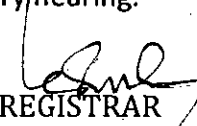



Form- A
FORM OF ORDER SHEET

Court of _____

Case No. 582/2014

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

17.11.2014


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


Reader

20.4.2015

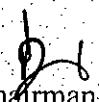
Appellant in person present. Record perused according to which this Tribunal has granted advance increments to appellant vide judgment dated 12.5.2009 which was annulled through enactment passed by Provincial Assembly as the Khyber Pakhtunkhwa Cessation of Payment of Arrears on Advance Increments on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

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


Chairman
Camp Court A/Abad

15.6.2015

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


Chairman
Camp Court A/Abad

19.08.2015

Appellant in person and Mr. Irshad Muhammad, SO alongwith Mr. Muhammad Tahir Aurangzeb, GP for all respondents present. Written reply not submitted. Requested for adjournment. Last opportunity granted. Adjourned to 16.11.2015 for written reply/comments before S.B at camp court A/Abad.


Chairman
Camp Court Abbottabad

16.11.2015

Appellant in person and Mr. Muhammad Irshad, S.O for respondent No.1 alongwith Mr. Muhammad Siddique, Sr.G.P for all respondents present. Comments submitted by respondent No.1 while learned Sr.G.P requested for further adjournment on behalf of remaining respondents. Last opportunity extended. To come up for written reply/comments on behalf of remaining respondents No.2 to 6 on 17.2.2016 before S.B at Camp Court A/Abad.


Chairman
Camp Court A/Abad.


17.02.2016

Appellant in person, M/S Muhammad Arshad, S.O and Muhammad Irshad, S.O alongwith Mr. Muhammad Saddique, Sr.G.P for respondents present. Written reply not submitted despite last opportunity. Requested for further adjournment. Last opportunity is extended subject to payment of cost of Rs. 500/- which shall be borne by respondents No.2 to 6 from their own pockets. To come up for written reply/comments and cost on 21.4.2016 before S.B at Camp Court A/Abad.


Chairman
Camp Court A/Abad

21.04.2016

Appellant in person and M/S Irshad Muhammad, SO, Muhammad Arshad, SO and Asif Mahmood, Asstt. alongwith Mr. Muhammad Siddique, Sr.GP for the respondents present. Written reply by respondents No. 2 to 5 submitted. Written reply of respondent No. 1 has already been submitted. The appeal is assigned to D.B for rejoinder and final hearing for 16.05.2016 alongwith connected appeals No. 577/2016 etc. at camp court, Abbottabad.


Chairman
Camp court, A/Abad

16.05.2016

Appellant in person and Mr. Muhammad Arshad, SO alongwith Mr. Muhjammad Siddique Sr.GP for the respondents present. Rejoinder submitted. Appellant requested for adjournment. Adjourned for final hearing to 17.08.2016 before D.B at camp court, Abbottabad.


Member


Chairman
Camp court, A/Abad,

19.08.2015


Appellant in person, M/S Irshad Muhammad, SO, Sohail Ahmad, Assistant and Haroon Khan, Senior Auditor alongwith Mr. Muhammad Tahir Aurangzeb, GP for all respondents present. Written reply not submitted. Requested for adjournment. Last opportunity granted. Adjourned to 16.11.2015 for written reply/comments before S.B at camp court A/Abad.


Chairman

Camp Court Abbottabad

16.11.2015


Appellant in person, M/S Irshad Muhammad, S.O and Sohail Ahmad Zeb, Assistant alongwith Mr. Muhammad Siddique, Sr.G.P for respondents present. Para-wise comments submitted. The appeal is assigned to D.B for rejoinder and final hearing for 16.5.2016 at Camp Court A/Abad.


Chairman

Camp Court A/Abad.

16.05.2016

Appellant in person and Mr. Muhammad Arshad, SO alongwith Mr. Muhjammad Siddique Sr.GP for the respondents present. Rejoinder submitted. Appellant requested for adjournment. Adjourned for final hearing to 17.08.2016 before D.B at camp court, Abbottabad.


Member


Chairman

Camp court, A/Abad,

17.08.2016

Appellant in person, M/S Zubair Ali, ADO, Zahid Gul, ADO, Malak Haroon, AAO alongwith Mr. Muhammad Siddique, Sr.GP for the respondents present. Informed the Tribunal that the issue pertaining to validity of Khyber Pakhtunkhwa Cessation of Payment of Arrears on Advance Increments on Higher Educational Qualification Act, 2012 is pending before the august Supreme Court of Pakistan. Requested for adjournment. Adjourned for final hearing on 15.2.2017 before the D.B at camp court, Abbottabad.



Member



Chairman
Camp court, A/Abad.

15.02.2017

Appellant in person, M/S Muhammad Irshad, SO, Saquib, Assistant and Anwar Ahmad, Assistant alongwith Mr. Muhammad Siddique, Sr.GP for the respondents present. Due to non-availability of D.B arguments could not be heard. To come up for final hearing on 22.08.2017 before the D.B at camp court, Abbottabad.



MEMBER

Camp Court, A/Abad

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Abbottabad

Camp Court, A/Abad

582/14


22.08.2017

Appellant *pro se* and Mr. Muhammad Bilal, DDA alongwith Amjad Ali, Assistant and Malak Haroon, AAO for the respondents present.

After listening to the arguments of the parties at some length, this Tribunal has reached the conclusion that the issue in the appeal involves interpretation of the Articles of the Constitution of Islamic Republic of Pakistan as the appellant has challenged the vires of a law promulgated by the Provincial Assembly i.e. Act No. IX of 2002.

In view of order XXVII-A of the Code of Civil Procedure, 1908 notice to the Advocate General, Khyber Pakhtunkhwa, Peshawar is necessary. Therefore, notice may be issued to Advocate General, Khyber Pakhtunkhwa, Peshawar as aforesaid for his appearance on 19.10.2017 before D.B at camp court, Abbottabad.



Member


Chairman
Camp court, A/Abad

19.10.2017

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


Member


Chairman
Camp court, A/Abad.

21.11.2017

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



Member



Chairman
Camp court, Abbottabad.

18.01.2018

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



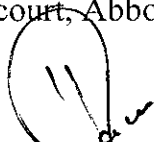
Member



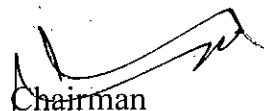
Chairman
Camp court, A/Abad.

21.02.2018

Appellant in person and Addl. AG alongwith Sohail Ahmad Zeb, ADO for the respondents present. Appellant seeks adjournment. To come up for arguments on 21.03.2018 before the D.B at camp court, Abbottabad.



Member



Chairman
Camp court, A/Abad.

582/14

21.03.2018

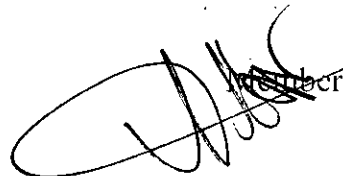
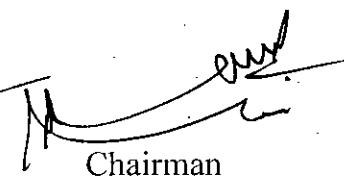
Appellant present in person and Mr. Usman Ghani, District Attorney alongwith Saquib Shahzad, Assistant and Malak Muhammad Haroon, AAO for the respondents present.

The appellant submitted an application for withdrawal of the present service appeal with permission to submit fresh implementation petition for implementation of the judgment dated 12.05.2009 passed by this Tribunal.

