgment dated 19.10.2017 passed by Khyber Pakhtunkhwa Service Tribunal, Peshawar in Service Appeal No. 1305/2014.

Filed by



Sardar Muhammad Ghazi
Advocate
Supreme Court of Pakistan
Mall Plaza, Rawalpindi Cantt.

Filed by


Advocate-on-Record
Supreme Court of Pakistan
Islamabad

Dated: 09.12.2017

Certificate

As per instructions from the client, this is first CPLA directed against the impugned judgment, filed before this Honourable Court.

Advocate-on-Record

Certified to be True Copy

Senior Court Associate
Supreme Court of Pakistan
Islamabad

**BEFORE THE HONOURABLE KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL, PESHAWAR.**

C.M. No. _____/2020

in

Service Appeal No. 1276/2007

Wajid Ali Shah

.....Applicant

VERSUS

Accountant General KPK and others

.....Respondents

**CIVIL MISC. APPLICATION UNDER SECTION _____ OF CIVIL
SERVANT ACT, 1973**

**APPLICATION U/S 151 CPC SEEKING
DISPENSATION TO FILE CERTIFIED COPIES OF
CERTAIN DOCUMENTS**

Respectfully Sheweth:

1. That the applicant has filed the above captioned petition before this Honorable Court in which the applicant has filed uncertified copies of certain documents, certified to which are not available to the applicant at this moment.
2. That the applicant undertakes to file certified copies of certain documents as soon as these are made available.
3. That in case production of certified copies of certain documents is not dispensed-with, the applicant shall suffer irreparable loss.

IN THE CIRCUMSTANCES, IT IS, THEREFORE, VERY HUMBLY PRAYED THAT ON ACCEPTANCE OF INSTANCE APPLICATION, PRODUCTION OF CERTIFIED COPIES OF CERTAIN DOCUMENTS MAY GRACIOUSLY BE DISPENSED WITH MEANWHILE AND THE WRIT PETITION BE HEARD ON MERITS IN THE INTEREST OF JUSTICE.

Wajid Ali Shah
Applicant

through :-

(Signature)

(Sardar Muhammad Ghazi)

Advocate Supreme Court of Pakistan
office No.12, First Floor ,
Mall Plaza , Saddar Rawalpindi
Cell No. 0300-8562850

Dated:- 12-03-2020

BEFORE THE HONOURABLE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR.

C.M. No. _____/2020

in

Service Appeal No. 1276/2007

Wajid Ali Shah

.....Applicant

VERSUS

Accountant General KPK and others

.....Respondents

CIVIL MISC. APPLICATION UNDER SECTION _____ OF CIVIL SERVANT ACT, 1973

APPLICATION U/S 151 CPC SEEKING DISPENSATION TO FILE CERTIFIED COPIES OF CERTAIN DOCUMENTS

AFFIDAVIT

I, Wajid Ali Shah, S/o Muzammal Shah Senior CT. Teacher Government High Secondary School Bandi Dhundan Abbottabad , R/o Village & Post Office Banda Pir Khan Tehsil and Distt. Abbottabad do hereby solemnly affirm and declare that the contents of the accompanying Application are true and correct to the best of my knowledge and belief and nothing has been concealed therefrom.

Dated: .02.2020.


Deponent:

VERIFICATION

Verified on Oath at Islamabad that the contents of the above affidavit are true and correct to the best of my knowledge and belief and nothing has been concealed therefrom.




Deponent:

BEFORE THE HONORABLE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

CM No. 86/2020

IN

Appeal No. 1276/2007

Wajid Ali Shah.....Applicant

VERSUS

Accountant General Khyber Pakhtunkhwa & othersRespondents

SERVICE APPEAL

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1	Comments/Reply	01 to 03	
2	Copies of Khyber Pakhtunkhwa Cessation of Payment of Arrears on Advance Increments on Higher Education Qualification Act No. IX of 2012	04 to 06	"A"
3	Copy of order of Honourable Tribunal dated 30-01-2013	07 to 08	"B"
4	Judgment of August Supreme Court of Pakistan dated 29-08-2013	09 to 11	"C"
4	Copy of the order dated 18-12-2019 of August Supreme Court of Pakistan	12 to 13	"D"

BEFORE THE HONORABLE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

CM No. 86/2020

IN

Appeal No. 1276/2007

Wajid Ali Shah.....Applicant

VERSUS

Accountant General Khyber Pakhtunkhwa & othersRespondents

SERVICE APPEAL

REPLY TO APPLICATION DATED 12-03-2020 ON BEHALF OF RESPONDENTS
NOS. 3 & 4.

