

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.

21.03.2018

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


Member

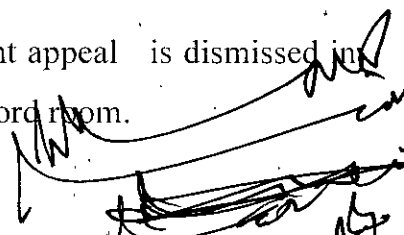

Chairman
Camp court, A/Abad

18.04.2018

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

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


Member


Chairman
Camp Court, A/Abad


ANNOUNCED
18.04.2018

389/2014

19.10.2017

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

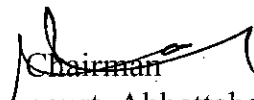

Member


Chairman
Camp court, A/Abad.

21.11.2017

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

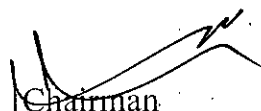

Member


Chairman
Camp court, Abbottabad.

18.01.2018

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



Member


Chairman
Camp Court, A/Abad

17.08.2016

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

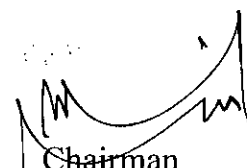
Appellant in person, M/S Muhammad Irshad, SO, Saquib, Assistant and Anwar Ahmad, Assistant alongwith Mr. Muhammad Siddique, Sr.GP for the respondents present. Due to non-availability of D.B arguments could not be heard. To come up for final hearing on 22.08.2017 before the D.B at camp court, Abbottabad.


MEMBER
Camp Court, A/Abad

22.08.2017


Appellant in person and Mr. Muhammad Bilal, DDA alongwith Amjad Ali Assistant and Malak Haroon, AAO for the respondents present. To come up for arguments alongwith connected appeal No. 582/2014, on 19.10.2017 before the D.B at camp court, Abbottabad.


Member


Chairman
Camp court, A/Abad


19.08.2015

Husband of the appellant, M/S Irshad Muhammad, SO
Sohail Ahmad, Assistant and Haroon Khan, Senior Auditor
alongwith Mr. Muhammad Tahir Aurangzeb, GP for 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


Mr.Jamshed Akhtar on behalf of the appellant, M/S, Irshad
Muhammad, S.O and Zahid Gul, ADO 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,


17.11.2014

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 Husband of the appellant 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

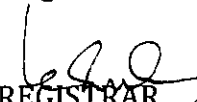
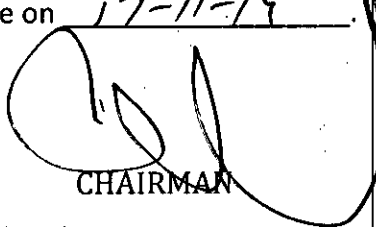
15.6.2015 Mr.Jamshed Akhtar husband of the appellant and Mr.Jamshed Awan, Assistant (lit) alongwith Mr.Muhammad Bilal,G.P for respondents present. Requested for adjournment. To come up for written reply/comments on 19.8.2015 before S.B at camp court A/Abad.


Chairman
Camp Court A/Abad

Form- A
FORM OF ORDER SHEET

Court of _____

Case No. 579/2014

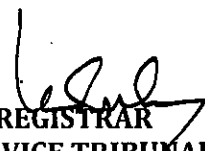
S.No.	Date of order Proceedings	Order or other proceedings with signature of judge or Magistrate
1	2	3
1	24/04/2014	<p>The appeal of Mst. Nazira Begum resubmitted today by her, may be entered in the Institution register and put up to the Worthy Chairman for preliminary hearing.</p> <p style="text-align: right;"> 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 style="text-align: right;"> CHAIRMAN</p>

The appeal of Mst Nazira Begum D/O Jhangir Khan DM Teacher GGHS Kuthiala Distt. A.Abad received today i.e. on 08 .04.2014 is incomplete on the following score which is returned to appellatant for completion and resubmission within 15 day.

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

No. 579 /S.T,

Dt. 08/04 /2014.


REGISTRAR
SERVICE TRIBUNAL
KHYBER PAKHTUNKHWA
PESHAWAR.

Mst. Nazira Begum appellatant

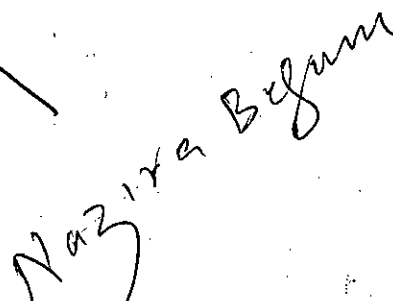
Resubmitted with the remarks/request that impugned Act (KPK ACT NO IX OF 2012 dated 15/05/2012) was promulgated and appellatant withdrew his execution petition pending before KPK Service Tribunal, with a view to challenge the vires of said Act through Writ Petition.

Initially appellatant 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 appellatant 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 21/4/2014


Mst Nazira Begum
Appellatant.

**BEFORE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR.**

Service Appeal No: 579 of 2014

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.

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 1529 of 2009	A	6 to 9
3	Copy of relevant pages of Judgment Dated 21/12/2009	B	10 to 16
	Copy of Act (KPK ACT NO IX OF 2012 dated 15/05/2012)	C	17 to 19
4	Copy of Service Tribunal Order passed in execution Petition	D	20
5	Copy of Peshawar High Court order dated 25/03/2014	E	21 to 29

Dated 05/04/2014

Nazira Begum
(Nazira Begum)
Appellant in person

(1)

**BEFORE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR.**

Service Appeal No: 579 of 2014

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.

Versus

Appellant
No. 513
Dated 8/4/2014

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

Respondents

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

[Signature]
8/4/14

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

re-submitted to
and filed.

