

**BEFORE THE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL,
PESHAWAR.**

Service Appeal No. 12889/2020

Date of Institution ... 27.10.2020

Date of Decision ... 12.07.2021

Jalalud Din, SCT (BPS-16),
GHSS Asbanr, Dir Lower

... (Appellant)

VERSUS

Government of Khyber Pakhtunkhwa through Chief Secretary,
Khyber Pakhtunkhwa, Peshawar and four others.

... (Respondents)

Mr. NOOR MUHAMMAD KHATTAK,
Advocate

--- For appellant.


MR. JAVED ULLAH,
Assistant Advocate General

--- For respondents.

MR. SALAH-UD-DIN
MR. ATIQ-UR-REHMAN WAZIR

--- MEMBER (JUDICIAL)
--- MEMBER (EXECUTIVE)

JUDGMENT:


SALAH-UD-DIN, MEMBER:- Through this single judgment, we intend to dispose of the instant Service Appeal as well as the clubbed appeals mentioned in appendix-A consisting of 141 sheets, appended with this judgment as its part, as all the appeals involve similar questions of law and facts.

2. The appellant has filed the instant Service Appeal under Section-4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974, against the impugned action of the respondents, making deduction of conveyance allowance from the salaries of the appellant during the summer/winter vacations and not responding

the departmental appeal of the appellant within the statutory period of ninety days.

In order to have a clear picture of the matter in issue, the sitting note dated 18.06.2021 of the instant appeal is reproduced as follows:-

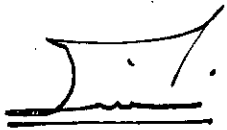
"Counsel for the appellant present.

Due to influx of abnormally large number of service appeals by individual appellants against the same set of respondents, and including one and the same subject matter with common questions of fact and law; the Registrar of this Tribunal, vide order dated 27.05.2021 on a miscellaneous application, was required to prepare a chronological list of all the appeals obviously for the sake of their management in a way to make their disposal doable by a single judgment instead of hearing each and every appeal separately for disposal by separate orders. For merger of the order dated 27.05.2021, contents thereof are reproduced below:-

Application for early hearing has been put up by the Reader with file. Counsel for the appellant present and heard.

Learned counsel for the appellant seeks early hearing of Appeals No. 13797/2020 and 38 others. It has been brought into the notice of this Bench that this appeal pertains to grievance of the appellant relating to grant of Conveyance Allowance and thousands of similar appeals are pending before this Tribunal at preliminary

hearing stage. It would result in abuse of the process of Tribunal, if the similar appeals are separately heard despite being the similarity of claim in all the appeals. Therefore, it would be in the fitness of things to club all appeals with one the oldest in order of chronology in light of the time of institution. The Worthy Registrar of this Tribunal has been called and assigned the duty that list of all the appeals be prepared in chronological order and all the appeals be clubbed with the oldest one, and be submitted for preliminary hearing before this Bench on 18.06.2021, irrespective of the previous dates given on the diary. This application is disposed of accordingly.



The order dated 27.05.2021 as reproduced above has been placed on this file vide order dated 17.06.2021, as the appeal in this file is the oldest in chronological order from the date of institution. Rest of appeals enumerated/described in the chronological list making part of this file, due to commonalty of the subject matter and questions of law and facts, are clubbed with the appeal at hand for disposal conjointly to prevent multiplicity of processes, when judgment passed in a single appeal will enable to settle the particular issue of conveyance allowance similarly in respect of the other appellants who have filed appeals individually because of procedural constraints.

Preliminary arguments have been heard. A brief history of Conveyance Allowance as

submitted by learned counsel for the appellant has been placed on this file. The copy of judgment dated 11.11.2019 in Service Appeal No. 1452/2019 titled "Maqsad Hayat Versus the Government" has also been annexed with the said brief. According to which a Single Bench of this Tribunal disposed of the said appeal while relying on the judgment of the Hon'ble Peshawar High Court Peshawar in Writ Petition No. 3162-P/2019 with the direction for implementation of the said judgment by the respondents within shortest possible time. The course was also kept open for the appellant to seek remedy in accordance with law, in case his grievance is not redressed by the respondents within reasonable time. There is no cavil to the resolution of matter by judgment dated 11.11.2019 but the likelihood of multiplicity of proceedings cannot be ruled out unless a self-speaking judgment is passed by the Tribunal under due course of law to settle the matter once for all.



The proceedings for hearing will take-place in appeal in hand and shall be deemed to have been applied to clubbed appeals without repetition/replication.

During pendency of this appeal, if any fresh appeal is instituted involving similar questions of law and facts relating to the Conveyance Allowance against the same departmental authorities, office shall also club the same with this appeal.

Points raised need consideration. The appeal, alongwith all clubbed appeals, is admitted to regular hearing. The appellant in this appeal is directed to deposit security and process fee within 10 days. Thereafter, notices of this appeal alongwith list of clubbed appeals be given to the respondents but their comments/written reply as filed in connection with appeal in hand shall be deemed to have been filed in all the clubbed appeals. There is no need of filing reply/comments individually in each and every clubbed appeal. Similarly, the appellants in all the clubbed appeals are exempted from the deposit of security and process fee. The respondents shall submit written reply/comments, as discussed above, in office within 10 days of the receipt of notices positively. If the written reply/comments are not submitted within the stipulated time, the office is directed to submit the file with a report of non-compliance. File to come up for arguments on 12.07.2021 before the D.B"

4. Precise facts of the instant Service Appeal as well as the clubbed Service Appeals are that the appellants are employees of Education Department, who were receiving conveyance allowance as admissible under the law and rules but the respondents without any valid and justifiable reasons stopped/deducted the payment of conveyance allowance for the period of summer as well as winter vacations on the ground that as the said vacations is leave period, therefore, the employees are not entitled to be paid conveyance allowance during the summer/winter vacations. After availing the remedy of departmental appeal, the appellants have approached

this Tribunal through filing of the appeals for redressal of their grievance.


5. Comments on behalf of respondents submitted, which are placed on file.

6. Learned counsel for the appellant has contended that conveyance allowance is being paid by both provincial as well as central government to the civil servants, in order to accommodate them in their travel expenses incurred by them in travelling to and from the workplace; that the summer and winter vacations are not granted upon the request of the employees, rather they remain available for any call of duty, therefore, the respondents are wrong in considering the summer and winter vacations as kind of leave for deduction of conveyance allowance for the said period; that the civil servants of vacation departments are allowed only 01 leave in a month and thus earned leave for 12 days per year is credited to their account, while civil servants of other departments can avail 04 leave in a month, making 48 days earned leave as credited to their account, therefore, the respondents are required to consider the said aspect, while dealing with conveyance allowance of the appellants; that action of the respondents is in utter violation of Article-4 and Article-25 of the Constitution of Islamic Republic of Pakistan 1973; that conveyance allowance is part and parcel of salary/pay and the appellant is entitled to its payment, even during the period of summer/winter vacations. Reliance was placed on an unreported judgment of august Peshawar High Court, Peshawar in Writ Petition No. 3162-P/2019 titled "Akhtar Hussain and 607 others Versus Government of Khyber Pakhtunkhwa", order/judgment dated 11.11.2019 of Khyber Pakhtunkhwa Service Tribunal rendered in Service Appeal No. 1452/2019 titled "Maqсад Hayat Versus Government of Khyber Pakhtunkhwa", judgment of Federal Service Tribunal in

Appeal No. 1888(R) CS/2016, 2020 PLC (C.S) 741 [Supreme Court (AJ&K)] and 2020 PLC (C.S) 747.

7. Respective learned counsel for the appellants in the clubbed Service Appeals have adopted the arguments advanced by the learned counsel for the appellant in the instant appeal.

8. Conversely, learned Assistant Advocate General for the respondents has contended that the teaching staff remains on leave during the period of winter and summer vacations and do not perform any duty during the said period, therefore, they are not entitled to any conveyance allowance during the summer/winter vacations; that being employees of vocational department, the appellants cannot claim any conveyance allowance during the vacation period and in respect of conveyance allowance, they cannot be treated at par with civil servants of non vocational departments. Reliance was placed on 2020 SCMR 1689 and 2020 SCMR 98.

 9. We have heard the arguments of learned counsel for the appellants as well as learned Assistant Advocate General for the respondents and have perused the record.

10. The controversy, which needs to be resolved, is with regard to the issue as to whether the appellants, who are employees of vacation department, are entitled to payment of conveyance allowance during the period of summer/winter vacation or not. In order to appreciate the matter in a proper legal way, it would be advantageous to reproduce Clause-(b) of FR-82 as below:-

"(b) Vacation counts as duty but the period of total leave in rules-77, 81 (a) and 81 (b) should ordinarily be reduced by one month for each year of duty in which the government servant availed himself of the vacation. If a part only of the vacation has been taken in any year, the period to be

deducted will be a fraction of a month equal to the proportion which the part of the vacation taken bears to the full period of the vacation".


In light of Clause (b) of FR-82, it is crystal clear that vacation counts as duty. Even during vacation, the employees of Education Department remain on call for any duty assigned to them. Moreover, the summer vacations are not granted on demand or option of the employees of the Education Department, rather the period of their earned leave is curtailed by one month for each year. The respondents are wrong in considering the summer/winter vacations as kind of leave. The conveyance allowance is admissible to the government servants who are on duty and in view of clause (b) of FR-82, the summer/winter vacation period also count as duty, therefore, the respondents are not justified in depriving the employees of the Education Department from the receipt of conveyance allowance during summer/winter vacations. The deduction of conveyance allowance from the salaries of the appellants and other teaching staff during summer/winter vacations is in violation of their rights available to them under the Constitution of Islamic Republic of Pakistan 1973. Reliance is placed on 2020 PLC (C.S) 741. The judgment dated 17.10.2017 passed by Federal Service Tribunal in identical nature appeals bearing No. 289 to 298 (R) C.S/2015 has been upheld by august Supreme Court of Pakistan vide order dated 13.07.2018 passed in CPs No. 4957 to 4966 of 2017. Furthermore, this Tribunal has also granted such relief to other employees of Education Department in identical nature appeals.

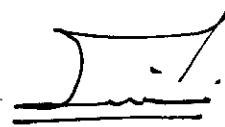
11. In light of the above discussion, the appeal in hand as well as clubbed appeals mentioned in the appendix-A stands allowed and the respondents are directed not to deduct the conveyance allowance from the salaries of the appellants during summer/winter vacations. The conveyance allowance if any,

already deducted should be reimbursed to the appellants forthwith. The instant judgment shall be considered as judgment *in rem*, therefore, the respondents should pay the said allowance to all similarly placed employees of the Education Department so as to avoid the discrimination under Article-4 & 25 of the Constitution of Islamic Republic of Pakistan as well as unnecessary litigation. Attested copy of this judgment be placed on files of all the clubbed appeals mentioned in appendix-A. Parties are left to bear their own costs. This file as well as files of clubbed Service Appeals mentioned in appendix-A be consigned to the record room.

ANNOUNCED

12.07.2021


(ATIQ-UR-REHMAN WAZIR)
MEMBER (EXECUTIVE)


(SALAH-UD-DIN)
MEMBER (JUDICIAL)

Application of Saleem Khan, S.O (Litigation)
E&SE, and two others.

13.09.2021

The applicants namely Saleem Khan S.O (Litigation) E&SE, Dr. Hayat Khan, Assistant Director, E&SE and Qazi Muhammad Ayaz, Litigation Officer, ~~H&D~~ through their joint applications seek for provision of short order(s) in Service Appeal No. 12889/2020, titled "Jalal-ud-Din Versus Government of Khyber Pakhtunkhwa" alongwith short orders in 9000+ other clubbed cases Vs. Government of Pakhtunkhwa.

The reasons as appear at Paragraphs 3 and 4 of the application includes that they collected certified copies of the judgment dated 12.07.2021 from the record room and submitted before the Advocate on Record for further action, who returned the case with observation that short orders in all other connected appeals (cases round about 9000+) be provided for filing of CPLA, otherwise CPLA will not be filed.

Needless to say that the short order dated 12.07.2021 has been written only in file of Appeal No.12889/2020.The underlying order for clubbing all the appeals as reproduced under Paragraph 3 of the judgment dated 12.07.2021 enlightens about dispensing with writing of order sheets in all the clubbed appeals obviously thousands in number. The following points from the said order are worth attention:-



12.07.2021 that the appeal in hand as well as clubbed appeals mentioned in Appendix "A" stood allowed and the respondents were directed not to deduct Conveyance Allowance from the salaries of the appellants during summer/winter vacations.

This application filed by the applicants named above is disposed of in the terms that the short order has been written only in one appeal bearing No.12889/2020 for which the reasons have been given above; and accordingly the provision of attested copy separately in respect of all the clubbed appeals is not doable.

This application alongwith instant order be placed on file and certified copy of this order be provided to the applicants.


Chairman


ORDER
12.07.2021

Mr. Noor Muhammad Khattak, Advocate, for the appellant present. Mr. Muhammad Hayat, Assistant Director (Litigation) alongwith Mr. Javed Ullah, Assistant Advocate General for the respondents present. Arguments heard and record perused.

Vide our detailed judgment of today, separately placed on file, the appeal in hand as well as clubbed appeals mentioned in the appendix-A stands allowed and the respondents are directed not to deduct the conveyance allowance from the salaries of the appellants during summer/winter vacations. The conveyance allowance if any, already deducted should be reimbursed to the appellants forthwith. The instant judgment shall be considered as judgment *in rem*, therefore, the respondents should pay the said allowance to all similarly placed employees of the Education Department so as to avoid the discrimination under Article-4 & 25 of the Constitution of Islamic Republic of Pakistan as well as unnecessary litigation. Attested copy of this judgment be placed on files of all the clubbed appeals mentioned in appendix-A. Parties are left to bear their own costs. This file as well as files of clubbed Service Appeals mentioned in appendix-A be consigned to the record room.

ANNOUNCED
12.07.2021


(ATIQ-UR-REHMAN WAZIR)
MEMBER (EXECUTIVE)



(SALAH-UD-DIN)
MEMBER (JUDICIAL)

S.A No. 12889/2020

18.06.2021

Counsel for the appellant present.

Due to influx of abnormally large number of service appeals by individual appellants against the same set of respondents, and including one and the same subject matter with common questions of fact and law; the Registrar of this Tribunal, vide order dated 27.05.2021 on a miscellaneous application, was required to prepare a chronological list of all the appeals obviously for the sake of their management in a way to make their disposal doable by a single judgment instead of hearing each and every appeal separately for disposal by separate orders. For merger of the order dated 27.05.2021, contents thereof are reproduced below:-



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claim in all the appeals. Therefore, it would be in the fitness of things to club all appeals with one the oldest in order of chronology in light of the time of institution. The Worthy Registrar of this Tribunal has been called and assigned the duty that list of all the appeals be prepared in chronological order and all the appeals be clubbed with the oldest one, and be submitted for preliminary hearing before this Bench on 18.06.2021, irrespective of the previous dates given on the diary. This application is disposed of accordingly.

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Points raised need consideration. The appeal, alongwith all clubbed appeals, is admitted to regular

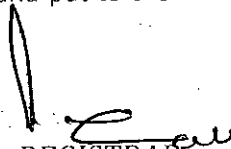
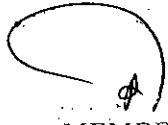


hearing. The appellant in this appeal is directed to deposit security and process fee within 10 days. Thereafter, notices of this appeal alongwith list of clubbed appeals be given to the respondents but their comments/written reply as filed in connection with appeal in hand shall be deemed to have been filed in all the clubbed appeals. There is no need of filing reply/comments individually in each and every clubbed appeal. Similarly, the appellants in all the clubbed appeals are exempted from the deposit of security and process fee. The respondents shall submit written reply/comments, as discussed above, in office within 10 days of the receipt of notices positively. If the written reply/comments are not submitted within the stipulated time, the office is directed to submit the file with a report of non-compliance. File to come up for arguments on 12.07.2021 before the D.B.


Chairman

FORM OF ORDER SHEET

Court of _____

Case No. - 12889 /2020

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1-	27/10/2020	<p>The appeal presented today by Mr. Noor Muhammad Khattak Advocate may be entered in the Institution Register and put to the Learned Member for proper order please.</p> <p style="text-align: right;"> REGISTRAR</p>
2-	08/02/21	<p>This case is entrusted to S. Bench for preliminary hearing to be put up there on 5-3-2021</p> <p style="text-align: right;"> MEMBER(J)</p>
	<p>05.03.2021</p> <p><i>This appeal relate to conveyance allowance on 27/05/2021 order was passed on early hearing application in Appeal NO. 13797/20, wherein the office was directed to prepare the list of appeals in chronological order and the appeals be clubbed with the oldest one, and submit it for preliminary hearing on 18/06/2021. This is the oldest case in order of chronology.</i></p>	<p>The learned judicial member is under transfer, therefore, the case is adjourned to 30.07.2021 for the same before S.B.</p> <p style="text-align: right;"> Reader</p> <p><u>Order</u> 17.6.2021</p> <p>In view of the Kacha Note in margin of order sheet, the copy of order dated 27.05.2021 be placed on this file and put on the date according to the cause list.</p> <p style="text-align: right;"> Chairman</p>

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR

APPEAL NO. _____/2020

JALALUD DIN

VS

EDUCATION DEPTT:

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S.NO.	DOCUMENTS	ANNEXURE	PAGE
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2.	Notification	A	4.
3.	Pay slips	B & C	5- 6.
4.	Departmental appeal	D	7.
5.	Service Tribunal judgment	E	8- 9.
6.	Vakalat nama	10.

APPELLANT

THROUGH:

NOOR MUHAMMAD KHATTAK
ADVOCATE

OFFICE: Flat No.4, 2nd Floor,
Juma Khan Plaza,
Near FATA Secretariat,
Warsak Road, Peshawar.
0345-9383141

Note:

Sir,

Spare copies will be submitted
After Admission of the case.

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR

Khyber Pakhtunkhwa
Service Tribunal

APPEAL NO. 12889 / 2020

Duty No. 13368

Mr. Jalalud Din, SCT (BPS-16),
GHSS Asbanr, Dir Lower.

Dated 27/10/2020

.....**APPELLANT**

VERSUS

- 1- The Government of Khyber Pakhtunkhwa through Chief Secretary, Khyber Pakhtunkhwa, Peshawar.
- 2- The Secretary (E&SE) Department, Khyber Pakhtunkhwa, Peshawar.
- 3- The Secretary Finance Department, Khyber Pakhtunkhwa, Peshawar.
- 4- The Accountant General, Khyber Pakhtunkhwa, Peshawar.
- 5- The Director of (E&SE) Department, Khyber Pakhtunkhwa, Peshawar.

.....**RESPONDENTS**

APPEAL UNDER SECTION-4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974 AGAINST THE IMPUGNED ACTION OF THE RESPONDENTS BY ILLEGALLY AND UNLAWFULLY DEDUCTING THE CONVEYANCE ALLOWANCE OF THE APPELLANT DURING WINTER & SUMMER VACATIONS AND AGAINST NO ACTION TAKEN ON THE DEPARTMENTAL APPEAL OF THE APPELLANT WITHIN THE STATUTORY PERIOD OF NINETY DAYS.

