


21st July 2022 1. Petitioner alongwith his counsel present. Mr. Noor Zaman Khattak, District Attorney alongwith Mr. Sohail Ahmad Zeb, Litigation Officer for respondents present.

2. Representative of the respondents produced the source form saying that in compliance with the judgment, the source form had been prepared and would be submitted in the Accounts Office today. The learned counsel for the petitioner submitted that Accounts Office might not act upon the source form. This apprehension of the learned counsel for the petition is misconceived. Since the Drawing and Disbursing Officer has prepared the source form and is going to submit the same in the Accounts Office for clearance of all the dues granted to the petitioner by way of judgment, therefore, there is no need to keep this petition pending. Disposed of accordingly. Consign.

3. *Pronounced in open court in Camp Court Abbottabad and given under my hand and seal of the Tribunal on this 21st day of July, 2022.*

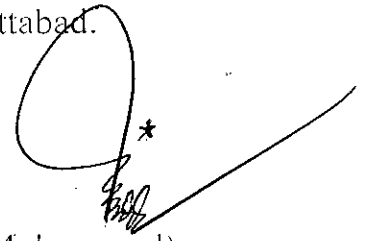



(Kalim Arshad Khan)
Chairman
Camp Court Abbottabad

20.12.2021

Petitioner in person present. Mr. Muhammad Muhammad Riaz Khan Paindakhel, Assistant Advocate General alongwith Mr. Sohail Ahmad Zeb, Assistant Litigation for respondents present.

R
Respondent-department submitted reply on behalf of respondent No.6 vide para-6 of which it has been intimated that the august Supreme Court of Pakistan has suspended the impugned judgement of this Tribunal on 08.12.2019 regarding the advance increments on account of higher qualification. Copy of the same is placed on file as well as handed over to the petitioner. Adjourned. To come up for further proceedings on 17.02.2022 before S.B at camp court Abbottabad.



(Mian Muhammad)
Member(E)
Camp.Court Abbottabad

A

14.06.2021

Due to cancellation of tour, Bench is not available. Therefore, case to come up for the same as before on 27.09.2021.



Reader

27.09.2021

Petitioner in person and Mr. Muhammad Riaz Khan, Paindakhel, Asstt. AG alongwith Mr. Amanatullah Qureshi, Deputy Secretary and Sohail Ahmad Zaib, Assistant Litigation for the respondents present.

Case to come up with EP No. 96/2020 for further proceedings on 20.12.2021 before S.B at Camp court, Abbottabad.

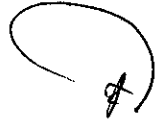


Chairman
Camp Court, A/Abad

20.10.2020

Representative of petitioner on behalf of petitioner present.

Notice of the present execution petition be issued to respondents for 15.12.2020 before S.B at Camp Court, Abbottabad.


(Rozina Rehman)
Member (J)
Camp Court, A/Abad

15.12.2021
15/12/21

Due to Covid-19, case is adjourned to 16.03.2021 for the same as before


Reader

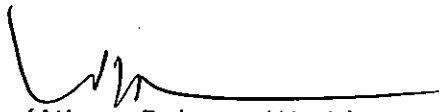
16.03.2021

Nemo for petitioner.

Riaz Khan Paindakheil learned Asst. AG alongwith Naseeb Khan SO for respondents present.



Representative of respondents submitted reply to execution petition on behalf of respondent No.2 which is placed on file.

Preceding date was adjourned on a Reader's note, therefore notice be issued to petitioner and his respective counsel. To come up for further proceedings on 15/6 /2021 before S.B at Camp Court Abbottabad.


(Atiq ur Rehman Wazir)
Member (E)
Camp Court, A/Abad

Form- A
FORM OF ORDER SHEET

Court of _____
Execution Petition No. 72/2020

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1	06.03.2020	<p>The execution petition of Mr. Amjid Hussain submitted today by post may be entered in the relevant register and put up to the Court for proper order please.</p> <p style="text-align: right;"> REGISTRAR 6/3/2020</p>
2-		<p>This execution petition be put up before touring S. Bench at A.Abad on 20/10/2020</p> <p style="text-align: right;"> Chairman</p>

BEFORE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

Execution Petition No: 72 of 2020

Amjad Hussain Awan S/O Sadiq Hussain, C.T teacher, Government High School Sheikh-ul-Bandi , Abbottabad. R/O: House No TC 1396, Mohallah Musa Zai, village and Post Office Nawan Shehr, Tehsil and District, Abbottabad.

Appellant

VERSUS

Government of Khyber Pakhtunkhwa through Secretary (Elementary & Secondary Education), Department Peshawar and 6 others.


Respondents

EXECUTION PETITION FOR IMPLEMENTATION OF JUDGMENT DATED 16/04/2019 PASSED IN APPEAL NO 407 OF 2012 READ WITH JUDGMENT DATED 12/05/2009 PASSED IN APPEAL NO 02 OF 2008 PASSED BY KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR (CAMP COURT ABBOTTABAD).

INDEX

S.No	DESCREPTION OF DOCUMENTS	ANNEXURES	PAGE NO
1	Memo; of execution petition	----	01 to 03
2	Copy of service appeal no 02 of 2008.	A	4-7
3	Copy of judgment dated 12/05/2009	B	8-12
4	Copy of Writ Petition	C	13-18
5	Copy of High Court Order dated 14/04/11	D	19
6	Copy of High Court Order dated 21/03/12	E	20-21
7	Copy of present service appeal	F	22-25
8	Copy of judgment dated 16/04/2019.	G	26-30

Dated 24/02/2020


(Amjad Hussain Awan)
Appellant Inperson

①

BEFORE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

Khyber Pakhtunkhwa
Service Tribunal

Case No. 223
Dated 06-03-2020

Execution Petition No: 72 of 2020

Amjad Hussain Awan S/O Sadiq Hussain, C.T teacher, Government High School Sheikh-ul-Bandi, Abbottabad. R/O: House No TC 1396, Mohallah Musa Zai, village and Post Office Nawan Shehr, Tehsil and District, Abbottabad.

Appellant

VERSUS

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

Respondents

EXECUTION PETITION FOR IMPLEMENTATION OF JUDGMENT DATED 16/04/2019 PASSED IN APPEAL NO 407 OF 2012 READ WITH JUDGMENT DATED 12/05/2009 PASSED IN APPEAL NO 02 OF 2008 PASSED BY KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR (CAMP COURT ABBOTTABAD).

PRAYER

IT IS RESPECTFULLY PRAYED THAT RESPONDENTS MAY PLEASE BE DIRECTED TO IMPLEMENT THE JUDGMENT DATED 16/04/2019 PASSED IN APPEAL NO 407 OF 2012 READ WITH JUDGMENT DATED 12/05/2009 PASSED IN APPEAL NO 02 OF 2008 PASSED BY KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR WITH ALL BACK BENEFITS/ARREARS.


Respectfully Sheweth,

- 1) That after completing legal formalities, appellant had challenged the right of 04 advance increments of MA with effect from 31/03/2003 (date of Passing MA) before Khyber Pakhtunkhwa Service Tribunal Peshawar in Service appeal no 02 of 2008, This Honourable Tribunal was pleased to accept the appeal on 12/05/2009. Copy of appeal is and judgment are annexed as Annexure "A" & "B".
- 3) That respondents did not file petition before Apex Court against the judgment dated 12/05/2009 and thus it attained finality, finally respondents implemented the same in letter and spirit.
- 4) That later on 15/01/2011, respondent no 4, with out notice and legal reason, recalled the order of four advance increments and also ordered the refund the amount paid to the appellant as advance increments, which were granted in pursuance of implementation of the final judgment dated 12/05/2009 passed by Khyber Pakhtunkhwa Service Tribunal Peshawar in Service appeal no 02 of 2008.
- 5) That it is clear contempt of court but due to non availability of contempt powers in Khyber Pakhtunkhwa Service Tribunal Act, under the urgent situation the illegal recovery/deduction order dated 15/01/2011 of respondent no 04 has been challenged through Writ Petition before Peshawar High Court wherein on 14/04/2011 Peshawar High Court suspended the same order dated 15/01/2011 of respondent no 04. Copies of Writ Petition, Order dated 14/04/2011 are annexed as Annexure "C"& "D".
- 6) That Later Peshawar High Court converted Writ Petition into appeal and referred/sent it to this Honourable Tribunal for decision. Copy of Order dated 21/03/2012 is annexed as Annexure "E".