Respectfully Sheweth:-

Reply to Application on behalf of respondents are submitted as under:-

Preliminary Objections:-

1. That the applicant has no cause of action to file the instant application.
2. That the judgments of August Supreme Court of Pakistan and this Honourable Tribunal have lost their efficacy for the purpose of implementation by clear intendment through sections 1 & 2 of Khyber Pakhtunkhwa Cessation of Payment of Arrears on Advance Increments on Higher Educational Qualification Act No. IX of 2012.
3. The Act was passed by the Provincial Assembly and assented by the Governor Khyber Pakhtunkhwa. The answering respondents are bound to obey the will of the legislature & cannot deviate from any provision of enactment.
4. 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, application is not tenable.
5. That the applicant was at liberty to join service after due process of law equivalent to his qualification & the Government is not bound to pay advance increment.
6. **That this Tribunal has already dismissed the service appeal No. 430/2015 of applicant on 19-10-2017. hence, the Principle of Estoppel is**

7. That the instant application is time barred. Hence liable to be dismissed.
8. **That the instant application is against the notification dated 27-10-2001 whereby, the basis of the claim of applicant stood erased. In the year 2012 the Khyber Pakhtunkhwa Cessation of Payment of Arrears on Advance Increments on Higher Educational Qualification Act No. IX of 2012 was promulgated which was made retrospective from 2001. Hence, the instant application is liable to be dismissed on this score alone.**
9. That the instant application is not maintainable in its present form.
10. That the applicant has filed the present application just to pressurize the respondents.
11. **That the August Supreme Court of Pakistan suspended the impugned judgment on 18-12-2019 regarding the Advance Increments on account of higher qualification in CP No. 397-P/2017, 409-P/2017, 420-P/2017, 72-P/2019 & 733-P/2019.**
12. That the applicant has not come to this Honorable Tribunal with clean hands.
13. That the applicant is estopped to sue due to his own conduct.
14. That the instant application is not maintainable due to non-joinder and mis-joinder of necessary parties.
15. That the instant application is against the rules and policy of the Government.
16. That the respondents seek leave of this Honorable Tribunal to raise additional points at the time of arguments.


Factual Objections:-

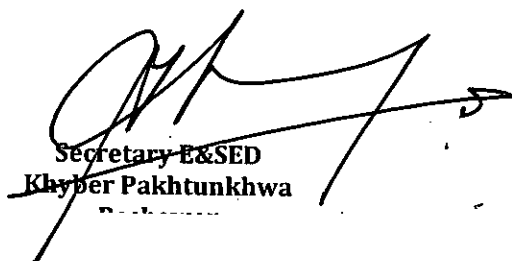
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2012 on 30-01-2013 by this Honorable Tribunal and Mr. Muhammad Haroon had filed Civil Petition No 360 of 2013 before the August Supreme Court of Pakistan against the order dated 30-01-2013, passed by this Honorable tribunal and leave to appeal was refused and petition was dismissed on 29/08/2013. (Copies of the Act of 2012, order of this Honourable Tribunal dated 30-01-2013 & Judgment of August Supreme Court of Pakistan dated 29-08-2013 are annexed as Annexure "A", "B" & "C" respectively).

2. In reply to Para No. 2, of the application it is submitted that comprehensive reply has already been given in Para No. 1.
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8. That the Para No. 8, of the application it is submitted that complete reply has already been given in Para No. 1 & 6.

Keeping in view of the above facts and circumstances it is very humbly requested that the instant application may please be dismissed.


Secretary Finance
Khyber Pakhtunkhwa


Secretary E&SED
Khyber Pakhtunkhwa

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;

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.

del
del

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.

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. I of 2012), is hereby repealed.

BY ORDER OF MR. SPEAKER

PROVINCIAL ASSEMBLY OF KHYBER
PAKHTUNKHWA

(AMANULLAH)
Secretary

Provincial Assembly of Khyber Pakhtunkhwa

BEFORE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR



Implementation Application No 47 of 2012.