The learned District Attorney objected to that part of this application in which the appellants seeks permission for implementation of the judgment of this Tribunal, inter-alia, on the grounds of limitation and resjudicata. In this appeal, the appellant has challenged the vires of Act No. IX of 2012 and that vires to the extent of retrospectivity has been decided by the Worthy Peshawar High Court in Writ Petition No. 913-P/2014, decided on 08.6.2017. According to the appellant after that judgment his grievance has been redressed and he can file a fresh application for the execution of the judgment of 2009 which was not executed due to that Act.

Since a question of law is involved which can be determined by the executing court only. However, this Bench has no objection on filing of execution petition subject to all legal and factual exceptions.

Consequently, the present appeal is dismissed as withdrawn. The appellant can seek all his legal rights available to him under the law. File be consigned to the record room.

Chairman
Camp court, A/Abad


ANNOUNCED
21.03.2018

The appeal of Mr. Muhammad Fayaz Awan son of Muhammad Urfan Junior Pharmacy Technician Ayub Teaching Hospital A.Abad received today i.e. on 10.04.2014 is incomplete on the following scores which is returned to the appellant for completion and resubmission within 15 days.

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

No. 593 /S.T,

Dt. 11/04 /2014.


REGISTRAR
SERVICE TRIBUNAL
KHYBER PAKHTUNKHWA
PESHAWAR.

Mr. Muhammad Fayaz Awan appellant.

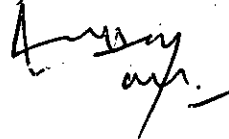
Resubmitted with the remarks/request that impugned Act (KPK ACT NO IX OF 2012 dated 15/05/2012) was promulgated and appellant withdrew his execution petition pending before KPK Service Tribunal, with a view to challenge the vires of said Act through Writ Petition.

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

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

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

dated


Muhammad Rizq Awan
Appellant.

**BEFORE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR.**

Service Appeal No: 582 of 2014

Muhammad Fayaz Awan S/O Muhammad Urfan, Junior Pharmacy Technician, Ayub Teaching Hospital, Abbottabad. R/O: House No K: 240/10, Kunj Jadeed, Abbottabad

Appellant

Versus

Government of Khyber Pakhtunkhwa through Secretary Finance Department Peshawar and 05 Other.

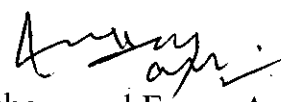
Respondents

SERVICE APPEAL

INDEX

S.No	DESC: OF DOCUMENTS	ANNEXURES	PAGE NO
1	Memo; of Service Appeal	----	1 to 5
2	Copy of Service Appeal No 760 of 2008	A	6 to 9
3	Copy of relevant pages of Judgment Dated 12/05/2009	B	10 to 14
	Copy of Act (KPK ACT NO IX OF 2012 dated 15/05/2012)	C	15 to 17
4	Copy of Service Tribunal Order passed in execution Petition	D	18
5	Copy of Peshawar High Court order dated 25/03/2014	E	19 to 27

Dated 05/04/2014


(Muhammad Fayaz Awan)
Appellant in person

①

**BEFORE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR.**

Service Appeal No: 582 of 2014

Muhammad Fayaz Awan S/O Muhammad Urfan, Junior Pharmacy Technician, Ayub Teaching Hospital, Abbottabad. R/O: House No K: 240/10, Kunj Jadeed, Abbottabad.

Versus

Appellant
548
10-4514

- 1 Government of Khyber Pakhtunkhwa through Secretary Finance Department Peshawar.
- 2 Government of Khyber Pakhtunkhwa through Secretary Health Department, Peshawar.
- 3 Director General, Health & Services Khyber Pakhtunkhwa, Peshawar.
- 4 Chief Executive, Ayub Medical Complex, Abbottabad.
- 5 Medical Superintendent, Ayub Teaching Hospital, Abbottabad.
- 6 Director Finance, Ayub Teaching Hospital, Abbottabad.

Respondents

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

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

re-submitted to the
and filed.

10/4/14
24/4/14

JUSTICE AND INEFFECTIVE UPON THE APPELLANT'S RIGHTS OF ADVANCE INCREMENTS, GRANTED IN SERVICE APPEAL NO 760 OF 2008 ACCEPTED BY KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PASSED ON 12/05/2009 ALONG WITH ALL BACK BENEFITS WITH EFFECT FROM HIS RELEVANT DATE OF CLAIM.

PRAYER:-

ON ACCEPTANCE OF THE INSTANT SERVICE APPEAL, DECLARED THE SAID ACT (KHYBER PAKHTUNKHWA ACT NO.IX of 2012) AS ILLEGAL UNCONSTITUTIONAL INEFFECTIVE UPON THE APPELLANT'S RIGHTS OF ADVANCE INCREMENTS AND RESPONDENTS BE GRACIOUSLY DIRECTED TO GRANT RELEVANT ADVANCE INCREMENTS (ALREADY DECIDED ON 12/05/2009) TO THE APPELLANT WITH EFFECT FROM THEIR RELEVANT DATES OF CLAIMS WITH ALL BACK BENEFITS.

Respectfully Sheweth,

FACTS

- 1) That appellant being junior pharmacy Technician was granted advance Increments on his higher qualification (six advance Increments of MA/MSc instead of two and four advance Increments of BA/BSc instead of two) on the basis of acceptance of his individual Service Appeal by this Honourable Service Tribunal and passed a consolidated judgment on 12/05/2009 at Camp Court Abbottabad. Copy of service appeal and relevant pages of Judgment is annexed as **"Annexure "A" & "B"**.
- 2) That when respondents' after passing long time' did not implement the existing judgment of Service Tribunal, appellant filed execution petition before this Tribunal, but an Act "Khyber Pakhtunkhwa cessation of payment of arrears on advance increments on higher education qualification Act" (KPK ACT NO IX OF 2012 dated 15/05/2012) was promulgated/published by the respondents. Copy of Act no IX is annexed as **Annexure "C"**.

- 3) That appellant withdrew his execution petition with the reason, to challenge the vires of impugned Act through Constitution Petition (Writ Petition) before Peshawar High Court. Copy of Service Tribunal Order passed in execution Petition is annexed as **Annexure "D"**.

- 4) That appellant and others challenged the vires of impugned Act through the Writ petition before Peshawar High Court Abbottabad Bench, which was decided/disposed of with the law relating to jurisdictional matters in the prevailing issue, and High Court held that remedy by way of service appeal before the Service Tribunal is available to the appellant against the impugned Act. Copy of High Court Order is annexed as **Annexure "E"**

- 5) That in pursuance of law as decided by High Court in appellant's Writ Petition, the instant service appeal is being filed with out departmental appeal, as under the law, it is not possible because there is no appellate departmental authority available, above the Governor KPK who is the promulgating/issuing final authority of impugned Act, Hence this Service appeal inter alia on the following Grounds.

Grounds

- a) That it is undoubted fact that respondents illegally snatched the legal rights of the appellant in an uncivilized way in a very haste manner, which is against the equity and there is no single example available in the civilized society.

- b) That it is admittedly proved that Service Tribunal passed its judgment on 12/05/2009 and respondents did not implement it after passing long period of 04 years, moreover Service Tribunal accepted the 267 service appeals through said single judgment dated 12/05/2009, while 90 % of cases has already been implemented, thus gross

discriminatory treatment is involved in the case of appellant and the said Act is against Article 25 of the Constitution.