- 7) That during the pendency of the case, once again respondent no 4 deducted 02 advance increments out of 04 from the salary of appellant, this Honourable Tribunal was informed for the same deduction of respondent no 04, This Honourable Tribunal called salary slip of appellant, relevant orders was passed on 18/03/2013, 17/07/2013 and 21/10/2013.
- 8) That now this Honourable Tribunal is pleased to accept the appeal on 16/04/2019 and respondents did not implement the same and there is no notice received by appellant from Apex Court. Copy of service appeal and Judgment are annexed as **Annexure "F" & "G"**.

It is respectfully prayed that respondents may please be directed to implement the judgment dated 16/04/2019 passed in appeal no 407 of 2012 read with judgment dated 12/05/2009 passed in appeal no 02 of 2008 passed by Khyber Pakhtunkhwa Service Tribunal Peshawar with all back benefits/arrears.


Dated 24/02/2020


 (Amjad Hussain Awan)
 Appellant Inperson

VERIFICATION

It is verified that the contents of the instant execution/implementation petition are true and correct to the best of my knowledge and belief and nothing has been suppressed from this Honourable Tribunal and same nature any appeal has not been filed earlier nor pending.

Dated 24/02/2020


 (Amjad Hussain Awan)
 Appellant Inperson

Annexure (A)

BEFORE NWFP SERVICE TRIBUNAL PESHAWAR.

Service Appeal No: 02 of 2008

Amjad Hussain Awan S/O Sadiq Hussain C.T teacher Government Centennial Model Secondary School (G.H.S NO 2) Abbottabad, R/O House NO T.C 1396 Mohallah, Musa Zai Nawan Shehr, Tehsil & District Abbottabad

Appellant

Versus

Service Tribunal
Diary No. 03
Dated 01-01-08

- 1 District Coordination Officer, Abbottabad
- 2 Executive District Officer (schools & Literacy), Abbottabad.
- 3 District Accounts Officer, Abbottabad.
- 4 Director of (schools & Literacy) N.W.F.P Peshawar.
- 5 Secretary to Govt of N.W.F.P (schools & Literacy) department Peshawar.
- 6 Accountant General, N.W.F.P Peshawar
- 7 Secretary to Govt of N.W.F.P, Finance Department, Peshawar

Respondents

Appeal Under Section 4 of N.W.F.P Service Tribunal Act 1974. For Grant of Six Advance Increments of M.A With All Back Benefits With Effect From 31-03-2003 Under Para 5(i) (c) of The Notification No FD(PRC) 1-1 /89 dated 11-08-1991 Issued By Respondent No. 7 And on the Basis of Judgment Dated 19/07/2007 passed by Hon'ble Supreme Court of Pakistan Passed in Appellant's Case i.e. CPLA No 590 of 2007, against the judgment of NWFP Service Tribunal Peshawar dated 24/04/2007 Passed in Service Appeal No 833 of 2006. (and in pursuance of another Supreme Court Judgment, Passed by larger Bench in I.A. SHARWANI and other Versus Government of Pakistan through Secretary. Finance Division, Islamabad and others, on 16. 01. 1991.. 1991 SCMR 1041)

Respectfully Sheweth,

FACTS

- 1) That appellant joined Education Department on 26/01/1991 against C.T post as a trained C.T Teacher, and his regular service started against C.T post from the

Attested
[Signature]

FILED IN-833

M.A

ANNEXURE
OFFICE
SECRETARY
NWFP SERVICE TRIBUNAL
PESHAWAR

RECEIVED
[Signature]

date of his appointment as C.T teacher on 26/01/1991 Certificate in this respect issued by Concerned authority is Annexed as Annexure A

9
5

- 2) That appellant is also working against C.T post in BPS No 12 and during Service passed his M.A examination on 31/03/2003 and he was entitled for four advance increments on the date of his passing M.A, on the basis of Para 5 (1) (C) of the Notification No FD(PRC)1-1/89 dated 11/08/1991 but the same was not given by the respondents in their office routine matters until now. Copy of said Notification is Annexure B.
- 3) That appellant being teacher in Education Department was/is a member of Civil Employees (BPS-1-15) of the Provincial Government of N.W.F.P and Para 3 of the same Notification dated 11/08/1991 above was applied in Pay and Allowances matters from 01/06/1991, Whose Para # 5 ,Clause (C) caters for the grant of Four Advance Increments on attaining M.A against C.T post and Prescribed Qualification of C.T Post is also F.A/Fsc, So appellant was/is entitled the same and Respondents did not give his Constitutional rights
- 4) That In the Meanwhile, Honourable Supreme Court Of Pakistan has decided the same matters in CPLA No 525 and 526 of 2007 on 19/07/2007, and ultimately declared that teachers in Education Department (appellant) are also Entitled for their Advanced Increments given in Notification No FD(PRC)1-1/89 Dated 11/08/1991 without any exception. Copy of Supreme Court order is Annexure C
- 5) That appellant passed his M.A Examination on 31/03/2003 and is entitled for 04 advanced increments and its restriction on the illegal pretext of respondents' target date 01/12/2001 is unconstitutional, without jurisdiction against fundamental rights contained in the Constitution of Islamic Republic of Pakistan, because Same nature condition of any target date, has been finally settled/decided by Larger Bench of Supreme Court of Pakistan in 1991 SCMR 1041 ,prior to this recent judgment dated 19/07/2007 of Supreme Court and now all the two disputed matters (application of Circular dated 11/08/1991 & target date i.e. 01/12/2001) has been solved finally . The most relevant portion of the Judgment dated 16/01/1991 is reproduced herein below.

Attested
[Signature]

W.F.P. DEPARTMENT
[Signature]

33. We would therefore, allow the above petitions to the extent of declaring that denial of additional benefit 2 % of pension for each year of service exceeding 30 years subject to a maximum of 10 % of pension sanctioned referred to hereinabove in Para .19(b)(xvii) to the pensioners who retired prior to 01/07/1986, and denial to the petitioner in C.P. No.5-R of 1990 of the ground that he retired prior to 01/07/1987 founded on above eligibility criteria as to the date of retirement, being discriminatory and violative of Article 25, and, they are entitled to the same (if not already granted) so long other pensioners are paid.

Attested
[Signature]

6

6 That when the above Judgment of the Supreme Court dated 19/07/2007 came into notice of the appellant, he submitted his departmental representation to respondent no 1 through respondent no 2 on 04/09/2007 and it is undecided within the statutory period of 90 days. Copy of representation is Annexure D. 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 04/09/2007

Grounds

- a). That the Policy contained in Notification/Circular dated 11/08/1991 was/is passed by N.W.F.P Provincial Assembly in their Budget Session 1991-92 and then Hon, le Governor approved the same and respondent No7 issued the said Circular after completing the legal requirements
- b). That the case of appellant is totally legal and both the important matters are decided by Honorable Supreme Court of Pakistan on 19/07/2007, and 16/01/1991, in CPLA No 525, 526, and 590 of 2007 and 1991 S.C.M.R 1041.
- c). That all the Respondents along with respondent No 7 neither have power nor any jurisdiction to change, apply or 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.
- d). That the action of respondents in refusing/delaying the grant of 4 advance increments to the appellant on the basis of Circular dated 11/08/1991, violated the Article 25, 189 190 of the Constitution.
- e). That the said Circular (Annexure B) was/is issued for Civil Provincial Employees of N.W.F.P (BPS-1-15) and appellant being C.T teacher (Education Department) falls under the same and fully entitled for the relief of 04 Advanced Increments of M.A along with back benefits as claimed by him.

That the case of appellant is the same nature in facts and Laws, which was decided by Supreme Court of Pakistan on 19/07/2007 passed in CPLA Nos 525 and 526 of 2007 (Annexure C).

Attested
[Signature]

ATTESTED
[Signature]
OFFICE OF THE
ATTORNEY GENERAL
PESHAWAR

7

- g). That under the law appellant's case is quite Clear after the Judgment passed in CPLA No 525 and 526 of 2007 by Supreme Court, and respondents' behaviour with appellant's representation dated 04/09/2007 is illegal , without jurisdiction and unconstitutional.
- 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 19/01/2007 .
- i). That appellant's service appeal is maintainable and appellant's post is C.T and prescribed qualification of the said post is F.A with C.T Course and appellant is now working in BPS # 14 and Instant Case falls under Para 5(1) (C) of the Circular dated 11/08/1991(Annexure B)

It is there fore respectfully prayed that appellant's appeal may kindly be accepted and 4 advance increments of M.A against CT post with effect from 31/03/2003 along with all back benefits may graciously be granted to the appellant in the interest of justice.