IN

Dr. A. Farooq
District Judge
No. 177
Date 23-02-2012

Service Appeal No 506 of 2009.

Muhammad Haroon S/O Haider Khan, (Ex PTC teacher), C.T Government High School Sirikot, Tehsil Ghazi District Haripur. R/O Village Billah, Post Office Sirikot, Tehsil Ghazi District Haripur.

Petitioner

VERSUS

- 1 Executive District Officer, Elementary & Secondary Education Department District Haripur.
- 2 District Coordination Officer, Haripur.
- 3 District Accounts Officer, Haripur.
- 4 Director of (Elementary & Secondary Education) Department, Khyber Pakhtunkhwa Peshawar.
- 5 Secretary to Government of (Elementary & Secondary Education), Department Peshawar.
- 6 Secretary to Government of Khyber Pakhtunkhwa through Secretary Finance Department Peshawar.

Respondents

ATTESTED
SECRETARY
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

PETITION FOR IMPLEMENTATION OF JUDGMENT DATED 12/05/2009 PASSED IN SERVICE APPEAL NO 506 OF 2009 BY THIS HONOURABLE TRIBUNAL WHEREBY PETITINER HAS GRANTED SIX (06) ADVANCE INCREMENTS OF M.A WITH EFFECT FROM 18/10/1994 ALONGWITH ALL BACK BENEFITS



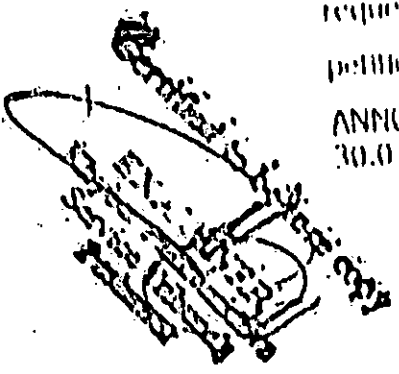
10/01/2013

Petitioner in person, Mr. Khurshid Ali, S/O. Ad. and 'Syed Hakeem' AAO with AAO for the Government. Petitioner stated that the matter pertains to promotion and such matter be taken up 2011, SO42, 718. The learned AAO stated that affairs on advance increment has already been withdrawn on promulgation of Yashwantrao Chavan Creation of Payment of Increas on Increas Increments on Higher Educational Qualification Act, 2012 and requested for rejection of the petition. In view of the above the petition is filed to be consigned to the record.

ANNOUNCED
30.01.2013.

*Sd/-
M. J. Khan*

*Sd/-
M. J. Khan*



Date of Presentation of Application 2-5-2013
 Number of 800
 Copies 6
 Urgent 2
 Total 8
 Name of [Signature]
 Date of Application 2-5-2013
 Date of Receipt of Copy 2-5-2013

Annex "C"

(10)

C-9

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. 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 Arrears 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 PFA 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

C-104 of 2013
111
110

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.

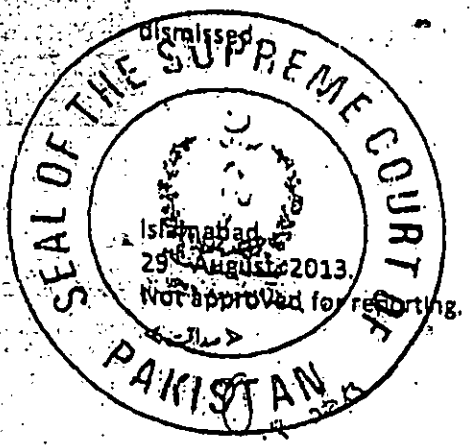
(2) Any order made, instruction issued, decision, judgment or order of any Court or Tribunal including a High Court or the Supreme Court, implemented immediately before the commencement of this Act, shall be deemed to have been validly made, issued and implemented by the date of commencement of this 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

Supintendent
Supreme Court of Pakistan
ISLAMABAD

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

10565/13

Case No.	Civil/Criminal
Date of Presentation	28/8/13
No. of Writs	1
No. of Parties	2
Registration Fee Rs.	5.00
Copy Fee (Rs.)	5.00
Copy Fee (Rs.)	10.00
Date of Copy	4/9/13
Date of Receipt	4/9/13
Received By	<i>[Signature]</i>