- c) That the action of respondents is admittedly arbitrary capricious unjust and against all norms of justice and against Tribunal Judgment and order as well as constitution of Pakistan.
- d) That impugned Act (Khyber Pakhtunkhwa Act No IX) is admittedly against the Article 25 of the Constitution as well as Constitution it self, according to said Act advance increments taken before issuance of Act (15/05/2012) would be legal, correct and valid but the same rights of advance increments (execution Petitions) would stand abated as per impugned Act, Such kind of target date of any Act/Notification /Memorandum/letter is not only illegal, against law but also against the Constitutional rights of the petitioners and in this respect the Learned larger bench of Supreme Court decided the same matters in **(1991 SCMR 1041)** (relevant at para 33 page 1092) thus liable to be declared illegal.
- e) That under the law provincial assembly has no power to change the nature of constitutional rights/Article nor pass any Act which is against to any Article of Constitution and the impugned Act cannot be passed in the presence of Article 25 of the Constitution.
- f) That Constitution cannot allow pick and choose types of colourful activities between the citizens thus impugned Act is unconstitutional.
- g) That it is an admitted fact that under question Act is the matter of great public importance.
- h) That appellant, who is once again dragged into litigation, that his grievances have been solved completely by this Honourable Tribunal by accepting his service appeal on 12/05/2009, but respondents published an illegal impugned Act, thus the conduct of the respondents is uncivilized in the civilized society and as such requires

indulgence of this Honourable Tribunal by awarding appropriate punishment to the respondents

It is, therefore, respectfully prayed that on acceptance of the instant Service appeal, this Honourable Tribunal may please be declared the said Act (Khyber Pakhtunkhwa Act No. IX of 2012) as illegal unconstitutional and respondents be graciously directed to grant advance increments of (B.A/B.Sc & M.A/M.Sc) to the appellant with effect from his relevant dates of claims, decided in service appeal no 760 of 2008, with all back benefits in the interest of natural justice.

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

Dated 05/04/2014

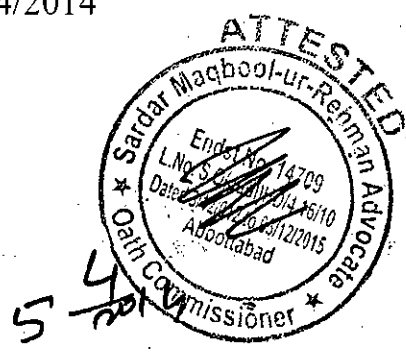
Muhammad Fayaz Awan
(Muhammad Fayaz Awan)
Appellant in person

Affidavit

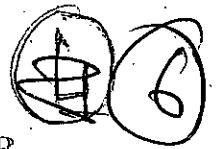
I, Muhammad Fayaz Awan S/O Muhammad Urfan, Junior Pharmacy Technician, Ayub Teaching Hospital, Abbottabad. R/O: House No K: 240/10, Kunj Jadeed, Abbottabad, do here by affirm on oath that contents of instant appeal is correct and true according to my best knowledge and belief and nothing has been suppressed from this Honourable Tribunal and this instant appeal is first appeal & same nature of any other appeal is not pending before Honourable Tribunal.

Dated 05/04/2014

Muhammad Fayaz Awan
(Muhammad Fayaz Awan)
Appellant in person
DEPONENT



Annexure A



BEFORE NWFP SERVICE TRIBUNAL PESHAWAR.

Service Appeal No: 76 of 2008

Muhammad Fayaz Awan S/O Muhammad Urfan, Junior Pharmacy Technician, Ayub Teaching Hospital, Abbottabad. R/O: House No K: 240/16, Kunj Jadeed, Abbottabad

Appellant

VERSUS

- 1 Medical Superintendent, Ayub Teaching Hospital, Abbottabad.
- 2 Director Finance, Ayub Teaching Hospital, Abbottabad.
- 3 Chief Executive, Ayub Medical Complex, Abbottabad.
- 4 Director General, Health & Services, N.W.F.P, Peshawar.
- 5 Secretary to Govt of N.W.F.P Health Department, Peshawar.
- 6 Secretary to Govt of N.W.F.P, Finance Department, Peshawar

Respondents

Appeal under Section 4 of NWFP Service Tribunal Act 1974, against the impugned Order dated 23/05/2008, issued under no 7054 Estt/PF/ATD by respondent no 01, whereby appellant's representation dated 21/04/2008, For grant of 06 Six advance increments of M.A Instead of 2(already granted) And 04 Four advance increments of BA instead of 02 (already given) with effect from 01/06/1991, with all back benefits on the basis of Para 5(i) (b) of the Notification No FD (PRC) 1-1 /89 dated 11-08-1991 issued by(respondent No 6) Finance Department N.W.F.P, Peshawar, and in pursuance of Judgments/Law passed by Supreme Court of Pakistan, was refused/dismissed.

PRAYER

It is respectfully prayed before this Honourable Tribunal that the instant appeal may gracious be accepted, impugned order dated 23/05/2008, issued by respondent No 01 may be set aside and the appellant may be granted 06 advance increments of MA instead of 02 and 04 advance increments of BA instead of 02 w.e.f. 01/06/1991 (total 06 more) with all back benefits

Respectfully Sheweth,

FACTS

- 1) That appellant was appointed as a Dispenser in Health Department on 03/10/1985 in BPS No 06, after that post of applicant was upgraded in BPS No 09 and renamed as Junior Pharmacy Technician on the basis of Service Structure Notification dated 25/08/2006. Now a days applicant is working as Junior Pharmacy Technician in BPS No 09 at Ayub Teaching Hospital, Abbottabad. A Certificate in this respect issued by Concerned authority is Annexed as Annexure A.
- 2) That appellant was passed his F.A Examination before his Service, and being F.A he was granted 02 Advance Increments, similarly appellant during his service as Dispenser, was passed his BA Examination on 06/11/1987 and was entitled for 04 advance increments but was granted only 02, appellant was also passed his M.A examination on 25/03/1990 and he was entitled for six 06 advance increments but only given 02 Advance Increments. Due to Entitlement applicant refers Para 5 (1) (b) of the Notification No FD(PRC)1-1/89 dated 11/08/1991, issued by (respondent no 06) Finance Department, N.W.F.P, Peshawar but the same was not given by the respondents in their office routine matters until now. Copy of said Notification is Annexure B.
- 3) That appellant being Dispenser in Health Department was/is a member of Civil Employees (BPS-1-15) of the Provincial Government of N.W.F.P and was/is entitled advance increments in pursuance of Notification 11/08/1991 referred above, whose Para # 5, Clause (b) caters for the grant of Six Advance Increments Instead of 02 on attaining M.A/M.Sc and 04 advance increments of BA/B.Sc(instead of 02) against Dispenser post because Prescribed Qualification of the said post was/is also Matric (SSC), So appellant was/is entitled the same and Respondents did not give his Constitutional rights.
- 4) That respondents had wrongly interpreted the Scheme of Advance Increments, given to the Civil Employees at Para No 05 of the Notification referred herein above (Annexure B) and appellant was/is given heavy loss of 06 Advanced Increments. w.e.f. 01/06/1991 (date of application of Notification), appellant was/is entitled for 04 Advanced Increments for B.A and 06 for M.A. but he was only 02 for B.A And also 02 for M.A against the Govt Policy contained in Notification/Circular dated 11/08/1991 was/is passed by N.W.F.P Provincial Assembly in their Budget Session 1991-92.
- 5) That Honourable Federal Service Tribunal Islamabad has already decided the same view on 03/11/1996 in Appeal No 449(R)/96, and after that on 9th September, 2003 Honourable Supreme Court of Pakistan upheld the same

(6) (8)

judgment in her reported judgment (PLD 2004 Supreme Court 77) by dismissing the Appeal No 1432 of 1997, which was filed by the Federal Govt. Copy of Judgment dated 03/11/1996 passed in Appeal No 449(R)/96 by F.S.T. is annexed as Annexure C.