[Signature]
24/4/14

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QUALIFICATION ACT, 2012) WHICH IS UNCONSTITUTIONAL, WITHOUT LAWFUL AUTHORITY, ARBITRARY, PERVERSE, DISCREMINATORY' AGAINST THE PRINCIPAL OF NATURAL JUSTICE AND INEFFECTIVE UPON THE APPELLANT'S RIGHTS OF ADVANCE INCREMENTS, GRANTED IN SERVICE APPEAL NO 1529 OF 2009 ACCEPTED BY KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PASSED ON 21/12/2009 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 21/12/2009) TO THE APPELLANT WITH EFFECT FROM THEIR RELEVANT DATES OF CLAIMS WITH ALL BACK BENEFITS.

Respectfully Sheweth,

FACTS

- 1) That appellant being DM teacher was granted 04 advance Increments of MA/MSc on his higher qualification on the basis of acceptance of his individual Service Appeal by this Honourable Service Tribunal and passed a consolidated judgment on 21/12/2009 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 the is no appellate departmental authority available, above the Governor KPK who is the promulgating/issuing final authority of impugned Act, Hence this Service appeal inter alia on the following Grounds.

Grounds

- a) That it is undoubted fact that respondents illegally snatched the legal rights of the appellant in an uncivilized way in a very haste manner, which is against the equity and there is no single example is available in the civilized society.
- b) That it is admittedly proved that Service Tribunal passed its judgment on 21/12/2009 and respondents did not implement it after passing long period of 04 years, 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 21/12/2009, 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 04 advance increments of & M.A/M.Sc to the appellant with effect from his relevant dates of claims, decided in service appeal no 1529 of 2009, 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

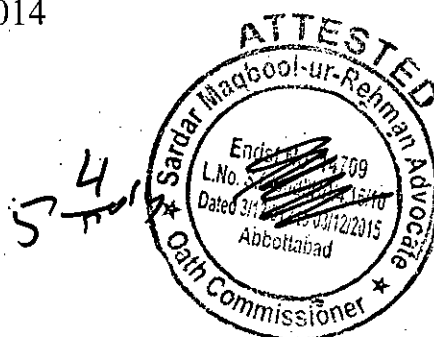
Nazira Begum
(Nazira Begum)
Appellant in person

Affidavit

I, 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, 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

Nazira Begum
(Nazira Begum)
Appellant in person
DEPONENT



Annexure A,

6

BEFORE NWFP SERVICE TRIBUNAL PESHAWAR.

Service Appeal No: 1529 of 2009

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.

Appellant

Versus

- 1 Executive District Officer (Elementary & Secondary Education), Abbottabad.
- 2 District Coordination Officer, Abbottabad.
- 3 District Accounts Officer, Abbottabad.
- 4 Director of (Elementary & Secondary Education) N.W.F.P Peshawar.
- 5 Secretary to Govt of N.W.F.P (Elementary & Secondary Education) Deptt; Peshawar.
- 6 Secretary to Govt of N.W.F.P), Finance Department: Peshawar.

Respondents

Appeal under Section 4 of NWFP Service Tribunal Act 1974.
For grant of 04 Four advance increments of M.A w. e. f. 07/06/2001 (date of Passing M.A examination) with all back benefits on the basis of Para 5(i) (c) of the Notification No FD (PRC) 1-1 /89 dated 11-08-1991 issued by (Finance Department N.W.F.P, Peshawar) and in pursuance of Judgments/Law passed by Supreme Court of Pakistan.

Attested
Nazira Begum

PRAYER

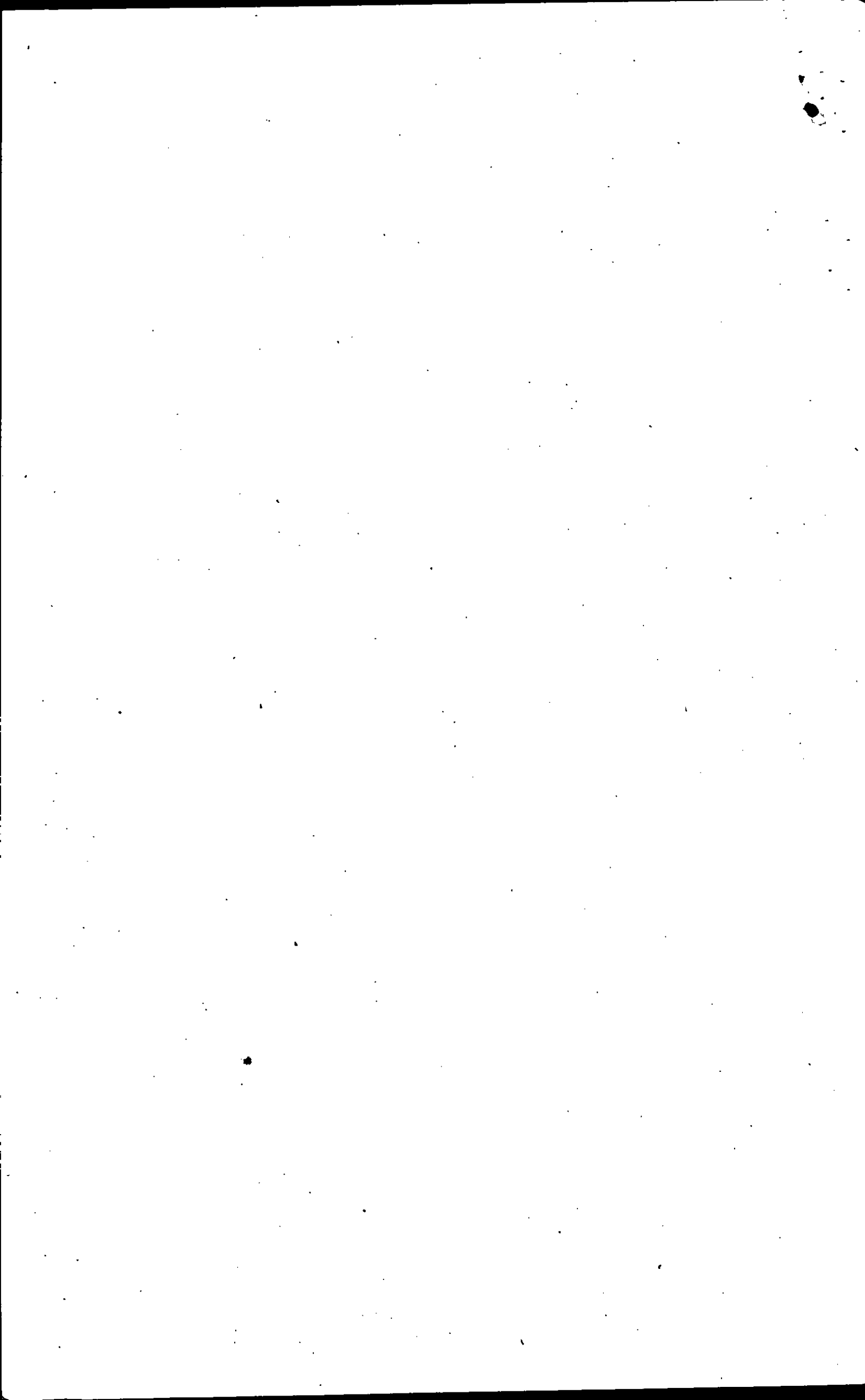
It is respectfully prayed before this Honourable Tribunal that the instant appeal may graciously be accepted, and the appellant may be granted 04 advance increments of MA w.e.f. 07/06/2001 with all back benefits

