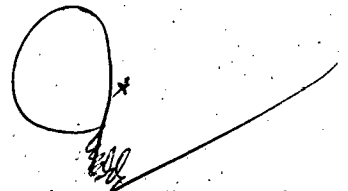


16.08.2022

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

Reply/comments on behalf of respondents not submitted. Learned Additional Advocate General seeks time to contact the respondents for submission of reply/comments. Adjourned. To come up for reply/comments as well as preliminary hearing on 13.10.2022 before S.B.

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(Mian Muhammad)
Member (E)




Form- A

FORM OF ORDER SHEET

Court of _____

Case No.-

1049/2022

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	24/06/2022	<p>The appeal presented today by Mr. Fazal Shah Mohmad Advocate may be entered in the Institution Register and put up to the Worthy Chairman for proper order please.</p> <p> REGISTRAR,</p>
2	6-7-22	<p>This case is entrusted to Single Bench at Peshawar for preliminary hearing to be put there on <u>6.7.22</u>. Notices be issued to appellant and his counsel for the date fixed.</p> <p> CHAIRMAN</p>
	06 th July, 2022	<p>Counsel for the appellant present.</p> <p>Let pre-admission be issued to the respondents. To come up for reply/preliminary hearing on 16.08.2022 before the S.B.</p> <p> (Kalim Arshad Khan) Chairman</p>

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

Service Appeal No 10272 /2022

Mian Hastam Khan**Appellant**

V E R S U S

Govt. and others.....**Respondents**

I N D E X

S.No	Description of Documents	Annexure	Pages
1.	Service appeal with Affidavit		1-3
2.	Copies of Judgments, Cabinet decision & Notification	A, B, C & D	4-29
3.	Copy of departmental appeal	E	30
4.	Vakalat Nama		31

Dated:-20-06-2022


Appellant

Through



Fazal Shah Mohmand
Advocate,
Supreme Court of Pakistan

OFFICE:- Cantonment Plaza Flat 3/B Khyber Bazar Peshawar Cell# 0301 8804841
Email:- fazalshahmohmand@gmail.com

Note:-

**Spare Copies will be submitted after
the admission of Service Appeal**


Advocate

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

Khyber Pakhtunkhwa
Service Tribunal

Service Appeal No 1027 /2022

Diary No. 429

Dated 24-6-2022

Mian Hastam Khan, Chowkidar (BPS-03), Govt. Institute for the Visually Impaired, Children (Boys) Peshawar.....**Appellant**

V E R S U S

1. Govt. of Khyber Pakhtunkhwa through Secretary, Social Welfare, Special Education, & Women Empowerment Department, Peshawar.
2. Director, Social Welfare, Special Education & Women Empowerment Department, Govt. of Khyber Pakhtunkhwa, Peshawar.
3. Govt. of Khyber Pakhtunkhwa through Chief Secretary, Civil Secretariat, Peshawar.
4. Govt. of Khyber Pakhtunkhwa through Secretary, Finance Department Peshawar.
5. Accountant General, Khyber Pakhtunkhwa, Peshawar.

.....**Respondents**

APPEAL U/S 4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT 1974, AGAINST THE NON-GRANT OF HEALTH ALLOWANCE TO THE APPELLANT AND FOR WHICH DEPARTMENTAL APPEAL OF THE APPELLANT HAS NOT BEEN RESPONDED SO FAR DESPITE THE LAPSE OF MORE THAN THE STATUTORY PERIOD OF NINETY DAYS.

PRAYER:-

Filed to-day
in
Registrar
24/6/22

On acceptance of this appeal, respondents may kindly be directed to grant/allow the appellant Health Allowance at the rate of one running basic pay with effect from the date of appointment with all back benefits.

Respectfully Submitted:-

1. That the appellant was appointed as Chowkidar (BPS-03) on 11-05-2017 and is serving in the Special Education Institution and teaching/providing special education/training to special children and since appointment he has performed his duties with honesty and full devotion with spotless service career.
2. That after eighteenth Constitutional amendment, the employees of Directorate General Special Education, of the

Federal Govt. department, have been transferred/devolved to the provincial Govt. Special Education and such devolved employees though serving under the same department of the Govt. of Khyber Pakhtunkhwa, are allowed/granted Health Allowance equal to one running basic pay w.e.f 01-01-2012 which has also been endorsed by the honorable Federal Service Tribunal as well as the honorable Supreme Court vide its Judgments in Civil Appeal No 811/2016, also approved by the provincial cabinet on 22-10-2019 and also implemented. **(Copy of Judgment of the FST dated 18-07-2017, Judgment of the Supreme Court dated 17-01-2018, decision of the provincial cabinet dated 22-10-2019 & Notification dated 25-11-2019 is enclosed as Annexure A, B, C & D).**

3. That the appellant being similarly placed, approached respondents for allowing/granting the appellant, Health Allowance equal to one running basic pay with effect from the date of his appointment, vide departmental appeal which has not been responded so far despite the lapse of the statutory period of ninety days. **(Copy of departmental appeal is enclosed as Annexure E).**
4. That this action of the respondents of not allowing/granting the appellant, Health Allowance equal to one running basic pay with effect from the date of his appointment, is against the law, facts and principles of justice on grounds inter-alia as follows:-

GROUND S:-

- A. That the omissions and commissions of the respondents are illegal and void ab-initio.
- B. That the appellant is denied treatment in accordance with law and rules in violation of Article 4 and 25 of the Constitution, as the appellant is exactly performing the same duties of teaching/training to the special children in the same Institutions and working under the same authorities, hence could not be treated differently.
- C. That even this issue was agitated before various judicial Foras which appeals were accepted and even the judgments have been implemented, thus the same point has been decided by various foras, the appellant such is also entitled to the same treatment.

D. That not granting the appellant health allowance on the analogy of their colleagues cause monetary loss to the appellant and he is subjected to monetary loss illegally.