- 6) That now, In the Meanwhile, Honourable Supreme Court Of Pakistan has also decided the same matters/view in CPLA No 525,526 and 590 of 2007 on 19/07/2007, and ultimately declared that Employees (appellant) are also Entitled for their Advanced Increments given in Para 5 (1) of Notification No FD(PRC)1-1/89 Dated 11/08/1991 without any charge/exception. Copies of Supreme Court judgments are annexed as Annexure D & E.
- 7) That appellant in the light of above Judgments of the Supreme Court dated 09/09/2003 & 19/07/2007, submitted his departmental representation to respondent no 1 on 21/04/2008, received it by him under diary no 2244 dated 22/04/2008, which was refused by the respondent no 01, on 23/05/2008 and final/dismissal order was issued. Copy of representation is annexed as Annexure F, and Impugned order is annexed as Annexure G, Hence this appeal inters - alia on the following ground, and appellant's appeal is within 30 days from the refusal/dismissal of his departmental representation.

Grounds

- a) That the impugned order dated 23/05/2008, passed by respondent no 01 on appellant's representation dated 21/04/2008 is arbitrary, unjust, and against all the norms of justice and equity. Hence liable to set aside.
- b) That the impugned order dated 23/05/2008, is against law, facts of the case, also against letter and spirit of the Judgments of Honourable Supreme Court of Pakistan(PLD 2004 Supreme Court 77) and dated 19/07/2007 passed in CPLA No 525.526 & 590 of 2007 and also dated 29/01/2008 in Civil Review Petition No 216 & 217 of 2007.
- c). That the Policy contained in Notification/Circular dated 11/08/1991 at its Para 5 was/is passed by N.W.F.P Provincial Assembly in their Budget Session 1991-92 and then Hon. le Governor approved the same and Finance Department issued the said Circular after completing the legal requirements
- d) That all the Respondents neither have power nor any jurisdiction to change, withheld/deny the Government Policy contained in Circular/Notification dated 11/08/1991 and cannot apply according to their own wishes and whims against the said policy.

- e) That the action of respondents in refusing the grant of advance increments to the appellant on the basis of Circular dated 11/08/1991, violated the Article 25,189 190 of the Constitution.
- f) That the said Circular (**Annexure B**) was/is issued for Civil Provincial Employees of N.W.F.P (BPS-1-15) and appellant being Junior Pharmacy Technician (Health Department) falls under the same and fully entitled for the relief of Advanced Increments of M.A (six) & B.A (four) along with back benefits as claimed by him.
- g) That the case of appellant is the same nature in number of Increments in pursuance of Para 5 (i) of Notification, which was decided by Supreme Court of Pakistan on 19/07/2007 passed in CPLA Nos 525,526 and 590 of 2007 (**Annexure D & E**).
- h) That under the law appellant's case is quite Clear after the Judgment passed in CPLA No 525,526 and 590 of 2007 by Supreme Court, and refusal/dismissal of appellant's representation is illegal, without jurisdiction and unconstitutional.
- i) That there is now no dispute available in the case of appellant as Honorable Supreme Court of Pakistan has decided all the disputed matters involved in the instant appeal on 19/07/2007. (CPLA No 525,526 & 590 of 2007)
- j) That appellant's service appeal is maintainable and appellant's post was/is Dispenser/ Junior Pharmacy Technician and prescribed qualification of the said post was Matric and appellant is now working in BPS # 09 against Junior Pharmacy Technician post and Instant Case falls under Para 5(1) (b) of the Circular dated 11/08/1991 (**Annexure B**)

It is there fore respectfully prayed that while setting aside impugned order dated 23/04/2008 approved/issued by respondent no 01, and appellant's appeal may kindly be accepted and 4 advance increments of BA instead of 02 and 06 advance increments of M.A instead of 02 w.e.f. 01/06/1991, along with all back benefits may graciously be granted to the appellant in the interest of justice.

(Signature)
 (Muhammad Fayaz Awan)
 Appellant in person

Affidavit

I do here by affirm on oath that contents of instant appeal is correct and true according to my best knowledge and belief and nothing has been suppressed from this Honourable Tribunal and this instant appeal is first appeal & same nature of any other appeal is not pending before Honourable Tribunal

R.O.N.C.
(Signature)
 20/05/08

(Signature)
 (Muhammad Fayaz Awan)
 DEPONENT

Annexure B,

10

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,
4.	01/2008	Maroof Khan
5.	02/2008	Amjad Hussain Awan

EXAMINER
NWFP Service Tribunal
Peshawar
ATTES/ED

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,

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257.	504/2009	Muhammad Shamraiz
258.	505/2009	Ali Bahadur
259.	506/2009	Muhammad Haroon
260.	523/2009	Naureena Maqsood
261.	524/2009	Yasmeeen 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

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.

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

WFP Service Tribunal
EXAMINER
S. R. Peshawar
ATTESTED

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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:-

ATTESTED
EXAMINED
M/EP Services Division

"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 scale 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 Crl. 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.

[Signature]
(BISMILLAH SHAH)
MEMBER.

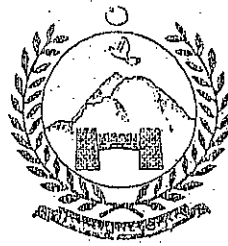
[Signature]
(ABDUL JALIL)
MEMBER.

CAMP COURT ABBOTTABAD.

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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.

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.

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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)

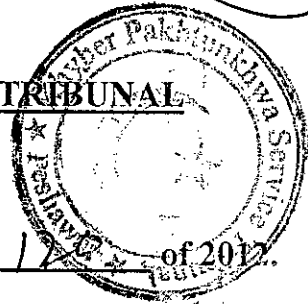
Secretary

Provincial Assembly of Khyber Pakhtunkhwa

Annexure D,

18

BEFORE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR



Implementation Application No 17 of 2012.

IN

Service Appeal No: 769 of 2008.

Muhammad Fayaz Awan S/O Muhammad Urfan, Junior Pharmacy Technician, Ayub Teaching Hospital, Abbottabad. R/O: House No K: 240/10, Kunj Jadeed, Abbottabad.

Petitioner

Versus

Medical Suptdent, Ayub Teaching Hospital, Abbottabad and 05 others.

Respondents

PETITION FOR IMPLEMENTATION OF JUDGMENT DATED 12/05/2009 PASSED IN SERVICE APPEAL NO 760 OF 2008 BY THIS HONOURABLE TRIBUNAL WHEREBY PETITINER HAS BEEN GRANTED 06 SIX ADVANCE INCREMENTS OF M.A INSTEAD OF 2 (ALREADY GRANTED) AND 04 FOUR ADVANCE INCREMENTS OF BA INSTEAD OF 02 (ALREADY GIVEN) WITH EFFECT FROM 01/06/1991, ALONGWITH ALL BACK BENEFITS

20.01.2014

Petitioner in person and Mr.Irshad Muhammad, Supdt. for respondent No.6 with Mr.Muhammad Tahir Aurangzeb, G.P for the respondents present. Petitioner moved application for withdrawal of the implementation petition on the ground that he is going to move the High Court and challenge vires of Act of 2012, namely Act of Khyber Pakhtunkhwa for Cessation of Payment of Arrears on Advance Increments on acquisition of Higher Educational Qualification.

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

ANNOUNCED
20.01.2014

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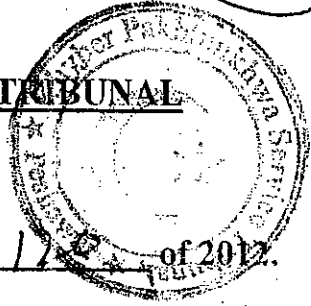
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Service Tribunal,
Peshawar

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Annexure D

18

**BEFORE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR**



Implementation Application No 120 of 2012.

IN

Service Appeal No: 760 of 2008.

Muhammad Fayaz Awan S/O Muhammad Urfan, Junior Pharmacy Technician, Ayub Teaching Hospital, Abbottabad. R/O: House No K: 240/10, Kunj Jadeed, Abbottabad

Petitioner

Versus

Medical Suptdent, Ayub Teaching Hospital, Abbottabad and 05 others.