Respectfully Sheweth,

FACTS

1) That the appellant was appointed in Education Department on 02/11/1995 against D.M post as an untrained teacher. Though she passed her D.M examination (professional Course) during her Service on 31/03/2002, but respondent no 6 (Finance Department) under Notification No FD(PRC)5-2/2002 dated 30/03/2009 has given the rights of regular service as well as all annual increments of untrained period, and it has also endorsed by the respondent no 5 (Secretary Elementary and Secondary Education Department, N.W.F.P Peshawar) on

Attested
Nazira Begum

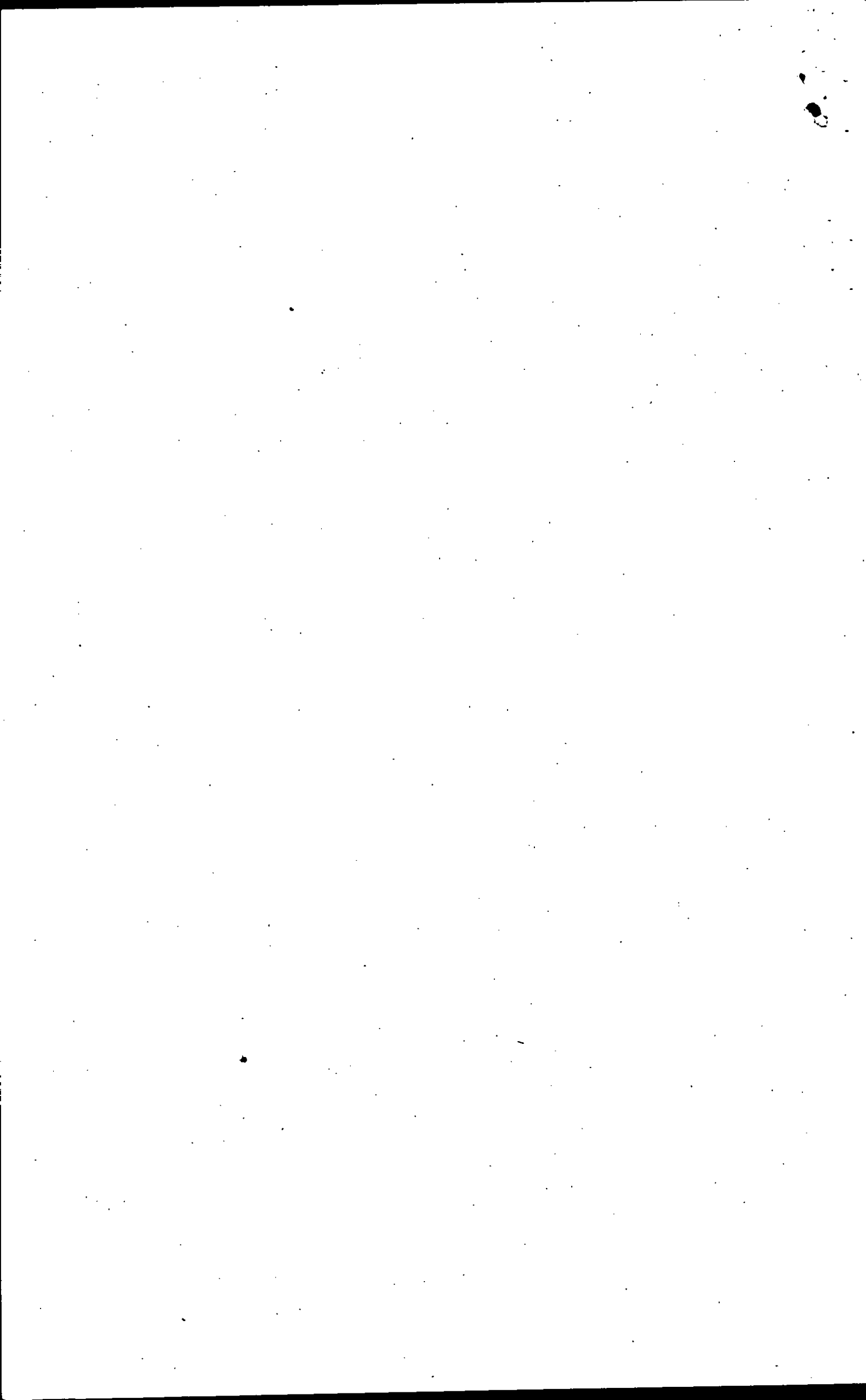


06/04/2009, and further endorsed by Respondent no 04 (Director of (Elementary & Secondary Education) N.W.F.P Peshawar) on 22/04/1999, thus her regular services was also started form her appointment i.e. 02/11/1995 on the basis of said notification dated 30/03/2009. Now a days appellat is working as D.M teacher in BPS No 15, at GGHS Kuthiala, District Abbottabad. A Certificate in this respect issued by concerned authority is annexed as Annexure A.