It is therefore prayed that appeal of the appellant may kindly be accepted as prayed for in the heading of the appeal.

Dated:-20-06-2022


Appellant

Through



Fazal Shah Mohmand
Advocate,
Supreme Court of Pakistan

LIST OF BOOKS

1. Constitution 1973.
2. other books as per need

CERTIFICATE:

Certified that as per instructions of my client, no other Service Appeal on the same subject and between the same parties has been filed previously or concurrently before this honorable Tribunal.



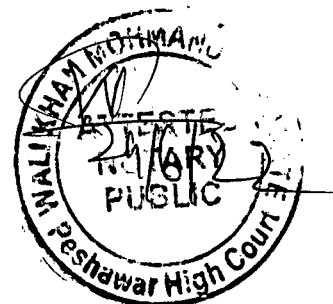
ADVOCATE

AFFIDAVIT

I, Mian Hastam Khan, Chowkidar (BPS-03), Govt. Institute for the Visually Impaired, Children (Boys) Peshawar, do hereby solemnly affirm and declare on oath that the contents of this **Appeal** are true and correct to the best of my knowledge and belief and nothing has been concealed from this honorable Tribunal.



DEPONENT



In the Federal Service Tribunal, Islamabad

Appeals No.565 to 573, 757 to 793, 894 to 918, 918-A, 919 to 943, 998 to 1045, 1108 to 1179, 1224 to 1243, 1265 to 1325, 2327 to 2350, 2352 to 2368 & 2368-A, 2369 to 2443, 2446 to 2484 & 2487 to 2501, 2508 to 2520(R)CS/2016 with M.Ps.

Nusrat Tahir and others

Versus

Secretary, Capital Administration & Development Division,
Secretary, Finance Division and AGPR, Islamabad.

Date of Institution : 04.04.2016, etc.

Date of hearing : 17.07.2017

Date of Judgment : 18.07.2017

Before: Syed Rafique Hussain Shah, and
Syed Muhammad Hamid, Members.

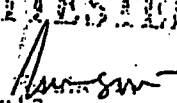
Present: Mr. Muhammad Anwar Mughal, Advocate for the appellants.

Syed Zil-e-Husnain Kazmi, Assistant Attorney General for the respondents with M/s Arshad Anjum, Assistant Director, CA & DD, Naveed Akhter, Section Officer, Finance Division, Azhar Nadeem Awan, Assistant Accounts Officer and Muhammad Jabbar, Senior Auditor, AGPR as D.Rs.

JUDGMENT

SYED RAFIQUE HUSSAIN SHAH, MEMBER:- With this judgment we shall decide the above titled appeals. The facts giving rise to the present appeals are that the Prime Minister of Pakistan approved payment of Health Allowance to the institutions providing Health Services in the year 2012 and the Finance Division issued notification No.2(13)R-2/2011-777 dated 06.02.2012 for grant of Health Allowance, equal to one basic pay of running salary to the health personnel in the employment of Federal Government in BPS Scheme w.e.f. 01.01.2012, in addition to the existing pay and allowances in BPS scheme. Health allowance had been paid to the contemporaries of the appellants in other Government Hospitals including PIMS, Federal, Govt. Polyclinic, CDA, ICT, Pakistan Railways and Federal Government Services Hospital, Islamabad, etc. but it was discontinued to the present appellants vide impugned orders dated 08.08.2014, 21.03.2016.

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Federal Service Tribunal
Islamabad



administrative control of CADD and, therefore, the entitlement or eligibility shall be taken into consideration in the light of status of each department or entity separately.

5. In order to meet the ends of justice, it would be appropriate that recovery of the Health Allowance already paid to the employees is recovered after a speaking order has been passed by the learned Secretary. It is expected that the Secretary CADD shall pass a speaking order preferably within 90-days."

XXX XXX XXX

The Secretary (CA&DD) after perusing the record and affording the opportunity of hearing to the authorized representatives of the petitioners (now appellants) on 14.03.2016 passed the order dated 21.03.2016 and declared the CA&DD's letter dated 13.03.2016 allowing Health Allowance to the DGSE employees unlawful, against the rules, void ab initio and directed the AGPR to recover the said Allowance from their salaries in easy installments.

2. In this backdrop, the appellants filed the instant appeals with the following prayer: -

"It is, therefore, most respectfully prayed that the appellant being entitled to Health Allowance being covered under category of Health Personnel, the said order dated 21.03.2016 by respondent No.1 may therefore, be set aside and it be declared that the action of respondent No.1 in withdrawing the said allowance and recovery thereof from the salaries of appellants, is mala fide, illegal, violative of principles of locus poenitentiae, unfair, unjust, unreasonable, arbitrary, fanciful and capricious and that are entitled to receive the same, from the date it has been withdrawn and stopped from payment."

3. The learned counsel for the appellants argued that the appellants being Federal government Servants under Article 240 of Constitution of the Islamic Republic of Pakistan, 1973 and covered under Section 2 (b) of Civil Servants Act, 1973 were entitled to all pay and allowances prescribed by Federal Government for its employees. Further stated that financial directive contained in Ministry of Finance O.M. No.2(13)R-2/2011 dated 06.02.2012 was unambiguous and clearly stipulated admissibility of Health Allowance to all health personnel in employment of Federal Government in BPS Scheme but despite the said notification of the Finance Division, the appellants were deprived of the

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Federal Services Tribunal
Islamabad

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said benefits. In support of his version, the learned counsel for the appellants referred to the judgments of FST dated 05.10.2015, 11.01.2016, 18.05.2016 and 14.12.2016 passed in Appeals No.224(R)CS/2015, 867 to 872(R)CS/2015, 1176 to 1187, 1189 to 1251(R)CS/2015 & 381 to 405(R)CS/2016 and prayed for the same relief. The learned counsel vehemently argued that the respondent-Finance Division was blowing hot and cold in the same breath as, on the one hand, it had admitted the claim of the appellants in para 5 of their para-wise comments filed in the Hon'ble Islamabad High Court, Islamabad while, on the other hand, they declined the same claim vide order dated 21.03.2016. He contended that the benefit once granted and acted upon had created a vested right which could not be withdrawn unilaterally, in violation of principle of natural justice. The learned counsel for the appellant lastly argued that impugned orders were void ab initio, coram-non-judice and having no sanctity of law as withdrawal / stoppage of salary amounted to punishment which could not be awarded without adopting the due process of law provided under the Government Servants (Efficiency and Discipline) Rules, 1973.