(Signature)
 (Amjad Hussain Awan)
 Appellant in person

Affidavit

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

Attested
(Signature)

Attested
(Signature)

(Signature)
 (Amjad Hussain Awan)
 DEPONENT



30-12-2007

Handwritten notes:
 10-16-109
 10-16-109
 10-16-109
 10-16-109
 10-16-109

BEFORE NWFP SERVICE TRIBUNAL PESHAWAR.

Annexure B₂

Service Appeal No: 85 of 2008

Amjad Hussain Awan S/O Sadiq Hussain. C.T teacher Government Centennial Model Secondary School (G.H.S NO 2) Abbottabad, R/O House NO T.C 1396 Mohallah, Musa Zai Nawan Shehr, Tehsil & District Abbottabad

Appellant

Versus

Service Tribunal
Entry No. 03
Dated 01-01-08

- 1 District Coordination Officer, Abbottabad
- 2 Executive District Officer (schools & Literacy), Abbottabad.
- 3 District Accounts Officer, Abbottabad.
- 4 Director of (schools & Literacy) N.W.F.P Peshawar.
- 5 Secretary to Govt of N.W.F.P (schools & Literacy) department Peshawar.
- 6 Accountant General, N.W.F.P Peshawar.
- 7 Secretary to Govt of N.W.F.P, Finance Department, Peshawar

12.5.2009

Appellant in person. Arshad Alam, A.G.P alongwith representative of the respondents present. Vide our detailed judgment of to-day in appeal No. 1276/2007, this appeal is also accepted. The parties are, however, left to bear their own costs.

ANNOUNCED

12.05.2009

Sd/- Member

Sd/- Member.
Camp court, Abbottabad.

Attested
12/5/09
18/5/09
19-05/6/09
19-27/6/09

Attested
Arshad Alam

BEFORE THE NWFP SERVICE TRIBUNAL, CAMP COURT ABBOTTABAD

Appeal No. 1276/2007

Date of institution - 27.12.2007
Date of decision - 12.05.2009

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

VERSUS

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

Appellant in person present.
Arshad Alam, A.C.P.....

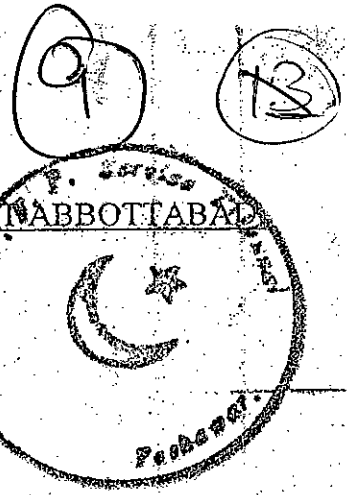
For respondents,

MR. ABDUL JALIL.....MEMBER.
MR. BISMILLAH SHAH.....MEMBER.

JUDGMENT.

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

<u>Sr. No.</u>	<u>Appeal No.</u>	<u>Name of appellant.</u>
1.	1277/2007	Saidur Rahman,
2.	1278/2007	Munibur Rahman,
3.	1279/2007	Muhammad Siddique,
4.	01/2008	Maroof Khan
5.	02/2008	Arjad Hussain Awan



ATTESTED
EXAMINER
NWFP SERVICE TRIBUNAL
PESHAWAR.
Attested
[Signature]

257.	504/2009	Muhammad Shamraiz
258.	505/2009	Ali Bahadur
259.	506/2009	Muhammad Haroon
260.	523/2009	Nareena Maqsood
261.	524/2009	Yasmeen Akhtar
262.	525/2009	Shabana Nazir
263.	581/2009	Nighat Bibi
264.	652/2009	Wassem Sultan
265.	683/2009	Bibi Hajra
266.	684/2009	Abdul Razaq
267.	685/2009	Fatiha Gul

10

~~11~~

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

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

4. We heard the arguments and perused the record.

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

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

Attested
Signature

ATTESTED
Signature

11

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

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

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

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

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

Attested
 NWFP Service Tribunal
 Examiner
 Peshawar

ATTESTED

12 96

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

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

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

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

ANNOUNCED.
12.05.2009.

sd-
(BISMILLAH SHAH)
MEMBER.

sd-
(ABDUL JALIL)
MEMBER.
CAMP COURT ABBOTTABAD.

Attested

Number of wards	6/1000	18/6/09.
Copies for	24	
Total	24	
Rate of copyist	24	
Date of completion of copy	27	6/09.
Cost of delivery of copy	27	6/09.

[Signature]
[Stamp]

~~Appeal No 407 of 2012~~

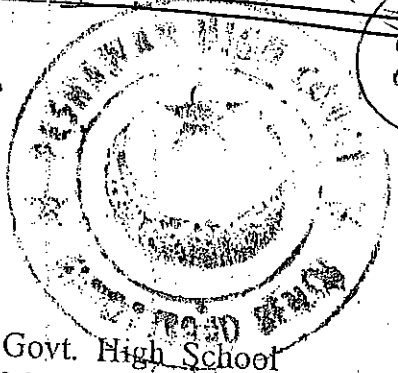
13

**BEFORE PESHAWAR HIGH COURT
ABBOTTABAD BENCH**

Annexure 1

~~Annexure II~~

W.P No. 1257/2010



Amjad Hussain Awan son of Sadiq Hussain C.T Teacher Govt. High School Sheikhi-ul-Bandi Abbottabad resident of House No. TC-1396 Mohallah Musa Zai Nawanshehr, Tehsil & District Abbottabad.

...PETITIONER

VERSUS

1. Govt. of Khyber Pakhtunkhwa, through Secretary (Elementary & Secondary Education) Department Peshawar.
2. Secretary to Govt. of Khyber Pakhtunkhwa Finance Department Peshawar.
3. Accountant General, Khyber Pakhtunkhwa, Peshawar.
4. District Controller of Accounts Abbottabad.
5. District Coordination Officer, Abbottabad.
6. Executive District Officer (Elementary & Secondary Education) Abbottabad.
7. Director of Schools (Elementary & Secondary Education) KPK Peshawar.

...RESPONDENTS

WRIT PETITION UNDER ARTICLE 199 OF THE CONSTITUTION OF ISLAMIC REPUBLIC OF PAKISTAN 1973, FOR A DECLARATION TO THE EFFECT THAT THE ORDER DATED 15/01/2011 PASSED BY THE RESPONDENT NO. 4, WHEREBY HE ORDERED THE REFUND OF THE AMOUNT PAID TO THE PETITIONER AS ADVANCE INCREMENTS IN PURSUANCE OF ORDER DATED 12/05/2009 PASSED BY THE HONOURABLE SERVICE TRIBUNAL KHYBER PAKHTUNKHWA PESHAWAR IN APPEAL NO. 02 OF

Attested

11.6.10
2.3.11

Registrar
Peshawar High Court
Abbottabad Bench
2/3/11

14 13

2008, BE DECLARED MALAFIDE WITHOUT JURISDICTION, WITHOUT NOTICE, WITHOUT LAWFUL AUTHORITY AND BE SET-ASIDE.

PRAYER: ON ACCEPTANCE OF THIS WRIT PETITION THE ORDER DATED 15/01/2011 PASSED BY RESPONDENT NO. 4 WHEREBY RESPONDENT NO. 4 BY RECALLING THE ORDER OF FOUR ADVANCE INCREMENT TO PETITIONER ORDERED THE REFUND OF AMOUNT PAID TO PETITIONER W.E.F 09/04/2003 TO 31/01/2011 BE SET-ASIDE AND IN CASE ANY AMOUNT IS REFUNDED OR THE AMOUNT IS DEDUCTED FROM THE SALARY OF THE PETITIONER MY BE ORDERED THE REFUND OF SAME AND AS AN INTERIM RELIEF THE OPERATION OF ORDER DATED 15/01/2011 THROUGH WHICH THE RESPONDENT NO. 4 HAS ORDERED THE REFINED OF THE AMOUNT OF FOUR ADVANCE INCREMENTS BE SUSPENDED TILL THE FINAL DISPOSAL OF THE TITLED WRIT PETITION.

Attested

Respectfully Sheweth; -

The facts giving rise to the instant writ petition are as under: -

- 1. That the petitioner joined the Education Department on 26/01/1991 as a C.T teacher. Copy of the appointment letter is annexed as Annexure 'A'.