- 2) That appellat passed her B.A examination in 2nd Division during her service on 16/01/1999 and was placed in BPS No 14 against D.M post w. e. f. 31/03/2002 (date of passing D.M. Course), on the basis of Notification No FD(PRC)1-1/89 dated 07/08/1991, issued by Finance Department, N.W.F.P, Peshawar. Copy of said Notification No FD (PRC) 1-1/89 dated 07/08/1991 is Annexure B.
- 3) That appellat during her Service against D.M post, passed her M.A examination on 07/06/2001, and was entitled for Four (04) Advance Increments with effect from 07/06/2001 (date of passing M.A examination) in pursuance of Para 5 (i) (c) of the Notification No FD(PRC)1-1/89 dated 11/08/1991, issued by Finance Department, N.W.F.P, Peshawar, but these (04) advance increments has not given to the appellat by the respondents in their office routine, until now. Copy of said Notification No FD (PRC) 1-1/89 is Annexure C.
- 4) That appellat being teacher in Education 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 (c) caters for the grant of Four Advance Increments M.A/M.Sc against D.M post because Prescribed Qualification of the said post was/is also F.A/F.Sc with D.M Course So appellat was/is entitled the same and Respondents did not give her Constitutional rights.
- 5) That now, In the Meanwhile, Honourable Supreme Court Of Pakistan has also decided the same matters in CPLA No 525,526 of 2007 on 19/07/2007, and ultimately declared that teachers (appellat) in Education Department 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 change/exception. Copy of Supreme Court judgment is annexed as Annexure D.
- 6) That Honourable Supreme Court of Pakistan has been pleased to dismiss the Civil Review Petitions No 216 & 217 of 2007, filed by Finance Department, N.W.F.P, Peshawar, on 29/01/2008, which were filed against the judgment, dated 19/07/2007, passed in C.P.L.A No 525 & 526 of 2007, and now the matters of

Attested
Nazira Begum

Attested
Nazira Begum



86 B

Advance Increments attained its finality and there is no way before the respondents to withhold/deny the rights of appellant. Copy of Supreme Court judgment passed in C.R.P No 216 & 217 of 2007 is annexed as Annexure E.

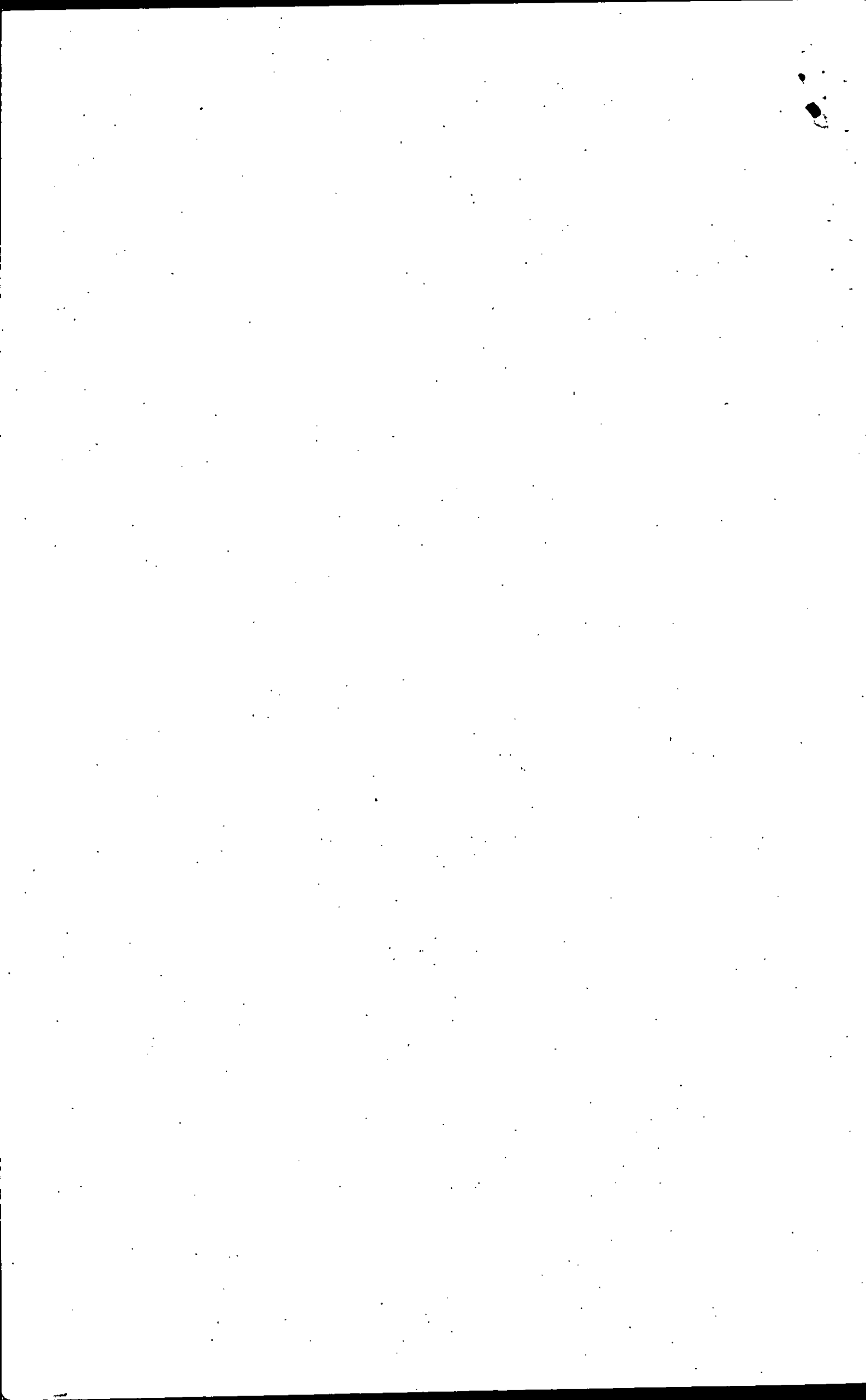
- 7) That the petitioner of C.P.L.A. No 525 of 2007 (Mr: Rashid Iqbal Khan CT, GMS Tarhana, Abbottabad) has now been received his 04 Advance Increments of M.A/M.Sc with effect from its qualifying date, i.e. 15/09/1997, through an order issued on 26/02/2008, by the Education Department, in compliance of the Judgments of Honourable Supreme Court of Pakistan, dated 19/07/2007 & 29/01/2008, passed in CPLA No 525/2007 & CRP No 216/2007. Copy of Order dated 26/02/2008; of 04 Advance Increments of MA/MSc is annexed as Annexure F.
- 8) That when the above Judgments of the Supreme Court dated 19/07/2007 & 29/01/2008, and above order of Education Department dated 26/02/2008 (Annexure F) came into the notice of appellant, in the light of the same, She submitted her departmental representation to respondent no 1 on 19/05/2009, and it is undecided within the statutory period of 90 days. Copy of representation is Annexure G. Hence this appeal inters - alia on the following ground, and appellant's appeal is within 120 days from the submission of his departmental representation dated 19/05/2009.