PRAYER:

That on acceptance of this appeal the respondents may kindly be directed not to make deduction of conveyance allowance during vacations period (Summer & Winter Vacations) and make the payment of all outstanding amount of Conveyance allowance which have been deducted previously with all back benefits. Any other remedy which this august Tribunal deems fit that may also be awarded in favor of the appellant.

R/SHEWETH:

ON FACTS:

- 1- That the appellant is serving in the Elementary & Secondary Education Department as SCT (BPS-16) quite efficiently and up to the entire satisfaction of their superiors.
- 2- That the Conveyance Allowance is admissible to all the Civil Servants and to this effect a Notification No. FD (PRC)1-1/2011 dated 14.07.2011 was issued. That later on vide revised Notification dated 20.12.2012 whereby the conveyance allowance for employees

Filed to-day
Registrar
27/10/20

working in BPS 1 to 15 were enhance/revised while employees from BPS- 16 to 19 have been treated under the previous Notification by not enhancing their conveyance allowance. Copy of the Notification dated 20.12.2012 are attached as annexure..... **A.**

- 3- That appellant was receiving the conveyance allowances as admissible under the law and rules but the respondents without any valid and justifiable reasons stopped/deducted the payment of conveyance allowance under the wrong and illegal pretext that the same is not allowed for the leave period. Copies of the Salary Slips of working/serving month and vacations (deduction period) are attached as annexure.....**B & C.**
- 4- That some of colleagues of the appellant approached to this august Tribunal in different service appeals which was allowed by this august Tribunal vide its judgment dated 11.11.2019. Copy of the judgment is attached as annexure.....**D.**
- 5- That appellant also filed Departmental appeal before the appellate for redressal of his grievances in light of the principle of consistency but no reply has been received from the quarter concerned. That appellant feeling aggrieved and having no other remedy filed the instant service appeal on the following grounds amongst the others. Copy of the Departmental appeal is attached as annexure.....**E.**

GROUND:

- A- That the action and inaction of the respondents regarding deduction of conveyance allowance for vacations period/months is illegal, against the law, facts, norms of natural justice.
- B- That the appellant have not been treated by the respondent Department in accordance with law and rules on the subject noted above and as such the respondents violated Article 4 and 25 of the constitution of Islamic Republic of Pakistan 1973.
- C- That the action of the respondents is without any legal authority, discriminatory and in clear violation of fundamental rights duly conferred by the Constitution and is liable to be declared as null and void.
- D- That there is clear difference between leave and vacation as leave is applied by the Civil Servant in light Government Servant Revised Leave Rules, 1981 while the vacations are always announced by the Government, therefore under the law and Rules the appellant fully entitled for the grant of conveyance allowance during vacations period.

- E- That the Government Servants Revised Leave Rules, 1981 clearly explain that the civil servants who avail the vacations are allowed only one leave in a month whereas, the other civil servants may avail 04 days leave in a calendar months and the same are credited to his account and in this way he may avail 48 days earned leave with full pay, whereas the Government servants to avail vacation such as appellant is allowed one day leave in a month and twelve (12) days in a year and earned leave for twelve days in a year are credited to his account and there is no question of deduction of conveyance allowance for vacation period, the respondents while making the deduction of conveyance allowance lost sight of this legal aspects and illegally and without any authority started the recovery and deduction of conveyance allowance from appellant.
- F- That as the act of the respondents is illegal, unconstitutional, without any legal authority and not only discriminatory but is also the result of malafide on the part of respondents.
- G- That appellant has the vested right of equal treatment before law and the act of the respondents to deprive the petitioners from the conveyance/allowance is unconstitutional and clear violation of fundamental rights.
- H- That according to Government Servants Revised leave Rules, 1981 vacations are holidays and not leave of any kind, therefore, the deduction of conveyance allowance in vacations is against the law and rules.
- I- That according to Article 38 (e) of the Constitution of Islamic Republic of Pakistan, 1973 the state is bound to reduce disparity in the income and earning of individuals including persons in the services of the federation, therefore in light of the said Article the appellant fully entitle for the grant of conveyance allowance during vacations.
- J- That the petitioners seeks permission of this Honorable Court to raise any other grounds available at the time of arguments.

It is therefore, most humbly prayed that the appeal of the appellant may be accepted as prayed for.

APPELLANT

Jalal
JALAL UD DIN

THROUGH:

N.M.K.
NOOR MOHAMMAD KHATTAK

&

M.S.
**MIR ZAMAN SAFI
ADVOCATES**

BETTER COPY PAGE- 4

GOVERNMENT OF KHYBER PAKHTUNKHWA
FINANCE DEPARTMENT
(REGULATION WING)

NO.FD/SO(SR-II)/52/2012
Dated Peshawar the: 20.12.2012

From

The Secretary to Govt. of Khyber Pakhtunkhwa
Finance Department, Peshawar.

To:

1. All administrative Secretaries to Govt. of Khyber Pakhtunkhwa.
2. The Senior Member, Board of Revenue, Khyber Pakhtunkhwa.
3. The Secretary to Governor, Khyber Pakhtunkhwa.
4. The Secretary to Chief Minister, Khyber Pakhtunkhwa.
5. The Secretary, Provincial Assembly, Khyber Pakhtunkhwa.
6. All Heads of attached Departments in Khyber Pakhtunkhwa.
7. All District Coordination Officers of Khyber Pakhtunkhwa.
8. All Political Agents/District & Session Judge in Khyber Pakhtunkhwa.
9. The Registrar Peshawar High Court, Peshawar.
10. The Chairman Public Service Commission, Khyber Pakhtunkhwa.
11. The Chairman, Service Tribunal, Khyber Pakhtunkhwa.

Subject: REVISION IN THE RATE OF CONVEYANCE ALLOWANCE FOR THE CIVIL EMPLOYEES OF THE KHYBER PAKHTUNKHWA. PROVINCIAL GOVERNMENT BPS-1-19

Dear Sir,

The Government of Khyber Pakhtunkhwa has been pleased to enhance/revise the rate of Conveyance Allowance admissible to all the Provincial Civil Servants Govt. of Khyber Pakhtunkhwa (working in BPS-1 to BPS-15) w.e.f from 1st September, 2012 at the following rates. However, the conveyance allowance for employees in BPS-16 to BPS-19 will remain unchanged.

S.No.	BPS	Existing Rate (PM)	Revised Rate (PM)
1.	1-4	Rs. 1,500/-	Rs. 1,700/-
2.	5-10	Rs. 1,500/-	Rs. 1,840/-
3.	11-15	Rs. 2,000/-	Rs. 2,720/-
4.	16-19	Rs. 5,000/-	Rs. 5,000/-

2. Conveyance Allowance at the above rates per month shall be admissible to those BPS-17, 18 and 19 officers who have not been sanctioned official vehicle.

Your Faithfully

(Sahibzada Saeed Ahmad)
Secretary Finance

Endst No. FD/SO(SR-II)8-52/2012 Dated Peshawar the 20th December 2012 -

M.A. 13



4 - 4

GOVERNMENT OF KHYBER PAKHTUNKHWA
FINANCE DEPARTMENT
(REGULATION WING)

NO. FDSO(SR-III)-7-52/2012
Dated Peshawar the: 20-12-2012

From: The Secretary to Govt. of Khyber Pakhtunkhwa,
Finance Department,
Peshawar.

To: 1. All Administrative Secretaries to Govt. of Khyber Pakhtunkhwa.
2. The Senior Member, Board of Revenue, Khyber Pakhtunkhwa.
3. The Secretary to Government, Khyber Pakhtunkhwa.
4. The Secretary to Chief Minister, Khyber Pakhtunkhwa.
5. The Secretary, Provincial Assembly, Khyber Pakhtunkhwa.
6. All Heads of Attached Departments in Khyber Pakhtunkhwa.
7. All District Coordination Offices in Khyber Pakhtunkhwa.
8. All Political Agents - District & Sessions Judges in Khyber Pakhtunkhwa.
9. The Registrar, Peshawar High Court, Peshawar.
10. The Chairman, Public Service Commission, Khyber Pakhtunkhwa.
11. The Chairman, Services Tribunal, Khyber Pakhtunkhwa.

Subject: REVISION IN THE RATE OF CONVEYANCE ALLOWANCE FOR THE CIVIL EMPLOYEES OF THE KHYBER PAKHTUNKHWA PROVINCIAL GOVERNMENT BPS-1-19

Dear Sir,
The Government of Khyber Pakhtunkhwa has been pleased to enhance / revise the rate of Conveyance Allowance admissible to all the Provincial Civil Servants, Govt. of Khyber Pakhtunkhwa (working in BPS-1 to BPS-19) w.e.f from 1st September, 2012 at the following rates. However, the conveyance allowance for employees in BPS-15 to BPS-19 will remain unchanged.

S.NO	BPS	EXISTING RATE (PK)	REVISED RATE (PK)
1.	1-4	Rs. 1,500/-	Rs. 1,700/-
2.	5-10	Rs. 1,500/-	Rs. 1,840/-
3.	11-15	Rs. 2,000/-	Rs. 2,220/-
4.	16-19	Rs. 5,000/-	Rs. 5,000/-

2. Conveyance Allowance at the above rates per month shall be admissible to those BPS-17, 18 and 19 officers who have not been sanctioned official vehicles.

Yours Faithfully,

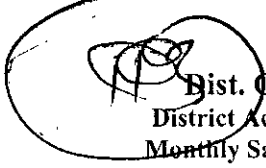
(Sahibzada Saad Ahmad)
Secretary Finance

Encl: NO. FDSO(SR-III)-8-52/2012 Dated Peshawar the 20th December, 2012

A Copy is forwarded for information to the:-

- 1. Accountant General, Khyber Pakhtunkhwa, Peshawar.
- 2. Secretaries to Government of Punjab, Sindh & Balochistan Finance Department.
- 3. All Commissioners / Secretaries Autonomous Bodies in Khyber Pakhtunkhwa.

M. NAZ AYUB
Additional Secretary (Reg)



Dist. Govt. NWFP-Provincial
District Accounts Office Dir at Timargar
Monthly Salary Statement (October-2019)



B - 8

Personal Information of Mr JALALUD DIN d/w/s of MUMTAZ

Personnel Number: 00263972 CNIC: 10976172746 NTN:
 Date of Birth: 10.04.1976 Entry into Govt. Service: 02.12.1996 Length of Service: 22 Years 11 Months 000 Days

Employment Category: Vocational Temporary

Designation: SENIOR CERTIFIED TEACHER 80001432-DISTRICT GOVERNMENT KHYBE
 DDO Code: DA6037-GHSS ASBANR
 Payroll Section: 001 GPF Section: 001 Cash Center: 09
 GPF A/C No: EDUDA009905 Interest Applied: Yes **GPF Balance:** 745,250.00
 Vendor Number: -
Pay and Allowances: Pay scale: BPS For - 2017 Pay Scale Type: Civil BPS: 16 Pay Stage: 20

Wage type		Amount	Wage type		Amount
0001	Basic Pay	49,310.00	1000	House Rent Allowance	2,727.00
1210	Convey Allowance 2005	5,000.00	1924	UAA-OTHER 20%(16 G/NG)	1,500.00
1947	Medical Allow 15% (16-22)	2,003.00	2148	15% Adhoc Relief All-2013	1,020.00
2199	Adhoc Relief Allow @10%	711.00	2211	Adhoc Relief All 2016 10%	3,892.00
2224	Adhoc Relief All 2017 10%	4,931.00	2247	Adhoc Relief All 2018 10%	4,931.00
2264	Adhoc Relief All 2019 10%	4,931.00			0.00

Deductions - General

Wage type		Amount	Wage type		Amount
3016	GPF Subscription	-3,340.00	3501	Benevolent Fund	-800.00
3609	Income Tax	-1,239.00	3990	Emp.Edu. Fund KPK	-150.00
4004	R. Benefits & Death Comp:	-650.00			0.00

Deductions - Loans and Advances

Loan	Description	Principal amount	Deduction	Balance

Deductions - Income Tax

Payable: 18,573.55 Recovered till OCT-2019: 4,026.00 Exempted: 4642.51 Recoverable: 9,905.04

Gross Pay (Rs.): 80,956.00 Deductions: (Rs.): -6,179.00 Net Pay: (Rs.): 74,777.00

Payee Name: JALALUD DIN
 Account Number: C/A 2402-2

Bank Details: NATIONAL BANK OF PAKISTAN, 231331 NBP CHAKDARA DIR NBP CHAKDARA DIR,

Leaves: Opening Balance: Aailed: Earned: Balance:

Permanent Address: VILL BAMBULAI

City: DIR LOWER

Domicile: NW - Khyber Pakhtunkhwa

Housing Status: No Official

Temp. Address:

City:

Email: jalal8083@gmail.com

ATTESTED

Dist. Govt. NWFP-Provincial
District Accounts Office Dir at Timargar
Monthly Salary Statement (July-2019)



C-6

Personal Information of Mr JALALUD DIN d/w/s of MUMTAZ

Personnel Number: 00263972 CNIC: 10976172746 NTN:
 Date of Birth: 10.04.1976 Entry into Govt. Service: 02.12.1996 Length of Service: 22 Years 08 Months 000 Days

Employment Category: Vocational Temporary

Designation: SENIOR CERTIFIED TEACHER 80001432-DISTRICT GOVERNMENT KHYBE
 DDO Code: DA6037-GHSS ASBANR
 Payroll Section: 001 GPF Section: 001 Cash Center: 09
 GPF A/C No: EDUDA009905 Interest Applied: Yes **GPF Balance:** 645,689.00
 Vendor Number: -
Pay and Allowances: Pay scale: BPS For - 2017 Pay Scale Type: Civil BPS: 16 Pay Stage: 20

Wage type		Amount	Wage type		Amount
0001	Basic Pay	49,310.00	1000	House Rent Allowance	2,727.00
1210	Convey Allowance 2005	5,000.00	1924	UAA-OTHER 20%(16 G/NG)	1,500.00
1947	Medical Allow 15% (16-22)	2,003.00	2148	15% Adhoc Relief All-2013	1,020.00
2199	Adhoc Relief Allow @10%	711.00	2211	Adhoc Relief All 2016 10%	3,892.00
2224	Adhoc Relief All 2017 10%	4,931.00	2247	Adhoc Relief All 2018 10%	4,931.00
2264	Adhoc Relief All 2019 10%	4,931.00			0.00

Deductions - General

Wage type		Amount	Wage type		Amount
3016	GPF Subscription	-3,340.00	3501	Benevolent Fund	-800.00
3609	Income Tax	-929.00	3990	Emp.Edu. Fund KPK	-150.00
4004	R. Benefits & Death Comp:	-1,089.00			0.00

Deductions - Loans and Advances

Loan	Description	Principal amount	Deduction	Balance

Deductions - Income Tax

Payable: 18,573.55 Recovered till JUL-2019: 929.00 Exempted: 7429.07 Recoverable: 10,215.48

Gross Pay (Rs.): 80,956.00 Deductions: (Rs.): -6,308.00 Net Pay: (Rs.): 74,648.00

Payee Name: JALALUD DIN
 Account Number: C/A 2402-2
 Bank Details: NATIONAL BANK OF PAKISTAN, 231331 NBP CHAKDARA DIR NBP CHAKDARA DIR,

Leaves: Opening Balance: Aailed: Earned: Balance:

Permanent Address: VILL BAMBULAI
 City: DIR LOWER Domicile: NW - Khyber Pakhtunkhwa Housing Status: No Official
 Temp. Address: City: Email: jalal8083@gmail.com

ATTENDED

D-

**BEFORE THE KHYBER PAKHTUNKHWA SERVICE
PESHAWAR**

APPEAL NO. 1452 /2019

Mr. Maqсад Hayat, SCT (BPS-16),
GHS Masho Gaggar, Peshawar.....

Date: 24/10/19
APPELLANT

VERSUS

- 1- The Government of Khyber Pakhtunkhwa through Chief Secretary, Khyber Pakhtunkhwa, Peshawar.
- 2- The Secretary (E&SE) Department, Khyber Pakhtunkhwa, Peshawar.
- 3- The Secretary Finance Department, Khyber Pakhtunkhwa, Peshawar.
- 4- The Accountant General, Khyber Pakhtunkhwa, Peshawar.
- 5- The Director (E&SE) Department, Khyber Pakhtunkhwa, Peshawar.

.....**RESPONDENTS**

**APPEAL UNDER SECTION-4 OF THE KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL ACT, 1974 AGAINST THE IMPUGNED
ACTION OF THE RESPONDENTS BY ILLEGALLY AND
UNLAWFULLY DEDUCTING THE CONVEYANCE ALLOWANCE
OF THE APPELLANT DURING WINTER & SUMMER
VACATIONS AND AGAINST NO ACTION TAKEN ON THE
DEPARTMENTAL APPEAL OF APPELLANT WITHIN THE
STATUTORY PERIOD OF NINETY DAYS.**

PRAYER:

That on acceptance of this appeal the respondents may kindly be directed not to make deduction of conveyance allowance during vacations period (Summer & Winter Vacations) and make the payment of all outstanding amount of Conveyance allowance which have been deducted previously with all back benefits. Any other remedy which this august Tribunal deems fit that may also be awarded in favor of the appellant.

R/SHEWETH:

ATTENTION FACTS:

- 1- That the appellant is serving in the elementary and secondary education department as Certified Teacher (BPS-15) quite efficiency and up to the entire satisfaction of the superiors
- 2- That the Conveyance Allowance is admissible to all the civil servants and to this effect a Notification No. FD (PRC) 1-1/2011 dated 14.07.2011 was issued. That later on vide revised Notification dated 20.12.2012 whereby the conveyance allowance for employees

Filed to-day

Registrar

24/10/19

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

11/11/19

W

Appeal No. 1452/2019
Masood Hayat vs Govt

11.11.2019

Counsel for the appellant present.

Learned counsel referred to the judgment passed by learned Federal Service Tribunal in Appeal No. 1888(R)CS/2016 which was handed down on 03.12.2018. Through the said judgment the issue of payment of Conveyance Allowance to a civil servant during summer and winter vacations was held to be within his entitlement and the deduction already made from him was to be reimbursed. Similar reference was made to the judgment by Honourable Peshawar High Court passed on 01.10.2019 in the case of appellant.

Learned counsel, when confronted with the proposition that the issue, in essence, was dilated upon by the Federal Service Tribunal and, more particularly, by the Honourable Peshawar High Court in the case of appellant, stated that in case the respondents are required to execute the judgment of Peshawar High Court, the appellant will have no cavil about disposal of instant appeal.

The record suggests that while handing down judgment in the Writ Petition preferred by the appellant, the Honourable High Court not only expounded the definition of "Pay" as well as "Salary" but also entitlement of a civil servant for the Conveyance Allowance during the period of vacations. It is important to note that the respondents were represented before the High Court during the proceedings.

In view of the above noted facts and circumstances and in order to protect the appellant from a fresh round of litigation which may protract over a formidable period, the appeal in hand is disposed of with observation that the judgment of Honourable Peshawar High Court passed in Writ Petitions including W.P. No. 3162-P/2019 shall be honoured and implemented by the respondents within shortest possible time. The appellant shall, however, be at liberty to seek remedy in accordance with law in case his grievance is not redressed by the respondents within a reasonable time.

File be consigned to the record.