Civil Petition Nos. 327-P/2017, 409-P/2017, 420-P/2017, 732-P/2019, 733-P/2019.
(As opposed from the Government/other cases 04.04.2017, 03.06.2019 of the Federal High Court, Peabawar passed by W.P. No. 2653/14, 913, 5714, 7412/14, 3031-P/12, 1182-P/11)

Government of K.P through Secretary Establishment Department, Peabawar and others
-VERSUS-
Petitioner(s)

Saeedullah and others (In C.P. 397-P/2017)
Muhammad Iqbal and others (In C.P. 409-P/2017)
Mohi Muhammad and others (In C.P. 420-P/2017)
Ayaz Ullah Khan and others (In C.P. 732-P/2019)
Muhammad Numan and others (In C.P. 733-P/2019)
Respondent(s)

For the petitioner(s) (in all cases): -Barrister Qasim Wadood, Addl AG

For the respondent(s) N.R.

Date of Hearing 18.12.2019

ORDER

UMAR ATA BANDIAL, J. - Learned Additional

Advocate General submits that the entitlement to additional increments on account of higher qualifications were granted to employees of the Provincial Government vide Notification dated 11.08.1991. That entitlement was revoked by a Notification dated 27.10.2001. This withdrawal of entitlement

STED
Associate

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was reiterated in a Notification dated 03.01.2009. Thereafter, in 2012 the Khyber Pakhtunkhwa Cessation of Payment of Arrears on Advance Increments on Higher Educational Qualification Act, 2012 ("Act") was promulgated which was made retrospective from 2001. In the present cases, the impugned judgment by the learned High Court has ignored firstly, the fact that the petitions for the claimed increments were filed two years after the afore-noted law was promulgated. Secondly, it has ignored the Notification dated 27.10.2001 whereby the basis of the claim stood erased and, accordingly, the Act was effective in its retrospective application.

2. The points raised have some weight, therefore, leave is granted, *inter-alia*, to consider the same. In the meantime, the impugned judgment shall remain suspended.

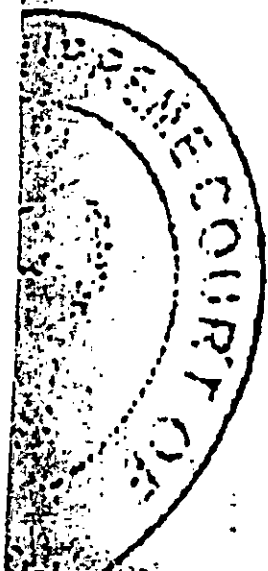
Sd/-J

Sd/-J

Sd/-J

Verified to be True Copy

Senior Court Associate
Supreme Court of Pakistan
Islamabad



Islamabad
18/12/2019

BEFORE THE HONORABLE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

CM No. 86/2020

IN

Appeal No. 1276/2007

Wajid Ali Shah.....Applicant

VERSUS

Accountant General Khyber Pakhtunkhwa & othersRespondents

SERVICE APPEAL

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Sr.#	Description	Page No's	Annexure
1	Comments/Reply	01 to 03	
2	Copies of Khyber Pakhtunkhwa Cessation of Payment of Arrears on Advance Increments on Higher Education Qualification Act No. IX of 2012	04 to 06	"A"
3	Copy of order of Honourable Tribunal dated 30-01-2013	07 to 08	"B"
4	Judgment of August Supreme Court of Pakistan dated 29-08-2013	09 to 11	"C"
4	Copy of the order dated 18-12-2019 of August Supreme Court of Pakistan	12 to 13	"D"

BEFORE THE HONORABLE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

CM No. 86/2020

IN

Appeal No. 1276/2007

Wajid Ali Shah.....Applicant

VERSUS

Accountant General Khyber Pakhtunkhwa & othersRespondents

SERVICE APPEAL

REPLY TO APPLICATION DATED 12-03-2020 ON BEHALF OF RESPONDENTS
NOS. 3 & 4.