FILED TODAY Additional Registrar Peshawar High Court Bench 2/3/11

15 31

2. That the petitioner acquired the higher education i.e passed the M.A Examination on 31/03/2003. Copy of the certificate is annexed as Annexure "B".
3. That as per policy of the Govt. the petitioner was entitled for four advance increments in his pay.
4. That after the refusal of respondents for giving the petitioner four advance increments in his pay, the petitioner filed an appeal before the Honourable Service Tribunal Peshawar. Copy of appeal is annexed as Annexure "C".
5. That on 12/05/2009 the Honourable Services Tribunal Khyber Pakhtunkhwa Peshawar was pleased to accept the appeal filed by the petitioner. Copy of judgment is annexed as Annexure "D".
6. That on 31/10/2009 vide office order No. 8438 the respondent allowed the petitioner four advance increments in pay. Copy of order is annexed as Annexure "E".
7. That the respondents not only revised the pay of the petitioner in accordance with the order of Services Tribunal dated 12/05/2009 but also paid the arrears to the petitioner w.e.f ^{01.04.2003} 09/04/2003 to 31/01/2011. Copy of order dated ~~12/05/2009~~ ^{12/05/2009} is annexed as Annexure "F".

Attested


REGISTERED TODAY
 Additional Registrar
 Peshawar High Court
 Bench
 12/3/11

16 32

8. That the respondent without notice and without any reason on 15/01/2011 ordered the refund of the amount paid to the petitioner as advance increments. Although no formal order was passed ^{but} upon the service book of the petitioner the same is written. Copy is annexed as Annexure "G".

9. That the order whereby the respondent No.4 has ordered the refund of the amount of 04 increment from the petitioner which comes to Rs. 105981/- is against the law, facts, malafide, without jurisdiction and lawful authority and the same is liable to be set-aside alongwith any other order for the recalling of the four advance increments on the following amongst other grounds; -

GROUND: -

a. That the petitioner on 12/05/2009 was held entitle by Services Tribunal for 04 advance increments, therefore, only August Supreme Court of Pakistan under the constitution and law was entitled to set-aside the order if found against law and procedure and the respondent No. 4 was not at all entitle to withdraw the benefit extended to the petitioner by a competent court of law.

Attested
[Signature]

REGISTRAR
M
Additional Registrar
High Court
Lahore
A 2/3/11

17 33

- b. That the order dated 12/05/2009 passed by Services Tribunal was implemented by the respondents in letter and spirit and under the doctrine of locus poententia the respondents were not entitle to withdraw a benefit once it was implemented.
- c. That the petitioner while contesting for his right of 04 increments never ever suppressed any fact from the court or from the respondents.
- d. That before passing the impugned order dated 15/01/2011 no notice whatsoever; was given to the petitioner and the petitioner is condemned unheard.
- e. That the act of respondents is malafide and has been passed to deprive other teachers who also are entitled for the benefit of 04 increments in pay.
- f. That the order impugned herein passed by the respondent No. 4 is without jurisdiction and without lawful authority.
10. That there is no other efficacious remedy available to the petitioner except the titled writ petition.
11. That court fee stamp of Rs. 500/- is attached.

Attested


FILED TODAY
 N
 Additional Registrar
 Peshawar High Court
 Bench
 2/3/11


18 34

It is, therefore, humbly prayed that on acceptance of this writ petition on acceptance of this writ petition the order dated 15/01/2011 passed by respondent no. 4 whereby respondent no. 4 by recalling the order of four advance increment to petitioner ordered the refund of amount paid to petitioner w.e.f 09/04/2003 to 31/01/2011 be set-aside and in case any amount is refunded or the amount is deducted from the salary of the petitioner my be ordered the refund of same and as an interim relief the operation of order dated 15/01/2011 through which the respondent no. 4 has ordered the refined of the amount of four advance increments be suspended till the final disposal of the titled writ petition.


...PETITIONER

Through

Dated: 1.3 /2011


(SAJJAD AHMED ABBASI)
Advocate High Court, Abbottabad

VERIFICATION:

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

Attested



...PETITIONER

MIEN TADAK
Additional Registrar
Abbottabad High Court
Abbottabad
2/3/11

Annexure D

35
19

PESHAWAR HIGH COURT, ABBOTTABAD BENCH

FORM 'A'
FORM OF ORDER SHEET

Date of Order or Proceedings	ORDER OR PROCEEDINGS WITH SIGNATURE OF JUDGE/JUDGES
1 14.04.2011	2 <u>W.P No. 128/2011</u> Present: Mr. Sajjad Ahmad Abbasi, Advocate, for petitioner. *** Comments of respondents No.4 and 6 be called for so as to reach this Court within a fortnight. Adjourned to a date in office. <u>Interim Relief.</u> Notice. In the meanwhile order dated 15.1.2011 is suspended. <i>sc/judges</i>

Attested
[Signature]

Attested
[Signature]

Annexure (E)



JUDGMENT SHEET

IN THE PESHAWAR HIGH COURT,
ABBOTTABAD BENCH.

JUDICIAL DEPARTMENT

W.P No. 128 of 2011

JUDGMENT

Date of hearing 21-03-2012

Appellant(s)/Petitioner (s) Amjad Hussain Awan in Person along with Sajjad Ahmad Hussain Awan
Respondent (s) Govt. of Punjab, N.A.G. with Respondent No. 3

YAHYA AFRIDI, J:- Amjad Hussain Awan,

petitioner, seeks the constitutional jurisdiction of this

Court praying that;

"The order dated 15.01.2011 passed by respondent No.4 whereby respondent No.4 by recalling the order of four advance increment to petitioner ordered the refund of amount paid to petitioner w.e.f. 09.04.2003 to 31.01.2011 be set-aside and in case any amount is refunded or the amount is deducted from the salary of the petitioner may be ordered the refund of same and as an interim relief the operation of order dated 15.01.2011 through which the respondent NO.4 has ordered the refund of the amount of four advance increments be suspended till the final disposal of the titled writ petition".

Attested
[Signature]

[Signature]

37
 (24)

2. Perusal of record would reveals that appeal of the petitioner for grant of advance increments was allowed by Khyber Pukhtunkhwa, Service Tribunal, Peshawar in Appeal No.02/2008 decided on 12.05.2009.

3. In the peculiar circumstances and keeping in view the earlier decision in the matter by Service Tribunal Khyber Pukhtunkhwa, we without passing any findings upon the grievance of the present petitioner treat the present petition as an appeal and refer the same to the Khyber Pakhtunkhwa Service Tribunal to decide the same in accordance with law.

4. The present petition is disposed of in the above terms. The petitioner is directed to appear before the Khyber Pukhtunkhwa Service Tribunal, Peshawar at Camp Abbottabad, on 17.04.2012.

Announced.
21.03.2012.

[Signature]
 JUDGE

[Signature]
 JUDGE

Certified to be True Copy

26.3.12
 Peshawar High Court
 Abbottabad Bench
 Authorized Under Sec 275 of Ordinance

Attested
[Signature]

Attested
[Signature]

BEFORE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

Annexure F

Service Appeal No: 407 of 2012

7
22

Amjad Hussain Awan S/O Sadiq Hussain, C.T teacher, Government High School Sheikh-ul-Bandi, Abbottabad. R/O: House No TC 1396, Mohallah Musa Zai, village and Post Office Nawan Shehr, Tehsil and District, Abbottabad.

Appellant

VERSUS

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

Respondents

SUBMISSION OF SERVICE APPEAL IN ITS PROPER FORM IS DIRECTED BY THIS HONOURABLE TRIBUNAL AT CAMP COURT ABBOTTABAD ON 17/04/2012 ORDER PASSED IN TITLED APPEAL.

A P P E A L UNDER SECTION 4 OF KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT 1974 AGAINST THE RECOVERY ORDER OF FOUR ADVANCE INCREMENTS WITH EFFECT FROM 09/04/2003 TO 31/01/2011 PASSED BY RESPONDENT NO 4 ON 15/01/2011 AFTER IMPLEMENTATION OF FINAL JUDGMENT DATED 12/05/2009 PASSED IN APPELLANT'S INDIVIDUAL SERVICE APPEAL NO 2 OF 2008 BY THIS HONOURABLE TRIBUNAL WHICH ATTAINED ITS FINALITY.