Chairman

ANNOUNCED

11.11.2019

Certified to be true copy

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

M

To,

The Director, (E&SE) Department,
Khyber Pakhtunkhwa, Peshawar.

E-9

Subject: DEPARTMENTAL APPEAL AGAINST THE IMPUGNED ACTION OF THE CONCERNED AUTHORITY BY ILLEGALLY AND UNLAWFULLY DEDUCTING THE CONVEYANCE ALLOWANCE DURING WINTER & SUMMER VACATIONS

Respected Sir,

With due respect it is stated that I am the employee of your good self Department and is serving as SCT (BPS-16) quite efficiency and up to the entire satisfaction of the superiors. It is stated for kind information that Conveyance Allowance is admissible to all the civil servants and to this effect a Notification No. FD (PRC) 1-1/2011 dated 14.07.2011 was issued. Later on vide revised Notification dated 20.12.2012 whereby the conveyance allowance for employees working in BPS 1 to 15 were enhance/revised while employees from BPS-16 to 19 have been treated under the previous Notification by not enhancing their conveyance allowance. Respected Sir, I was receiving the conveyance allowance as admissible under the law and rules but the concerned authority without any valid and justifiable reasons stopped/deducted the payment of conveyance allowance under the wrong and illegal pretext that the same is not allowed for the leave period. One of the employee of Education Department in Islamabad filed service appeal No.1888 (R) CS/2016 before the Federal Service Tribunal, Islamabad regarding conveyance allowance which was accepted by the Honorable Service Tribunal vide its judgment dated 03.12.2018. That I also the similar employee of Education Department and under the principle of consistency I am also entitled for the same treatment meted out in the above mentioned service appeal but the concerned authority is not willing to issue/grant the same conveyance allowance which is granting to other employees. **Copy attached.** I am feeling aggrieved from the action of the concerned authority regarding deduction of conveyance allowance in vacations period/months preferred this Departmental appeal before your good self.

It is therefore, most humbly prayed that on acceptance of this Departmental appeal the concerned authority may very kindly be directed the conveyance allowance may not be deducted from my monthly salary during the winter & summer vacations.

Dated: 15.07.2020

Your Obediently

JALALUD DIN, SCT
GHSS Asbanr, Dir Lower

ATTESTED

M A

VAKALATNAMA

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR

_____ OF 2020

Jalal Ud Din

(APPELLANT)
(PLAINTIFF)
(PETITIONER)

VERSUS

Education Department

(RESPONDENT)
(DEFENDANT)

I/We Jalal Ud Din

Do hereby appoint and constitute **NOOR MOHAMMAD KHATTAK, Advocate, Peshawar** to appear, plead, act, compromise, withdraw or refer to arbitration for me/us as my/our Counsel/Advocate in the above noted matter, without any liability for his default and with the authority to engage/appoint any other Advocate Counsel on my/our cost. I/we authorize the said Advocate to deposit, withdraw and receive on my/our behalf all sums and amounts payable or deposited on my/our account in the above noted matter.

Dated. ____/____/2020



CLIENT



ACCEPTED
NOOR MOHAMMAD KHATTAK


MIR ZAMAN SAFI
ADVOCATES

OFFICE:
Flat.No.4, 2nd Floor,
Juma Khan Plaza, Near FATA Secretariat,
Warsak Road, Peshawar.
Mobile No.0345-9383141

BEFORE THE HONORABLE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR.

Service Appeal No: 12889/2020

Jalal Ud Din SCT BPS-16 GHS Asbanar District Dir LowerAppellant.

VERSUS

Govt of Khyber Pakhtunkhwa through the Chief Secretary & others...Respondents

JOINT PARAWISE COMMENTS FOR & ON BEHALF OF RESPONDENTS No: 1-5.

Respectfully Sheweth :-

The Respondents submit as under:-

PRELIMINARY OBJECTIONS.

- 1 **That** the Appellant has got no cause of action/locus standi.
- 2 **That** the instant Service Appeal is badly time barred.
- 3 **That** the Appellant has concealed material facts from this Tribunal.
- 4 **That** the instant service appeal is based on mala fide intentions.
- 5 **That** the Appellant has not come to this Honorable Tribunal with clean hands.
- 6 **That** the instant Service Appeal is against the prevailing law & rules.
- 7 **That** the Appellant has been treated as per law, rules & policy.
- 8 **That** the appeal is not maintainable in its present form.
- 9 **That** the appeal is bad for mis-joinder & non-joinder of the necessary parties.
- 10 **That** the instant Service Appeal is barred by law.
- 11 **That** the appellant is not entitled for the grant of conveyance allowance during the summer/winter vacation against the SCT in BPS-16 post.
- 12 **That** similar nature case is already pending adjudication before the august Supreme Court of Pakistan under case titled Govt. of KPK & others Vs Maqsd Hayat against the Judgment dated 01-10-2019 of the Honorable Peshawar High Court Peshawar & order dated 11-11-2019.

ON FACTS

- 1 **That** Para-1, needs no comments being pertains to the service record of the appellant against the SCT B-16 post in District Dir Lower.
- 2 **That** Para-2 is incorrect & misleading on the grounds that the appellant is not entitled for the grant of conveyance allowance in view of the Notification No.FD(PRC)1-1/2011 dated 14-07-2011 issued by the Respondent No.03 & subsequent modification dated 20-12-2012 for the employees working from BPS-1 to 15 & BPS-16 to 19 for those who are working on administrative posts in different Departments of the province except the teaching staff who are already on leave during the summer/winter vacation & are not performing their official duties during the said period. Hence the plea of the appellant is illegal & liable to be rejected. **(Copy of the Notification dated 20-12-2012 is attached as Annexure-A).**
- 3 **That** Para-3 is correct that conveyance allowance during the summer/winter period has been deducted from the appellant on the grounds that during the said period. Hence the plea of the appellant is illegal & liable to be rejected.
- 4 **That** Para-4 is correct that this Honorable Tribunal has disposed of same cases vide Judgement dated 11-11-2019, whereby, conveyance allowance summer/winter vacation has been allowed to them, however, aggrieved from the aforesaid Judgment dated 11-11-2019 of this Honorable Bench, the Respondent Department has filed a Civil Petition for leave to appeal/CPLA before the august Supreme Court of Pakistan which is still pending for final decision on behalf of the Respondent Department as a Petitioner therein. Hence the plea of the appellant is illegal & liable to be rejected.
- 5 **That** Para-5 is also incorrect & denied on the grounds no Departmental appeal whatsoever has yet been filed by the appellant till date against his plea for the grant of conveyance allowance summer/winter vacation against the SCT B-16 posts, hence the appeal in hand is liable to be dismissed on the following grounds inter alia:-

ON GROUNDS

- A. **Incorrect & not admitted.** The appellant has been treated as per Law, Rules & Policy in the instant case by the Respondent Department. Hence, the claim of the appellant is baseless & liable to be rejected in favor of the Respondents in the interest of justice.
- B. **Incorrect & not admitted.** The appellant has been treated as per Law, Rules & Policy in the instant case by the Respondent Department. Hence, the claim of the appellant is baseless & liable to be rejected in favor of the Respondents in the interest of justice.
- C. **Incorrect & not admitted.** The appellant has been treated as per Law, Rules & Policy in the instant case by the Respondent Department. Hence, the claim of the appellant is baseless & liable to be rejected in favor of the Respondents

in the interest of justice as the act of the Respondent Department with regard to the non-grant of conveyance allowance during the summer/winter vacations is legally competent in view of the stance taken in the fore going paras of the present reply. Hence the plea of the appellant is illegal & liable to be rejected.

- D. **Incorrect & not admitted.** The stand of the appellant is without any proof & justification. Hence, deserves to be rejected in view of the above made submissions as the appellant is basically from teaching Cadre & is on leave during the summer/winter vacations falling within the ambit of revised leave rules-1981.
- E. **Incorrect & not admitted.** The stand of the appellant is without any proof & justification. Hence, deserves to be rejected in view of the above made submissions in view of the above made submissions as the appellant is basically from teaching Cadre & is on leave during the summer/winter vacations falling within the ambit of revised leave rules-1981.
- F. **Incorrect & not admitted.** The appellant has been treated as per Law, Rules & Policy in the instant case by the Respondent Department. Hence, the claim of the appellant is baseless & liable to be rejected in favor of the Respondents in the interest of justice as the act of the Respondent Department with regard to the non-grant of conveyance allowance during the summer/winter vacations is legally competent in view of the stance taken in the fore going paras of the present reply. Hence the plea of the appellant is illegal & liable to be rejected.
- G. **Incorrect & not admitted.** The appellant has been treated as per Law, Rules & Policy in the instant case by the Respondent Department. Hence, the claim of the appellant is baseless & liable to be rejected in favor of the Respondents in the interest of justice as the act of the Respondent Department with regard to the non-grant of conveyance allowance during the summer/winter vacations is legally competent in view of the stance taken in the fore going paras of the present reply. Hence the plea of the appellant is illegal & liable to be rejected.
- H. **Incorrect & not admitted.** The stand of the appellant is without any proof & justification. Hence, deserves to be rejected in view of the above made submissions in view of the above made submissions as the appellant is basically from teaching Cadre & is on leave during the summer/winter vacations falling within the ambit of revised leave rules-1981.
- I. **Incorrect & not admitted.** The appellant has been treated as per Law, Rules & Policy in the instant case by the Respondent Department. Hence, the claim of the appellant is baseless & liable to be rejected in favor of the Respondents in the interest of justice having no question of violating the provision of Article-38 (e) of 1973 constitution.
- J. **Legal.** However, the Respondents No.1-5 also seek leave of this Honorable Bench to submit additional record, grounds & case law at the time of arguments on the date fixed please.

PRAYER.

In view of the above made submissions, it is requested that this Tribunal may very graciously be pleased to dismiss the instant service appeal in favor of the Respondent Departments in the interest of justice please.

Dated ___/___/2021.




DIRECTOR

E&SE Department Khyber
Pakhtunkhwa, Peshawar.
(Respondents No: 1 & 5)

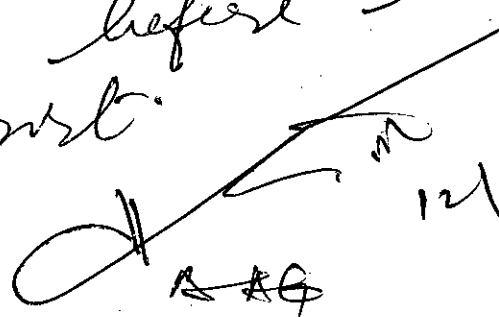
AFFIDAVIT

I, Dr. Hayat Khan Asstt: Director (Litigation-II) E&SE Department do hereby solemnly affirm and declare On oath that the contents of the instant Para wise Comments are true & correct to the best of my knowledge & belief.



Deponent

Note: As per Order sheet dtd 18/6/2021 in Service Appeal No. 12889/20, the instant Para wise comments may be deemed as comments been received in the connected/dubbed cases pending adjudication before this honorable court.



AAG 12/7/21

BETTER COPY PAGE- 4

GOVERNMENT OF KHYBER PAKHTUNKHWA
FINANCE DEPARTMENT
(REGULATION WING)

NO:FD/SO(SR-II)/52/2012
Dated Peshawar the: 20.12.2012

From

The Secretary to Govt. of Khyber Pakhtunkhwa
Finance Department, Peshawar.

To:

1. All administrative Secretaries to Govt. of Khyber Pakhtunkhwa.
2. The Senior Member, Board of Revenue, Khyber Pakhtunkhwa.
3. The Secretary to Governor, Khyber Pakhtunkhwa.
4. The Secretary to Chief Minister, Khyber Pakhtunkhwa.
5. The Secretary, Provincial Assembly, Khyber Pakhtunkhwa.
6. All Heads of attached Departments in Khyber Pakhtunkhwa.
7. All District Coordination Officers of Khyber Pakhtunkhwa.
8. All Political Agents/District & Session Judge in Khyber Pakhtunkhwa.
9. The Registrar Peshawar High Court, Peshawar.
10. The Chairman Public Service Commission, Khyber Pakhtunkhwa.
11. The Chairman, Service Tribunal, Khyber Pakhtunkhwa.

Subject: REVISION IN THE RATE OF CONVEYANCE ALLOWANCE FOR THE
CIVIL EMPLOYEES OF THE KHYBER PAKHTUNKHWA. PROVINCIAL
GOVERNMENT BPS-1-19

Dear Sir,

The Government of Khyber Pakhtunkhwa has been pleased to enhance/revise the rate of Conveyance Allowance admissible to all the Provincial Civil Servants Govt. of Khyber Pakhtunkhwa (working in BPS-1 to BPS-15) w.e.f from 1st September, 2012 at the following rates. However, the conveyance allowance for employees in BPS-16 to BPS-19 will remain unchanged.

S.No.	BPS	Existing Rate (PM)	Revised Rate (PM)
1.	1-4	Rs. 1,500/-	Rs. 1,700/-
2.	5-10	Rs. 1,500/-	Rs. 1,840/-
3.	11-15	Rs. 2,000/-	Rs. 2,720/-
4.	16-19	Rs. 5,000/-	Rs. 5,000/-

2. Conveyance Allowance at the above rates per month shall be admissible to those BPS-17, 18 and 19 officers who have not been sanctioned official vehicle.

Your Faithfully

(Sahibzada Saeed Ahmad)
Secretary Finance

Endst No. FD/SO(SR-II)8-52/2012 Dated Peshawar the 20th Decembe 2012

A - 4



GOVERNMENT OF KHYBER PAKHTUNKHWA
FINANCE DEPARTMENT
(REGULATION WING)

NO. FG/SC(SR-III)-52/2012
Dated Peshawar the 20th December, 2012

From: The Secretary to Govt. of Khyber Pakhtunkhwa,
Finance Department,
Peshawar.

To: All Administrative Secretaries to Govt. of Khyber Pakhtunkhwa,
The Senior Member, Board of Revenue, Khyber Pakhtunkhwa,
The Secretary to Government, Khyber Pakhtunkhwa,
The Secretary to Chief Minister, Khyber Pakhtunkhwa,
The Secretary, Financial Accounts, Khyber Pakhtunkhwa,
All Heads of Attached Departments in Khyber Pakhtunkhwa,
All District Coordination Officers, Khyber Pakhtunkhwa,
All Political Agents, District & Sessions Judges in Khyber Pakhtunkhwa,
The Registrar, Peshawar High Court, Peshawar,
The Chairman, Public Service Commission, Khyber Pakhtunkhwa,
The Chairman, Service Tribunal, Khyber Pakhtunkhwa.

Subject: REVISION IN THE RATE OF CONVEYANCE ALLOWANCE FOR THE
CIVIL EMPLOYEES OF THE KHYBER PAKHTUNKHWA PROVINCIAL
GOVERNMENT BPS 1-19

DEAR Sir,
The Government of Khyber Pakhtunkhwa has been pleased to enhance /
revise the rate of Conveyance Allowance admissible to all the Provincial Civil Servants Govt.
of Khyber Pakhtunkhwa (working in BPS-1 to BPS-19) w.e.f from 1st September, 2012 at
the following rates. However, the conveyance allowance for employees in BPS-19 to BPS-19
will remain unchanged.

S.NO	BPS	EXISTING RATE (PK)	REVISED RATE (PK)
1.	1-4	Rs.1,500/-	Rs.1,700/-
2.	5-10	Rs.1,500/-	Rs.1,640/-
3.	11-15	Rs.2,000/-	Rs.2,720/-
4.	16-19	Rs.5,000/-	Rs.5,000/-

2. Conveyance Allowance at the above rates for month shall be admissible to
those BPS-17, 18 and 19 officers who have not been sanctioned official vehicles.

Yours Faithfully,

(Sahibzada Saad Ahmad)
Secretary Finance

Encl: NO. FG/SC(SR-III)-52/2012 Dated Peshawar the 20th December, 2012

A Copy is forwarded for information to the:-

1. Accountant General, Khyber Pakhtunkhwa, Peshawar
2. Secretaries to Government of Punjab, Govt. of Sindh & Government of Balochistan, Finance Department
3. All Administrators / Senior Administrative Secretaries, Khyber Pakhtunkhwa

(M. TAZ AYUB)
Additional Secretary (Finance)

Appeal No. 1452/2019
Marbad Hayat vs Govt

11.11.2019

Counsel for the appellant present.

Learned counsel referred to the judgment passed by learned Federal Service Tribunal in Appeal No. 1888(R)CS/2016 which was handed down on 03.12.2018. Through the said judgment the issue of payment of Conveyance Allowance to a civil servant during summer and winter vacations was held to be within his entitlement and the deduction already made from him was to be reimbursed. Similar reference was made to the judgment by Honourable Peshawar High Court passed on 01.10.2019 in the case of appellant.

Learned counsel, when confronted with the proposition that the issue, in essence, was dilated upon by the Federal Service Tribunal and, more particularly, by the Honourable Peshawar High Court in the case of appellant, stated that in case the respondents are required to execute the judgment of Peshawar High Court, the appellant will have no cavil about disposal of instant appeal.

The record suggests that while handing down judgment in the Writ Petition preferred by the appellant, the Honourable High Court not only expounded the definition of "Pay" as well as "Salary" but also entitlement of a civil servant for the Conveyance Allowance during the period of vacations. It is important to note that the respondents were represented before the High Court during the proceedings.

In view of the above noted facts and circumstances and in order to protect the appellant from a fresh round of litigation which may protract over a formidable period, the appeal in hand is disposed of with observation that the judgment of Honourable Peshawar High Court passed in Writ Petitions including W.P. No. 3162-P/2019 shall be honoured and implemented by the respondents within shortest possible time. The appellant shall, however, be at liberty to seek remedy in accordance with law in case his grievance is not redressed by the respondents within a reasonable time.

File be consigned to the record.

Chairman

ANNOUNCED

11.11.2019

certified to be true copy

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

M

BEFORE THE HONORABLE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR.

Service Appeal No: 12889/2020

Jalal Ud Din SCT BPS-16 GHS Asbanar District Dir LowerAppellant.

VERSUS

Govt of Khyber Pakhtunkhwa through the Chief Secretary & others...Respondents

JOINT PARAWISE COMMENTS FOR & ON BEHALF OF RESPONDENTS No: 1-5.

Respectfully Sheweth :-

The Respondents submit as under:-

PRELIMINARY OBJECTIONS.

- 1 **That** the Appellant has got no cause of action/locus standi.
- 2 **That** the instant Service Appeal is badly time barred.
- 3 **That** the Appellant has concealed material facts from this Tribunal.
- 4 **That** the instant service appeal is based on mala fide intentions.
- 5 **That** the Appellant has not come to this Honorable Tribunal with clean hands.
- 6 **That** the instant Service Appeal is against the prevailing law & rules.
- 7 **That** the Appellant has been treated as per law, rules & policy.
- 8 **That** the appeal is not maintainable in its present form.
- 9 **That** the appeal is bad for mis-joinder & non-joinder of the necessary parties.
- 10 **That** the instant Service Appeal is barred by law.
- 11 **That** the appellant is not entitled for the grant of conveyance allowance during the summer/winter vacation against the SCT in BPS-16 post.
- 12 **That** similar nature case is already pending adjudication before the august Supreme Court of Pakistan under case titled Govt. of KPK & others Vs Maqsad Hayat against the Judgment dated 01-10-2019 of the Honorable Peshawar High Court Peshawar & order dated 11-11-2019.