Respectfully Sheweth:-

Reply to Application on behalf of respondents are submitted as under:-

Preliminary Objections:-

1. That the applicant has no cause of action to file the instant application.
2. That the judgments of August Supreme Court of Pakistan and this Honourable Tribunal have lost their efficacy for the purpose of implementation by clear intendment through sections 1 & 2 of Khyber Pakhtunkhwa Cessation of Payment of Arrears on Advance Increments on Higher Educational Qualification Act No. IX of 2012.
3. The Act was passed by the Provincial Assembly and assented by the Governor Khyber Pakhtunkhwa. The answering respondents are bound to obey the will of the legislature & cannot deviate from any provision of enactment.
4. 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, application is not tenable.
5. That the applicant was at liberty to join service after due process of law equivalent to his qualification & the Government is not bound to pay advance increment.
6. **That this Tribunal has already dismissed the service appeal No. 430/2015 of applicant on 19-10-2017 hence, the Principle of Estoppel is**

- 7. That the instant application is time barred. Hence liable to be dismissed.
- 8. That the instant application is against the notification dated 27-10-2001 whereby, the basis of the claim of applicant stood erased. In the year 2012 the Khyber Pakhtunkhwa Cessation of Payment of Arrears on Advance Increments on Higher Educational Qualification Act No. IX of 2012 was promulgated which was made retrospective from 2001. Hence, the instant application is liable to be dismissed on this score alone.
- 9. That the instant application is not maintainable in its present form.
- 10. That the applicant has filed the present application just to pressurize the respondents.
- 11. That the August Supreme Court of Pakistan suspended the impugned judgment on 18-12-2019 regarding the Advance Increments on account of higher qualification in CP No. 397-P/2017, 409-P/2017, 420-P/2017, 72-P/2019 & 733-P/2019.
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- 13. That the applicant is estopped to sue due to his own conduct.
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- 16. That the respondents seek leave of this Honorable Tribunal to raise additional points at the time of arguments.

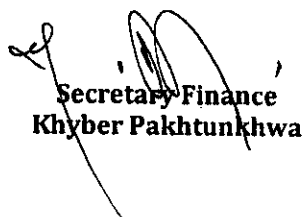
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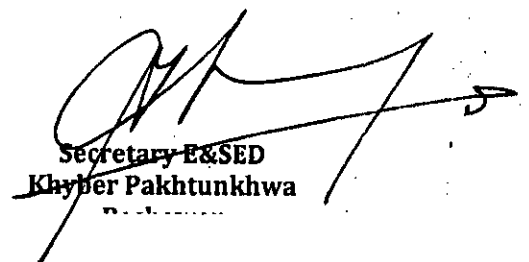
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2012 on 30-01-2013 by this Honorable Tribunal and Mr. Muhammad Haroon had filed Civil Petition No 360 of 2013 before the August Supreme Court of Pakistan against the order dated 30-01-2013, passed by this Honorable tribunal and leave to appeal was refused and petition was dismissed on 29/08/2013. (Copies of the Act of 2012, order of this Honourable Tribunal dated 30-01-2013 & Judgment of August Supreme Court of Pakistan dated 29-08-2013 are annexed as Annexure "A", "B" & "C" respectively).

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Keeping in view of the above facts and circumstances it is very humbly requested that the instant application may please be dismissed.


Secretary Finance
Khyber Pakhtunkhwa


Secretary E&SED
Khyber Pakhtunkhwa

EXTRAORDINARY

GOVERNMENT



REGISTERED NO. PIII

G A Z E T T E

KHYBER PAKHTUNKHWA

Published by Authority

PESHAWAR, TUESDAY, 15TH MAY, 2012.

PROVINCIAL ASSEMBLY SECRETARIAT
KHYBER PAKHTUNKHWA

NOTIFICATION

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(KHYBER PAKHTUNKHWA ACT NO. IX OF 2012)

*(first published after having received the assent of the Governor of the Khyber
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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;

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.

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. I of 2012), is hereby repealed.

BY ORDER OF MR. SPEAKER

PROVINCIAL ASSEMBLY OF KHYBER
PAKHTUNKHWA

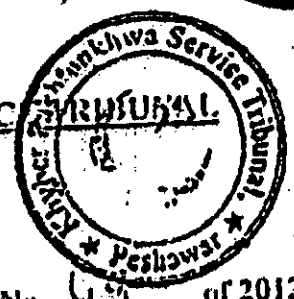
(AMANULLAH)

Secretary

Provincial Assembly of Khyber Pakhtunkhwa

Amx-15 B (8) 7

**BEFORE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR**



Implementation Application No 64 of 2012.