4. The appeals were resisted by the respondents. It was stated that the said allowance was not admissible to the appellants as they did not fall under the definition of health personnel because health personnel meant a person who held a post in any institute or organization delivering services in the health sector and included in Schedule-I. It was further submitted that the Health Allowance was allowed provisionally to the appellants by the AGPR on the basis of CADD Division's letter dated 06.08.2012 but subsequently that Division sent a reference to the Finance Division to seek its concurrence for admissibility of Health Allowance which regretted the same on 14.03.2013 on the ground that they were involved in the process of education, training and rehabilitation of disabled children and persons with disabilities and, hence, could not be declared as health personnel to become entitled for the said allowance. The CADD on 13.03.2013 in its communication to AGPR conveyed sanction of the Health Allowance to DGSE employees without concurrence of the Finance Division and the AGPR made provisional payment to the appellants, which was subsequently discontinued after verification of entitlement in order to prevent the misuse of this allowance by non-entitled personnel. It was submitted by respondent No.2 that health allowance was granted with the

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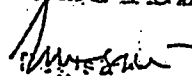
approval of the Prime Minister, through a summary, specifically moved for three Federal Government Hospitals i.e. Pakistan Institute of Medical Sciences, F.G. Polyclinic and National Institute of Rehabilitation Medicine. The Directorate General of Special Education & Social Welfare, being an educational body, dealt with the process of education, training and rehabilitation of disabled children and persons with disabilities, which was carried out by a multi-professional team including teachers, professionals, doctors, administrators, ministerial and supportive / ancillary staff did not fall within the ambit of health organization and could not be declared as 'health personnel' to get the said allowance. The respondent No.3 i.e. AGPR in its parawise comments submitted that the identical cases titled Dr. Farkh F. Lodhi, etc. vs Secretary Finance were still pending before the Hon'ble Supreme Court of Pakistan.

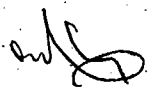
5. We heard the learned counsel for the parties and perused the record.

6. The health allowance equal to one basic pay of running salary was granted to the health personnel in the employment of Federal Government, in HPS Scheme, with effect from 01.01.2012. It was made admissible to non-clinical cadres. In reply to a query raised by AGPR vide letter No.TM/18-64/CSHP/HPS/2011-12/186, dated 12.03.2012, the Regulations Wing of the Finance Division vide U.O. No.F.2(13)R-2/2012-172 dated 27.03.2012 furnished definition of the health personnel by stating that 'health personnel' meant a persons who held a post in any institute or organization delivering services in the health sector and included in Schedule-I, but did not include person who was on deputation to the Federal Government from any Province or other authority and who was on contract, or on work charged basis or who was paid from contingencies. The appellants are neither deputationists from any Province or other authority nor have been engaged on contract or on work charged basis. They are also not being paid from contingencies. On the contrary, they are civil servants under section 2 (b) of the Civil Servants Act, 1973 and are delivering services to the disabled children / persons. The beneficiaries / appellants comprised of Academic and Administrative Cadres. According to the definition furnished by the Finance Division vide their u.o. dated 27.03.2012 the appellants are entitled to health allowance. In paras-6 & 7 under Facts of parawise comments filed before the Hon'ble Islamabad High

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Federal Service Tribunal



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Court, Islamabad on behalf of Secretary Finance Division in Writ Petition No.4007/2014, it was categorically admitted that in April, 2014 Ministry of CADD again submitted NIS / BOs containing a provision of Rs.100 million as HPA 'for DGSE for financial year 2014-15', however, DFA refused to endorse the NIS / BOs and forcefully deducted an amount of Rs.92.542 million of HPA, leaving Rs.7.458 million for the petitioners (now appellants) i.e. 24 employees who belonged to medical profession and came under the criteria of entitlement of HPA, as per DFA (CADD) understanding. D.O. letter dated 09.05.2014 was issued by FA's Organization to AGPR for stoppage of HPA to non-entitled employees and it was duty of AGPR to take action on the said letter and decide entitlement. It was prayed that the petition was an administrative issue with CADD & DGSI, therefore, the Finance Division be excluded from the list of respondents. Now the Finance Division has come up with different stand. It is not allowed to approbate and reprobate. No logical reply has been submitted by the respondents for depriving the appellants of their legitimate rights. A large number of employees of the Federal Government, similarly placed, are getting the said advantage. Why, then, the appellants be deprived, is not clear from what has been written in the comments before the Hon'ble Islamabad High Court, Islamabad and the Federal Service Tribunal. This seems to be discriminatory treatment offending Article 4 & 25 of the Constitution of Islamic Republic of Pakistan, 1973. Further, the appellants have been directed by respondent No.1 to refund the paid amount which is against the principle of locus poenitentiae because the Hon'ble Supreme Court of Pakistan has consistently held that the benefit once granted and acted upon created a vested right which could not be withdrawn unilaterally, in violation of natural justice. It is an established law that benefits received by a civil servant, even under erroneous order passed by the competent authority without any fault on the part of civil servant could not be recovered even if the beneficial order was subsequently withdrawn or rectified. We are fortified to take this view in the light of the judgment of Hon'ble Supreme Court of Pakistan reported in PLD 1992 SC 207. Hence, to this extent, the impugned orders are not legally sustainable and liable to be set aside.