ON FACTS

- 1 **That** Para-1, needs no comments being pertains to the service record of the appellant against the SCT B-16 post in District Dir Lower.
- 2 **That** Para-2 is incorrect & misleading on the grounds that the appellant is not entitled for the grant of conveyance allowance in view of the Notification No.FD(PRC)1-1/2011 dated 14-07-2011 issued by the Respondent No.03 & subsequent modification dated 20-12-2012 for the employees working from BPS-1 to 15 & BPS-16 to 19 for those who are working on administrative posts in different Departments of the province except the teaching staff who are already on leave during the summer/winter vacation & are not performing their official duties during the said period. Hence the plea of the appellant is illegal & liable to be rejected. (**Copy of the Notification dated 20-12-2012 is attached as Annexure-A**).
- 3 **That** Para-3 is correct that conveyance allowance during the summer/winter period has been deducted from the appellant on the grounds that during the said period. Hence the plea of the appellant is illegal & liable to be rejected.
- 4 **That** Para-4 is correct that this Honorable Tribunal has disposed of same cases vide Judgement dated 11-11-2019, whereby, conveyance allowance summer/winter vacation has been allowed to them, however, aggrieved from the aforesaid Judgment dated 11-11-2019 of this Honorable Bench, the Respondent Department has filed a Civil Petition for leave to appeal/CPLA before the august Supreme Court of Pakistan which is still pending for final decision on behalf of the Respondent Department as a Petitioner therein. Hence the plea of the appellant is illegal & liable to be rejected.
- 5 **That** Para-5 is also incorrect & denied on the grounds no Departmental appeal whatsoever has yet been filed by the appellant till date against his plea for the grant of conveyance allowance summer/winter vacation against the SCT B-16 posts, hence the appeal in hand is liable to be dismissed on the following grounds inter alia:-

ON GROUNDS

- A. **Incorrect & not admitted.** The appellant has been treated as per Law, Rules & Policy in the instant case by the Respondent Department. Hence, the claim of the appellant is baseless & liable to be rejected in favor of the Respondents in the interest of justice.
- B. **Incorrect & not admitted.** The appellant has been treated as per Law, Rules & Policy in the instant case by the Respondent Department. Hence, the claim of the appellant is baseless & liable to be rejected in favor of the Respondents in the interest of justice.
- C. **Incorrect & not admitted.** The appellant has been treated as per Law, Rules & Policy in the instant case by the Respondent Department. Hence, the claim of the appellant is baseless & liable to be rejected in favor of the Respondents

in the interest of justice as the act of the Respondent Department with regard to the non-grant of conveyance allowance during the summer/winter vacations is legally competent in view of the stance taken in the fore going paras of the present reply. Hence the plea of the appellant is illegal & liable to be rejected.

- D. **Incorrect & not admitted.** The stand of the appellant is without any proof & justification. Hence, deserves to be rejected in view of the above made submissions as the appellant is basically from teaching Cadre & is on leave during the summer/winter vacations falling within the ambit of revised leave rules-1981.
- E. **Incorrect & not admitted.** The stand of the appellant is without any proof & justification. Hence, deserves to be rejected in view of the above made submissions in view of the above made submissions as the appellant is basically from teaching Cadre & is on leave during the summer/winter vacations falling within the ambit of revised leave rules-1981.
- F. **Incorrect & not admitted.** The appellant has been treated as per Law, Rules & Policy in the instant case by the Respondent Department. Hence, the claim of the appellant is baseless & liable to be rejected in favor of the Respondents in the interest of justice as the act of the Respondent Department with regard to the non-grant of conveyance allowance during the summer/winter vacations is legally competent in view of the stance taken in the fore going paras of the present reply. Hence the plea of the appellant is illegal & liable to be rejected.
- G. **Incorrect & not admitted.** The appellant has been treated as per Law, Rules & Policy in the instant case by the Respondent Department. Hence, the claim of the appellant is baseless & liable to be rejected in favor of the Respondents in the interest of justice as the act of the Respondent Department with regard to the non-grant of conveyance allowance during the summer/winter vacations is legally competent in view of the stance taken in the fore going paras of the present reply. Hence the plea of the appellant is illegal & liable to be rejected.
- H. **Incorrect & not admitted.** The stand of the appellant is without any proof & justification. Hence, deserves to be rejected in view of the above made submissions in view of the above made submissions as the appellant is basically from teaching Cadre & is on leave during the summer/winter vacations falling within the ambit of revised leave rules-1981.
- I. **Incorrect & not admitted.** The appellant has been treated as per Law, Rules & Policy in the instant case by the Respondent Department. Hence, the claim of the appellant is baseless & liable to be rejected in favor of the Respondents in the interest of justice having no question of violating the provision of Article-38 (e) of 1973 constitution.
- J. **Legal.** However, the Respondents No.1-5 also seek leave of this Honorable Bench to submit additional record, grounds & case law at the time of arguments on the date fixed please.

PRAYER.

In view of the above made submissions, it is requested that this Tribunal may very graciously be pleased to dismiss the instant service appeal in favor of the Respondent Departments in the interest of justice please.

Dated ___/ ___/2021.



DIRECTOR

E&SE Department Khyber
Pakhtunkhwa, Peshawar.
(Respondents No: 1 & 5)

AFFIDAVIT

I, Dr. Hayat Khan Asstt: Director (Litigation-II) E&SE Department do hereby solemnly affirm and declare On oath that the contents of the instant Para wise Comments are true & correct to the best of my knowledge & belief.



Deponent

BETTER COPY PAGE- 4

GOVERNMENT OF KHYBER PAKHTUNKHWA
FINANCE DEPARTMENT
(REGULATION WING)

NO.FD/SO(SR-II)/52/2012
Dated Peshawar the: 20.12.2012

From

The Secretary to Govt. of Khyber Pakhtunkhwa
Finance Department, Peshawar.

To:

1. All administrative Secretaries to Govt. of Khyber Pakhtunkhwa.
2. The Senior Member, Board of Revenue, Khyber Pakhtunkhwa.
3. The Secretary to Governor, Khyber Pakhtunkhwa.
4. The Secretary to Chief Minister, Khyber Pakhtunkhwa.
5. The Secretary, Provincial Assembly, Khyber Pakhtunkhwa.
6. All Heads of attached Departments in Khyber Pakhtunkhwa.
7. All District Coordination Officers of Khyber Pakhtunkhwa.
8. All Political Agents/District & Session Judge in Khyber Pakhtunkhwa.
9. The Registrar Peshawar High Court, Peshawar.
10. The Chairman Public Service Commission, Khyber Pakhtunkhwa.
11. The Chairman, Service Tribunal, Khyber Pakhtunkhwa.

Subject: REVISION IN THE RATE OF CONVEYANCE ALLOWANCE FOR THE CIVIL EMPLOYEES OF THE KHYBER PAKHTUNKHWA, PROVINCIAL GOVERNMENT BPS-1-19

Dear Sir,

The Government of Khyber Pakhtunkhwa has been pleased to enhance/revise the rate of Conveyance Allowance admissible to all the Provincial Civil Servants Govt. of Khyber Pakhtunkhwa (working in BPS-1 to BPS-15) w.e.f from 1st September, 2012 at the following rates. However, the conveyance allowance for employees in BPS-16 to BPS-19 will remain unchanged.

S.No.	BPS	Existing Rate (PM)	Revised Rate (PM)
1.	1-4	Rs. 1,500/-	Rs. 1,700/-
2.	5-10	Rs. 1,500/-	Rs. 1,840/-
3.	11-15	Rs. 2,000/-	Rs. 2,720/-
4.	16-19	Rs. 5,000/-	Rs. 5,000/-

2. Conveyance Allowance at the above rates per month shall be admissible to those BPS-17, 18 and 19 officers who have not been sanctioned official vehicle.

Your Faithfully

(Sahibzada Saeed Ahmad)
Secretary Finance

Endst No. FD/SO(SR-II)8-52/2012 Dated Peshawar the 20th Decembe. 2012



GOVERNMENT OF KHYBER PAKHTUNKHWA
FINANCE DEPARTMENT
(REGULATION WING)

4 - (4)

NO. FDSO(SR)-ITIS-52/2012
Dated Peshawar the 20-12-2012

From:

The Secretary to Govt. of Khyber Pakhtunkhwa,
Finance Department,
Peshawar.

To:

- All Administrative Secretaries to Govt. of Khyber Pakhtunkhwa.
- The Senior Member, Board of Revenue, Khyber Pakhtunkhwa.
- The Secretary to Government, Khyber Pakhtunkhwa.
- The Secretary to Chief Minister, Khyber Pakhtunkhwa.
- The Secretary, Provincial Assembly, Khyber Pakhtunkhwa.
- All Heads of Attached Departments in Khyber Pakhtunkhwa.
- All District Coordination Officers, Khyber Pakhtunkhwa.
- All Political Agents, District & Sessions Judges in Khyber Pakhtunkhwa.
- The Registrar, Peshawar High Court, Peshawar.
- The Chairman, Public Service Commission, Khyber Pakhtunkhwa.
- The Chairman, Services Tribunal, Khyber Pakhtunkhwa.

Subject:

REVISION IN THE RATE OF CONVEYANCE ALLOWANCE FOR THE
CIVIL EMPLOYEES OF THE KHYBER PAKHTUNKHWA PROVINCIAL
GOVERNMENT BPS-1-19

Dear Sir,

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4.	16-19	Rs.5,000/-	Rs.5,000/-

2. Conveyance Allowance at the above rates per month shall be admissible to
those BPS-17, 18 and 19 officers who have not been sanctioned official vehicle.

Yours Faithfully,

(Signature)
Saib Qadir Saad Ahnadi
Secretary Finance

Encls: NO. FDSO(SR)-ITIS-52/2012

Dated Peshawar the 20th December, 2012

A Copy is forwarded for information to the:-

1. Accountant General, Khyber Pakhtunkhwa, Peshawar.
2. Secretaries to Government of Punjab, Sindh & Balochistan Finance Department.
3. All Administrators / Semi Autonomous Bodies in Khyber Pakhtunkhwa.

(Signature)
UNTAZ AYUBI

Additional Secretary, Finance

Appeal No. 1452/2019
Masood Hayat vs Govt

11.11.2019

Counsel for the appellant present.

Learned counsel referred to the judgment passed by learned Federal Service Tribunal in Appeal No. 1888(R)CS/2016 which was handed down on 03.12.2018. Through the said judgment the issue of payment of Conveyance Allowance to a civil servant during summer and winter vacations was held to be within his entitlement and the deduction already made from him was to be reimbursed. Similar reference was made to the judgment by Honourable Peshawar High Court passed on 01.10.2019 in the case of appellant.

Learned counsel, when confronted with the proposition that the issue, in essence, was dilated upon by the Federal Service Tribunal and, more particularly, by the Honourable Peshawar High Court in the case of appellant, stated that in case the respondents are required to execute the judgment of Peshawar High Court, the appellant will have no cavil about disposal of instant appeal.

The record suggests that while handing down judgment in the Writ Petition preferred by the appellant, the Honourable High Court not only expounded the definition of "Pay" as well as "Salary" but also entitlement of a civil servant for the Conveyance Allowance during the period of vacations. It is important to note that the respondents were represented before the High Court during the proceedings.

In view of the above noted facts and circumstances and in order to protect the appellant from a fresh round of litigation which may protract over a formidable period, the appeal in hand is disposed of with observation that the judgment of Honourable Peshawar High Court passed in Writ Petitions including W.P. No. 3162-P/2019 shall be honoured and implemented by the respondents within shortest possible time. The appellant shall, however, be at liberty to seek remedy in accordance with law in case his grievance is not redressed by the respondents within a reasonable time.

File be consigned to the record.

Chairman

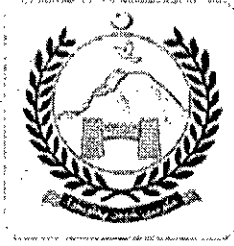
ANNOUNCED

11.11.2019

verified to be true copy

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

ATTACHED
M



**KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL, PESHAWAR**

No. 1452-56 ST

Dated: 29/07 /2021

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

Ph:- 091-9212281
Fax:- 091-9213262

To

1. The Chief Secretary,
Government of Khyber Pakhtunkhwa,
Peshawar.
2. Secretary E&SE Department,
Government of Khyber Pakhtunkhwa,
Peshawar.
3. Secretary Finance Department,
Government of Khyber Pakhtunkhwa,
Peshawar.
4. Accountant General,
Government of Khyber Pakhtunkhwa,
Peshawar.
5. Director E&SE,
Government of Khyber Pakhtunkhwa,
Peshawar.

Subject: JUDGMENT IN APPEAL NO. 12889/2020, MR. JALALUD DIN & OTHERS.

I am directed to forward herewith a certified copy of Judgement dated 12.07.2021 passed by this Tribunal on the above subject for strict compliance.

Encl: As above

REGISTRAR
KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL
PESHAWAR



Office of the
Accountant General

Fort Road, Khyber Pakhtunkhwa

Peshawar Pakistan

Phone: 091 9211250-54

No. Lit/S.T/S.A No. 12889/2020/Jalal ud din / 624-27 Date. 16.08.2021

To,

1. Secretary (E&SE) Department, Khyber Pakhtunkhwa, Peshawar.
2. The Director of (E&SE) Department, Khyber Pakhtunkhwa, Peshawar.

SUBJECT:- Judgment in Service Appeal No.12889/2020 Titled. Jalal ud din Vs. Chief Secretary Government of Khyber Pakhtunkhwa & others.

Memo:

Please refer to the subject Service Appeal. It is submitted for your kind information that the Service Tribunal Peshawar has accepted the subject Court Case. Being an Administrative Department of the Appellant you are requested for further necessary action by your end.

ACCOUNTS OFFICER
(LITIGATION)

Copy forwarded to:

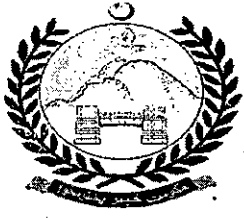
1. Registrar, Khyber Pakhtunkhwa Service Tribunal Peshawar for information please.
2. Secretary Finance Department Peshawar with the request that the instant case as well as identical cases are frequently been accepted by the Service Tribunal Khyber Pakhtunkhwa and the court is pressing hard for implementation of its judgment but your policy guidance/notifications in this regard is still awaited vide this office letter No.H-24/Allowances/856, dated: 19-08-2019 and reminder -I No.889, dated:29-10-2019, Reminder No-II No. 1008 dated: 27-07-2020, Reminder-III No.1084,14/12/2020 which may kindly be expedited on urgent basis (copies are enclosed).

Placed on relevant app-

16.08.2021
ACCOUNTS OFFICER
(LITIGATION)

13/9/2021

Secy Edu:



**GOVERNMENT OF KHYBER PAKHTUNKHWA
HIGHER EDUCATION, ARCHIVES & LIBRARIES DEPARTMENT**

NO. SO(Lit)/HE/Clubbed Service Appeals/2021-Conveyance Allowance
Dated Peshawar 27-08-2021

To

The Secretary to Govt, of Khyber Pakhtunkhwa,
Law, Parliamentary Affairs and Human Rights Department.

Subject: **JUDGMENT DATED 12.07.2021 (CONVEYANCE ALLOWANCE) PASSED
IN CLUBBED SERVICE APPEALS TITLED JALAL UD DIN (SCT BPS-16)
AND OTHERS VS GOVT. OF KHYBER PAKHTUNKHWA THROUGH
CHIEF SECRETARY AND OTHERS.**

Dear Sir,

I am directed to refer to the subject noted above and to enclose herewith copy of Assistant Director (Lit) Directorate of Higher Education letter No. DHE/AD (Lit)/Conveyance All:/18242-45 dated 26.08.2021 on the subject noted and to request to instruct the Additional Advocate General, Khyber Pakhtunkhwa Service Tribunal, Peshawar to file application(s) for provision of list of those service appeals alongwith certified copy of judgment dated 12.07.2021 besides complete record of the said cases which pertains to this department among over 9000 clubbed cases regarding conveyance allowance decided through single judgment dated 12.07.2021, as this department neither received any notice in these service appeals nor copy of the judgment ibid, enabling this department to process the same for filing of application/ appeal within limitation period, please.

2 Being Court matter; therefore, this may be treated as "Most Urgent".

Encl; as Above.

Yours Faithfully,

(NOOR ZALI KHAN)
Section Officer (Litigation-II)

Endst: No. & date even.

Copy forwarded to:-

1. The Registrar, Khyber Pakhtunkhwa Service Tribunal, Peshawar.
2. The Additional Advocate General, Khyber Pakhtunkhwa Service Tribunal, Peshawar.
3. The Director, Higher Education, Khyber Pakhtunkhwa, Peshawar w/r to his letter mentioned above with the request to depute a well conversant officer to collect complete record of those cases relevant to Higher Education Department (list of some of the appellants is enclosed) and furnish working paper alongwith judgment dated 12.07.2021 within two days for placing the same before Scrutiny Committee of Law Department for filing applications u/s 12(2) CPC or otherwise and also provide copy of letter dated 02.08.2021 mentioned in your above quoted letter and also call explanation from the concerned Litigation Officers that why they failed to provide the relevant record of those cases pertaining to Higher Education Department despite of repeated directions by Directorate of Higher Education, please.
4. PS to Secretary Higher Education Department Khyber Pakhtunkhwa.

Section Officer (Litigation-II)



GOVERNMENT OF KHYBER PAKHTUNKHWA
HIGHER EDUCATION, ARCHIVES & LIBRARY DEPARTMENT

NO. SO (Lit) HED/clubbed Service Appeals/2021-Conveyance Allowance/90/24

Dated the Peshawar September 1, 2021

To

The Director,
Higher Education Khyber Pakhtunkhwa,
Rano Ghari, Peshawar.

Subject:- JUDGMENT REGARDING CONVEYANCE ALLOWANCE.

Dear Sir,

I am directed to refer to your letter No. DHE/AD(Lit)/Conveyance All:/4528 dated 27.08.2021 received to this department on 01.09.2021 and this department letter of even number dated 27.08.2021 on the subject noted above and to state that being Administrative Department, it is the responsibility of this department to take up the case with Law Department for further litigation.

2. I am, therefore, directed to request once again to depute a well conversant officer to collect complete record of relevant cases (list of some of the appellants already shared vide this department letter referred above) amongst 9000 plus cases decided by Khyber Pakhtunkhwa Service Tribunal, Peshawar in its single judgment dated 12.07.2021 and prepare proper working paper and furnish the same alongwith judgment ibid, within two days, for placing the same before Scrutiny Committee of Law Department for filing Applications/ Appeals or otherwise within limitation period, please.

3. Being court matter, therefore, this may be treated as **"MOST URGENT"**.

Encl: as Above.

(NOOR ZALI KHAN)
Section Officer (Litigation-II)

Endst: No. & date even.