Grounds

- a) That the impugned action of respondent no 01 not deciding the appellant's representation dated 19/05/2009 is arbitrary, unjust, and against all the norms of justice and equity and violated the Articles 25, 189 and 190 of the Constitution, as petitioner of CPLA (Mr: Rashid Iqbal Khan) has got his same relief of 04 advance increments of MA/MSc.
- b) That the impugned action of respondent no 01 not deciding the appellant's representation, is against law, facts of the case, also against letter and spirit of the Judgments of Honourable Supreme Court of Pakistan 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.

Attested
Nazira Begum

Attested
Nazira Begum



- e) That the action of respondents in refusing the grant of advance increments to the appellant on the basis of Circular dard 11/08/1991, violated the Article 25,189 190 of the Constitution, as petitioner of CPLA (Mr: Rashid Iqbal Khan) has got his same relief of 04 advance increments of MA/MSc.
- f) That the said Circular (Annexure C) was/is issued for Civil Provincial Employees of N.W.F.P (BPS-1-15) and appellant being teacher(Education Department) falls under the same and fully entitled for the relief of Advanced Increments along with back benefits as claimed by him.
- g) That the case of appellant is the same nature in pursuance of Para 5 (i) of Notification, which was decided by Supreme Court of Pakistan on 19/07/2007 passed in CPLA No 525,526 of 2007 (Annexure D).
- h) 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.
- i) That appellant's service appeal is maintainable and appellant's post is/was D.M and prescribed qualification of the said post was F.A/F.Sc, appellant is now working in BPS # 15 against D.M post and Instant Case falls under Para 5(1) (c) of the Circular dated 11/08/1991(Annexure C).

It is therefore respectfully prayed that appellant's appeal may kindly be accepted and 04 advance increments of M.A w.e.f. 07/06/2001 (date of passing M.A examination), along with all back benefits may graciously be granted to the appellant in the interest of justice.

Attested
Nazira Begum

Nazira Begum
(Nazira Begum)
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

Attested
Nazira Begum

Nazira Begum
(Nazira Begum)
DEPONENT

Annexure B,

8

10

BEFORE N.W.F.P SERVICE TRIBUNAL PESHAWAR.

Service Appeal No. 1529 of 2009

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.

Appellant

Versus

- 1 Executive District Officer (Elementary & Secondary Education), Abbottabad.
- 2 District Coordination Officer, Abbottabad.
- 3 District Accounts Officer, Abbottabad.
- 4 Director of (Elementary & Secondary Education), N.W.F.P, Peshawar.
- 5 Secretary to Govt of N.W.F.P (Elementary & Secondary Education), Deptt: Peshawar.
- 6 Secretary to Govt of N.W.F.P, Finance Department, Peshawar.

N.W.F Province
Service Tribunal

Diary No. 4/1/2009

Dated 21/12/09

Respondents

21.12.2009

Appellant present in person.

Preliminary arguments heard and record perused.

Vide detailed order of today in Appeal No. 993/09, this appeal is also accepted in limine in the same terms as laid down in the aforesaid appeal. No order as to costs.

ANNOUNCED
21.12.2009

CHAIRMAN
Camp Court A/Abad

Attested
Nazira Begum

Attested
Nazira Begum

Handwritten notes: 12-12-09, 1529, 993/09

(11) 9

BEFORE NWFP SERVICE TRIBUNAL PESHAWAR

Service Appeal No: 993 of 2009

Mr. Abdul Rasheed S/o Abdul Ghafoor AT teacher GHS Jangi R/o Near Maki Masjid, Javed Shaheed Road, Jinnah Abad, Mandian, Abbottabad

... APPELLANT

Received Tribunal

Diary No. 1117

Dated 17-6-09

VERSUS

1. District Coordination Officer, Abbottabad.
2. Executive District Officer (E&SE) Abbottabad.
3. A.G.N.W.F.P Peshawar, through District Accounts Officer, Abbottabad.
4. Director (E&SE) NWFP, Peshawar.
5. Secretary to Govt. of NWFP (E&SE) Department Peshawar.
6. Secretary to Govt. of NWFP, Finance Department Peshawar.