P R E Y E R

ON ACCEPTANCE OF INSTANT APPEAL RECOVERY ORDER DATED 15/01/2011 PASSED BY RESPONDENT NO 04 BE SET-ASIDE AND IN CASE AMOUNT REFUNDED/DEDUCTED FROM THE SALARY OF APPELLANT MAY BE ORDERED THE REFUND OF SAME AND RECOVERY/DEDUCTION ORDER DATED 15/01/2011 MAY ALSO BE SUSPENDED TILL THE FINAL DISPOSAL OF TITLED SERVICE APPEAL.

Attested
[Signature]

23

27

Respectfully Sheweth,

- 1) That appellant joined Education Department on 26/01/1991 as a CT teacher. Copy of appointment letter is annexed as Annexure "A".
- 2) That appellant acquired the higher education i.e. passed the MA examination on 31/03/2003. Copy of Degree is annexed as Annexure "B".
- 3) That as per policy of the Government the appellant was entitled for four advance increments in his pay.
- 4) That after the refusal of respondents for giving the appellant four advance increments in his pay, the appellant filed an appeal before Khyber Pakhtunkhwa Service Tribunal Peshawar. Copy of appeal is annexed as Annexure "C".
- 5) That on 12/05/2009 the Khyber Pakhtunkhwa Service Tribunal Peshawar was pleased to accept the appeal filed by the appellant. Copy of Judgment is annexed as Annexure "D".
- 6) That on 31/10/2009 vide office order No. 8438 the respondent allowed the appellant four advance increments in pay. Copy of Order is annexed as Annexure "E".
- 7) That respondents not only revised the pay of the appellant in accordance with the order of Service Tribunal dated 12/05/2009 but also paid the arrears to the appellant w.e.f. 01/04/2003 to 31/01/2010. Copy of order in respect of arrears is annexed as Annexure "F".
- 8) That respondent with out notice and without any reason on 15/01/2011 ordered the refund the amount paid to the appellant as advance increments. Although no formal order was passed but upon the service book of appellant the same is written. Copy of order is ~~annexed as Annexed~~ as Annexure "G".

Attested
[Signature]

- 3
24
- 9) That the order whereby the respondent No 4 has ordered the refund of the amount of 04 increments from the appellant which comes to Rs 105981/- is against the law, facts, malafide, without jurisdiction and lawful authority and the same is liable to be set-aside alongwith any other order for the recalling of the four advance increments.
- 10) That under the urgent situation the illegal recovery/deduction order dated 15/01/2011 of respondent no 04 has been challenged through Writ Petition before Peshawar High Court wherein on 14/04/2011 High Court has suspended the same order dated 15/01/2011 of respondent no 04 and on 21/03/2012 it (W.P) is converted into appeal by High Court and referred/sent to this Honourable Tribunal for decision. Copies of Writ Petition, Orders dated 14/04/2011 & 21/03/2012 are annexed as Annexure "H", "I", "J".
- 11) This Honourable Tribunal has been pleased to hear the appeal at Camp Court Abbottabad on 17/04/2012 and directed the appellant to file appeal in its proper form, under the same direction appeal is now filing, Hence the instant appeal on the following grounds.

GROUNDS

- a) That the appellant on 12/05/2009 was held entitle by the Service Tribunal for 04 advance increments, therefore, only August Supreme Court of Pakistan under the Constitution and law was entitled to set-aside the order if found against law and procedure and the respondent No 04 was not at all entitle to withdraw the benefit extended to the appellant by a competent Court of law.
- b) That the order dated 12/05/2009 passed by Service Tribunal was implemented by the respondents in letter and spirit and under the doctrine of locus Poenitentiae the respondents were not entitle to withdraw a benefit once it was implemented.
- c) That the appellant while contesting for his right of 04 advance increments never ever suppressed any fact from the Court or from the respondents.

Attested
[Signature]

لو لودر
طبر
31/5/12

- d) That before passing the Impugned order dated 15/01/2011 no notice whatsoever, was given to the appellant and the appellant is contemned-unheard.
- e) That the act of respondents is malafide and has been passed to deprive other teachers who also are entitled for the benefit of 04 increments in pay.
- f) That all the present respondents including respondent No 04 were also arrayed as respondents in service appeal No 02 of 2008 of appellant and they contested that appeal and then order dated 12/05/2009 was passed by this Honourable Tribunal.

It is, therefore, humbly prayed that on acceptance of this appeal the order dated 15/01/2001 passed by respondent No 04 by recalling the order of four advance increments to appellant ordered the refund of amount paid to appellant w.e.f. 09/04/2003 to 31/01/2011 be set-aside and in case any amount is refunded or the amount is deducted from the salary of the appellant may be ordered the refund of same and as an interim relief the operation of order dated 15/01/2011 through which the respondent no 04 has ordered the refund of the amount of 04 advance increments be suspended till the final disposal of the titled service appeal.

Dated 02/05/2012

Amjad Hussain Awan
 (Amjad Hussain Awan)
 Appellant Inperson

VERIFICATION

It is verified that the contents of the instant service appeal are true and correct to the best of my knowledge and belief and nothing has been suppressed from this Honourable Tribunal and same nature any appeal has not been filed earlier nor pending.

Dated 02/05/2012

Amjad Hussain Awan
 (Amjad Hussain Awan)
 Appellant Inperson

*Attested
 Amjad Hussain Awan*

Annexure (G)

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
CAMP COURT, ABBOTTABAD.

Appeal No. 407/2012

Date of institution ... 08.05.2012
Date of decision 16.04.2019



Amjad Hussain awan son of Sadiq Hussain, C.T Teacher, GHS Sheikhul Bandi, Abbottabad R/O House No. TC 1396, Mohallah Musa Zai, Nawan Shehr, Abbottabad. ... (Appellant)

Versus

Government of Khyber Pakhtunkhwa through Secretary Elementary & Secondary Education Department, Peshawar and others. ... (Respondents)

Present

Mr. Sajjad Ahmad Abbasi,
Advocate ... For appellant.

Mr. Muhammad Bilal,
Deputy District Attorney ... For respondents.

MR. HAMID FAROOQ DURRANI, ... CHAIRMAN
MR. AHMAD HASSAN, ... MEMBER.

JUDGMENT

HAMID FAROOQ DURRANI, CHAIRMAN:-

1. The facts, as gatherable from the memorandum of appeal, are that the appellant joined the Education Department as C.T on 26.01.1991. During his service the appellant acquired higher education and passed M.A examination on 31.3.2003. At the relevant time he was entitled for four advance increments in his pay on account of higher qualification. He was denied the increments, therefore, the appellant filed an appeal before this Tribunal which was allowed on 12.05.2009. Consequently, on 31.10.2009, the

ATTESTED

Attested
[Signature]

[Signature]

respondents allowed the appellant requisite four advance increments in pay. His pay was, therefore, revised and he was also paid the arrears w.e.f. 01.04.2003 to 31.01.2010. On 15.1.2011, the respondents ordered the refund of the amount paid to the appellant as advance increments. The said fact was recorded in service book of the appellant while no separate formal order was made in that regard. The appellant challenged the act of the respondents through a Writ Petition before the Honourable Peshawar High Court, wherein, on 14.4.2011, the order of recovery was suspended while the Writ Petition was converted into a service appeal and referred/sent to this Tribunal.

2. We have heard learned counsel for the appellant, learned Deputy District Attorney on behalf of the respondents and have also perused the available record.

Learned Deputy District Attorney, at the outset, raised a preliminary objection in terms that the appeal in hand was for payment of advance increments and in view of Khyber Pakhtunkhwa Cessation of Payment of Arrears on Advance Increments on Higher Educational Qualification Act, 2012, it was not maintainable.

On the other hand, learned counsel for the appellant, argued that the arguments of learned Deputy District Attorney was misconceived. The appeal was not at all with the prayer for grant of advance increments but was for setting aside the order of respondents requiring refund of amount already paid to the appellant

Khyber Pakhtunkhwa
 Service Tribunal
 Peshawar
 Dy. District Attorney
 Peshawar
 Westcar
 Peshawar
 P. M.

RECEIVED
 14/04/2011

w.e.f 09.04.2003 to 31.01.2011. Learned counsel also referred to the judgment of Apex Court passed in Civil Petition No. 172-P and 173-P/2013.