Copy forwarded to the:

1. The Secretary to Govt. of Khyber Pakhtunkhwa, Law Department w/r to this department letter of even number dated 27.08.2021 (copy enclosed for ready reference) for necessary action, please.
2. The Secretary to Govt. of Khyber Pakhtunkhwa, Finance Department.
3. The Registrar, Khyber Pakhtunkhwa Service Tribunal, Peshawar.
4. The Additional Advocate General, Khyber Pakhtunkhwa Service Tribunal, Peshawar.
5. PS to Secretary Higher Education Department Khyber Pakhtunkhwa.
6. PA to Deputy Secretary (Lit/Colleges), Higher Education Department.

Section Officer (Litigation-II)



GOVERNMENT OF KHYBER PAKHTUNKHWA
ELEMENTARY & SECONDARY EDUCATION DEPARTMENT

Block "A" Civil Secretariat, Peshawar

Phone No. 091-9211128

MOST IMMEDIATE / COURT MATTER

NO.SO (Lit-II) E&SED/1-6/SA# 12889/20&1207/17/Jalal & Wahab
Dated Peshawar, the 02-09-2021

To

The Director,
Directorate of E&SE
Khyber Pakhtunkhwa, Peshawar.

Subject: - **SERVICE APPEAL NO. 12889/2020 & 1207/2017 JALAL UD DIN & MUHAMMAD WAHAB MANSOORI AND OTHER 5900 SAME NATURE CASES VS GOVT OF KPK THROUGH CHIEF SECRETARY KP AND OTHERS.**

I am directed to refer to the subject noted above and to state that a meeting was held with Advocate on Record, Supreme Court of Pakistan in his office along with the representative of Directorate of E&SE on 02.09.2021. AOR directed that all applications cases may be submitted in KP Service Tribunal Peshawar for provision of attested copy of judgment and relevant record of 10 to 20 cases on daily basis for filling of CPLA before August Supreme Court of Pakistan.

The above directions may be followed in letter and spirit and provide all the relevant record to AOR for filling CPLA before Supreme Court of Pakistan well in time under intimation to this department, please.

SECTION OFFICER (Lit-II)

Endst: of even No. & date.

Copy is forwarded to the:-

1. Advocate-on-Record, Supreme Court of Pakistan for Govt. of Khyber Pakhtunkhwa
- ✓ 2. Registrar, KP Service Tribunal, Peshawar.
3. P.A to Deputy Secretary (Legal) E&SE, Department.

SECTION OFFICER (Lit-II)

**BEFORE THE HONORABLE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR.**

Service Appeal No: 12889/2020

Jalal Ud Din SCT BPS-16 GHS Asbanar District Dir LowerAppellant.

VERSUS

Govt of Khyber Pakhtunkhwa through the Chief Secretary & others... Respondents.

JOINT PARAWISE COMMENTS FOR & ON BEHALF OF RESPONDENTS No: 1-5.

Respectfully Sheweth :-

The Respondents submit as under:-

PRELIMINARY OBJECTIONS.

- 1 **That** the Appellant has got no cause of action/locus standi.
- 2 **That** the instant Service Appeal is badly time barred.
- 3 **That** the Appellant has concealed material facts from this Tribunal.
- 4 **That** the instant service appeal is based on mala fide intentions.
- 5 **That** the Appellant has not come to this Honorable Tribunal with clean hands.
- 6 **That** the instant Service Appeal is against the prevailing law & rules.
- 7 **That** the Appellant has been treated as per law, rules & policy.
- 8 **That** the appeal is not maintainable in its present form.
- 9 **That** the appeal is bad for mis-joinder & non-joinder of the necessary parties.
- 10 **That** the instant Service Appeal is barred by law.
- 11 **That** the appellant is not entitled for the grant of conveyance allowance during the summer/winter vacation against the SCT in BPS-16 post.
- 12 **That** similar nature case is already pending adjudication before the august Supreme Court of Pakistan under case titled Govt. of KPK & others Vs Maqsd Hayat against the Judgment dated 01-10-2019 of the Honorable Peshawar High Court Peshawar & order dated 11-11-2019.

ON FACTS

- 1 **That** Para-1, needs no comments being pertains to the service record of the appellant against the SCT B-16 post in District Dir Lower.
- 2 **That** Para-2 is incorrect & misleading on the grounds that the appellant is not entitled for the grant of conveyance allowance in view of the Notification No.FD(PRC)1-1/2011 dated 14-07-2011 issued by the Respondent No.03 & subsequent modification dated 20-12-2012 for the employees working from BPS-1 to 15 & BPS-16 to 19 for those who are working on administrative posts in different Departments of the province except the teaching staff who are already on leave during the summer/winter vacation & are not performing their official duties during the said period. Hence the plea of the appellant is illegal & liable to be rejected. **(Copy of the Notification dated 20-12-2012 is attached as Annexure-A).**
- 3 **That** Para-3 is correct that conveyance allowance during the summer/winter period has been deducted from the appellant on the grounds that during the said period. Hence the plea of the appellant is illegal & liable to be rejected.
- 4 **That** Para-4 is correct that this Honorable Tribunal has disposed of same cases vide Judgement dated 11-11-2019, whereby, conveyance allowance summer/winter vacation has been allowed to them, however, aggrieved from the aforesaid Judgment dated 11-11-2019 of this Honorable Bench, the Respondent Department has filed a Civil Petition for leave to appeal/CPLA before the august Supreme Court of Pakistan which is still pending for final decision on behalf of the Respondent Department as a Petitioner therein. Hence the plea of the appellant is illegal & liable to be rejected.
- 5 **That** Para-5 is also incorrect & denied on the grounds no Departmental appeal whatsoever has yet been filed by the appellant till date against his plea for the grant of conveyance allowance summer/winter vacation against the SCT B-16 posts, hence the appeal in hand is liable to be dismissed on the following grounds inter alia:-

ON GROUNDS

- A. **Incorrect & not admitted.** The appellant has been treated as per Law, Rules & Policy in the instant case by the Respondent Department. Hence, the claim of the appellant is baseless & liable to be rejected in favor of the Respondents in the interest of justice.
- B. **Incorrect & not admitted.** The appellant has been treated as per Law, Rules & Policy in the instant case by the Respondent Department. Hence, the claim of the appellant is baseless & liable to be rejected in favor of the Respondents in the interest of justice.
- C. **Incorrect & not admitted.** The appellant has been treated as per Law, Rules & Policy in the instant case by the Respondent Department. Hence, the claim of the appellant is baseless & liable to be rejected in favor of the Respondents


in the interest of justice as the act of the Respondent Department with regard to the non-grant of conveyance allowance during the summer/winter vacations is legally competent in view of the stance taken in the fore going paras of the present reply. Hence the plea of the appellant is illegal & liable to be rejected.

- D. **Incorrect & not admitted.** The stand of the appellant is without any proof & justification. Hence, deserves to be rejected in view of the above made submissions as the appellant is basically from teaching Cadre & is on leave during the summer/winter vacations falling within the ambit of revised leave rules-1981.
- E. **Incorrect & not admitted.** The stand of the appellant is without any proof & justification. Hence, deserves to be rejected in view of the above made submissions in view of the above made submissions as the appellant is basically from teaching Cadre & is on leave during the summer/winter vacations falling within the ambit of revised leave rules-1981.
- F. **Incorrect & not admitted.** The appellant has been treated as per Law, Rules & Policy in the instant case by the Respondent Department. Hence, the claim of the appellant is baseless & liable to be rejected in favor of the Respondents in the interest of justice as the act of the Respondent Department with regard to the non-grant of conveyance allowance during the summer/winter vacations is legally competent in view of the stance taken in the fore going paras of the present reply. Hence the plea of the appellant is illegal & liable to be rejected.
- G. **Incorrect & not admitted.** The appellant has been treated as per Law, Rules & Policy in the instant case by the Respondent Department. Hence, the claim of the appellant is baseless & liable to be rejected in favor of the Respondents in the interest of justice as the act of the Respondent Department with regard to the non-grant of conveyance allowance during the summer/winter vacations is legally competent in view of the stance taken in the fore going paras of the present reply. Hence the plea of the appellant is illegal & liable to be rejected.
- H. **Incorrect & not admitted.** The stand of the appellant is without any proof & justification. Hence, deserves to be rejected in view of the above made submissions in view of the above made submissions as the appellant is basically from teaching Cadre & is on leave during the summer/winter vacations falling within the ambit of revised leave rules-1981.
- I. **Incorrect & not admitted.** The appellant has been treated as per Law, Rules & Policy in the instant case by the Respondent Department. Hence, the claim of the appellant is baseless & liable to be rejected in favor of the Respondents in the interest of justice having no question of violating the provision of Article-38 (e) of 1973 constitution.
- J. **Legal.** However, the Respondents No.1-5 also seek leave of this Honorable Bench to submit additional record, grounds & case law at the time of arguments on the date fixed please.

PRAYER.


In view of the above made submissions, it is requested that this Tribunal may very graciously be pleased to dismiss the instant service appeal in favor of the Respondent Departments in the interest of justice please.

Dated ___/ ___/2021.


DIRECTOR
E&SE Department Khyber
Pakhtunkhwa, Peshawar.
(Respondents No: 1 & 5)

AFFIDAVIT

I, Dr. Hayat Khan Asstt: Director (Litigation-II) E&SE Department do hereby solemnly affirm and declare On oath that the contents of the instant Para wise Comments are true & correct to the best of my knowledge & belief.


Deponent

BETTER COPY PAGE- 4

GOVERNMENT OF KHYBER PAKHTUNKHWA
FINANCE DEPARTMENT
(REGULATION WING)

NO. FD/SO(SR-II)/52/2012
Dated: Peshawar the: 20.12.2012

From

The Secretary to Govt. of Khyber Pakhtunkhwa
Finance Department, Peshawar.

To:

1. All administrative Secretaries to Govt. of Khyber Pakhtunkhwa.
2. The Senior Member, Board of Revenue, Khyber Pakhtunkhwa.
3. The Secretary to Governor, Khyber Pakhtunkhwa.
4. The Secretary to Chief Minister, Khyber Pakhtunkhwa.
5. The Secretary, Provincial Assembly, Khyber Pakhtunkhwa.
6. All Heads of attached Departments in Khyber Pakhtunkhwa.
7. All District Coordination Officers of Khyber Pakhtunkhwa.
8. All Political Agents/District & Session Judge in Khyber Pakhtunkhwa.
9. The Registrar Peshawar High Court, Peshawar.
10. The Chairman Public Service Commission, Khyber Pakhtunkhwa.
11. The Chairman, Service Tribunal, Khyber Pakhtunkhwa.

Subject: REVISION IN THE RATE OF CONVEYANCE ALLOWANCE FOR THE CIVIL EMPLOYEES OF THE KHYBER PAKHTUNKHWA. PROVINCIAL GOVERNMENT BPS-1-19

Dear Sir,

The Government of Khyber Pakhtunkhwa has been pleased to enhance/revise the rate of Conveyance Allowance admissible to all the Provincial Civil Servants Govt. of Khyber Pakhtunkhwa (working in BPS-1 to BPS-15) w.e.f from 1st September, 2012 at the following rates. However, the conveyance allowance for employees in BPS-16 to BPS-19 will remain unchanged.

S.No.	BPS	Existing Rate (PM)	Revised Rate (PM)
1.	1-4	Rs. 1,500/-	Rs. 1,700/-
2.	5-10	Rs. 1,500/-	Rs. 1,840/-
3.	11-15	Rs. 2,000/-	Rs. 2,720/-
4.	16-19	Rs. 5,000/-	Rs. 5,000/-

2. Conveyance Allowance at the above rates per month shall be admissible to those BPS-17, 18 and 19 officers who have not been sanctioned official vehicle.

Your Faithfully

(Sahibzada Saeed Ahmad)
Secretary Finance

Endst No. FD/SO(SR-II)8-52/2012 Dated Peshawar the 20th Decembe 2012

A - 4



GOVERNMENT OF KHYBER PAKHTUNKHWA
FINANCE DEPARTMENT
(REGULATION WING)

NO. FG/SC(SR-11)/7-52/2012
Dated Peshawar the 20-12-2012

From:

The Secretary to Govt. of Khyber Pakhtunkhwa,
Finance Department,
Peshawar.

To:

- All Administrative Secretaries to Govt. of Khyber Pakhtunkhwa
- The Senior Member, Board of Revenue, Khyber Pakhtunkhwa
- The Secretary to Government, Khyber Pakhtunkhwa
- The Secretary to Chief Minister, Khyber Pakhtunkhwa
- The Secretary, Financial Accounts, Khyber Pakhtunkhwa
- All Heads of Attached Departments in Khyber Pakhtunkhwa
- All District Coordination Officers, Khyber Pakhtunkhwa
- All Political Agents, District & Sessions Judges in Khyber Pakhtunkhwa
- The Registrar, Peshawar High Court, Peshawar
- The Chairman, Public Service Commission, Khyber Pakhtunkhwa
- The Chairman, Services Tribunal, Khyber Pakhtunkhwa

REVISION IN THE RATE OF CONVEYANCE ALLOWANCE FOR THE CIVIL EMPLOYEES OF THE KHYBER PAKHTUNKHWA PROVINCIAL GOVERNMENT BPS-1-19

Dear Sir,

The Government of Khyber Pakhtunkhwa has been pleased to enhance / revise the rate of Conveyance Allowance admissible to all the Provincial Civil Servants Govt. of Khyber Pakhtunkhwa (working in BPS-1 to BPS-19) w.e.f from 1st September, 2012 at the following rates. However, the conveyance allowance for employees in BPS-15 to BPS-19 will remain unchanged.

S.NO.	BPS	EXISTING RATE (PM)	REVISED RATE (PM)
1.	1-4	Rs.1,500/-	Rs.1,700/-
2.	5-10	Rs.1,500/-	Rs.1,640/-
3.	11-15	Rs.2,000/-	Rs.2,720/-
4.	16-19	Rs.5,000/-	Rs.5,000/-

2. Conveyance Allowance at the above rates per month shall be admissible to those BPS-17, 18 and 19 officers who have not been sanctioned official vehicles.

Yours Faithfully,

(Sanjod Saeed Ahmad)
Secretary Finance

Encl: NO. FG/SC(SR-11)/7-52/2012 Dated Peshawar the 20th December, 2012

A Copy is forwarded for information to the:-

- 1. Accountant General, Khyber Pakhtunkhwa, Peshawar
- 2. Secretaries to Government of Punjab, Sindh & Balochistan Finance Department
- 3. All Magistrates / Semi Autonomous Bodies in Khyber Pakhtunkhwa

(M. TAZAYUBI)
Additional Secretary (Finance)

Appeal No. 1452/2019
Marbad Hayat vs Govt

11.11.2019

Counsel for the appellant present.

Learned counsel referred to the judgment passed by learned Federal Service Tribunal in Appeal No. 1888(R)CS/2016 which was handed down on 03.12.2018. Through the said judgment the issue of payment of Conveyance Allowance to a civil servant during summer and winter vacations was held to be within his entitlement and the deduction already made from him was to be reimbursed. Similar reference was made to the judgment by Honourable Peshawar High Court passed on 01.10.2019 in the case of appellant.

Learned counsel, when confronted with the proposition that the issue, in essence, was dilated upon by the Federal Service Tribunal and, more particularly, by the Honourable Peshawar High Court in the case of appellant, stated that in case the respondents are required to execute the judgment of Peshawar High Court, the appellant will have no cavil about disposal of instant appeal.

The record suggests that while handing down judgment in the Writ Petition preferred by the appellant, the Honourable High Court not only expounded the definition of "Pay" as well as "Salary" but also entitlement of a civil servant for the Conveyance Allowance during the period of vacations. It is important to note that the respondents were represented before the High Court during the proceedings.

In view of the above noted facts and circumstances and in order to protect the appellant from a fresh round of litigation which may protract over a formidable period, the appeal in hand is disposed of with observation that the judgment of Honourable Peshawar High Court passed in Writ Petitions including W.P. No. 3162-P/2019 shall be honoured and implemented by the respondents within shortest possible time. The appellant shall, however, be at liberty to seek remedy in accordance with law in case his grievance is not redressed by the respondents within a reasonable time.

File be consigned to the record.

Chairman

ANNOUNCED

11.11.2019

certified to be true copy

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

ATTACHED
M

BREIF HISTORY OF CONVEYANCE ALLOWANCE CASE

What is Conveyance Allowance?

Answer:

Conveyance Allowance, also known as transport allowance, is kind of Allowance which is offered by an employer to his employee to compensate for travel expense to and from their residence and workplace.

Which Class of Civil Servants is entitled for Conveyance Allowance?

Basically Conveyance Allowance is offered by both central and provincial government to the Civil servants to accommodate their travel expense to and from workplace. There are certain departments in which one is vacation department and the other is non-vacation department which led to misperception regarding difference in vacation department and non-vacation department and wasn't able to make clear difference by the Government. The vacation department is that department which involves vacations during summer and winter specifically to cater certain skills and trainings by the Government to the Civil servants while non-vacation departments which have no as such vacations in their entire service.

Conveyance allowance was granted to civil servants of vacation department i.e elementary, secondary and higher education department's teachers of all cadres since the inception of the education department but due malaise intention of the federal and provincial government inclined to deduct Conveyance Allowance from their salaries on some wrong pretext unlawfully. Teachers of the federal government took initiative to take up the issue to higher level for its reprisal but government subdued the issue on one or the other pretext finding no solution to the grievance of the teaches of center. The teachers of all cadres left no stone unturned to get their arrears back that has been deducted unlawfully from their salaries and all went in vain.

After exhausting all the forums in personal capacity, the teachers of the Sindh government preferred departmental appeal to the appellate authority seeking to get back arrears deducted from their salaries since respondent's deduction of conveyance allowance illegally but the respondents ignored the fact in issue and underestimated the plea of the teachers. Such irresponsible attitude of the respondent's forced teachers of all cadres to move in a Writ Petition to Sindh High Court vide judgment dated 23.12.2015, allowed in favor of the petitioners and the department

implemented the same. In this way the federal employees i.e teachers made an arrangement to file appeals before the Federal Service Tribunal, Islamabad embedded the same issue of conveyance Allowance illegal Deduction by the respondents. While during arguments before the Federal Service Tribunal, Islamabad the legal fraternity raised an issue that the appellant being aggrieved from the illegal deduction of the Conveyance Allowance from the Pay on stance that respondents are considering summer and winter vacation as leave of kind and deducting the same on the very pretext overlooking the legal aspects of said allowance. The legal fraternity assisted the court regarding this legal issue articulating legally each and every aspect of the case in light of the law and rules as:-

“That the deduction of conveyance allowance violates FR.82(b) which enunciates in unambiguous terms that Vacations Counts as duty, even during vacations a government servants/teachers are require to be prepared for any call of duty in the relevant department. The vacations are available not on the basis of option for the government servants/teachers working in school and colleges. The period is of earned leave is curtailed by one month for each year. The summer vacations are not granted on the demand and option of the teachers. They are allowed lesser earned leave than the rest of the government servants of various departments”

While the plea taken by the finance division during argument is inconsistent with FR.82(b) and respondents were not able to justify the stance with cogent facts and figure.

The Honorable Court accepted the appeal and allowed in favor of the appellants directing the respondents not to deduct the conveyance allowance from the salary of the appellant during summer and winter vacation and reimbursed the same vide judgment in appeal No.1888 (R)CS/2016 dated 03.12.2018.