7. We would like to make an emphasis on the judgments of the Tribunal in Appeals No.224(R)CS/2015 and 381 to 405(R)CS/2016 dated

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 Federal Service Tribunal
 Islamabad

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05.10.2015 and 14.12.2016 wherein the controversy relating to Health Allowance has already been resolved. When confronted with the said fact, the respondents have failed to deny the fact. As such, the action of the respondents appears to be inconsistent in the light of the aforementioned judgments on account of Article 25 of the Constitution which guarantees equal rights and equal protection of law for every citizen. To ensure uniformity, rule of consistency must be applied while considering the case of the appellants. Since the Hon'ble Apex Court vide its judgment in the case reported as 1996 SCMR 1185 has already held that "rule of good governance demands that the benefits of the said decision be extended to other civil servants also, who may not be parties to the litigation, instead of compelling them to approach the Tribunal or any other legal forum. Hence, the claim of the appellants is required to be decided on the same analogy / principle as framed in the cases of Dr. Farrukh Fiaz Lodhi and others by the Tribunal vide its judgment dated 05.10.2015, 11.01.2016 and 14.12.2016.

8. Foregoing in view and following the rule of consistency, the impugned orders dated 21.03.2016 and 25.03.2016 are set aside with direction to the respondents to continue the Health Allowance already granted to the appellants since 2012, and to refund all deduction made in compliance with the impugned orders within a period of one month from the date the copy of this judgment is received in their office. Since the main appeals have been accepted, Misc. Petitions are also accepted.

- 9. Judgment to apply all the titled appeals mutatis mutandis.
- 10. There shall be no order as to costs.
- 11. Parties shall be informed accordingly.

Sd-
MEMBER

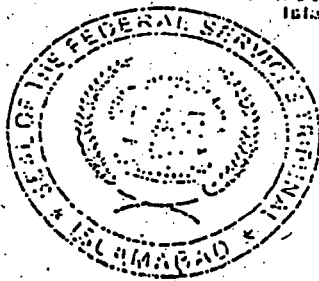
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MEMBER

ISLAMABAD
18.07.2017

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Federal Service Tribunal
Islamabad



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-11-

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

Present:
MR. JUSTICE MIAN SAQIB NISAR, F.C.J.
MR. JUSTICE UMAR ATA BANDIAL
MR. JUSTICE IJAZ UL AHSAN

CIVIL APPEAL NOS. 1631 TO 2112 OF 2017,
CIVIL APPEAL NOS. 216 OF 2016 AND CIVIL APPEAL NOS.
806 TO 811 OF 2016.

(On appeal from the judgments dated 18.7.2017, 11.1.2018, 05.7.2015 of the Federal Service Tribunal, Islamabad passed in Appeal Nos 565 to 573, 757 to 793, 894-910, 915-A, 919-943, 998-1003, 1005-A, 1006-1046, 1108-1170, 1224-1243, 1245-1275, 2327-4390, 2383-2388, 2389-A, 2368; 2370, 2372-2443, 2446-2449, 2453, 2451, 2452, 2450, 2448-2444, 2487-2501, 2508-2520, CS/2016, 867-872, JCS/13, 224, JCS/15 etc.)

Federation of Pakistan through Secretary Capital Administration and Development Division, Islamabad etc.

Appellant(s)
(in all cases)

VERSUS

- Nusrat Tahir etc. (in C.A.1631/2017)
- Miraj Gul etc. (in C.A.1632/17)
- Ejaz Ahmed and others (in C.A.1633/2017)
- Firdous Begum etc. (in C.A.1634/2017)
- Robina Qureshi etc. (in C.A.1635/17)
- Muhammad Arshad etc. (in C.A.1636/2017)
- Shahbaz Akhtar Khalid etc. (in C.A.1637/2017)
- Muhammad Touqeer Iqbal etc. (in C.A.1638/2017)
- Astagh Ahmad etc. (in C.A.1639/2017)
- Taimoor Imran Ali Khan etc. (in C.A.1640/2017)
- Muhammad Jabbar Khan etc. (in C.A.1641/17)
- Shahid Iqbal etc. (in C.A.1642/2017)
- Muhammad Anwar etc. (in C.A.1643/2017)
- Nafeed Kausar etc. (in C.A.1644/17)
- Iqbal ur Raahid etc. (in C.A.1645/2017)
- Ghulam Mustafa etc. (in C.A.1646/2017)
- Mulhtar Ahmed etc. (in C.A.1647/17)
- Nacema Bushra Malik etc. (in C.A.1648/2017)
- Meena Asad etc. (in C.A.1649/2017)
- Muhammad Qayyum etc. (in C.A.1650/17)
- Rubina Mahmood-Awan etc. (in C.A.1651/2017)
- Muhammad Khushal Khan etc. (in C.A.1652/2017)
- Mussarat Bibi etc. (in C.A.1653/17)
- Muhammad Ghulam Durrani etc. (in C.A.1654/2017)
- Muhammad Mushtaq etc. (in C.A.1655/2017)
- Qari Muhammad Almas etc. (in C.A.1656/17)
- Riaz Akhtar etc. (in C.A.1657/2017)
- Syed Zamcer Haider Rizvi etc. (in C.A.1658/2017)
- Liaqat Ali etc. (in C.A.1659/17)
- Muhammad Arif etc. (in C.A.1660/2017)
- Waseem Hussain etc. (in C.A.1661/2017)
- Khalid Pervez etc. (in C.A.1662/17)
- Muhammad Nazir Kiyani etc. (in C.A.1663/2017)
- Abdul Majeed etc. (in C.A.1664/2017)
- Muhammad Ashraf etc. (in C.A.1665/17)