3. We are of the view that the controversy involved in the instant appeal has already been laid to rest by the August Supreme Court of Pakistan through referred judgment handed down on 07.12.2018. It has been noted, inter-alia in the judgment that:-

"7. Plain reading of the above provisions show that the claim of advance increments on obtaining higher educational qualification was discontinued by the Provincial Government on 27.10.2001. Section-2 of the Act of 2012 provides that claim for payment of arrears of advance increments shall be deemed non-existent and no further claim whatsoever on the basis of these instructions shall be entertained and all cases in respect of such claims pending in any Court or Tribunal including High Court and Supreme Court shall stand abated. Sub-section 2 provides that any amount of advance increment or arrears thereof already paid before the commencement of the act of 2012 shall be deemed to have been validly paid and shall not be recoverable from the recipient government employees.

8. The scope of Act of 2012 is that after the promulgation of the Act i.e w.e.f. 11.05.2012, no government employee can claim arrears on account of advance increments for higher educational qualification and advance increments and arrears already paid shall not be recoverable from the recipient government employee. "Arrears" includes payment of a debt or the discharge of an obligation. In this case, claim of the petitioners for advance increment under Notification dated 11.08.1991 is an outstanding arrear. Reference to the deeming commencement date under section-1(3) of the Act is simply to identify the cutoff date for the purposes of tabulating

Attested
 Service Tribunal
 Registrar

Attested
 Registrar

Attested
 Registrar

arrears as mentioned in section-2, which, if outstanding on 11.5.2012, will not be payable and no claim relating to the same can be entertained."

The portion of the judgment reproduced here-in-above is towards interpretation of Section 2 of the Act 2012 *ibid*. Sub-section-2 of the said section clearly postulates that 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.

4. In the case in hand, it is clear that the appellant was allowed four advance increments in his pay in pursuance to the judgment of this Tribunal passed on 12.05.2009 whereby a number of appeals including that of the appellant were decided. The order dated 31.10.2009 allowing the benefit of advance increments to the appellant and others also contained a mention that the same was issued consequent upon the judgment of August Supreme Court of Pakistan in CPLA No. 525 and 526 of 2007, in addition to the decision of this Tribunal made in appeal No. 1276/2007. A reference to the Finance Department Notifications was also made therein. We also refer to the prayer in the appeal in hand, wherein, the appellant has

Khyber Pakhtunkhwa
 Service Tribunal
 Peshawar
 Attest
 [Signature]

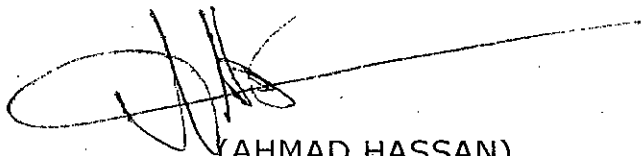
[Signature]


30

asked for setting aside of order of return of amount paid to him on account of advance increments for the period from 09.4.2003 to 31.01.2011.

In view of Section 2(2) of the Act, 2012 *ibid* and the dictum of Apex Court we are left with no doubt that the appeal in hand contains merits warranting its acceptance. Consequently, the appeal is allowed as prayed for.

Parties are left to bear their respective costs. File be consigned to the record room.


(AHMAD HASSAN)
Member


(HAMID FAROOQ DURRANI)
Chairman
Camp Court, Abbottabad.

ANNOUNCED
16.04.2019

Certified
True Copy
Muzamil
Service Officer
Peshawar

Attested
Muzamil

Date of Presentation of Application 14-05-18

Number of Words 2000

Copying Fee 12-00

Urgent 2-00

Total 14-00

Name of Copyist [Signature]

Date of Completion of Copy 14-05-18

Date of Delivery of Copy 14-05-18

BEFORE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

Execution Petition No.72 of 2020

Amjad Hussain Awan s/o Sadiq Hussain, CT Teacher.....(Appellant).

V E R S U S

Government of Khyber Pakhtunkhwa & others.....(Respondents).

REPLY TO EXECUTION PETITION ON BEHALF OF RESPONDENT NO.2

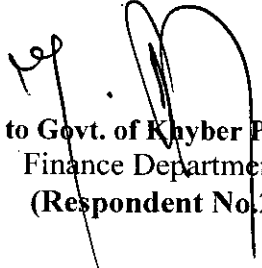
Preliminary Objections:

1. That the instant appeal is not maintainable in the present form.
2. That the Appellant is estopped by his own conduct to file the present petition.
3. That the Appellant has not come to this court with clean hands.
4. That the Appellant has got no cause of action to file the present petition against the respondents.

Respectfully Sheweth:

1. Needs no comments.
3. Pertains to record, hence needs no comments.
4. Advance increments were allowed for possessing of higher educational qualification over and above the prescribed qualification. However, the said facility was discontinued under Pay Revision - 2001. Whereas the Appellant acquired higher qualification i.e. MA on 31-03-2003 by the time said facility had already been discontinued.
5. Related to Respondent No.3 & 4.
6. Pertains to record, hence needs no comments.
7. Related to Respondent No.3&4.
8. Related to Respondent No.3&4.

In view of the above explanation, it is, therefore, humbly prayed that on acceptance of these para-wise comments, this honourable Service Tribunal may very graciously be pleased to dismiss the present petition with cost.


Secretary to Govt. of Khyber Pakhtunkhwa
Finance Department,
(Respondent No.2)

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

Execution Petition No. 72/2020

IN

Service Appeal No. 407/2012

Amjad Hussain.....Appellant

VERSUS

Government of Khyber Pakhtunkhwa & OthersRespondents

REPLY TO EXECUTION PETITION ON BEHALF OF RESPONDENTS NOS. 1, 5, 6 & 7

INDEX

Sr.No	Description	Page Nos	Annexures
1	Comments alongwith affidavit.	01 to 03	
2	Copy of the Act 2012	04 to 06	"A"
3	Copy of judgment dated 18-12-2019	07 to 08	"B"

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

Execution Petition No. 72/2020

IN

Service Appeal No. 407/2012

Amjad Hussain.....Appellant

VERSUS

Government of Khyber Pakhtunkhwa & OthersRespondents

REPLY TO EXECUTION PETITION ON BEHALF OF RESPONDENTS NOS. 1, 5, 6 & 7

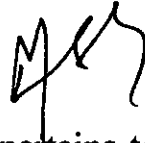
Respectfully Sheweth:-

PRELIMINARY OBJECTION:-

1. That the instant execution petition is not maintainable in the present form.
2. That the petitioner is estopped by his own conduct to filed the present petition.
3. That the petitioner has not come to this Tribunal with clean hands.
4. That the petitioner has got no cause of action to file the present petition against the respondents.
5. That the respondents have challenged the judgment of this Honorable Tribunal passed in appeal No. 407/2012 dated 16-04-2019 before the Honourable Supreme Court of Pakistan and CPLA No. 505-P/2019 is subjudice before the Honourable Supreme Court of Pakistan.
6. That the Honourable Supreme Court of Pakistan suspended the impugned judgment on 18-12-2019 regarding the Advance Increments on account of higher qualification in CP No. 397-P/2017, 409-P/2017, 420-P/2017, 72-P/2019 & 733-P/2019.

Factual objections:-

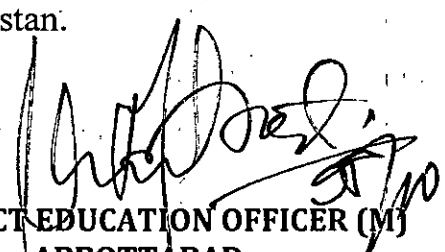
1. That Para No. 1, of the execution petition pertains to the service record of the appellant hence, need no comment.
3. In reply to Para No. 3, of the execution petition it is submitted that the instant application is against the notification dated 27-10-2001 whereby, the basis of the claim of applicant stood erased. In the year 2012 the Khyber



Pakhtunkhwa Cessation of Payment of Arrears on Advance Increments on Higher Educational Qualification Act No. IX of 2012 was promulgated which was made retrospective from 2001. Hence, the instant application is liable to be dismissed on this score alone. (Copy of the Act 2012 is annexed herewith as Annexure "A").