Respondents against the former judgments passed vide Appeal No.289(R)/CS to 298(R)CS/2015 by the August Federal Service Tribunal Islamabad on the same issue, went in CPLA before the Supreme Court of Pakistan but the Apex Court honored judgment of the Federal Service Tribunal and dismissed the Petition of the respondents vide Civil Petition No.4957 to 4966 of 2017.

That in this way the legal fraternity raise the same plea before the Supreme Court of Azad & Jammu Kashmir of Pakistan that conveyance allowance can only be deducted from the pay of a civil servants when he/she avails leave while referring to the relevant provision of Rules, that vacation and leave are two different terms having different connotations which cannot be interchanged and interpreted in a manner to deprive a civil servants from the conveyance allowance. Fortunately, the civil servants of vacation department of Azad and Jammu Kashmir got through Honorable Supreme Court Azad & Jammu Kashmir of Pakistan with flying

colors vide well celebrated judgment reported in 2020 PLCS(C.S) 741 wherein upholding that the Petition filed by the petitioners was accepted and the vacation could not be treated as leave rather same would be considered as on duty and the conveyance allowance could not be refused/deducted from the emoluments without amendment in the rules through executive orders.

One bereaved Province of Khyber Pakhtunkhwa was lagging behind who's Civil Servants deprived of Conveyance Allowance and the respondents blatantly deducting it from their salaries overlooking pro-contra effects of deductions. That against the said illegal deduction, i ,namely; Noor Muhammad Khattak Advocate moved in Writ Petition No. 3162-P/2019 before the Honorable Peshawar high Court which was disposed of with exposition and expounded that definition of "Pay" as well as "Salary", that pay is part of an emolument and thus disposed of with direction to refer to is proper forum which is Khyber Pakhtunkhwa Service Tribunal Peshawar. That in this case I, Noor Muhammad Khattak Advocate High Court Peshawar filed an appeal before the Khyber Pakhtunkhwa service tribunal Peshawar, namely; Maqasd Hayat & other VS Government of Khyber pakhtunkhwa in Appeal No.1452/2019 which was instantly allowed in Preliminary Hearing in favor of the appellants. I relied on FR.82(b) and Khyber pakhtunkhwa Revised leave rule,1989 while arguments that the civil servants of Vacation department earning one leave per month and that of a year amounts to 12 days credited to their leave account and the government is deducting on wrong pretext illegally the said conveyance allowance overlooking the legal aspect. And i assisted the court by differentiating the leave and vacation as for leave the civil servants apply under the Khyber pakhtunkhwa Civil Servants Revised Leave Rules.1989 while the vacation is granted by the government itself which doesn't justify the stance of respondents for deduction of conveyance allowance placing reliance on Sindh Service Tribunal Judgment dated 23.12.2015, Federal service tribunal Judgment in appeal No.1888/2016 dated 03.12.2018, Supreme Court of Pakistan Judgment in Civil Petition No.4957 to 4966/2017, Supreme Court of (AJ&k) reported judgment 2020 PLC(CS)741 and also on Article 4 and 25 of the Constitution of Islamic Republic of Pakistan. Furthermore, thousands of the appeals of the Appellants were allowed on preliminary hearing relying on rule principle of consistency having same issue of deduction of conveyance of allowance illegally by the respondents and the August KPK Service Tribunal Peshawar directed respondents not to deduct conveyance allowance from the pay of the appellant during the course of summer and winter vacations.

CONCLUSION:

It has been invariably concluded that the conveyance allowance is expense to and from the workplace entitling all the civil

servants of vacation department during the course of summer and winter vacations and its deduction is illegal and unlawful by the respondents. Law and rules in categorical terms certifies that conveyance allowance is part and parcel of salary/pay and vacation period should be treated as civil servant as on duty because they are required to be prepared for duty any time on the call of Government. Similarly legal expositions and interpretation in judgments of Supreme Court of Pakistan and Azad and Jammu Kashmir Apex Court ascertain the same that conveyance allowance should not be deducted from the salaries of civil servants if the respondents are doing so falls in illegal and unlawful act.

⇒ Referred Judgments Copies Attached:

- 1) Peshawar High Court Judgment.....**A.**
- 2) Khyber Pakhtunkhwa Service tribunal Judgments.....**B.**
- 3) Federal Service Tribunal, Islamabad Judgment.....**C.**
- 4) Supreme Court of Pakistan, Judgment.....**D.**
- 5) Azad Jammu & Kashmir Supreme Court Judgment.....**E.**


NOOR MUHAMMAD KHATTAK
ADVOCATE
(High Court, Peshawar)

BEFORE THE PESHAWAR HIGH COURT, PESHAWAR

Annexure A
7/1

WRIT PETITION NO. _____/2019

- 1- Mr. Akhtar Hussain, PSHT, GPS No.2, Shergarh, Mardan.
- 2- Mr. Mohammad Arif Khan, PSHT, GPS Takht Bhai Mardan.
- 3- Mr. Ali Zar Khan, SS, GHS Adina Swabi.
- 4- Mr. Asad Ali, SS, GHS Adina District Swabi.
- 5- Mr. Shad Ali, SS, GHS Adina District Swabi.
- 6- Mr. Hamesh Khan, SS, GHS Adina District Swabi.
- 7- Mr. Sardar Iqbal, SS, GHS Adina District Swabi.
- 8- Mr. Mustaqim Shah, SS, GHS Adina District Swabi.
- 9- Mr. Zulfiqar Ud Din, SS, GHS Adina District Swabi.
- 10- Mr. Arif Ali, Director Physical Education, GHS Adina District Swabi.
- 11- Mr. Kashif Ali, SS, GHS Adina District Swabi.
- 12- Mr. Imran Khan, SET, GHS Chamtar Mradan.
- 13- Mr. Naseer Ahmad, CT, GHS Chamtar Mradan.
- 14- Mr. Qayyum Khan, CT, GHS Chamtar Mradan.
- 15- Mr. Tufail Ahmad, N/A, GHS Chamtar Mradan.
- 16- Mr. Siraj Ud Din, STT, GHS Chamtar Mradan.
- 17- Mr. Sher Alam Khan, SET, GHS Chamtar Mradan.
- 18- Mr. Khalid Mehmood, Qari, GHS Chamtar Mradan.
- 19- Mr. Bakhtiar Ali, SET, GHS Chamtar Mradan.
- 20- Mr. Muhammad Afzaal, CT, GHS Chamtar Mradan.
- 21- Mr. Aziz Khan, CT, GHS Chamtar Mradan.
- 22- Mr. Salim Ur Rehman, CT, GHS Chamtar Mradan.
- 23- Mr. Amjad Ali, SPET, GHS Chamtar Mradan.
- 24- Mr. Zahid Hussain, SET, GHS Chamtar Mradan.
- 25- Mr. Ismaeel Khan, SET, GHS Khazana Dheri, Mardan.
- 26- Mr. Saeed Ur Rehman, SST, GHS Khazana Dheri, Mardan.
- 27- Mr. Misal Khan, SET, GHS Khazana Dheri, Mardan.
- 28- Mr. Salim Khan, SST, GHS Khazana Dheri, Mardan.
- 29- Mr. Noor Ullah, AT, GHS Khazana Dheri, Mardan.
- 30- Mr. Amjad Ali, CT, GHS Kund Khwar, Mardan.
- 31- Mr. Dilshad Ali, CT, GHS Lund Khwar, Mardan.
- 32- Mr. Danish Ali, CT, GHS Lund Khwar, Mardan.
- 33- Mr. Muhammad Iqbal, Qari, GHS Lund Khwar, Mardan.
- 34- Mr. Khan Faqir, SCT, GHS Lund Khwar, Mardan.
- 35- Mr. Muhammad Rahim, SCT, GHS Lund Khwar, Mardan.
- 36- Mr. Abdullah, CT, GHS Lund Khwar, Mardan.
- 37- Mr. Arsahd Anwar, SET, GHS Lund Khwar, Mardan.
- 38- Mr. Ali Gohar, CT, GHS Lund Khwar, Mardan.
- 39- Mr. Hidayat Khan, SCT, GHS Lund Khwar, Mardan.
- 40- Mr. Syed Zahid, CT, GHS Lund Khwar, Mardan.
- 41- Mr. Nowsher Khan, DM, GHS Lund Khwar, Mardan.
- 42- Mr. Faiz Ur Rehman, PST, GHS Lund Khwar, Mardan.
- 43- Mr. Abdul Khaliq, SET, GHS Lund Khwar, Mardan.



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Peshawar High Court

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Judgment Sheet

IN THE PESHAWAR HIGH COURT, PESHAWAR,
JUDICIAL DEPARTMENT.**Writ Petition No. 3162-P/2019 Akhtar Hussain and 607
others..vs..Govt of Khyber Pakhtunkhwa****JUDGMENT**

Date of hearing.....01.10.2019.....

Petitioner(s) by Mr. Noor Mohammad Khattak, Advocate

Mr. Mujahid Ali Khan, AAG, for respondents.



ROOH-UL-AMIN KHAN, J:- Through this common judgment we, proposed to decided the instant as well as the connected writ petitions as all having involved common question of law and facts, the particulars of which are given below.

- i. WP No. 3162-P/2019 titled Akhtar Hussain etc..vs..Government of Khyber Pakhtunkhwa through Chief Secretary, Peshawar and 4 others.
- ii. WP No. 3064-P/2019 titled Habeeb Ullah etc...Vs.. Government of Khyber Pakhtunkhwa through Chief Secretary, Peshawar and 7 others.
- iii. WP No. 3084-P/2019 titled Sikandar Khan etc...Vs.. Government of Khyber Pakhtunkhwa through Chief Secretary, Peshawar and 4 others.
- iv. WP No. 3178-P/2019 titled Abdur Rehman etc...Vs.. Government of Khyber Pakhtunkhwa through Chief Secretary, Peshawar and 4 others.

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EXAMINER
Peshawar High Court

- v. WP No. 3233-P/2019 titled Amjid Ali etc...Vs..
Government of Khyber Pakhtunkhwa through Chief
Secretary, Peshawar and 4 others.
- vi. WP No. 3283-P/2019 titled Gul Saeed etc...Vs..
Government of Khyber Pakhtunkhwa through Chief
Secretary, Peshawar and 4 others.
- vii. WP No. 3287-P/2019 titled Syed Israr Shah etc...Vs..
Government of Khyber Pakhtunkhwa through Chief
Secretary, Peshawar and 7 others.
- viii. WP No. 3288-P/2019 titled Firdous Khan etc...Vs..
Government of Khyber Pakhtunkhwa through Chief
Secretary, Peshawar and 4 others.
- ix. WP No. 3353-P/2019 titled Hafiz Inam Ur Rehman
etc...Vs.. Government of Khyber Pakhtunkhwa
through Chief Secretary, Peshawar and 6 others.
- x. WP No. 3366-P/2019 titled Jehanzeb Khan etc...Vs..
Government of Khyber Pakhtunkhwa through Chief
Secretary, Peshawar and 4 others.
- xi. WP No. 3390-P/2019 titled Haji Rehman etc...Vs..
Government of Khyber Pakhtunkhwa through Chief
Secretary, Peshawar and 2 others.
- xii. WP No. 3520-P/2019 titled Mohammad Khalid
etc...Vs.. Government of Khyber Pakhtunkhwa
through Chief Secretary, Peshawar and 4 others.

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EXAMINER
Peshawar High Court

allowance under the wrong and illegal pretext that the same is

not allowed for the leave period.

3. In essence, the grievance the petitioners is that

they were receiving the conveyance allowance under the notifications mentioned above, which was stopped without any

justifiable reason.

4. Since the matter pertains to grant of conveyance

allowance which is part and parcel of pay. Similar controversy

came before this Court in Writ Petition No. 3209-P/2014 titled

(Hafiz Mohammad Ijaz etc..vs..Government of Khyber

Pakhtunkhwa), wherein the pay and salary were defined in the

following manner.

7. To resolve the controversy as to

whether payment of allowance to a civil servant

falls in chapter-2 of Khyber Pakhtunkhwa Civil

Servants Act, 1973 i.e. terms and conditions of

service, it is necessary to reproduce the definition of

"pay" provided in section 2(e) of the Khyber

Pakhtunkhwa Civil Servants Act, 1973 which reads

as under:

2. (e)—"Pay" means the amount drawn

monthly by a civil servant as pay, and includes

special pay, personal pay and any other

allowances declared by the prescribed

authority to be paid" (emphasis provided).

The word "allowance" used in the above

quoted definition clause of the Civil Servants Act,

1973, according to its dictionary meaning, denotes

wages and benefits received as compensation for

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ATTORNEY
EXAMINER
Peshawar High Court

4

- xiii. WP No. 3567-P/2019 titled Husnur Rehman etc...Vs..
Government of Khyber Pakhtunkhwa through Chief
Secretary, Peshawar and 3 others.
- xiv. WP No. 3667-P/2019 titled Maqsad Hayat etc...Vs..
Government of Khyber Pakhtunkhwa through Chief
Secretary, Peshawar and 4 others.
- xv. WP No. 3939-P/2019 titled Syed Khurshid Shah
etc...Vs.. Government of Khyber Pakhtunkhwa
through Chief Secretary, Peshawar and 5 others.
- xvi. WP No. 4072-P/2019 titled Subhan Ullah etc...Vs..
Government of Khyber Pakhtunkhwa through Chief
Secretary, Peshawar and 6 others.
- xvii. WP No. 4758-P/2019 titled Sohrab Hayat etc...Vs..
Government of Khyber Pakhtunkhwa through Chief
Secretary, Peshawar and 4 others.

2. As per averments of the writ petition, the petitioners are serving in the Elementary & Secondary Education Department on their respective posts. On 14.7.2011 the Government of Khyber Pakhtunkhwa enhanced the conveyance allowance to all the Civil Servants i.e. from BPS-1 to 15, including the petitioners, which was subsequently revised vide another notification dated 20.12.2012 and was further enhanced. But the respondents without any valid and justifiable reasons stopped / deducted the payment of conveyance

Footnote

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ATTESTED
EXAMINER
Peshawar High Court

allowance under the wrong and illegal pretext that the same is

not allowed for the leave period.

3. In essence, the grievance the petitioners is that they were receiving the conveyance allowance under the notifications mentioned above, which was stopped without any justifiable reason.

4. Since the matter pertains to grant of conveyance allowance which is part and parcel of pay. Similar controversy came before this Court in Writ Petition No. 3209-P/2014 titled (Hafiz Mohammad Iqbal vs. Government of Khyber Pakhtunkhwa), wherein the pay and salary were defined in the following manner.

7. To resolve the controversy as to whether payment of allowance to a civil servant falls in chapter-2 of Khyber Pakhtunkhwa Civil Servants Act 1973 i.e. terms and conditions of service, it is necessary to reproduce the definition of "pay" provided in section 2(e) of the Khyber Pakhtunkhwa Civil Servants Act 1973 which reads as under

2. (e) — "Pay" means the amount drawn monthly by a civil servant as pay, and includes special pay, personal pay and any other allowances declared by the prescribed authority to be paid." (emphasis provided).

The word "allowance" used in the above quoted definition clause of the Civil Servants Act 1973, according to its dictionary meaning, denotes wages and benefits received as compensation for

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ATTORNEY GENERAL
KHYBER PAKHTUNKHWA
ISLAMABAD

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allowance under the wrong and illegal pretext that the same is not allowed for the leave period.

3. In essence, the grievance the petitioners is that they were receiving the conveyance allowance under the notifications mentioned above, which was stopped without any justifiable reason.

4. Since the matter pertain to grant of conveyance allowance which is part and parcel of pay. Similar controversy came before this Court in Writ Petition No. 3509-P/2014 titled (Hafiz Mohammad Ilyas etc..vs..Government of Khyber Pakhtunkhwa), wherein the pay and salary were defined in the following manner.

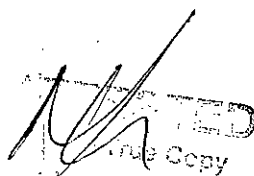
“7. To resolve the controversy as to whether payment of allowances to a civil servant falls in chapter-2 of Khyber Pakhtunkhwa Civil Servants Act, 1973 i.e. terms and conditions of service, it is necessary to reproduce the definition of “pay” provided in section 2(e) of the Khyber Pakhtunkhwa Civil Servants Act, 1973 which reads as under:

“ 2. (e)—“Pay” means the amount drawn monthly by a civil servant as pay, and includes special pay, personal pay and any other emoluments declared by the prescribed authority to be paid.” (emphasis provided).

The word “emolument” used in the above quoted definition clause of the Civil Servants Act, 1973, according to its dictionary meaning, denotes wages and benefits received as compensation for

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 Peshawar High Court


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holding an office or having employment. The word emolument is basically derived from the Latin word emolumentum. It originally meant "the sum paid to a miller for grinding a customer wheat". Today, the term exists mostly as a bit of archaic legalese, but it might be within the route of expression i.e. "grinding out a living". From the above it is manifest that emoluments are essentially the benefits that one gets from the working of being employed. **Emolument** is the profit from employment and is compensation in return of services, hence the emoluments are part and parcel of pay. Section 17 being part of chapter-2 i.e. terms and conditions of service of a civil servant provides that, a civil servant appointed to a post shall be entitled, in accordance with rules, to the pay sanctioned for the post. Likewise, Rule 9(21) of (FR/SR) provide, the definition of pay which means the amount drawn monthly by a government servant as ;

- (i) the pay, other than special pay or pay granted in view of his personal qualification, which has been sanctioned for the post held by him substantively or in an officiating capacity, or to which he is entitled by reason of his position in a cadre, and (ii) overseas pay, technical pay, special pay and personal pay and
- (iii) any other **emoluments** which may be specially classed as pay by the governor general.

The legislature in its wisdom has wisely used the word "pay" instead of salary in definition clause and section 17 of Khyber Pakhtunkhwa Civil Servants Act, 1973. The word 'pay' connotes

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 Peshawar High Court

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payment of wages including emolument in broader spectrum while the salary is used for amount that one receives in return for work and or service provided, which is paid periodically i.e. over a specified interval of time such as weekly or most commonly monthly. The term "salary" has been dealt with at page-553 of Corpus Juris Secundem Vol. 77 as under:-

"Salary". The word "Salary" is defined has meaning fixed compensation regularly paid by the year, quarter, month or week; fixed compensation for regular work, or for continuous services over a period of time; periodical compensation for services; compensation for services rendered; per annum compensation mean in official and in some other situation, or station; legal compensation.

Salary is also defined as meaning stipulated periodical recompense; or consideration paid, or stipulated to be paid to a person on regular interval for services usually a fixed sum to be paid by the year or half year, quarter; reward or consideration paid or agreed to be paid to a person on a regular intervals by the year, month or week for services; reward of fixed or recompense for services rendered or performed; reward or compensation of services rendered or performed.

From the above mentioned definition it is manifest that the "salary" of a civil servant is a fixed amount regularly paid as compensation to the employee, whereas the pay means an amount received by a civil servant including other emoluments i.e. allowances."

Conclusion

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Peshawar High Court

5. Besides, certain other petitions filed by the Teachers /employees of the same department serving from other corners of the province which were decided by Abbottabad Bench of this Court, wherein it was held that the conveyance allowance being part of pay fall in terms and conditions of civil servant and it can adequately be claimed through an appeal by adopting the prescribed procedure under the Khyber Pakhtunkhwa Civil Servants Act, 1974.