Respondents

PETITION FOR IMPLEMENTATION OF JUDGMENT DATED 12/05/2009 PASSED IN SERVICE APPEAL NO 760 OF 2008 BY THIS HONOURABLE TRIBUNAL WHEREBY PETITINER HAS BEEN GRANTED 06 SIX ADVANCE INCREMENTS OF M.A INSTEAD OF 2 (ALREADY GRANTED) AND 04 FOUR ADVANCE INCREMENTS OF BA INSTEAD OF 02 (ALREADY GIVEN) WITH EFFECT FROM 01/06/1991, ALONGWITH ALL BACK BENEFITS

20.01.2014

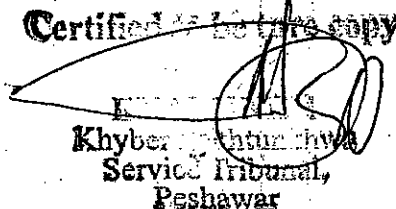
Petitioner in person and Mr.Irshad Muhammad, Supdt. for respondent No.6 with Mr.Muhammad Tahir Aurangzeb, G.P for the respondents present. Petitioner moved application for withdrawal of the implementation petition on the ground that he is going to move the High Court and challenge vires of Act of 2012, namely Act of Khyber Pakhtunkhwa for Cessation of Payment of Arrears on Advance Increments on acquisition of Higher Educational Qualification.

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

ANNOUNCED
20.01.2014

SKV
Chairman
Appellate Tribunal

Certified as true copy



Date of Registration of Application: 29-1-2014
Number of Petition: 120
Copies to: 4
Type of Case: Implementation
Date of Disposal: 29-1-2014
Date of Filing: 29-1-2014

Annexure E

(19)

1

BEFORE THE PESHAWAR HIGH COURT ABBOTTABAD BENCH

Writ Petition No 159-A of 2014

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

Petitioners

Versus

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

10/853
7-5-14

TO DATE

9/13/14

Verified to be True Copy
37374
Peshawar High Court
Abbottabad Bench
Authorized Under Sec 75 Acts Ordinal

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

Respondents

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

PRAYER:-

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

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 Peshawar High Court
 Abbottabad Bench
 27/3/14

Judgment Sheet

IN THE PESHAWAR HIGH COURT,
ABBOTTABAD BENCH.

JUDICIAL DEPARTMENT

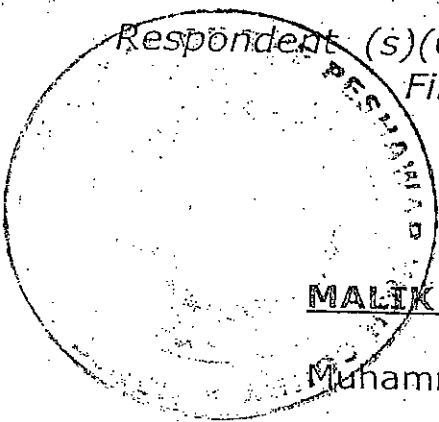
WP No.159-A of 2014

JUDGMENT

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

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

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



MALIK MANZOOR HUSSAIN, J:-

Muhammad Fiaz Awan and six others

petitioners seek the constitutional

jurisdiction of this Court praying that:

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

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

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

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

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

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

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

(Emphasis provided)

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

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3/3/14
 Registrar
 Abbottabad Bench
 Established Under Section 46(a) Ordinance

24

3. The submissions made by petitioner No.1 in person and on behalf of other petitioners have been considered and the available record thoroughly perused.

4. The main grievance of the petitioners is that they have discriminately treated by the respondents in awarding advance increments on acquiring higher qualifications and have not been considered at par with those, who have been granted such relief and they were prevented on the basis of the Act (ibid), which was against the spirit of constitution and violation of the Fundamental Rights of the petitioners guaranteed in Article 25 of the Constitution of Islamic Republic of Pakistan, 1973. This Court, in view of the clear enunciation of the Honourable Supreme Court of Pakistan in I.A. Sharwani v. Government of Pakistan (1991 SCMR 1041), and the bar contained in Article 212 of the Constitution of Islamic Republic of Pakistan, 1973 would not dilate upon the merits of the case that may prejudice the case of

sd/

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Examiner
Peshawar High Court
Abbottabad Bench
Authorized Under Sec 75 Acts Ord 1979

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

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

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Examiner
Peshawar High Court
Abbottabad Bench
Authorized Under Section 20(1) Ordinance

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

(Emphasis provided)

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

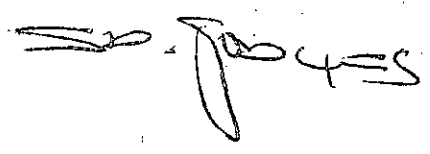
220

Certified to be True Copy
 Examiner
 Peshawar High Court
 Abbottabad Bench
 Authorized Under Sec 75 Acts Ordms

27

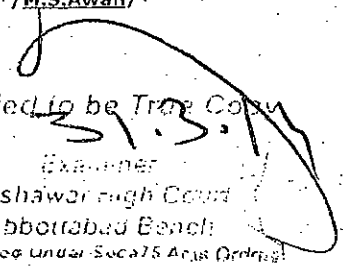
remedy by way of appeal before the Service Tribunal is available to the petitioners against the vires of the Act (ibid) or infringement of fundamental rights guaranteed in Article 25 of the Constitution.

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



Announced:
Dt.25.03.2014.

/M.S.Awan/

Certified to be True Copy

Examiner
Peshawar High Court
Abbottabad Bench
Authorized Under Section 25 of the Ordinance

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR.

Service Appeal No.582/2014
Muhammad Fayaz Awan, Junior Technician Health,
Abbottabad.

... **Appellant**

VERSUS

1. The Secretary Finance Department, Khyber Pakhtunkhwa, Peshawar.
2. The Secretary, Health Department, Khyber Pakhtunkhwa, Peshawar.
3. Director General(Health Services), Khyber Pakhtunkhwa, Health Department, Peshawar.
4. Chief Executive, Ayub Medical Complex, Abbottabad.
5. Medical Superintendent, Ayub Medical Complex, Abbottabad.
6. Director Finance, Ayub Medical Complex, Abbottabad. ... **Respondents**

PARAWISE COMMENTS ON BEHALF OF RESPONDENT NO.I

Preliminary Objections:

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

Facts:

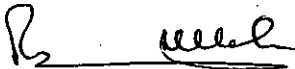

- 1) Need no Comments by Respondent No.1.
- 2) Incorrect. The Bill regarding cessation of Payment of Arrears on Advance Increments on Higher Educational Qualification Bill, 2012 has been passed by the Provincial Assembly, Khyber Pakhtunkhwa, assented to by the Governor, Khyber Pakhtunkhwa and notified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

Cont'd Next Page-(2)

Grounds:

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

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


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

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BEFORE THE SERVICES TRIBUNAL KHYBER PAKHTUNKHWA,
PESHAWAR

APPEAL NO. 582/2014

Muhammad Fayyaz Awan

VERSUS

Government of Khyber Pakhtunkhwa and Others

COMMENTS ON BEHALF OF RESPONDENTS No: 243

Respectfully Sheweth:-

That the comments on behalf of respondents are as under:-

PRELIMINARY OBJECTION:

1. That the appellant has got no cause of action.
2. That the appellant has no locus standi
3. That the appeal in hand is devoid of merit, hence not maintainable.
4. That this Honorable Tribunal lacks jurisdiction to entertain the present appeal.
5. That, through instant appeal the act of Parliament-IX of 2012 has been challenged, hence the Honorable Service Tribunal is not competent forum to decide the lis.
6. That the appellant is estopped to agitate the instant matter before Honourable Tribunal.
7. That the appellant filed the instant appeal with malafide intention for wrongful gain by suppressing the original facts, hence the appeal is liable to be dismissed.
8. That the appellant has not come to this Honourable Tribunal with clean hands, hence not entitled for any relief.
9. That appeal is barred for mis-joinder and non-joinder of necessary parties.
10. That the appeal is barred by Law, hence not maintainable in the eye of law and same is liable to be dismissed on this score alone.
11. That the appellant concealed the distorted facts from this Honorable Tribunal.