...RESPONDENTS

APPEAL UNDER SECTION-4 OF NWFP SERVICE TRIBUNAL ACT 1974 FOR GRANT OF FOUR ADVANCE INCREMENTS OF M.A WITH ALL BACK BENEFITS WITH EFFECT FROM 04/11/1992 UNDER PARA 5(I) (C) OF THE NOTIFICATION NO. FD (PRC) 1-1/89 DATED 11.08.1991 ISSUED BY FINANCE DEPARTMENT N.W.F.P PESHAWAR AND ON THE BASIS OF JUDGMENT DATED 19.07.2007 PASSED BY AUGUST SUPREME COURT OF PAKISTAN IN CPLA NO. 525, 526 OF 2007, CRP NO. 216 & 217 OF 2007.

PRAYER

It is respectfully prayed before this Honorable Tribunal that the instant appeal may graciously be accepted, and the appellant may be granted four (04) advance increments of M.A w.e.f 04/11/1992 with all back benefits.

Respectfully Sheweth:-

Attested
Nazia Begum

FACTS: -

1. That appellant was appointed as TT trained teacher in Education Department on 01.10.1983 in BPS-07 and was promoted against AT post on 22/10/1986 in BPS-09 on regular basis. A certificate in this respect issued by he concerned authority is annexed as Annexure "A".

That having the sanad of Shahadat-ul-Almia, applicant was placed in BPS-14 as per Finance Department Notification

Attested
Nazia Begum

ATTESTED

17/6/09

NWFP SERVICE TRIBUNAL PESHAWAR

② 13 4

Serial No. of Order or Proceedings	Date of Order or Proceedings	Order or other Proceedings with Signature of Judge or Magistrate and that of parties or counsel where necessary
1	2	3
		25. 1283/09 Mst. Bushra Manzoor
		26. 1446/09 Mst. Syeda Rabia Naqvi
		27. 1447/09 Mst. Rukhshinda Jabeen
		28. 1448/09 Mst. Riffat Rehna
		29. 1527/09 Ubaidullah
		30. 1528/09 Assad Habib
		31. 1529/09 Nazira Begum
		32. 1530/09 Syeda Ghazala Nargas
		33. 1655/09 Tahseen Akhtar
		34. 1769/09 Shamsul Haq
		35. 1852/09 Ibrar Hussain
		<p>The appellants have preferred these appeals for grant of four advance increments on the ground of possessing/ acquiring the higher qualification of M.A/M.Sc in the light of Government of NWFP Finance Department Notification dated 7th August 1991 and circular letter dated 11.8.1991.</p> <p>It may be pointed out at the outset that earlier a number of appeals were lodged for the grant of advance increments on the basis of the same Notification and circular letter, and a couple of appeals were dismissed by the Tribunal, against which, appeals were lodged in the august Supreme Court of Pakistan, which accepted CPLA No.525 of 2007 and CPLA No.526 of 2007, declaring</p>

Attested
Nazira Begum

Attested
Nazira Begum

NWFP J. (Criminal)
ATTESTED
Nazira Begum

14/22

3

NWFP J.(Criminal) No. 210

Appeal No. 993/09

GS&PD.NWFP.489/14-F.S.-500 Pads-17.11.07/P47/Form Stop Jobs/NWFP Criminal 210

Seri. No. of Order or Proceedings	Date of Order or Proceedings	Order or other Proceedings with Signature of Judge or Magistrate and that of parties or counsel where necessary
1	2	3
		<p>the petitioners entitled to four advance increments with effect from the date of qualifying M.A/ M.Sc examination. The Government/department preferred review petitions, but the same were declined vide order dated 29.01.2008 in CRPs No. 216 & 217/2007 and Crl.OP No. 66 & 67/2007, with direction to the Government/department to implement the above referred judgment of the august Supreme Court of Pakistan in letter and spirit within two weeks under intimation to the Registrar of the Supreme Court.</p> <p>Following the judgment of the august Supreme Court of Pakistan, this Tribunal, in Appeal No. 1276/2007 titled "Muhammad Akram-vs-DCO Abbottabad etc." and 267 other appeals", reiterated the judgment of the august Supreme Court of Pakistan in its decision dated 12.5.2009 and issued directions to the concerned officers/officials in the Province to follow the aforesaid judgment in its true letter and spirit and not to compel the respective right holders to enter into litigation with the department, otherwise the cost of litigation shall be recovered from the pay and pension as well as person and property of the defaulting concerned officers, though after fixation of responsibility on them as a result of</p>

Attested
Nazim Begum

NWFP EXAMINER
Registrar
Attested
Nazim Begum

Attested
Nazim Begum

15 B 4

Serial No. of Order or Proceedings 1	Date of Order or Proceedings 2	Order or other Proceedings with Signature of Judge or Magistrate and that of parties or counsel where necessary 3
		<p>proper enquiry. The Tribunal further decided that 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.</p> <p>It may also be noted that on 15.6.2009, this Tribunal disposed of Appeal No. 720/2009 titled "Nazir Bano vs-DCO Abbottabad etc." alongwith a number of other appeals in limine and issued the same directions as issued earlier in Service Appeal No.1276/07.</p> <p>Apart from the above, the Government/department was also bound to extend the same benefit to the similarly placed persons when the Tribunal had already decided the point of law relating to the case of a civil servant who litigated, in the light of <u>2005 SCMR-499</u>. (Supreme Court of Pakistan).</p> <p>Above all, the Government of NWFP Elementary & Secondary Education have also issued Notification dated 28.7.2009, based on the above referred judgment of the august Supreme Court of Pakistan, thereby, declaring all other similarly placed teachers with the original appellant in the aforesaid cases to be</p>