Mr. Bilal
09/03/18

ATTESTED
Court Associate
Supreme Court of Pakistan
Islamabad


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Asif Ali and others
 Wajid Bashir etc.
 Mrs. Samina Zafar etc.
 Muhammad Bukhsh others
 Mrs. Qamar Zahra etc.
 Shabbir Nawaz etc.
 Zulfiqar Ahmed others
 Mrs. Rashda Jabeen etc.
 Mrs. Najma Khanum etc.
 Mrs. Mah-e-Naz Israr & others
 Zuhaida Khanum etc.
 Mrs. Shabana Latif etc.
 Mrs. Zahida Naheed etc.
 Miss Lala Rukh Qurshi etc.
 Mrs. Raheela Ambreen etc.
 Mrs. Shams un Nisa and others
 Ms. Farzana Masood etc.
 Mrs. Kameez Rubab etc.
 Ms. Raheela Haider and others
 Mrs. Asia Bashid etc.
 Mrs. Tayyaba Qaiser etc.
 Mrs. Naureen Iqbal and others
 Mrs. Shabbana Kausar etc.
 Tahira Yasmeen Aya etc.
 Tauqeer Ahmad and others
 Inayat Ullah etc.
 Muhammad Idrees Qamar etc.
 Syed Arif Hussain Shah etc.
 Parveen Akhtar etc.
 Muhammad Yousaf etc.
 Nasreen Anjum Aya etc.
 Muhammad Ishaq etc.
 Azhar Mahmood etc.
 Abdul Ghafoor etc.
 Muhammad Sayyad etc.
 Muhammad Saleem Khan etc.
 Gul Shad etc.
 Joseph Rafiq etc.
 Syeda Sadaf Ali etc.
 Mrs. Mehnaz Ajmal etc.
 Javed Iqbal etc.
 Mrs. Rizwana Shahid etc.
 Muhammad Ajmal etc.
 Iqtidar Hussain etc.
 Tahir Mahmood etc.
 Adnan Babar etc.
 Pervaiz Nadeem etc.
 Asif Younas etc.
 Muhammad Younas etc.
 James Mashid etc.
 Muhammad Aslam etc.
 Shoukat Mashid etc.
 Ms. Yasmin Tahira etc.
 Muhammad Aslam etc.
 Mrs. Rubina Anjum etc.

(in C.A. 1723/2017)
 (in C.A. 1724/2017)
 (in C.A. 1725/17)
 (in C.A. 1726/2017)
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 (in C.A. 1776/17)
 (in C.A. 1777/2017)
 (in C.A. 1778/2017)

ATTESTED


 Court Associate
 Supreme Court of Pakistan
 Islamabad

17



Ms. Nazmiya etc.	(in C.A.1780/2017)
Ms. Tasneem Fatima etc.	(in C.A.1781/2017)
Muhammad Naveed Arif Khan etc.	(in C.A.1782/17)
Miss Naz Tahir etc.	(in C.A.1783/2017)
Syed Sultan Shah etc.	(in C.A.1784/2017)
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- Habib Ullah etc. (in C.A.2100/2017)
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Muhammad Attique ur Rehman
etc.

(in C.A.811/2016)

...Respondents(s)

For the Appellant(s)
(in all cases)

Mr. Sajid Ilyas Bhatti, DAG
Syed Rifaqat Hussain Shah, AOR
Ms. Saadia Kanwal, S.O Fin.
Mr. Abid Hussain Channa, S.O Fin.
Mr. Sajid Javed, Asstt. Legal Fin.
Mr. Abdul Razzaq, AAO MEG
Rawalpindi

For the Respondent(s) In-person

For the Respondent(s)
(in C.A.216/16)

Mr. Muhammad Ilyas Lodhi, ASC
Malik Itaat Hussain Awan, ASC

Amicus Curiae:

Mr. Muhammad Makhdoom Ali
Khan, Sr. ASC
Mr. Sikandar Bashir Mohmand, ASC

Date of Hearing

17.01.2018.

JUDGMENT

UMAR ATA BANDIAL, J.— By leave of this Court granted on 23.02.2016, 01.4.2016 and 12.12.2017 in the several connected appeals before us, the appellant Federal Government challenges the judgments delivered on common questions of fact and law by the learned Federal Service Tribunal on 05.10.2015, 11.01.2016 and 18.07.2017. The judgments impugned in the connected appeals declare the respondent employees of different institutions functioning under the Directorate General of Special Education ("DGSE") to be entitled to payment of Health Allowance granted by the Federal Government vide its Office Memoranda dated 04.02.2012 and 06.2.2012. These Memoranda are issued by the Finance Division (Regulations Wing) Government of Pakistan pursuant to approval granted by the Prime Minister under the Rules of Business, 1973. It would be useful to reproduce the two

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memoranda containing the terms and conditions for the grant of
Health Allowance to eligible persons:

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"Government of Pakistan
Finance Division
(Regulations Wing)

F.No.2(13)R-2/2011 Islamabad, the 04th Feb,2012

OFFICE MEMORANDUM

Subject: GRANT OF ADHOC ALLOWANCE EQUAL TO ONE BASIC PAY AT THE INITIAL OF THE SCALE TO THE HEALTH PERSONNEL IN BPS SCHEME.

The undersigned is directed to say that the Ordinance No.VI of 2011 that sanctioned the Career Structure for Health Personnel Scheme (CSHP) has lapsed on 26.12.2011. Accordingly, CSHP is no longer in the field and all health personnel have consequently reverted to the BPS scheme. In order to compensate health personnel for the loss of benefits sought under CSHP while preserving their status as Civil Servants, it has been decided by the Federal Government to grant adhoc allowance equal to one basic pay at the initial of the scale to the health personnel in the employment of Federal Government, in BPS scheme, with effect from 1st January, 2012. This will be in addition to their existing pay/allowances in BPS Scheme.