IN

Handwritten notes: 177, 23-02-2012

Service Appeal No 506 of 2009.

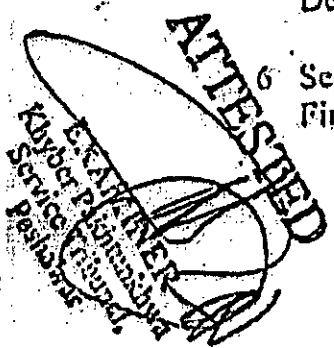
Muhammad Haroon S/O Haider Khan, (Ex PTC teacher), C.T Government High School Sirikot, Tehsil Ghazi District Haripur. R/O Village Billah, Post Office Sirikot, Tehsil Ghazi District Haripur.

Petitioner

VERSUS

- 1 Executive District Officer, Elementary & Secondary Education Department District Haripur.
- 2 District Coordination Officer, Haripur.
- 3 District Accounts Officer, Haripur.
- 4 Director of (Elementary & Secondary Education) Department, Khyber Pakhtunkhwa Peshawar.
- 5 Secretary to Government of (Elementary & Secondary Education), Department Peshawar.
- 6 Secretary to Government of Khyber Pakhtunkhwa through Secretary Finance Department Peshawar.

Respondents



PETITION FOR IMPLEMENTATION OF JUDGMENT DATED 12/05/2009 PASSED IN SERVICE APPEAL NO 506 OF 2009 BY THIS HONOURABLE TRIBUNAL WHEREBY PETITIONER HAS GRANTED SIX (06) ADVANCE INCREMENTS OF M.A WITH EFFECT FROM 18/10/1994 ALONGWITH ALL BACK BENEFITS

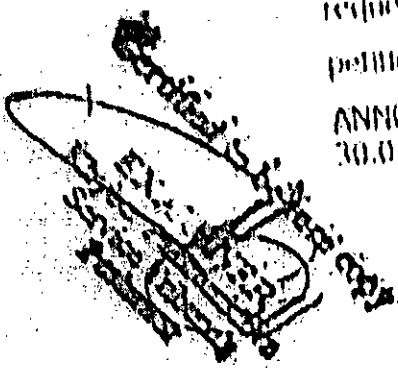


Petitioner in person, Mr. Khurshid Ali, S/O. Ad. and Ayed Hashshah, AIG with AIG for the Government. Petitioner stated that the matter pertains to limitation rule against such matter be ruled by 2011, SCAP, 718. The learned AIG stated that arrears on advance increment has already been withdrawn on promulgation of Khazbe Pakhtunkhwa Creation of Payment of Arrears on Advance Increments on Higher Educational Qualification Act, 2012 and requested for rejection of the petition. In view of the above the petition is filed to be consigned to the record.

ANNOUNCED
30.01.2013.

*Sd/-
Mansoor*

*Sd/-
Mansoor*



Date of Presentation of Application 2-5-2013
 Number of Petitions 300
 Copies 6
 Originals 2
 Total 8
 Name of Officer [Signature]
 Date of Copying 2-5-2013
 Date of Receipt 2-5-2013

Anx. "C"

(10)

C-9

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. 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 Advances 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 PfA 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

Signature
Secretary
Supreme Court
Islamabad

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

10565/13

Case No.	Civil/Criminal
Date of Filing	28/8/13
No. of W.C.s	710
No. of Petitions	5
Registration Fee Rs.	5.00
Copy Fee (Rs.)	5.00
Cost of Copy	10.00
Cost of Stamp	47.91
Cost of other	5.00
Total	87.91

Civil Petition Nos. 397-P/2017, 409-P/2017, 420-P/2017, 733-P/2019, 733-P/2019
(As agreed from the Judgment/Order dated 02.08.2017, 03.08.2019 of
the Honorable High Court, Peshawar passed in W.P. No. 2533/14,713,
27.10.2001, 2001-P/1112-111)

Government of N.P through Secretary Establishment Department,
Peshawar and others

Petitioner(s)

VERSUS

Saeedullah and others	(In C.P. 397-P/2017)
Muhammad Iqbal and others	(In C.P. 409-P/2017)
Mohi Muhammad and others	(In C.P. 420-P/2017)
Ayaz Ullah Khan and others	(In C.P. 733-P/2019)
Muhammad Rehman and others	(In C.P. 733-P/2019)

Respondent(s)

For the petitioner(s)
in all cases:

Barrister Qasim Wadood, Addl. AG

For the respondent(s)

N.R.