FACTS:

1. In reply to para No. 1 of the appeal, it is submitted that judgment of Honourable Tribunal has lost its efficacy for the purpose of implementation by clear intendment through Section 1& 2 of Khyber

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Pakhtunkhwa cessation of payment arrears on advance increments on Higher Education Qualification Act No. IX of 2012.

2. Para No. 2 is incorrect. The bill regarding the cessation of payment of arrears on advance increments on Higher Education Qualification Bill, 2012 has been passed by the Provincial Assembly, Khyber Pakhtunkhwa, assented to by the Governor, Khyber Pakhtunkhwa and notified by Secretary, Provincial Assembly vide notification No. PA/Khyber Pakhtunkhwa/Bills/2012/20711 dated 15/05/2012, in the shape of Khyber Pakhtunkhwa Act No. IX of 2012 and has attained the status of law. The said Act has not been promulgated/published by respondents.
3. Para No. 3 of the instant appeal relates to the judicial record.
4. In reply to Para No. 4, it is submitted that due to the promulgation of Khyber Pakhtunkhwa cessation of payment arrears on advance increments on High Education Qualification Act No. IX of 2012, all the execution/implementations petitions were dismissed by this Honourable Tribunal and also by Honourable High Court. It is further submitted that Mr. Muhammad Haroon had filed civil petition No. 360 of 2013 before the August Supreme Court of Pakistan against the order dated 30/01/2013, passed by this Honourable Tribunal and the same was dismissed on 29/08/2013. Copy of the said judgment is annexed as Annexure "A".
5. Incorrect. The mentioned Act has been notified/promulgated by the Secretary, Provincial Assembly and not by the respondents; hence the present appeal is not maintainable and is liable to be dismissed.

GROUNDS

- a. Para-a is incorrect, hence needs no reply.
- b. Para-b is incorrect, complete reply has already been given in preceding paras.
- c. Para-c is incorrect, hence denied merits no reply.
- d. Para-d is incorrect, as mentioned in preceding paras.
- e. Incorrect. Being legislative/law making body, the Provincial Assembly has the constitutional power to make fresh law/amend the existing law on the larger interest of public. Hence the Act passed by the Provincial Assembly is as per law and constitution of the country. The August Supreme Court of Pakistan, Peshawar High Court as well as this

Honorable Tribunal has disposed/dismissed numerous cases regarding grant of arrears in light of above cited Act.

- f. Para-f is incorrect as mentioned in preceding paras.
- g. Para-g is incorrect as replied in the above going paras.
- h. Para-h is incorrect. The appellant filed the instant appeal with malafide intention for wrongful gain by suppressing the original facts, hence the appeal is liable to be dismissed.

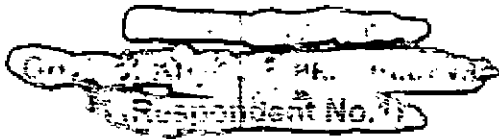
It is therefore, humbly prayed that on acceptance of the comments of respondents, service appeal of the appellant may kindly be dismissed.



**Director General Health Services,
Govt. of Khyber Pakhtunkhwa
(Respondent No.3)**



**Secretary Health,
Govt. of Khyber Pakhtunkhwa
(Respondent No.2)**



Respondent No.1

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 KRK 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 Salaries on Advance Increments on Higher Educational Qualification Act, 2012 (Khyber Pakhtunkhwa Act No.IX of 2012).

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

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

ATTESTED

Superintendent
Supreme Court
ISLAMABAD

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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.

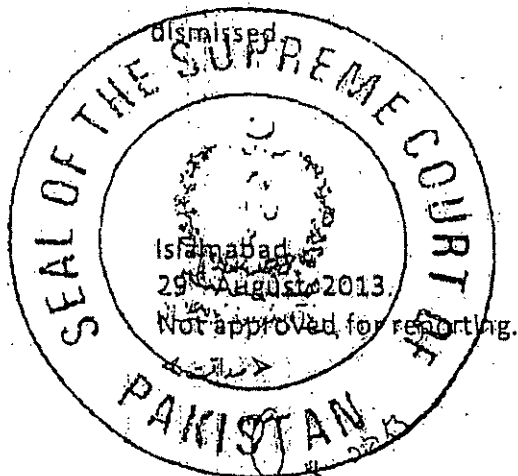
(2) Any order made, instruction issued, decision, judgment or order of any Court or Tribunal including a High Court or the Supreme Court, implemented immediately before the commencement of this Act, shall be deemed to have been validly made, issued and implemented by the date of commencement of this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

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

Cr. No.	Civil/Criminal
Date of Filing	28.8.13
No. of Writs	3
No. of Petitions	5
Provision for Fee	5.00
Copy to be made	10
Costs of Petitioner	4747/-
Date of Judgment	5-9-13
Signature	<i>[Handwritten Signature]</i>

کورٹ فیس
قیمتی

وکالت نامہ

بعدالت سرسبز ٹریشونل KPK کیپ کورٹ سب سے آباد

عنوان: محمد منیاض الموان بنام گورنمنٹ KPK وٹھیرا

منجانب: سپانڈنٹ 4-6

نوعیت مقدمہ: سرسبز اسپل نمبر 582/16

باعث تحریر آنکہ

مقدمہ مندرجہ میں اپنی طرف سے واسطے پیروی و جواب وہی کل کاروائی متعلقہ آں مقام

اس سے آباد۔ سردار جان عالم اینڈ وکیل ہائی کورٹ

کو وکیل مقرر کر کے اقرار کرتا ہوں کہ صاحب موصوف کو مقدمہ کی کل کاروائی کا کامل اختیار ہوگا نیز وکیل صاحب

موصوف کو کرنے راضی نامہ و تقرر ثالث و فیصلہ برحلف و دینے اقبال دعویٰ اور بصورت دیگر ڈگری کرانے اجراء

وصولی چیک روپیہ و عرضی دعویٰ کی تصدیق اور اس پر دستخط کرنے کا اختیار ہوگا اور بصورت ضرورت مقدمہ مذکور

کی کل یا کسی جزوی کاروائی کے لئے کسی اور وکیل یا مختار صاحب قانونی کو اپنے ہمراہ اپنی بجائے تقرر کا اختیار

بھی ہوگا اور صاحب مقرر شدہ کو بھی وہی اور ویسے ہی اختیارات ہوں گے اور اس کا ساختہ پرواختہ مجھ کو منظور و قبول

ہوگا۔ دوران مقدمہ جو خرچ و ہر جانہ التوائے مقدمہ کے سبب ہوگا اس کے مستحق وکیل صاحب ہوں گے۔

نیز بقایا رقم وصول کرنے کا بھی اختیار ہوگا۔ اگر کوئی پیشی مقام دورہ پر ہو یا حد سے باہر ہو تو وکیل صاحب موصوف

پابند ہوں گے کہ پیروی مقدمہ مذکورہ کریں اور اگر مختار مقرر کردہ میں کوئی جز و بقایا ہو تو وکیل صاحب موصوف

مقدمہ کی پیروی کے پابند نہ ہوں گے۔ نیز درخواست بمراد استجارت نالش بصیغہ مفلسی کے دائر کرنے اور اس کی