2. This Division's OM No.2(13)R-2/2011-698 dated 17th November, 2011 may be treated as withdrawn w.e.f. 26.12.2011.

Sd/--
(M. Munir Sadiq)
Deputy Secretary (R-I)"

"Government of Pakistan
Finance Division
(Regulations Wing)

F.No.2(13)R-2/2011-777 Islamabad, the 06th February,2012

OFFICE MEMORANDUM

Subject: GRANT OF ADHOC ALLOWANCE EQUAL TO ONE BASIC PAY OF RUNNING SALARY TO THE HEALTH PERSONNEL IN BPS SCHEME.

In continuation of Finance; Division's O.M. No.F.2(13)R-2/2011, dated 4.2.2012, it has been decided by the Federal Government to grant benefit of one basic pay of running salary as Health Allowance to the health personnel in the employment of Federal Government, in BPS scheme, with effect from 1st January, 2012. This will be in addition to their existing allowances in BPS Scheme. Also grant of stipend amounting to Rs.50,000 per month to the postgraduate residents and Rs.24,000 per month for House Officers respectively w.e.f. 1.7.2011 will continue.

Sd/--
(Manzoor Ali Khan)
Sr. Joint Secretary (Regulations)"

(emphasis supplied)

2. Learned Deputy Attorney General has contended that the Health Allowance granted by the Federal Government is available to health personnel in the employment of the Federal Government in the BPS scheme at three hospitals established in

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Supreme Court of Pakistan

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Islamabad, namely, Pakistan Institute of Medical Sciences ("PIMS"), Federal Government Polyclinic ("FGP") and National Institution of Rehabilitation Medicines ("NIRM"). The employees at these hospitals do not have a career structure in place after the Career Structure for Health Personnel Scheme Ordinance, 2011 ("Ordinance") lapsed on 26.1.2011. The Health Allowance was accordingly granted by the Federal Government as a form of compensation. It is clear from the two memoranda dated 04.2.2012 and 06.2.2012 reproduced above that the Health Allowance is granted to "health personnel". However, the composition of the category of employees that are eligible for the benefit has not been provided therein. The respondents who are several hundred in number are unrepresented by counsel. In view of the fact that a large number of employees are affected by the instant controversy, the Court has sought assistance from Mr. Muhammad Makhdoom Ali Khan, Sr. ASC and Mr. Sikandar Bashir Mohmand, ASC as amicus curiae in the matter. Mr. Sikandar Bashir Mohmand, ASC made able submissions before the Court that highlighted important facts and documents on record which simplified the controversy appreciably.

3. It transpires that an Office Memorandum dated 27.03.2012 by the Finance Division (Regulations Wing) clarifies that the term "health personnel" used in the above mentioned memoranda bears the meaning given to that expression in Section 2(b) of the Ordinance. This definition refers to the contents of Schedule-I to the Ordinance which specifies the service providers who qualify as health personnel. A perusal of Schedule-I shows that five categories of service providers are

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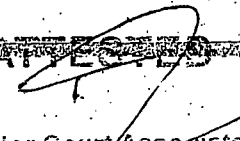
classified as health personnel, namely: Doctors, Allied, Nurses, Paramedics and Support. The services specified under the categories of Paramedics and Support include Teachers, Audiovisual Operators, Technicians, Librarians, etc.

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4. The administrative Ministry for the health institutions of the Federal Government at Islamabad is the Ministry of Capital Administration and Development Division ("CADD"). It is an admitted fact that vide order dated 13.03.2013 the Ministry of CADD granted the Health Allowance to the employees of the DGSE and its allied special education centers/ institutions including National Trust for the Disabled ("NTD") and the National Council for Rehabilitation of Disabled Persons ("NCRDP"). The respondents were thereby acknowledged as beneficiaries of the said grant and were paid the Health Allowance with effect from 01.1.2012 until 27.10.2014, when the Finance Division informed the Accountant General Pakistan Revenue ("AGPR") that only health personnel working in Federal Government hospitals and clinics were qualified to receive the Health Allowance. The AGPR correspondingly instructed the DGSE to stop payment of the said allowance to its employees as no budget allocation for the said emolument had been made in the financial year 2014-15.

5. The discontinuation of their Health Allowance was taken to the Islamabad High Court by some of the respondents. Vide order dated 17.9.2015 the learned High Court referred the dispute to the Secretary CADD for passing a speaking order thereon; and till then restrained recovery of past payments of the Health Allowance from the affected employees of DGSE and allied centers. The Secretary CADD heard the parties and by

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Islamabad



order dated 21.3.2016 rejected the entitlement of the respondents to receive the said allowance. The principal ground of his decision is that employees of the DGSE were engaged in the process of education, training and rehabilitation of disabled children and therefore did not fall within the ambit of a health organization. The respondents successfully challenged the said order before the learned Federal Service Tribunal which has, *inter alia*, by the impugned judgment dated 18.07.2017 declared that the respondents are entitled to the grant of Health Allowance.

6. Learned Deputy Attorney General has contended that after the lapse of the Ordinance that had provided a career structure for the doctors, nurses and paramedics working in PIMS, FGP and NIRM, the Health Allowance was granted by the Federal Government as compensation to the said health personnel. He was, however, unable to show any contemporaneous direction issued by the Ministry of CADD or the Ministry of Finance that restricted the grant of the Health Allowance to the claimed employees of the three hospitals specified by him. As already noted above, the definition of health personnel provided in the Ministry of Finance Office Memorandum dated 27.3.2012 is wide in scope and therefore unhelpful to his plea.

7. We have examined the definition of "health personnel" adopted by said memorandum dated 27.3.2012 from Section 2(b) of the Ordinance which is to the following effect:

"b) "health personnel" means a person who holds a post in any institute or organization delivering services in the health sector and included in Schedule-I, but does not include:
i) a person who is on deputation to the Federal Government from any Province or other authority;

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ii) a person who is employed on contract, or on work charged basis or who is paid from contingencies."