Date of Hearing

18.12.2019

ORDER

UMAR ATA BANDIAL, J.— Learned Additional

Advocate General submits that the entitlement to additional increments on account of higher qualifications were granted to employees of the Provincial Government vide Notification dated 11.08.1991. That entitlement was revoked by a Notification dated 27.10.2001. This withdrawal of entitlement

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Associate

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was reiterated in a Notification dated 03.01.2009. Thereafter, in 2012 the Khyber Pakhtunkhwa Cessation of Payment of Arrears on Advance Increments on Higher Educational Qualification Act, 2012 ("Act") was promulgated which was made retrospective from 2001. In the present cases, the impugned judgment by the learned High Court has ignored firstly, the fact that the petitions for the claimed increments were filed two years after the afore-noted law was promulgated. Secondly, it has ignored the Notification dated 27.10.2001 whereby the basis of the claim stood crased and, accordingly, the Act was effective in its retrospective application.


2. The points raised have some weight, therefore, leave is granted, *inter-alia*, to consider the same. In the meantime, the impugned judgment shall remain suspended.

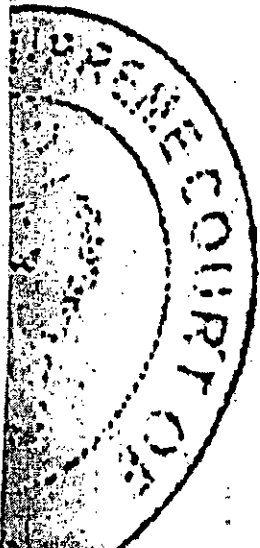
Sd/-J

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certified to be True Copy


 Senior Court Associate
 Supreme Court of Pakistan
 Islamabad



Islamabad
 13/12/2019

(WAKALATNAMA)

IN THE Service Tribunal KPK Peshawar
WASID ALI SHAH

Plaintiff
Petitioner
Applicant

VERSUS

Accountant-General KPK Peshawar & Others

Defendant
Respondent

Subject matter Service Rules (Implementation)

On behalf of Wasid Ali Shah

KNOW ALL TO WHOM PRESENT shall come that I/ we, the undersigned hereby appoint and continue

Sardar Muhammad Ghazi

Senior Advocate Supreme Court of Pakistan
Cell No.0300.8562850

(Here matter called the advocate) to be above for the in the above-mentioned case to do all the following acts deeds and things or any of them, that is to say: -

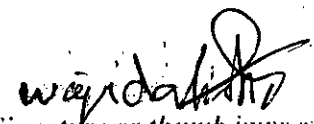
1. To act, appear and plead in the above-mentioned case in this Court.
2. To present pleadings, appeals, cross-objections or petition for executions, review, revision, withdraw, compromise or other petitions or affidavits or other documents as shall be deemed necessary or advisable by him/ them for the said case at its all stages.
3. And I/ we hereby confirm and ratify all present and future acts and proceedings taken by the said Advocate in this case.
4. I/ we authorize the said Advocates to withdraw/ receive on my/ our behalf all sums and amounts deposited on my/ our account in the above noted matter
5. And I/ we hereby agrees no to hold the Advocates or his substitute responsible for the result of the said case in consequence of his absence from the court when the said case is called up for hearing.
6. And I/ we hereby that in the event of the whole or any part of the fee agreed to me/ us to be paid to the Advocates remaining unpaid he shall be entitled to withdraw from the prosecution of the said case until the same is paid and fee paid partially/ wholly is non-refundable in any case whatsoever.
7. I/we have hereunto set my/ or and to the presents the contents of which have been explained to and understood by me/ us. This 12 day of Rad, 2020.

Accepted subject to the terms and condition mentioned above

Accepted



Sardar Muhammad Ghazi


Signature or thumb impression

Wasid Ali Shah