6. For the reasons given hereinabove, the petitioners are civil servants and their claim falls in terms and conditions of service enumerated in Chapter-2 of the Khyber Pakhtunkhwa Civil Servants Act, 1973, wherein the jurisdiction of this Court is expressly barred by Article 212 of the Constitution of Islamic Republic of Pakistan, 1973. Resultantly, this and the connected writ petition mentioned above stand dismissed being not maintainable. However, the petitioners are liberty to approach the proper forum, if so desire.

Announced on;
1st of October, 2019
Zarshad

Kocher Sami
 JUDGE

M
 JUDGE

Khan & Mr. Justice Mohammad Naeem Anwar

[Signature]
 EXHIBIT TO BE TRUE COPY
 Examiner
 Peshawar High Court, Peshawar
 Authorized Under Article 57 of
 the Qanun-e-shahadat Order 1988

28 JUL 2020

6/11/19

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Annex - (B) (9)
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**BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR**

APPEAL NO. 1452 / 2019

Khyber Pakhtunkhwa
Service Tribunal

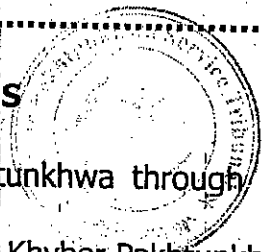
Diary No. 1500

Dated 24/10/19

Mr. Maqсад Hayat, SCT (BPS-16),
GHS Masho Gagar, Peshawar.....

APPELLANT

VERSUS



- 1- The Government of Khyber Pakhtunkhwa through Chief Secretary, Khyber Pakhtunkhwa, Peshawar.
- 2- The Secretary (E&SE) Department, Khyber Pakhtunkhwa, Peshawar.
- 3- The Secretary Finance Department, Khyber Pakhtunkhwa, Peshawar.
- 4- The Accountant General, Khyber Pakhtunkhwa, Peshawar.
- 5- The Director (E&SE) Department, Khyber Pakhtunkhwa, Peshawar.

RESPONDENTS

APPEAL UNDER SECTION-4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974 AGAINST THE IMPUGNED ACTION OF THE RESPONDENTS BY ILLEGALLY AND UNLAWFULLY DEDUCTING THE CONVEYANCE ALLOWANCE OF THE APPELLANT DURING WINTER & SUMMER VACATIONS AND AGAINST NO ACTION TAKEN ON THE DEPARTMENTAL APPEAL OF APPELLANT WITHIN THE STATUTORY PERIOD OF NINETY DAYS.

PRAYER:

That on acceptance of this appeal the respondents may kindly be directed not to make deduction of conveyance allowance during vacations period (Summer & Winter Vacations) and make the payment of all outstanding amount of Conveyance allowance which have been deducted previously with all back benefits. Any other remedy which this august Tribunal deems fit that may also be awarded in favor of the appellant.

Filed to-day
Registrar
24/10/19

R/SHEWETH:
ON FACTS:

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Khyber Pakhtunkhwa
Service Tribunal
Peshawar

- 1- That the appellant is serving in the elementary and secondary education department as Certified Teacher (BPS-15) quite efficiency and up to the entire satisfaction of the superiors.
- 2- That the Conveyance Allowance is admissible to all the civil servants and to this effect a Notification No. FD (PRC) 1-1/2011 dated 14.07.2011 was issued. That later on vide revised Notification dated 20.12.2012 whereby the conveyance allowance for employees

Re-submitted to-day
and filed.
Registrar
11/11/19

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Appeal No. 1452/2019
Mazbad Hayat vs Govt



11.11.2019

Counsel for the appellant present.

Learned counsel referred to the judgment passed by learned Federal Service Tribunal in Appeal No. 1888(R)CS/2016 which was handed down on 03.12.2018. Through the said judgment the issue of payment of Conveyance Allowance to a civil servant during summer and winter vacations was held to be within his entitlement and the deduction already made from him was to be reimbursed. Similar reference was made to the judgment by Honourable Peshawar High Court passed on 01.10.2019 in the case of appellant.

Learned counsel, when confronted with the proposition that the issue, in essence, was dilated upon by the Federal Service Tribunal and, more particularly, by the Honourable Peshawar High Court in the case of appellant, stated that in case the respondents are required to execute the judgment of Peshawar High Court, the appellant will have no cavil about disposal of instant appeal.

The record suggests that while handing down judgment in the Writ Petition preferred by the appellant, the Honourable High Court not only expounded the definition of "Pay" as well as "Salary" but also entitlement of a civil servant for the Conveyance Allowance during the period of vacations. It is important to note that the respondents were represented before the High Court during the proceedings.

In view of the above noted facts and circumstances and in order to protect the appellant from a fresh round of litigation which may protract over a formidable period, the appeal in hand is disposed of with observation that the judgment of Honourable Peshawar High Court passed in Writ Petitions including W.P. No. 3162-P/2019 shall be honoured and implemented by the respondents within shortest possible time. The appellant shall, however, be at liberty to seek remedy in accordance with law in case his grievance is not redressed by the respondents within a reasonable time.

File be consigned to the record.


Chairman

Certified to be true copy

ANNOUNCED

11.11.2019


Khyber Pakhtunkhwa
Service Tribunal,
Peshawar


Chairman

Judgment Sheet
IN THE FEDERAL SERVICE TRIBUNAL, ISLAMABAD

Annex - (C)

(11)

Appeal No.1888(R)CS/2016

Date of Institution	21.10.2016
Date of Hearing	26.11.2018
Date of Judgment	03.12.2018

APPELLANT: Muhammad Sikandar Dar, Lecturer (BS-17), Islamabad Model College for Boys, G-10/4, Islamabad.

RESPONDENTS:

- (i) Secretary, Federal Education & Professional Training Division, Islamabad.
- (ii) Director Model Colleges, Federal Directorate of Education, Islamabad.
- (iii) Secretary Finance (Regulation Wing), Islamabad.

Before: Mr. Sikander Ismail Khan, and
Mr. Manzoor Ali Khan, Members.

Present: Mr. Ghulam Rasool Bhatti, Advocate for appellant.
Mr. Arshad Mehmood Malik, Assistant Attorney General with Rana Muhammad Nazir, DD, FDE(Legal) and Mr. Arshad Anjum, AD, Federal Education & Professional Training Division, DRs.

JUDGMENT

SIKANDER ISMAIL KHAN, MEMBER: Through the instant appeal, the appellant has prayed for issuance of a direction to the respondents not to deduct the conveyance allowance from the salaries of the appellant during summer and winter vacations as vacations are treated as holidays but not leave of any kind and the same be allowed as decided by the superior courts.

2. The facts as narrated in the memo of appeal are that the appellant is performing his duties as lecturer (BS-17) in Islamabad Model College for Boys, G-10/4, Islamabad. Being aggrieved by the deduction of conveyance allowance, the appellant

preferred copy 22.06.2016 which
has not been responded. Hence this appeal.

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3. The learned counsel for the appellant has argued that travelling allowance and conveyance allowance is part of compensatory allowance with means an allowance granted to meet the personal expenditure necessitated by the special circumstances in which duty is performed. Further, in identical matter, the Hon'ble Sindh Service Tribunal allowed the conveyance allowance to all the teaching staff during summer and winter vacations vide judgment dated 23.12.2015 which has been implemented by the department. Hence deduction of conveyance allowance from the salaries of the appellant and other teaching staff during summer and winter vacations is clear discrimination against the right of the appellant. He also referred judgment of this Tribunal dated 17.10.2017 passed in identical matter in appeals No.289 to 298(R)CS/2015 and upheld by the Hon'ble Supreme Court of Pakistan in CPs No.4957 to 4966 of 2017 dated 13.07.2018.

4. The appeal is resisted by the respondents. It is stated that in fact the summer and winter vacations are holidays and not a leave, however, physically the teaching and other related staff are not on duty in the school and colleges during vacation, the presence of vocational staff in the institutions is subject to opening after vacations, the science laboratories and libraries are also closed during holidays, therefore, conveyance allowance to vocational staff is not allowed. In support of the arguments, the learned Assistant Attorney General referred SR No.263, 264 & 266.

5. We have heard the learned counsel for both the parties and have perused the available record. Admittedly, the summer and winter vacations are holidays and not leave of any kind but

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the appellant along with other colleagues are being ignored on the ground that physically the teaching and other related staff are not on duty in the school and colleges during vacations. We are not convinced with this assertion of the respondents especially when the summer and winter vacations are treated as holidays. We also sought wisdom from the judgment passed by the various courts and upheld by the Hon'ble Supreme Court of Pakistan in identical matter. We may also like to mention that all the educational institutions charge educational fee and other dues even for the winter and summer vacations, so how the respondents justify themselves by deducting the conveyance allowance of the staff for the same period. The equality should be maintained in all respect. This Tribunal has already adjudicated the issue vide its judgment as referred to in Para 3 above and the said judgment has been upheld by the Hon'ble Supreme Court of Pakistan. It is imperative to reproduce hereunder the relevant portions of the judgment as a ready reckoner:-

"8. FR-82(b) enunciates in unambiguous terms that vacations count as duty. Even during vacations a government servant/teacher is required to be prepared for any call of duty in the relevant department. The vacations are available not on the basis of any option for the government servants/teachers working in school and colleges. The period of earned leave is curtailed by one month for each year. The summer vacations are not granted on the demand and option of the teachers. They are allowed lesser earned leave than the rest of the government servants of various departments.

9. The conveyance allowance is admissible to the government servants who are on duty. The statute treats the period of vacations as duty. The explanation given by the Finance Division is in conflict with the statutory provisions like FR-82(b) which are to reign supreme, as compared to the explanation of the Finance Division. There seems to be no justification whatsoever for depriving the

appellants of the payment of conveyance allowance during the period of summer vacations.

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10. In the circumstances, we are constrained to allow these appeals. Order accordingly. The conveyance allowance is payable to the appellants w.e.f. the vacation of 2014, when the departmental appeals / representations were filed by these appellants."

6. For the foregoing reasons and in view of the rule of consistency, we have no hesitation to accept the appeal. Therefore, the respondents are directed not to deduct the conveyance allowance from the salary of the appellant during summer and winter vacations. The conveyance allowance already deducted should be reimbursed to the appellant forthwith. This judgment is considered *in rem and not in personam* and thus the respondents should pay the said allowance to all similarly placed employees of the educational institutions to avoid discrimination under Article 4 & 25 of the Constitution as well as un-necessary litigation.

7. There shall be no order as to cost. Parties shall be informed.

Sd-
MEMBER

Sd-
MEMBER

Islamabad, the December 03, 2018.

FEDERAL SERVICE TRIBUNAL ISLAMABAD	
Appellate Case No.	2965/2018
Date of Appointment	28-11-2018
Appellant	P4
Respondent	P1
Case No.	4
Date	4-12-2018
Place	4-12-2018
Signature	Justice Javed

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Registrar
Federal Service Tribunal
Islamabad



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Annex = D

IN THE SUPREME COURT OF PAKISTAN
(APPELLATE JURISDICTION)

PRESENT: MR. JUSTICE MIAN SAQIB NISAR, H CJ
MR. JUSTICE IJAZ UL AHSAN

CIVIL PETITIONS NO. 4957 TO 4966 OF 2017
(Against the judgment dated 17.10.2017 of the
Federal Service Tribunal, Islamabad passed in
Appeals No. 289(R)CS to 298(R)CS/2015)

Secretary Finance, Finance Division, Islamabad and others
...Petitioner(s)
(In all cases)

VERSUS

Muhammad Farooq Khan
Nadzem Siddiq
Muhammad Yousaf
Muhammad Mumtaz
Shahid Gul
Hajan Daudpota
Faiz-ul-Mahmood
Fazal Mahboob
Muhammad Masoud Anwar
Muhammad Aziz

In C.P. 4957/2017
In C.P. 4958/2017
In C.P. 4959/2017
In C.P. 4960/2017
In C.P. 4961/2017
In C.P. 4962/2017
In C.P. 4963/2017
In C.P. 4964/2017
In C.P. 4965/2017
In C.P. 4966/2017
...Respondent(s)

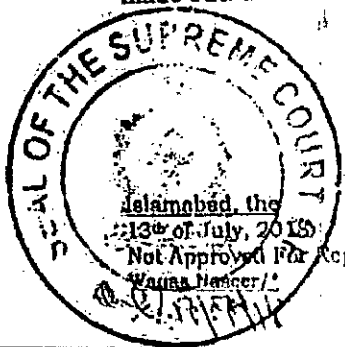
For the petitioner(s): Ch. Aamir Rehman, Addl. A.G.P.
(In all cases)

For the respondent(s): Not represented
(In all cases)

Date of hearing: 13.7.2018

ORDER

MIAN SAQIB NISAR, C.J.: No substantial question of law of public importance has been raised in these matters entitling the petitioner to get leave to appeal within the purview of Article 212(3) of the Constitution of the Islamic Republic of Pakistan, 1973. The factual aspects of the case which are embedded in these matters have been properly addressed and decided in the judgment impugned; the same is the position about the legal issues. No case for interference has been made out. Dismissed accordingly.



Sd/-, H CJ

Sd/-, J

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Senior Court Associate
Supreme Court of Pakistan
Islamabad

Finance Department v. Mahboob Ahmed Awan
(Ghulam Mustafa Mughal, J)

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2020 P L C (C.S.) 741

[Supreme Court (AJ&K)]

Before Ch. Muhammad Ibrahim Zia, CJ.
Raja Sared Akram Khan and
Ghulam Mustafa Mughal, JJ

FINANCE DEPARTMENT, AZAD GOVERNMENT OF
THE STATE OF JAMMU AND KASHMIR, through
Secretary Finance, Civil Secretariat, Chatter Domail,
Muzaffarabad and 10 others

versus

MAHBOOB AHMED AWAN, SENIOR
TEACHER and others

Civil Appeal No.53 of 2019, decided on 9th April, 2019.

(On appeal from the judgment of the High Court dated 11.06.2018 in Writ Petitions Nos. 1315 of 2012, 534, 1361, 1378, 1417, 1459, 1468, 1579, 1691, 1895, 1904 of 2013, 146, 166, 470, 707, 917, 1018, 1210, 1427, 1451, 1589, 1844, 1899, 2044, 93, 2252 of 2014, 370, 1322, 1468, 1519, 2089, 2091, 2456, 2673 of 2015, 267, 1208, 2082, 2331 of 2016 and 594 of 2010).

Azad Jammu and Kashmir Civil Servants Revised Leave Rules, 1983---

---R.25-A---Employees of education department---Deduction of conveyance allowance during summer/winter vacations---Effect---Contention of employees was that they were entitled for conveyance allowance during summer/winter vacations---Writ petition filed before the High Court on behalf of employees was accepted---Validity---Vacations could not be treated as leave rather same would be considered as on duty---Conveyance allowance could not be refused/deducted from the emoluments without amendment in the Rules through some executive order---Impugned judgment of the High Court did not suffer from any legal infirmity---Writ of mandamus could be issued where a public functionary had failed to act in accordance with law and rules---No final order had been passed with regard to deduction of conveyance allowance by the departmental authority---Employees were not bound to approach the Service Tribunal in circumstances---Appeal was dismissed, in circumstances. [p. 745, 746, 747] A, B & C.

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Azad Government and others v. Abdul Kalam Qasbi and others
1995 PLC (C.S.) 46 ref.

Azad Jammu and Kashmir Government through Chief Secretary, Muzaffarabad and another v. Syed Zaman Ali Shah and others PLD 1991 SC(AJK) 57 and **The Appointments General and others v. Zaman Hussain Khan** 1998 PLC (C.S.) 431 ref.

Sardar Karam Dad Khan Advocate-General for Appellants.

Abdul Rashid Abbasi, Sherazada Awza, Syed Sarosh Gilani and Amjad Hameed Siddiqui for Respondents.

Date of hearing: 3rd April, 2019.

JUDGMENT

GHULAM MUSTAFA MUGHAL, J.—The captioned appeal by leave of the Court has been filed against the judgment of the High Court dated 11.06.2018, passed in Writ Petitions Nos. 1315 of 2012, 534, 1361, 1378, 1417, 1459, 1468, 1579, 1691, 1895, 1904 of 2013, 146, 166, 470, 707, 917, 1018, 1210, 1327, 1451, 1589, 1844, 1899, 2044, 93, 2252 of 2014, 370, 1322, 1468, 1519, 2089, 2091, 2456, 2673 of 2015, 267, 1208, 2082, 2331 of 2016 and 594 of 2010.

2. The brief facts forming the background of the captioned appeal are that the respondents, herein, filed different writ petitions in the High Court against the appellants, herein, claiming therein that they are employees of Education Department and serving as Naib Qasids, Junior Clerks, Lab Assistants, Teachers, Lecturers, Professors, Associate Professors and Professors in different cadres. It was averred that during extreme hot weather in the summer/winter vacations spreading over 2-½ months' period are observed in schools/colleges and teachers are also allowed to observe the vacations for the aforesaid period. It was maintained that the respondents, herein, are entitled to the Conveyance Allowance during vacations under the Revised Pay Scale Scheme, 2001. It was contended that the said allowance was deducted from the monthly emoluments of the petitioners/respondents, herein, under the pretext that the allowance is not admissible during vacations. It was further claimed that certain audit objections were also raised by the Director General Audit regarding payment of conveyance allowance, however, the same was even deducted from the monthly emoluments of petitioners / respondents, herein. It was maintained that the petitioner/respondents, herein, and other teachers of Education Department protested against the deduction of the conveyance allowance from their monthly salary on the ground that summer/winter vacations do not amount to leave and these vacations are not availed by them and other teaching staff on their own free will. It was stated that Secretary Education

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(Schools) and Director Public Instructions (Schools) asked the Accountant General not to make deduction of conveyance allowance but the needful has not been done. It was contended that under the Azad Jammu and Kashmir Civil Servants Revised Leave Rules, 1983, the period of vacation counts as duty and not as leave. It was further contended that in accordance with statutory Rules, supra, the deduction of Conveyance Allowance cannot be made from the emoluments of the respondents, thus, the act of the petitioners is illegal, arbitrary and against the Azad Jammu and Kashmir Civil Servants Revised Leave Rules, 1983.

3. The writ petition was contested by the respondents/appellants, herein, by filing separate written statements. It was averred that payment or deduction of the Conveyance Allowance relates to the terms and conditions of the service of the petitioners, therein, hence, the Azad Jammu and Kashmir Service Tribunal having exclusive jurisdiction in this regard is the proper forum wherein the petitioners may seek remedy and writ petitions are not maintainable. It was further stated that according to the Finance Department's letter dated 25.05.1977, the Conveyance Allowance is allowed only to those civil servants who are not residing within the working premises and have to travel to their work-place from their residence. It was further stated that during summer/winter vacations, the petitioners/respondents, herein, did not travel from their residence to work-place in relation to performance of their duties, therefore, they are not entitled to receive conveyance allowance. It was prayed that the writ petitions may be dismissed. The learned High Court after necessary proceedings has decided the writ petitions in the following manner:-

"The crux of the above discussion is that respondents jointly and severally are hereby restrained to deduct the conveyance allowance of summer/winter vacations of petitioners. The respondents are further directed to refund the conveyance allowance of those teachers which have been deducted from their salaries. The Accountant General, Azad Jammu and Kashmir, is hereby, directed to circulate copies of the instant judgment to all District Accounts Officers to comply with and implement the instant judgment forthwith. The writ petitions are accepted in the manner as indicated hereinabove with no order as to the costs".