Attested Nazira Begum

Attested Nazira Begum

NWFP EXAMINER TRIBUNAL ATTESTED

14

16

Serial No. of Order or Proceedings	Date of Order or Proceedings	Order or other Proceedings with Signature of Judge or Magistrate and that of parties or counsel where necessary
1	2	3
<p>Attested Nazir Begum</p>  <p>Attested Nazir Begum</p> <p>30-12-09</p> <p>21/12/09</p> <p>21/12/09</p> <p>21/12/09</p>		<p>entitled to the benefits of Finance Department Notification dated 7.8.1991 and circular letter dated 11.8.1991 with effect from the date of issue or with effect from the date of acquiring higher qualification, whichever is later.</p> <p>In view of the above, this appeal and all the above listed appeals are accepted in limine, with direction the Government/department/respondents to ascertain the entitlement of the appellants and extend the benefit of advance increments to the similarly placed appellants, with further direction to also extend the benefit to other similarly placed Government employees who have not approached the Tribunal so far. The appellants are also directed to approach their department in this connection, and the department shall immediately process their cases within a reasonable time, otherwise, the responsible officer(s)/official(s) shall be taken to task for defiance of the order of Court/Tribunal and strictly dealt with departmentally as well as in accordance with law. No order as to costs.</p> <p><u>ANNOUNCED</u> 21.12.2009</p> <p> (QALANDAR ALI KHAN) CHAIRMAN CAMP COURT ABBOTTABAD</p>

Annexure C,

17

EXTRAORDINARY
GOVERNMENT



REGISTERED NO. PIII
G A Z E T T E

KHYBER PAKHTUNKHWA

Published by Authority

PESHAWAR, TUESDAY, 15TH MAY, 2012.

PROVINCIAL ASSEMBLY SECRETARIAT
KHYBER PAKHTUNKHWA

NOTIFICATION

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;

Attested
Nazira Begum

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.

Attested
Nazira Begum

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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

Printed and published by the Manager,
Staty. & Ptg. Dept., Khyber Pakhtunkhwa, Peshawar

Attested
Nazia Begum

Annexure D

20



**BEFORE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR**

Implementation Application No 93 of 2012.

IN

Service Appeal No: 1529 of 2009

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.

Petitioner

VERSUS

Executive District Officer, Elementary & Secondary Education Department
District Abbottabad and 05 others.

Respondents

**PETITION FOR IMPLEMENTATION OF JUDGMENT DATED
21/12/2009 PASSED IN SERVICE APPEAL NO 1529 OF 2009 BY
THIS HONOURABLE TRIBUNAL WHEREBY PETITINER HAS
BEEN GRANTED 04 FOUR ADVANCE INCREMENTS OF M.A
WITH EFFECT FROM 07/06/2001 WITH ALL BACK BENEFITS**

20.01.2014

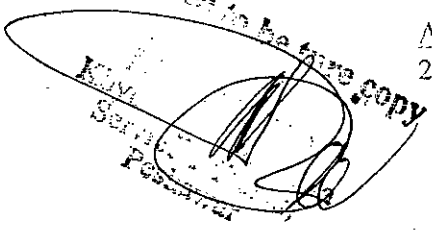
Mr. Jamshed Akhtar, husband of the petitioner, on behalf of the petitioner, M/S Zubair Ali, ADO for respondents No. 1, 2, 4 & 5 and Irshad Muhammad, Supdt. for respondent No. 6 with Mr. Muhammad Tahir Aurangzeb, G.P for the respondents present. Petitioner in implementation petition No. 120 of 2012 moved application for withdrawal of the implementation petition on the ground that he is going to move the High Court and challenge vires of Act of 2012, namely Act of Khyber Pakhtunkhwa for Cessation of Payment of Arrears on Advance Increments on acquisition of Higher Educational Qualification.

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

ANNOUNCED
20.01.2014

sd/-
Chairman
Comp Const A/Asst

Certified to be true copy



Number of copies of Application 29-1-2014
400
Urgent
Total
Name of Officer
Date of Cont.
Date of Disposal

- 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.

*Attested
Nazira Begum*

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.

3/13/14
 Executing
 Peshawar High Court
 Abbottabad Bench
 Under Sec 17 of Ordinance

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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*

*Attested
Nazira Begum*

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

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

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

Attested
Nazira Begum

20

Certified to be True Copy

Examiner
Peshawar High Court
Abbottabad Bench
Authorized Under Sec 25 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.

Certified to be True Copy

3/3/14
 Registrar
 Abbottabad Bench
 Reviewing Under Section 4(1) Ordinance

Attested
 Nazira Begum

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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

Attested
NABIRA BEGUM

nb

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2/3/17
Examiner
Peshawar High Court
Abbottabad Bench
Authorized Under Sec 75 Acts Ord 1973

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

Attested
Nazira Begum

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Confirmed to be True Copy
Examiner
Peshawar High Court
Abbottabad Bench
Authorized Under Section 75 of the Ordinance

provision of the Civil Servants Act or any service rule. Furthermore, the question involved is of public importance as it affects all the present and future pensioners and, therefore, falls within the compass of clause (3) of Article 184 of the Constitution. However, we may clarify that a civil servant cannot 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

Attested
 Nazim Begum

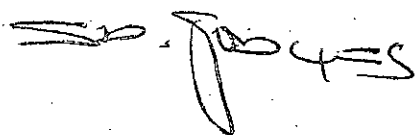
28

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

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.

Attested
Nazira Begum



Announced:
Dt.25.03.2014.

/M.S.Awan/

Certified to be True Copy
31.3.14
Examiner
Peshawar High Court
Abbottabad Bench
(Authorized under Section 75 of the Ordinance)

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR.