پیروی کا بھی صاحب موصوف کو اختیار ہوگا۔

لہذا وکالت نامہ تحریر کر دیا تاکہ سند رہے۔

المرقوم: 21/4/16

بمقام: Accepted by me

Director Finance
Ayub Teaching Hospital
Abbottabad

HOSPITAL DIRECTOR
Ayub Teaching Hospital
Abbottabad

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

Service Appeal No. 582/2014

Muhammad Fayyaz Awan

VERSUS

Govt. of KPK & others

SERVICE APPEAL

COMMENTS ON BEHALF OF RESPONDENT NO. 04 TO 06

Respectfully Sheweth; -

That the comments on behalf of respondents are as under;-

PRELIMINARY OBJECTIONS;-

1. That the appellant has got no cause of action.
2. That the appellant has no locus standi.
3. That the appeal in hand is devoid of merit, hence not maintainable.
4. That this Honourable Tribunal lacks jurisdiction to entertain the present appeal.
5. That, through instant appeal the act of Parliament-IX of 2012 has been challenged, hence the Honourable Service Tribunal is not competent forum to decide the lis.
6. That the appellant is estopped to agitate the instant matter before Honourable Tribunal.

7. That the appellant filed the instant appeal with malafide intention for wrongful gain by suppressing the original facts, hence the appeal is liable to be dismissed.
8. That the appellant has not come to this Honourable Tribunal with clean hands, hence not entitled for any relief.
9. That appeal is barred for mis-joinder and non-joinder of necessary parties.
10. That the appeal is barred by law, hence not maintainable in the eye of law and same is liable to be dismissed on this score alone.
11. That the appellant concealed the distorted facts from this Honourable Tribunal.

FACTS:

1. In reply to para No. 1 of the appeal, it is submitted that judgment of Honourable Tribunal has lost its efficacy for the purpose of implementation by clear intendment through Sections 1 & 2 of Khyber Pakhtunkhwa cessation of payment arrears on advance increments on Higher Education Qualification Act No. IX of 2012.
2. Para No. 2 is incorrect. The bill regarding the cessation of payment of arrears on advance

increments on Higher Education Qualification Bill, 2012 has been passed by the Provincial Assembly, Khyber Pakhtunkhwa, assented to by the Governor, Khyber Pakhtunkhwa and notified by Secretary, Provincial Assembly vide notification No. PA/Khyber Pakhtunkhwa/Bills/2012/20711 dated 15/05/2012, in the shape of Khyber Pakhtunkhwa Act No. IX of 2012 and has attained the status of law. The said Act has not been promulgated/ published by respondents.

3. Para No. 3 of the instant appeal relates to the judicial record.
4. In reply to Para No. 4, it is submitted that due to the promulgation of Khyber Pakhtunkhwa cessation of payment arrears on advance increments on High Education Qualification Act No. IX of 2012, all the execution/ implementations petitions were dismissed by this Honourable Tribunal and also by Honourable High Court. It is further submitted that Mr. Muhammad Haroon had filed civil petition No. 360 of 2013 before the August Supreme Court of Pakistan against the order dated 30/01/2013, passed by this Honourable Tribunal and the same was dismissed on

29/08/2013. Copy of the said judgment is annexed as Annexure "A".

5. Incorrect. The mentioned Act has been notified/promulgated by the Secretary, Provincial Assembly and not by the respondents, hence the present appeal is not maintainable and is liable to be dismissed.

GROUND:-

- a. Para-a is incorrect, hence needs no reply.
- b. Para-b is incorrect, complete reply has already been given in preceding paras.
- c. Para-c is incorrect, hence denied merits no reply.
- d. Para-d is incorrect, as mentioned in preceding paras.
- e. Incorrect. Being legislative/ law making body, the Provincial Assembly has the constitutional power to make fresh law/ amend the existing law in the larger interest of public. Hence the Act passed by the Provincial Assembly is as per law and constitution of the country. The August Supreme Court of Pakistan, Peshawar High Court as well as this Honourable Tribunal has disposed/ dismissed numerous cases

regarding grant of arrears in light of above cited Act.

- f. Para-f is incorrect as mentioned in preceding paras.
- g. Para-g is incorrect as replied in the above going paras.
- h. Para-h is incorrect. The appellant filed the instant appeal with malafide intention for wrongful gain by suppressing the original facts, hence the appeal is liable to be dismissed.

It is, therefore, humbly prayed that on acceptance of the comments of respondents, service appeal of the appellant may kindly be dismissed.

...RESPONDENT NO 04 TO 06

Through

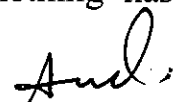
Dated: 21/4 /2016



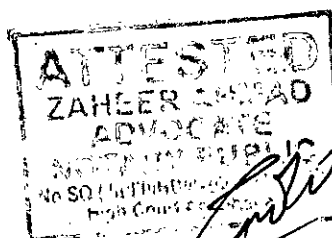
(Sardar Jan-e-Alam)
Advocate High Court, Abbottabad

VERIFICATION:-

Verified on oath that the contents of foregoing comments are true and correct to the best of my knowledge and belief and nothing has been concealed from this Honourable Court.



...RESPONDENT



In the Supreme Court of Pakistan
(Appellate Jurisdiction)

Annexure 11

Present:

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

Civil Petition No. 360 of 2013.

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

Muhammad Haroon

...Petitioner

Versus

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

Petitioner: In person.

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

Date of hearing: 29.8.2013

JUDGMENT

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

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 P/A Corporation v. Aziz-ur-Rehman Chaudhry (2011 SCMR 219).

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

ATTESTED

Superintendent
Supreme Court - Pakis
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

Supplement
Supreme Court
Khyber Pakhtunkhwa

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 Civil/Criminal
Date of Filing: 28/8/13
No. of Pages: 90
No. of Exhibits: 5
Registration Fee: 500
Court Fee: 1000
Date of Order: 4/9/13
Signature: *[Handwritten Signature]*

(1)

**BEFORE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR.**

Service Appeal No: 582 of 2014

Muhammad Fayaz Awan S/O Muhammad Urfan, Junior Pharmacy Technician, Ayub Teaching Hospital, Abbottabad. R/O: House No K 240/10, Kunj Jadeed, Abbottabad

Appellant.

Versus

Government of Khyber Pakhtunkhwa through Secretary Finance Department Peshawar and 05 Other.

Respondents

**REJOINDER (REPLICATION) ON THE COMMENTS
(REPLY) OF THE RESPONDENTS NO 1 TO 6.**

Respectfully Sheweth,

That three sets of comments/replies have submitted before this Honourable Tribunal, one is from respondents No 1 and the 2nd is from respondent no 2 & 3, 3rd is from respondents no 4 to 6, factually and legally all points/issues are same therefore for the sake of brevity and to avoid confusion, Appellant submits the following joint rejoinder.

ON PRELIMINARY OBJECTIONS

1-3) That appellant has good cause of action to file instant appeal before this Honourable Court, it is not time bared but filed well in time, there is no limitation against Pay matters, and cause of action arises every month when the appellant receives his pay slip, it is legally and factually maintainable, and according to law, the impugned Act would itself treated as final order, Moreover the instant service appeal is filed, in pursuance of the Judgment dated 25/03/2014 (Annexure "E") passed by Peshawar High Court, which is now final, as respondents has not filed any review petition before High Court, nor filed any Petition/appeal before Supreme Court of Pakistan.

4-6) That appellant filed his appeal according to law, for his valuable rights, which was snatched illegally by the respondents and it is fundamental & constitutional right of appellant to file instant appeal,

thus plea of pressurizing, is incorrect and denied, appellant did not conceal any fact from this Honourable Tribunal and came to this Honourable Tribunal with clean hands and appellant has got good locus standi to challenge the impugned Act, and there is no estoppel in this regard.