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8. It is noted that the foregoing definition of health personnel covers persons holding posts in any institute or organization who are delivering services in the health sector that are included in Schedule-I to the Ordinance. Learned Deputy Attorney General was unable to distinguish the respondents, who are employees of the DGSE and allied institutions/centers, NCRDP and NTD, from the paramedic and support staff positions that qualify as health personnel according to Schedule-I to the Ordinance. It is not denied by the appellant that education, training and rehabilitation of disabled persons are services provided in the health sector. These services fall within the terms of Schedule-I to the Ordinance and therefore the providers thereof qualify as health personnel.

9. Accordingly, not only do the respondents fall within the category of persons who are, in terms of Finance Division Memoranda dated 06.2.2012 and 27.3.2012, eligible for grant of the Health Allowance but their entitlement has in fact been admitted by both the Ministry of CADD and Ministry of Finance. In this respect the aforementioned letter dated 13.3.2013 issued by the Ministry of CADD is referred. Also the affidavit of the Secretary Finance, Government of Pakistan filed in the Islamabad High Court pursuant to that Court's order dated 20.3.2015 passed in Writ Petition No. 4007 of 2014, specifically records that the proposal approved by the Prime Minister vide Summary dated 25.1.2012 did not restrict admissibility of the Health Allowance to the personnel of the three hospitals (identified by the learned DAG). For that reason the Finance

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Senior Court Associate
Supreme Court of Pakistan
Islamabad

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Division Memoranda dated 04.2.2012 and 6.2.2012 made the allowance available to all health personnel employed by the Federal Government in the BPS Scheme.

10. As a result, the said allowance was paid to the health personnel of the DGSE and its allied institutions until 27.10.2014 when the Finance Division instructed the AGPR to confine the grant of the allowance to employees of Federal Government hospitals and clinics. This instruction represents merely a change of opinion which is not occasioned by an amendment in the terms of eligibility for the Health Allowance. Therefore, as the Memoranda dated 04.2.2012, 06.2.2012 and 27.3.2012 issued by the Finance Division, Government of Pakistan still hold the field in their original terms, there is no merit in the objection by the learned DAG to the entitlement of the respondents to claim and receive the Health Allowance.

11. As a secondary and also tenuous argument, learned Deputy Attorney General contended that the Health Allowance is granted under executive fiat without any statutory backing therefore the same can be withdrawn by the Federal Government at any time. That is clearly a flawed contention. It is admitted that grant of the Health Allowance and the terms of eligibility to receive the same were determined by the competent authority, Ministry of Finance in accordance with Rules of Business of the Federal Government. The original terms of the said lawful grant still hold the field. These were acted upon and payment of the Health Allowance to the respondents has conferred a vested right upon them. In such circumstances, the executive is barred by the rule of *locus poenitentiae* from unilaterally rescinding and retrieving the benefit availed by its recipients. Reference is made

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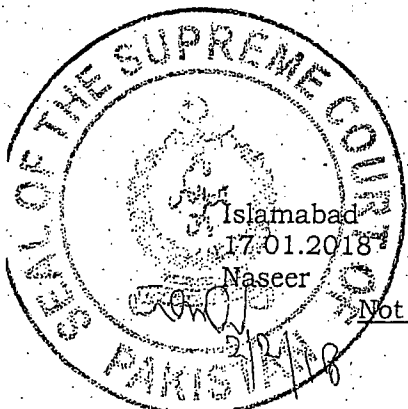
to Pakistan, through the Secretary, Ministry of Finance vs. Muhammad Himayatullah Farukhi (PLD 1969 SC 407) and The Engineer-in-Chief Branch vs. Jalaluddin (PLD 1992 SC 207). Therefore without a change of the terms of eligibility for the Health Allowance even the prospective exclusion of the respondents from receipt of the benefit shall constitute arbitrary and unlawful action.

12. In the circumstances, we do not find any error or defect in the impugned judgments of the learned Federal Service Tribunal dated 05.10.2015, 11.1.2016 and 18.7.2017. Consequently, these appeals are dismissed and the entitlement of employees of the DGSE, allied institutions/centers, NCRDP and NTD to receive the Health Allowance is affirmed.

Sd/- Mian Saqib Nisar, CJ
Sd/- Umar Ata Bandial, J
Sd/- Ijaz ul Ahsan, J

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Senior Court Associate
Supreme Court of Pakistan
Islamabad



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GOVERNMENT OF KHYBER PAKHTUNKHWA
ESTABLISHMENT AND ADMIN: DEPARTMENT
(CABINET WING)
No. SOC(E&AD)9-24/2019
Dated Peshawar the 28th October, 2019.



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To,

The Secretary to Govt. of Khyber Pakhtunkhwa
Zakat, Ushr, Social Welfare, Special Education & Women
Department.

**SUBJECT: DECISION OF THE MEETING OF PROVINCIAL CABINET
DATED 22.10.2019.**

Dear Sir!

I am directed to forward herewith the following decision of the meeting of Provincial Cabinet held on 22.10.2019 under the chairmanship of Chief Minister, Khyber Pakhtunkhwa for implementation.

AGENDA ITEM NO. 16
**DRAWL OF HEALTH ALLOWANCE BY THE EMPLOYEES OF SPECIAL
EDUCATION WP.NO.430/2018 NAZEER SHAH VS GOVERNMENT OF KHYBER
PAKHTUNKHWA**

Decision of the Cabinet:

The Cabinet approved Health Allowance to the devolved employees of Special Education Institutions at the rate of one running basic pay.

Implementing Department: Zakat, Ushr, Social Welfare, Special Education & Women Empowerment

2. I am to request that an implementation report of the Cabinet decision as required under Rule 25 (2) of the Khyber Pakhtunkhwa Government Rules of Business, 1985 may kindly be furnished on top priority basis to the Cabinet Section, Administration Department.

Yours faithfully,


(TAJ MUHAMMAD)
SECTION OFFICER (CABINET)

ENDST.NO. & DATE EVEN.