Service Appeal No.579/2014
Nazira Begum, DPE, Abbottabad.

...

Appellant

VERSUS

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

...

Respondents

PARAWISE COMMENTS ON BEHALF OF RESPONDENT NO.1

Preliminary Objections:

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

Facts:

- 1) Need no Comments by Respondent No.1.
- 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.

P. Ullah
SECRETARY TO GOVERNMENT
OF KHYBER PAKHUNKHWA
FINANCE DEPARTMENT
(RESPONDENT NO.1) *(Signature)*

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR.

Service Appeal No.579/2014
Nazira Begum, DPE, Abbottabad.

...

Appellant

VERSUS

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

...

Respondents

PARAWISE COMMENTS ON BEHALF OF RESPONDENT NO.1

Preliminary Objections:

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

Facts:



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

Cont'd Next Page-(2)

Grounds:

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

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


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

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

Appeal No. 579/2014

Nazira Bagum.....Appellant

VERSUS

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

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

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

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

Appeal No. 579/2014

Nazira Bagum.....Appellant

VERSUS

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

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

Respectfully Sheweth:-

Comments on behalf of respondents are submitted as under:-

PRELIMINARY OBJECTION:-

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

Factual objections:-

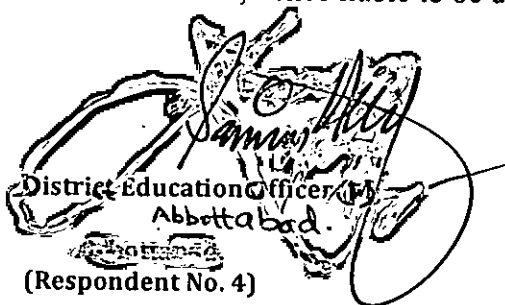
1. In reply to Para No.1 of the appeal it is submitted that judgment of honorable tribunal has lost its efficacy for the purpose of implementation by clear intendment through sections 1 & 2 of Khyber Pakhtunkhwa cessation of payment arrears on advance increments on higher education qualification Act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

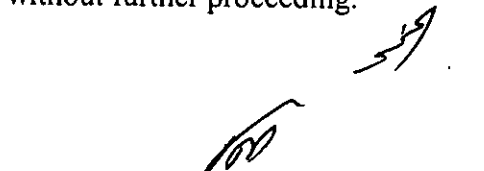
2. That para No.2 of the appeal is incorrect as composed hence, denied. The Act was passed by the Provincial Assembly and assented by the Governor KPK who isn't party in the present appeal. The answering respondents are bound to obey the will of the legislature & cannot deviate from any provision of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

Grounds:


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

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


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


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

*Vetted
Subject to annexures
M. [Signature]
6/7/15*


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

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

Appeal No. 579/2014

Nazira Bagum.....Appellant

VERSUS

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

AFFIDAVIT

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



[Handwritten Signature]
DEPONENT

In the Supreme Court of Pakistan
(Appellate Jurisdiction)

Annexure "A"

Present:

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

Civil Petition No.360 of 2013.

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

Muhammad Haroon

...Petitioner

Versus

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

Petitioner:

In person.

For official respondents:

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

Date of hearing:

29.8.2013

JUDGMENT

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

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

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

ATTESTED

Superintendent
Supreme Court Pakistan
ISLAMABAD

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

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

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

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

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

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

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

ATTESTED

Sub-judge
Supreme Court
Islamabad

C.P-350 of 2013.

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

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



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

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

10565/13

Case No.	Civil/Criminal
Date of Presentation	28.8.13
No. of Writs	1
No. of Petitions	1
Registration Fee Paid	5.00
Copy Fee Paid	5.00
Court Fee Paid	10.00
Name of Counsel	4/9/13
Date of Appointment	4/9/13
Appointed by	4/9/13
Received by	4/9/13

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

Appeal No. 579/2014

Nazira Bagum.....Appellant

VERSUS

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

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

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

BEFORE THE HONORABLE KHYBER PAKHTUNKHWA SERVICE
TRIBUNAL PESHAWAR CAMP COURT ABBOTTABAD.
Appeal No. 579/2014

Nazira Bagum.....Appellant

VERSUS

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

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

Respectfully Sheweth:-

Comments on behalf of respondents are submitted as under:-

PRELIMINARY OBJECTION:-

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

Factual objections:-

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

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

Grounds:

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

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

[Signature]
District Education Officer
Abbottabad.

(Respondent No. 4)

[Signature]
Director (E&SE) Khyber Pakhtunkhwa
Peshawar.

(Respondent No. 3)

*Vetted
Subject to annexures
7. [Signature]
6/7/15*

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

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

Appeal No. 579/2014

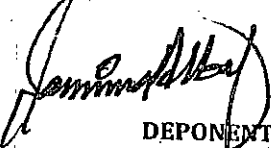
Nazira Bagum.....Appellant

VERSUS

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

AFFIDAVIT

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


DEPONENT

Annexure 11

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

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

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

ATTESTED

Deputy Registrar
Supreme Court of Pakistan
ISLAMABAD

CP-100/2011

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
Bupram
Khyber Pakhtunkhwa
Government
Islamabad

CP-360 of 2013

5. A bare reading of the above sections from Khyber Pakhtunkhwa Act No. IX of 2012 makes it crystal clear that whatever benefit the petitioner was claiming through the judgment dated 12.5.2009, has been nullified by the legislature through clear Intendment in unequivocal terms, while w/res 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

[Signature]
Superintendent
Supreme Court of Pakistan
ISLAMABAD

10565/13

Case No.	Civil/Criminal
Date of Filing	28.8.13
No. of Pages	9/0
No. of Exhibits	0
Registration Fee Paid	5.00
Court Fee Paid	5.00
Number of Copies	10
Name of Counsel	<i>[Signature]</i>
Name of Advocate	<i>[Signature]</i>