7-8) That there is no question of misjoinder and nonjoinder of necessary parties, all the necessary parties are already included in the panel of respondents and no one is left, respondents in para-8 themselves admitted that, this Honourable Tribunal is not a Constitutional Court, Government of KPK through Secretaries (Departments) have already been arrayed as party, the jurisdictional point is decided and well settled by Supreme Court and specifically by High Court on 25/03/2014 which is worth perusal, In this Tribunal, the vires of impugned Act is challenged through instant appeal, which is filed on the basis of law, decided by Peshawar High Court in Writ Petition on 25/03/2014, which attained its finality, and binding upon respondents.

9-11) That the right of advance increments was given/decided by this Honourable Tribunal vide its judgment dated 12/05/2009 and respondents were arrayed as party and they appeared, filed comments, and fully contested the same, and legally no law (Act) was promulgated against the fundamental and constitutional rights of the appellant, no one has any such power to make such law which is against the spirit & Articles of the Constitution of Islamic Republic of Pakistan.

ON FACTUAL OBJECTIONS

1) That respondents in reply of Para no 1 of the service appeal,
"the judgment of Honourable Tribunal -----
----- Act No IX of 2012"

have reproduced the para No 04 of the Judgment dated 29/03/2013. passed by Supreme Court of Pakistan in CP No 360 of 2013, but deliberately concealed the real factual position of the case, as a matter

of facts, under the next Para no 05 of the same judgment of Supreme Court of Pakistan, in pursuance of observation/guidance of Apex court, the Writ Petition was decided by High Court on 25/03/2014 and instant service appeal is filed under the same law.

2) That under the law provincial assembly has no power to change the nature of constitutional rights/Article nor pass any Act which is against to any Article of Constitution and the impugned Act cannot be passed in the presence of Article 25 of the Constitution, and such law/matters was decided by the Learned larger bench of Supreme Court in (1991 SCMR 1041) (relevant at para 33 page 1092), Further more all necessary parties are arrayed in service appeal and same appeal is directly filed under the specific law as decided by High Court in Writ Petition on 25/03/2014, which is binding upon respondents and attained its finality and never challenged by respondents before proper forum on the question/point of necessary party, respondents when raised objection have forgotten vital aspect of the relevant law that this Honourable Tribunal had been established under Article 212 of the Constitution and has its power to decide the issues of term and condition of the service between civil servants & Department, and Governor KPK is not represent department. Similarly this Honourable Court has not writ power under Article 199 of the Constitution.

3) That respondents stated the factual position of the case before passing the Judgment dated 25/03/2014 passed by Peshawar High Court, but they did not point out any law, or gave any thing that how appellant can be restricted from his legal right on the subject ? , while it was decided on 25/03/2014 and High Court held **that remedy by way of service appeal before the Service Tribunal is available to the aggrieved person (appellant) against the impugned Act,** respondents side tracked the real issue, because they have no defense in the presence of law, settled by Supreme Court and High Court.

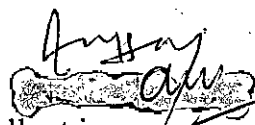
- 4) That respondents did not submit their reply to the point and tried to hush up the matter, factually case of appellant is quite clear and filed according to law decided by Supreme Court of Pakistan and the Peshawar High Court Abbottabad Bench, and the Jurisdiction point of law on the subject subjudice before this Honourable Tribunal, is finally settled by larger Bench of Supreme Court of Pakistan, in her reported Judgment (1991 SCMR 1041) (relevant at para 33 page 1092), after the relevant law, respondent have no way to deny the rights of the appellant in any way.
- 5) That Appellant seeks the leave of this Honourable Tribunal to request additional grounds according to situation at the time of arguments.

ON GROUNDS

- a-c) That the reply of the respondents are totally incorrect and ambiguous, also not relevant to the points raised in the appeal, appellant reiterated the position taken in Para a-c of his appeal.
- d-h) That the case of appellant is very much clear and it is directly based on Supreme Court Judgment and comments of the respondents are totally incorrect, also not relevant to the points raised in appeal, and it is admitted facts that reply of respondents is totally incorrect and claim of appellant cannot be denied by the respondents in the presence of Supreme Court Judgment as referred above, thus the position taken in Para (d-h) in appeal by appellant is reiterated.

It is humbly prayed that this appeal may kindly be accepted along with all back benefits.

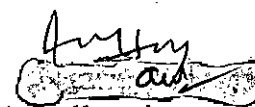
Dated 16/05/2016


Appellant in person

Verification

It is verified that contents of instant rejoinder is correct and true according to my best knowledge and belief and nothing has been suppressed from this Honourable Tribunal.

Dated 16/05/2016


Appellant in person



**KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL**

All communications should be addressed to the Registrar KPK Service Tribunal and not any official by name.

Ph:- 091-9212281

Fax:- 091-9213262

1217- PESHAWAR
No. 18 ST Dated: 15/9/2017

To,

The Advocate General,
Govt. of Khyber Pakhtunkhwa Peshawar.


Subject:-

**NOTICE UNDER ORDER XXVII-A OF CODE OF CIVIL
PROCEDURE, 1908, IN SERVICE APPEAL NO.582/2014 TITLED
"MUHAMMAD FAYAZ AWAN-VS- SECRETARY FINANCE
DEPARTMENT GOVT. OF KHYBER PAKHTUNKHWA AND
OTHERS**

Sir,

I am directed to refer to the subject noted above and forward herewith copy of an order dated 22/8/2017 of this Tribunal passed in titled case for assisting this Tribunal in the said case on the date fixed i.e 19/10/2017 at Camp Court Abbottabad.

Yours sincerely,

o/c 
REGISTRAR
KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL PESHAWAR.

No & date even above.

Copy forwarded to Additional Advocate General Service Tribunal Peshawar.

o/c 
REGISTRAR
KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL PESHAWAR

**BEFORE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR.**

Service Appeal No: 582 of 2014

Muhammad Fayaz Awan S/O Muhammad Urfan, Junior Pharmacy Technician, Ayub Teaching Hospital, Abbottabad. R/O: House No K: 240/10, Kunj Jadeed, Abbottabad

Appellant

Versus

Government of Khyber Pakhtunkhwa through Secretary Finance Department Peshawar and 05 Other.

Respondents


APPLICATION FOR WITHDRAWAL OF INSTANT SERVICE APPEAL WITH PERMISSION TO BRING FRESH IMPLEMENTATION PETITION FOR IMPLEMENTATION OF JUDGMENT DATED 12/05/2009 PASSED BY THIS TRIBUNAL (CAMP COURT ABBOTTABAD).

Respectfully Sheweth,

- 1) That appellant's service appeal relating to advance Increments on his higher qualification was accepted by this Honourable Service Tribunal on 12/05/2009 at Camp Court Abbottabad, during its implementation petition, An Act "Khyber Pakhtunkhwa cessation of payment of arrears on advance increments on higher education qualification Act" (KPK ACT NO IX OF 2012 dated 15/05/2012) was promulgated/published by the respondents.
- 2) That appellant withdrew his previous execution petition, and challenged the vires of impugned Act through instant service appeal, during its pendency, the involved matter in the titled service appeal has been solved and settled through writ petition, as Peshawar High Court has finally declared the said Act as null and void and accepted the rights of appellant.
- 3) That in the prevailing situation there is no need to continue the matters in the titled service appeal and appellant wants to withdraw it with permission to file fresh execution petition under the law.

It is therefore humbly prayed that this application for withdrawal of service appeal with permission to bring fresh execution petition may graciously be accepted in the interest of justice.

Dated 21/03/2018


(Muhammad Fayaz Awan)
Appellant Inperson