Copy to:-

1. P.S to Secretary Administration Department.
2. PA to Additional Secretary (Cabinet) Administration Department.
3. PA to Deputy Secretary (Cabinet) Administration Department.


SECTION OFFICER (CABINET)





GOVERNMENT OF KHYBER PAKHTUNKHWA
FINANCE DEPARTMENT
(REGULATION WING)

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Dated Peshawar the 25-11-2019

NOTIFICATION

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No.FDISOSR-JUB-7/2019, In pursuance of the Supreme Court of Pakistan Civil Appeal No B11/2010 titled "Muhammad Aikque-Ur-Rehman & Others vs Federal Government of Pakistan through Secretary Capital Administration etc," the Government of Khyber Pakhtunkhwa (Provincial Cabinet) has been pleased to approve Health Allowance at the rate of one running basic pay to the devolved employees working in the Special Education Institutions from the date of their devolution to Provincial Govt of Khyber Pakhtunkhwa

2 The above said allowance will be admissible only to the employees of Special Education Institutions of Khyber Pakhtunkhwa devolved under 15th Constitutional Amendment

Secretary to Govt of Khyber Pakhtunkhwa
Finance Department

Enclat: No. & Date Even.

Copy is forwarded for information and necessary action to the:-

- 1 Accountant General, Khyber Pakhtunkhwa, Peshawar
- 2 Principal Secretary to Chief Minister, Khyber Pakhtunkhwa
- 3 Principal Secretary to Governor, Khyber Pakhtunkhwa
- 4 Secretary to Social Welfare, Special Education & Women Empowerment Deptt.
- 5 Director, FMIU, Finance Department, Khyber Pakhtunkhwa
- 6 PS to Minister Finance, Khyber Pakhtunkhwa
- 7 PS to Secretary, Finance Department, Khyber Pakhtunkhwa
- 8 PS to Special Secretary, Finance Department, Khyber Pakhtunkhwa
- 9 PA to Additional Secretary (Regulation), Finance Department
- 10 Master File

[Signature]
SECTION OFFICER (SR-II)
FINANCE DEPARTMENT

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GOVERNMENT OF KHYBER PAKHTUNKHWA
FINANCE DEPARTMENT

NOTIFICATION

No.FD(SOSR-II)8-8/2019, In pursuance of the Supreme Court of Pakistan Civil Appeal No. 811/2018 titled "Muhammad Atique Ur Rehman & others Vs Federal Govt of Pakistan & others etc" the Government of Khyber Pakhtunkhwa (Provincial Cabinet) has been pleased to approve Health Allowance at the rate of one running basic pay to the devolved employees working in the Special Education Institutions from the date of their devolution to Provincial Govt of Khyber Pakhtunkhwa.

2. The above said allowance will be admissible only to the employees of Special Education Institutions of Khyber Pakhtunkhwa devolved under 18th Constitutional Amendment.

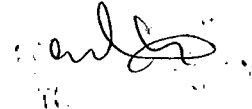
Secretary to Govt of Khyber Pakhtunkhwa
Finance Department

Endst: No. & Date Even.

Copy is forwarded for Information and necessary action to the:

1. Accountant General, Khyber Pakhtunkhwa Peshawar
2. Principal Secretary to chief Minister Khyber Pakhtunkhwa.
3. Principal Secretary to Governor Khyber Pakhtunkhwa Peshawar
4. Secretary to Social Welfare, Social education & Women Empowerment Deptt.
5. Director FMIU Finance Department Khyber Pakhtunkhwa.
6. PS to Minister Finance Khyber Pakhtunkhwa
7. PS to Secretary Finance Department Khyber Pakhtunkhwa
8. PS to Special Secretary Finance department Khyber Pakhtunkhwa
9. PA to Additional Secretary (Regulations) Finance Department
10. Master File

Section Officer
Finance Department (SR-II)



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**BEFORE THE SECRETARY, SPECIAL EDUCATION, SOCIAL WELFARE AND WOMEN
EMPOWERMENT DEPARTMENT KHYBER PAKHTUNKHWA, PESHAWAR.**

Subject : THROUGH PROPER CHANNEL, APPEAL FOR THE GRANT OF HEALTH ALLOWANCE

Respectfully Submitted:-

That I am serving under your kind control in the Special Education Institution and teaching/providing Special Education services/training to Special Children. It is pertinent to mention that after eighteenth Constitutional amendment the employees of Directorate General Special Education of the Federal Govt: Department, have been transfer/devolved to the Provincial Govt:, Special Education and such devolved employees though serving under the same department of the Govt: of Khyber Pakhtunkhwa are allowed/granted Health Allowance equal to one running basic pay w.e.f 01-01-2012 which has also been endorsed by the Honorable Federal Service Tribunal as well as the Honorable Supreme Court vide its judgements in Civil Appeal No. 811/2016, also approved by the Provincial Cabinet on 22-10-2019 and also implemented.

Since the employees of devolved Institutions and I am performing the same duties in the same Institutions, same department, having the same job description and cause, being teaching/providing special Education/Training to special Children, therefore I could not be treated discriminately more particularly with respect to my colleagues and that too under the same administrative control. It is worth to mention that the employees of devolved Institution have been allowed Health Allowance since 01-01-2012 and even after the payment of arrears the same has been merged in their basic pays.

It is therefore requested that I may kindly be allowed/granted Health Allowance equivalent to one running basic Pay w.e.f 01-01-2012 on the analogy of the employees of Special Education Institutions of Khyber Pakhtunkhwa with all back benefits.

Dated : 24-02-2022

*Received & Recommended
for n/a*

[Signature]
Govt: Peshawar

[Signature]
Mian Hasnain Jan Chowkidar
Govt: Institute for visually impaired child
(Boys) Peshawar

**REGISTERED
TO ELECTRICITY**