4. That Para No. 4, of the execution petition does not relate to the answering respondents.
5. That Para No. 5, of the execution petition relates to record.
6. That Para No. 6, of the execution petition also pertains to record hence, need no comment.
7. That Para No. 7, of the execution petition does not relate to answering respondent.
8. In reply to Para No. 8, of the execution petition it is submitted that respondents have challenged the judgment of this Honorable Tribunal passed in appeal No. 407/2012 dated 16-04-2019 before the Honourable Supreme Court of Pakistan and CPLA No. 505-P/2019 is subjudice before the Honourable Supreme Court of Pakistan. Further submitted that Honourable Supreme Court of Pakistan suspended the impugned judgment on 18-12-2019 regarding the Advance Increments on account of higher qualification in CP No. 397-P/2017, 409-P/2017, 420-P/2017, 72-P/2019 & 733-P/2019. (Copy of the judgment dated 18-12-2019 is annexed herewith as Annexure "B").
9. That the respondents seek leave of this Honourable Tribunal to raise additional grounds during the course of arguments.

Under the circumstances, it is humbly prayed that the instant execution petition may please be Sine die adjourned till the final decision of CPLA pending before the Honourable Supreme Court of Pakistan.


 DISTRICT EDUCATION OFFICER (M)
 ABBOTTABAD
 (Respondent No. 6)

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

Execution Petition No. 72/2020

IN

Service Appeal No. 407/2012

Amjad Hussain.....Appellant

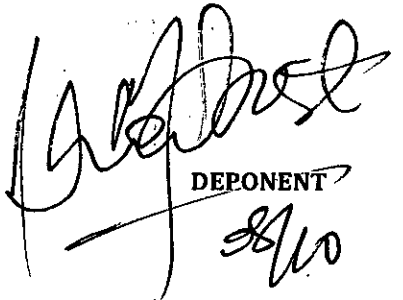

VERSUS

Government of Khyber Pakhtunkhwa & OthersRespondents

REPLY TO EXECUTION PETITION ON BEHALF OF RESPONDENTS NOS. 1, 5, 6 & 7

AFFIDAVIT

I, Mr. Muhammad Shaukat, District Education Officer (M) Abbottabad, do hereby affirm and declared on oath that contents of forgoing reply are correct and true according to the best of my knowledge and belief and nothing has been suppressed from this Honorable Tribunal.


 DEPONENT


Anx-A (4) (5)

EXTRAORDINARY
GOVERNMENT

REGISTERED NO. P.III



GAZETTE



KHYBER PAKHTUNKHWA

Published by Authority

PESHAWAR, TUESDAY, 15TH MAY, 2012.

PROVINCIAL ASSEMBLY SECRETARIAT
KHYBER PAKHTUNKHWA

NOTIFICATION

Dated Peshawar, the 15th May, 2012.

No. PA/Khyber Pakhtunkhwa/Bills/2012/20711.—The Khyber Pakhtunkhwa Cessation of Payment of Arrears on Advance Increments on Higher Educational Qualification Bill, 2012 having been passed by the Provincial Assembly of Khyber Pakhtunkhwa on 8th May, 2012 and assented to by the Governor of the Khyber Pakhtunkhwa on 11th May, 2012 is hereby published as an Act of the Provincial Legislature of the Khyber Pakhtunkhwa.

**THE KHYBER PAKHTUNKHWA CESSATION OF PAYMENT OF ARREARS ON
ADVANCE INCREMENTS ON HIGHER EDUCATIONAL QUALIFICATION
ACT, 2012.**

(KHYBER PAKHTUNKHWA ACT NO. IX OF 2012)

(first published after having received the assent of the Governor of the Khyber Pakhtunkhwa in the Gazette of the Khyber Pakhtunkhwa (Extraordinary), dated the 15th May, 2012).

*Assented
15/5/12*

AN
ACT

to cease the payment of arrears accrued on account of advance increments on higher educational qualification.

WHEREAS advance increments have been granted to certain Provincial Government employees on the basis of acquiring or possessing higher educational qualification over and above the prescribe educational qualification from time to time;

AND WHEREAS the Provincial Government vide Notification No. (PRC)1-1/2001, dated 27.10.2001, had already discontinued the scheme of advance increments on higher educational qualification;

AND WHEREAS due to financial constraints, it is not possible for Provincial Government to pay the claimed and unclaimed arrears accrued from the said increments;

It is hereby enacted as follows:-

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

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

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

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

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

Attested
[Signature]

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

*Attended
M. M.*

Case No. 397-P/2017, 409-P/2017, 420-P/2017, 732-P/2019, 733-P/2019.
(In support from the Government of Karnataka) vs. Petitioner(s)
On Petition filed in the High Court, Bangalore dated 18.12.2019.

37

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

VERSUS

Saeedullah and others	(In C.P. 397-P/2017)
Muhammed Iqbal and others	(In C.P. 409-P/2017)
Mohi Muhammad and others	(In C.P. 420-P/2017)
Aryat Ullah Khan and others	(In C.P. 732-P/2019)
Muhammed Rehman and others	(In C.P. 733-P/2019)

Respondent(s)

For the petitioner(s) Barrister Qasim Wadood, Addl AG
for all cases.

For the respondent(s) N.R.

Date of Hearing 18.12.2019

ORDER

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

TESTED
Associate

Scanned by CamScanner

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

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

Sd/-J

Sd/-J

Sd/-J

Verified to be True Copy

Senior Court Associate
Supreme Court of Pakistan
Islamabad

Islamabad
18/12/2019

PAYROLL SYSTEM
AMENDMENT FORM
SINGLE EMPLOYEE ENTRY

FORM:PAYFO2
Date
Page No.

OFFICE OF THE PRINCIPAL GOVT: HIGH SCHOOL SHEIKH UL BANDI ABBOTTABAD

FOR THE MONTH OF **01.07.2022**

DDO Code **A D 6 0 8 4**
Personal Number **0 0 7 3 3 9**
Grade(Pay Scale Group) **1 6**

GHS SHEIKH UL BANDI

Employee Name **AMJAD HUSSAIN**

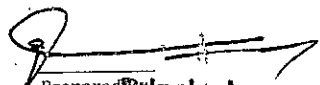
CNIC **13101-0967882-3**

Start

Salary Status

SCT

Info Type	Field ID	GENERAL DATA CHANGE		CHANGE IN PAYMENTS/DEDUCTIONS				Effective Date	Remarks
		New contents	Wage Type	Amount			Rupees		
			0001	59950				01.07.2022	Arrear of Pay & Allowances W.E.FROM
			2148	1300					01.03.2013 TO 30.06.2022 on a/c of 4 adv:
			2199	866					increments of MA instead of 02 in the light of
			2211	4404					judgement of Service Tribunal KP
			2224	5995					Revised salary slip attached
			2247	5995					
			2234	5995					
			2309	5995					
			2341	8998					
			5801	274480	P				Arrear detail on reverse please.
			5309	14000	p				
			5964	5968	P				
			5975	17152	P				
			5990	16720	P				
			5322	13072	P				
			5334	9424	P				
			5150	2128	P				
			5155	1708	P				
			Total	354652					

Prepared By 
Principal
GHS Sheikh-ul-Bandi
Abbottabad

Audited/Checked by

Entered/Verified By

ARREAR BILL OF PAY & ALLOWANCES IN R/O AMJAD HUSSAIN SGT GHS SHEIKH UL BANDI

A01101- PAY OF OFFICERS							
Period		Month	Due	Drawn	Diff:	Total	
From	01.03.2013	30.11.2013	9	24400	22800	1600	14400
From	01.12.2013	30.11.2014	12	25200	23600	1600	19200
From	01.12.2014	30.06.2015	7	26000	24400	1600	11200
From	01.07.2015	31.07.2015	1	33610	31540	2070	2070
From	01.12.2015	30.06.2016	7	34645	32575	2070	14490
From	01.07.2016	30.11.2016	5	42760	40200	2560	12800
From	01.12.2016	30.06.2017	7	44040	41480	2560	17920
From	01.07.2017	30.11.2017	5	52350	49310	3040	15200
From	01.12.2017	30.11.2018	12	53870	50830	3040	36480
From	01.12.2018	30.11.2019	12	55390	52350	3040	36480
From	01.12.2019	30.11.2020	12	56910	53870	3040	36480
From	01.12.2020	30.11.2021	12	58430	55390	3040	36480
From	01.12.2021	30.06.2022	7	59950	56910	3040	21280
TOTAL							274480
A.R 2013 (A0121T)							
From	01.07.2013	30.11.2013	5	3660	3420	240	1200
From	01.12.2013	30.11.2014	12	3780	3540	240	2880
From	01.12.2014	30.06.2016	19	3900	3660	240	4560
From	01.07.2016	31.01.2022	67	1300	1220	80	5360
TOTAL							14000
A.R 2015 (A0122C)							
From	01.07.2015	30.11.2015	5	3361	3154	207	1035
From	01.12.2015	30.06.2016	7	3464	3257	207	1449
From	01.07.2016	31.01.2022	67	866	814	52	3484
TOTAL							5968
A.R 2016 (A0122M)							
From	01.07.2016	30.11.2016	5	4276	4020	256	1280
From	01.12.2016	31.01.2022	62	4404	4148	256	15872
TOTAL							17152
A.R 2017 (A0122Y)							
From	01.07.2017	30.11.2017	5	5235	4931	304	1520
From	01.12.2017	30.11.2018	12	5387	5083	304	3648
From	01.12.2018	30.11.2019	12	5539	5235	304	3648
From	01.12.2019	31.07.2020	12	5691	5387	304	3648
From	01.12.2020	31.11.2021	12	5843	5539	304	3648
From	01.12.2021	31.01.2022	2	5995	5691	304	608
TOTAL							16720
A.R 2018 (A0123G)							
From	01.07.2018	30.11.2018	5	5387	5083	304	1520
From	01.12.2018	30.11.2019	12	5539	5235	304	3648
From	01.12.2019	30.11.2020	12	5691	5387	304	3648
From	01.12.2020	30.11.2021	12	5843	5539	304	3648
From	01.12.2021	31.01.2022	2	5995	5691	304	608
TOTAL							13072
A.R 2019 (A0123V)							
From	01.07.2019	30.11.2019	5	5539	5235	304	1520
From	01.12.2019	30.11.2020	12	5691	5387	304	3648
From	01.12.2020	30.11.2021	12	5843	5539	304	3648
From	01.12.2021	31.01.2022	2	5995	5691	304	608
TOTAL							9424
A.R 2021 (A0124 P)							
From	01.07.2021	30.11.2021	5	5843	5539	304	1520
From	01.12.2021	31.01.2022	2	5995	5691	304	608
TOTAL							2128
DRA 2022							
From	01.03.2022	30.06.2022	4	8963	8536	427	1708
TOTAL							1708
GRAND TOTAL							354652

OFFICE OF THE DISTRICT EDUCATION OFFICER (M) ABBOTTABAD



No. 5196-97/(Lit)

Dated: 16 /07/2022

☎ 0992-9310102, 0992-330131

✉ EDO.Education.Atd@gmail.com

To

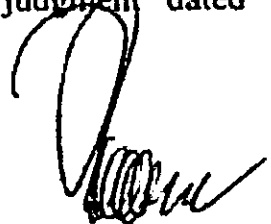
↗ The Principal
GHS Sheikh Ul Bandi,
Abbottabad.

Subject: EXECUTION PETITION NO 72/2020 TITLED AMJAD HUSSAIN VS GOVT OF KHYBER PAKHTUNKHWA & OTHERS.

Mr. Amjad Hussain filed EP No. 72/2020 in Service Appeal No. 407/2012 before the Honorable Khyber Pakhtunkhwa Service Tribunal Peshawar at Camp Court Abbottabad and next date of hearing is fixed on 20-07-2022 for Implementation Report.

As the department challenged the impugned judgment dated 16-04-2019 before the August Supreme Court of Pakistan and same was dismissed on 14-07-2022.

Hence, you are hereby directed to implement the judgment dated 16-04-2019 in its true letter and spirit.



District Education Officer (M)
Abbottabad

Dated: _____

Endst: No. _____

Copy forwarded for the information to the:-

1. Registrar, Khyber Pakhtunkhwa Service Tribunal Peshawar.


District Education Officer (M)
Abbottabad

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

Execution Petition No. 72/2020

In

Service Appeal No. 407/2012

Amjad Hussain.....Appellant

VERSUS

GOVERNMENT OF KHYBER PAKHTUNKHWA, PESHAWAR & OTHERS.....RESPONDENTS

IMPLEMENTATION REPORT

INDEX

Sr.No	Description	Page Nos	Annexures
1	Implementation Report alongwith Affidavit	01 to 02	
2	Copy letter dated 16-07-2022	03	A

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

Execution Petition No. 72/2020

In

Service Appeal No. 407/2012

Amjad Hussain.....Appellant

VERSUS

GOVERNMENT OF KHYBER PAKHTUNKHWA, PESHAWAR & OTHERS.....RESPONDENTS

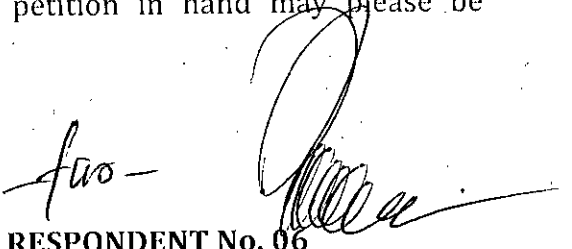
IMPLEMENTATION REPORT

Respectfully Sheweth:-

It is submitted as under:

1. That the above titled Execution Petition is pending adjudication before this Honorable Tribunal and today date is fixed for Implementation Report.
2. That the judgment of this Honourable Tribunal has been implemented in its true letter & spirit vide letter issued under Endst: No. 5196-97 dated 16-07-2022 and directed the Drawing Disbursing Officer accordingly. (Copy of letter dated 16-07-2022 is annexed herewith as Annexure "A").

It is, therefore, respectfully prayed that on acceptance of instant Implementation Report the Execution petition in hand may please be dismissed.



RESPONDENT No. 06
District Education Officer (M)
Abbottabad

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

Execution Petition No. 72/2020

In

Service Appeal No. 407/2012

Amjad Hussain.....Appellant

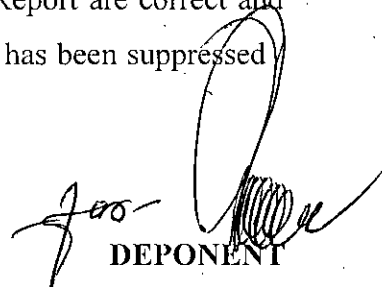
VERSUS

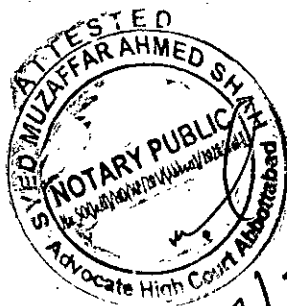
GOVERNMENT OF KHYBER PAKHTUNKHWA, PESHAWAR & OTHERS.....RESPONDENTS

IMPLEMENTATION REPORT

AFFIDAVIT

I, Mr. Muhammad Tanveer, District Education Officer (M) Abbottabad, declare on oath that the contents of the forgoing Implementation Report are correct and true according to the best of my knowledge and belief and nothing has been suppressed or concealed from this Honorable Tribunal.


DEPONENT



21/07/2022

OFFICE OF THE DISTRICT EDUCATION OFFICER (M) ABBOTTABAD



No. 5196-97/(Lit)

Dated: 16 /07/2022



0992-9310102, 0992-330131



EDO.Education.Atd@gmail.com

To

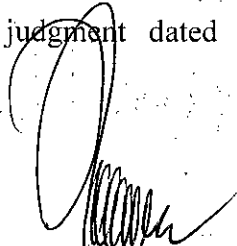
The Principal
GHS Sheikh Ul Bandi,
Abbottabad.

Subject: EXECUTION PETITION NO 72/2020 TITLED AMJAD HUSSAIN VS GOVT OF KHYBER PAKHTUNKHWA & OTHERS.

Mr. Amjad Hussain filed EP No. 72/2020 in Service Appeal No. 407/2012 before the Honorable Khyber Pakhtunkhwa Service Tribunal Peshawar at Camp Court Abbottabad and next date of hearing is fixed on 20-07-2022 for Implementation Report.

As the department challenged the impugned judgment dated 16-04-2019 before the August Supreme Court of Pakistan and same was dismissed on 14-07-2022.

Hence, you are hereby directed to implement the judgment dated 16-04-2019 in its true letter and spirit.

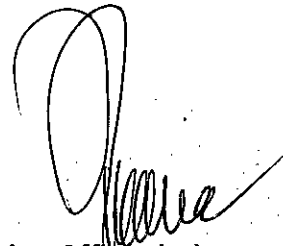

District Education Officer (M)
& Abbottabad

Endst: No. 5196-97

Dated: 16/07/2022

Copy forwarded for the information to the:-

1 ✓ Registrar, Khyber Pakhtunkhwa Service Tribunal Peshawar.


District Education Officer (M)
& Abbottabad