4. Sardar Karam Dad Khan, the learned Advocate-General appearing for the appellants argued with vehemence that the respondents, herein, are not entitled to the conveyance allowance during summer/winter vacations in view of the restriction imposed by the Finance Department and conveyed to the Accountant General of Azad

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Jammu and Kashmir, hence, their writ petitions were not maintainable before the High Court. He further argued that as the Conveyance Allowance is part and parcel of pay and falls within the ambit of terms and conditions of service of the respondents, herein, therefore, jurisdiction of the learned High Court is ousted in view of Article 227. The Azad Jammu and Kashmir Interim Constitution, 1974, read with section 4 of the Azad Jammu and Kashmir Service Tribunals Act, 1974. He added that in presence of this Constitutional bar, no any order could be issued in vacuum by the learned High Court and proper remedy for redressal of the grievance of the respondents, herein, was the Service Tribunal. The learned Advocate-General further submitted that the orders of the Finance Department Government of Azad Jammu and Kashmir dated 25.05.1977, letters of Finance Department Govt. of Punjab dated 07.06.1987* and 18.11.2009 and the letter of Finance Department regulation wing Government of Pakistan Dated 05.04.2010, cannot postulate that the respondents, herein, are not entitled to the conveyance allowance and these letters can be treated as final order for the purpose of invoking jurisdiction of the Service Tribunal. He further argued that the impugned consolidated judgment of the High Court dated 11.06.2018, has been passed without jurisdictional competence *coram-non-judice*.

5. Conversely, Mr. Abdul Rashid Abbasi, the learned Advocate appearing for the other side vehemently argued that the Conveyance Allowance can only be deducted from the pay of a civil servant when he/she avails leave. While referring to the relevant provisions of Rules, the learned Advocate submitted that vacation and leave are two different terms having different connotations which cannot be interchanged and interpreted in a manner to deprive a civil servant from the conveyance allowance. The learned Advocate further argued that under Rule 25-A of the Azad Jammu and Kashmir Civil Servants Revised Leave Rules, 1973, it has been provided that 'Vacation counts as duty and not as leave', therefore, by no stretch of imagination it can be said that the Conveyance Allowance is deductible during the period of vacation. The learned Advocate submitted that as the teaching staff does not avail summer/winter vacations at their own and remains on call, therefore, the deduction of the Conveyance Allowance without any proper amendment in the Rules and order of the authority mere on the directions of the Finance Department, is not lawful. He further submitted that the Conveyance Allowance is not included in the terms and conditions of service of the civil servants as it has not been mentioned in Chapter II of the AJ&K Civil Servants Act, 1976 and the Rules made thereunder, therefore, the jurisdiction of the High Court is not barred. He added that the jurisdiction of the High Court is ousted only in respect of the matters which are expressly made appealable before the Service Tribunal. b

PLC (Sd/-)

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Finance Department v. Sherrazwan Awan & others
17/10/2014

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support of his submissions, the learned Advocate placed reliance on the cases reported as Azad Jammu and Kashmir Government through Chief Secretary, Mirza Jafar Ahmad and another v. Syed Zaman, Ali Shah and 3 others (PLD 1991 YC 624) and Syed Zaman, Ali Shah and 3 others v. Abdul Fakhir Qureshi and others 11995 PLC (C 51 46), an unreported judgment of the Federal Service Tribunal Islamabad rendered in Civil Appeal No. 18891/P/2011, dated on 05 12 2014 and the Order of the Apex Court of Pakistan dated 13 07 2014 in the same matter, whereby, leave was refused.

6. Messrs Sherrazwan Awan, Syed Zaman's Counsel and Mr. Amjad Hameed Siddiqui, Advocates, adopted the arguments advanced by Mr. Abdul Rashid Akhbar, Advocate.

7. We have heard the learned counsel for the parties and have given our due thought to the proposition involved in the case. Before proceeding further, we may refer the relevant provision of The Azad Jammu and Kashmir Civil Servants Revised Leave Rules, 1983 (hereinafter to be referred as Rules, 1983). Rule 25-A of these rules is relevant which reads as under:-

***25-A. Combination of Vacations with Leave:—** In case of Government servants serving in vacation departments, vacation may be prefixed or affixed to leave, or both prefixed and affixed or allowed to intervene between two periods of leave, subject to the conditions mentioned in Rules 101, 102, 103, 105, 106, 110, 112, (a, b & c), 114, 123, 124, 125, 126, 133-A, 133-B, 141, 142, 143, 153, 153-A, 153-B, (a,b), 153-C, 154, 155, 156, 157, (b,c) of K.S.R Volume-1.

Previous approval of the Finance Department should be obtained in cases where such combinations of vacation with the leave involve extra expense to Government.

Note: Unless contrary appears from the context vacation counts as a duty and not as leave.]”

The controversy involved in the matter is, as to whether, during the summer/winter vacations, the respondents, herein, who are admittedly serving in different Government schools/colleges, where these vacations are observed, are entitled to Conveyance Allowance during these vacations? A perusal of the above reproduced Rule and the Note appended therewith sufficiently suggest that vacation cannot be treated as leave rather the same would be considered as on duty. As it is clearly observed that vacation cannot be treated as leave and teaching st

PL(Senior)

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would be deemed as on duty, therefore, Conveyance Allowance cannot be refused/deducted from their emoluments without amendment in the Rules through some executive order. The impugned judgment passed by the learned High Court, therefore, does not suffer from any legal infirmity.

8. The contention of Sardar Karam Dad Khan, the learned Advocate General that the matter falls within the terms and conditions of service of the respondents, herein, hence, the jurisdiction of the High Court was barred, is devoid of any force for the reason that; firstly, no basic order has been passed by the competent/departmental authority for deduction of the Conveyance Allowance; and secondly, any letter of the Finance Department cannot be treated as order of the departmental authority for the purpose of appeal before the Azad Jammu and Kashmir Service Tribunal. Mr. Abdul Rashid Abbasi, Advocate, has contended that the terms and conditions of service of a civil servant are covered under Chapter II of the Azad Jammu and Kashmir Civil Servants Act, 1976 and the Conveyance Allowance is not included therein, is devoid of any force. It cannot be held that if a matter relating to the terms of conditions of service of a civil servant is not listed in Chapter II of the said Act, then the same cannot be treated as such. In Zaman Ali's case referred to hereinabove, this Court has observed that the terms and conditions of service of a civil servant are large in number and only some of them are listed in Chapter II of the Azad Jammu and Kashmir Civil Servants Act, 1976. At page 62, para 8 of the report, it was observed as under:-

58. Under Section 4 of the Azad Jammu and Kashmir Service Tribunals Act the Service Tribunal has been vested with exclusive jurisdiction to hear appeals against final orders in respect of terms and conditions of service. Terms and conditions of civil servants are large in number and so scattered that it is not easy to summarise them; but the plain fact is that some of them can be easily found in the Civil Servants Act in Chapter II. The title of Chapter II is 'Terms and conditions of service of civil servants'. Section 3 which is the first section in the Chapter lays down as follows:-

The terms and conditions of service of a civil servant shall be provided in this Act and the rules.

As stated above, no any final order has been passed regarding deduction of the Conveyance Allowance by the departmental authority, therefore, there is no occasion for the respondents, herein, to approach the Service Tribunal. The writ of mandamus can be issued where a public functionary fails to act in accordance with law and rules. Abdul Kabir

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2020)

Muhammad Iqbal v. Government of the Punjab
(Mujahid Mustaqeem Ahmed, J)

747

Qureshi's case, referred to by the learned High Court in the impugned judgment and relied upon by Mr. Abdul Rashid Abbasi, Advocate, fully supports our aforesaid view. We have also considered the judgment passed by the learned Federal Service Tribunal which is appended with the concise statement filed by Mr. Abdul Rashid Abbasi, Advocate, wherein, the matter has sufficiently been dealt with and the teaching staff is declared entitled to the Conveyance Allowance during vacations. One of the factors, which has been noticed by the learned Federal Service Tribunal is that summer/winter vacations are not observed by the teaching staff at their own free will rather they are on call of the Government and can join duty at any time, that is why, these vacations cannot be treated as leave. The Apex Court of Pakistan refused to grant leave against the said judgment of the Federal Service Tribunal.

Thus, in these circumstances, we have reached the conclusion that this appeal has no substance. The same is, hereby, dismissed with no order as to costs.

ZC/58/SC(AJ&K)

Appeal dismissed.

2020 P L C (C.S.) 747

[Lahore High Court (Multan Bench)]

Before Mujahid Mustaqeem Ahmed, J

MUHAMMAD IQBAL

versus

GOVERNMENT OF THE PUNJAB through
Secretary Education Schools, Punjab,
Lahore and 4 others

Writ Petition No. 13233 of 2016, decided on 18th February, 2019.

Punjab Civil Servants Recruitment (Relaxation of
Age Limit) Rules, 1976

Notification No. DS(O&M)5-3/2004/CONTR
having applied for

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25. We had dismissed this appeal in Court on January 23, 2017 for reasons to be recorded and these are the reasons for doing so. The office is directed to send a copy of paragraphs 21 and 24 to the Attorney General for Pakistan, the Advocate Generals of all the provinces, the Secretary Establishment Division, the Chief Secretaries of the provinces, the Law Secretaries of the Federation and provinces and the Finance Secretaries of the Federation and the provinces for their information and compliance.

MWA/R-1/S

Appeal dismissed.

P L D 2017 Supreme Court 134

Present: Mian Saqib Nisar, C.J.,
Ejaz Afzal Khan and Umar Ata Bandial, JJ . .

Messrs SHIFA INTERNATIONAL HOSPITAL,
ISLAMABAD---Petitioner

versus

COMMISSIONER OF INCOME TAX/WEALTH
TAX, ISLAMABAD---Respondent

Civil Petition No.2640 of 2016, decided on 2nd February, 2017.

(Against the judgment dated 31-5-2016 of the Islamabad High Court, Islamabad passed in I.T.R. No.24 of 2008).

(a) Interpretation of statutes---

---Fiscal statute---Provisions of a fiscal statute were to be strictly construed and applied. [p. 138] A

(b) Income Tax Ordinance (XXXI of 1979) [since repealed]

---S. 23 & Third Sched. Entry I & II---Hospital buildings
Depreciation allowance---"Factory" or "workshop"---Scope
Depreciation allowance allowed for buildings was 5% [Entry I of Third
Sched. to the Income Tax Ordinance 1979] whereas for "factor,

2020 S C M R 98

[Supreme Court of Pakistan]

Present: Mushir Alam, Faisal Arab and Sajjad Ali Shah, JJ

HOUSE BUILDING FINANCE COMPANY LIMITED---Appellant

Versus

MUHAMMAD IRFAN KHAN and others---Respondents

Civil Appeal No. 86-K of 2018, decided on 4th September, 2019.

(On appeal from the judgment dated 26.11.2018 passed by High Court of Sindh, Karachi in C.P. No. D-5773 of 2016)

Constitution of Pakistan---

---Art. 25---Civil service---Salary---Discrimination, plea of---Distinct categories of employees---Salary and allowances of 'Workmen' and 'Officers/Executive staff' revised on basis of different criteria---Legality---Financial exigency did empower the employer to consider different yardstick for revision in the salary of different categories of its employees---All employees could not claim to be treated alike irrespective of their grades, domain and class---Clear distinction existed between the employees covered by the labour laws (i.e. workmen') and other statutory dispensation vis-a-vis employees in 'Executive and Officers' cadre---For good governance grouping by the employer of its employees serving in lower Basic Pay Scales into one category and those serving in higher Basic Pay Scales to another category for the purpose of granting greater monetary benefit, could not be challenged on ground of arbitrariness or unreasonable classification and as violative of Art. 25 of the Constitution.

Sail Ex-employees Association v. Steel Authority of India Ltd. and others 2010 (124) FLR 410; Muhammad Shabbir Ahmed Nasir v. Secretary, Finance Division, Islamabad 1997 SCMR 1026; Farman Ali v. State 1997 SCMR 1026 = 1997 PLC (C.S.) 903; V. Markendeya and others v. State of Andhra Pradesh and others (1989) 3 Supreme Court Cases 191; Ajay Hasia v. Khalid Mujib AIR 1981 SC 487 and E.P. Royappa v. State of Tamil Nadu AIR 1974 SC 555 ref.

Munir A. Malik, Senior Advocate Supreme Court, Ghulam Qadir Jatoi, Advocate-on-Record, Tariq Rehman, Head HR, Malik Nasir Ayaz, Head Legal and Zulfiqar Ali, Manager Legal for Appellant.

Abdul Mujeeb Pirzada, Senior Advocate Supreme Court for Respondents.

Date of hearing: 4th September, 2019.

ORDER

MUSHIR ALAM, J.---Instant appeal arises out of leave granting order dated 27.12.2018 against the judgment dated 26.11.2018 passed by High Court of Sindh at Karachi arising out of C.P. No.D-5773 of 2016 whereby the Appellant-House Building Finance Company Limited (HBFCL) through Managing Director etc was directed to include pay and allowances and the emoluments of the respondents in accordance with the increase in emoluments of the executive staff on the ground, inter alia, that there is no differentia between the two sets of employees of the Appellant-HBFCL and they are entitled for equal treatment in accordance with Article-25 of the Constitution of Pakistan, 1973.

2. Mr. Munir. A. Malik, learned Sr. ASC for the appellant submits that the learned Bench of the High Court misdirected itself while treating two different categories of employees i.e. 'Workmen' and 'Officers and Executives' at par. According to the learned ASC for the Appellant both the category of employees have different job descriptions, rights and obligations. The first category of employees enjoy right to 'Collective Bargain' as recognized by the statutory dispensation under Industrial Relation Act, 2012 whereas, no such statutory dispensation is available to the 'Officers and Executives' category of the employees. It was further urged that the salary structure of the appellant's Officers and Executives category is controlled by Regulation No.7.4.2 of the House Building Finance Corporation Service Regulation, 1957, which legal aspect was not appreciated by the learned Bench. It was next urged that the principle of classification as laid down in the case of Federation of Pakistan v. Agri-tech Limited and others (PLD 2016 Supreme Court 676) whereby the policy to subsidize fertilizer of a particular grade was approved and the same principle was applied, in the case of Appellant HBFC, policy while granting increase in the salary structure of 'Officers and Executives' cannot be claimed as a matter of right by the other set of employees of altogether different grades and class.

3. According to the learned Sr. ASC for the appellant there was a rational justification to distinguish between two categories of employees while implementing the policy as the increase in salary of the Officers and Executive cadre was directly linked with the performance of the Officers and Executives to intensify their work in order to take out the appellant from heavy losses. Had the appellant not implemented such a policy, it would have sunk and faced winding up and all the employees would have suffered substantially.

4. Mr. Munir A. Malik, learned Sr. ASC for the appellant besides the above case law has also relied on the judgment rendered by the High Court of Delhi titled as Sail Ex-employees Association v. Steel Authority of India Ltd. and others [2010(124)FLR410] to bring home the points as argued before us, which recognizes the principle that employees who were workmen constituted an altogether different class from the employees who were Managers and Officers, being members of the various executive cadres of the respondent-company. Para-9 of the judgment (Supra) reflects the stated position in following terms:

"Even otherwise, the employees who are workmen, constitute an altogether different class from the employees who are Managers and Officers, being members of various executive cadres of the respondent/ company. The pay structure,

allowances and service conditions of employees forming part of managerial/ officer cadres are altogether different from the pay structure, allowances and service conditions of employees constituting non-executive cadres. Those who belong to executive cadres get not only higher salary but also better allowances, more perks and more favourable service conditions. In fact, executive cadres and non-executive cadres are altogether different classes and cannot be compared with each other. Differential treatment based on intelligible differentia is permissible under the constitution so long as it has a reasonable nexus with the objective sought to be achieved in this behalf. Only those who are similarly situated are entitled to equal treatment. Since the employees forming part of managerial cadres belong altogether to a different class, they cannot claim, as a matter of right, the same treatment which is given to the non-executive employees on account of a binding agreement between them and the respondent company. Therefore, this is no violation of Article 14 of the Constitution in payment of gratuity to the Executive as per their statutory entitlements while paying gratuity to the non-executives in terms of the agreement between them and the management."

5. Mr. Abdul Majeed Pirzada, learned Sr. ASC for the respondents when confronted, though conceded that the nature of duty of both categories of employees are different nonetheless states that in past whenever there was revision in salary it was for all categories of employees irrespective of their cadres. He stressed that if there is an increase in inflation, it affects both the respondents and other categories of employees alike. Therefore, Article, 25 of the Constitution of Pakistan, 1973 requires that all employees should be dealt with in accordance with law and equality.

6. We have heard the arguments of the learned counsel for the parties and perused the record with their assistance. There is no cavil to the proposition that the Appellant-HBFCL Officers and Executive category form part of the managerial officer cadres and are responsible to implement/ execute the policy of extending loan and enforcing recoveries and it is their performance that matters for the prosperity and growth of the company. Other categories of employees who are not before us are merely menial or supportive staff neither having any say in the policy matters nor any role in extending and or recovery of loan process, which requires intelligent and effective field force comprising of the categories of the appellant belonging to executive officer class.

7. We have noted that the learned Bench of the High Court in para 12 of the impugned judgment after discussing a large number of cases came to a conclusion as noted in para-12 which reads as follows:

"On merits, the Petitioners' counsel vehemently emphasized that the Respondent have increased pay scales and allowances in respect of staff (clerical and non-clerical) of HBFCL with effect from 01.01.2016, whereas the same benefits have been denied to the Petitioners in violation of Article 25 of the Constitution. However the claim of the petitioners has been refuted by the management of HBFCL, who offered the petitioners to increase their salary with effect from 01.01.2019. In our view this classification made between the two categories of the employees of the respondent Company did not constitute intelligible differentia having rational nexus to the very object of the policy that must be objective and reasonable therefore the Respondent-Company has no legal justification to deny the petitioners the same relief as granted to the other staff of the Respondent-Company. Our view is supported by the decision rendered by the Hon'ble Supreme Court in the case of Federation of Pakistan v. Agri-tech Limited and others (PLD 2016 Supreme Court 676)."

To arrive at the conclusion as noted in para-12 as reproduced above, no rational basis has been identified as to how the 'Officers and Executive' cadre which does not enjoy a statutory protection of collective bargaining could be equated with the workmen cadre in service of HBFCL. We have also noted that Government of Pakistan in a recent fiscal year, 2019-2020 increased the salary from Grade-01 to Grade-16 employees and revision was ordered to the extent of 10% whereas for the Gazetted Officers of Grade-17 to Grade-20 the increase was only ordered to the extent of 05% and salary of BPS-21 and above was not increased. Even we have noted that no increase was considered in respect of the armed personnel on account of the financial crunch faced by the State of Pakistan. As such, financial exigency as has been expressed above, do empower the employer to consider different yardstick for revision in the salary of different categories of its employees. All employees cannot claim to be treated alike irrespective of their grades, domain and class. There is a clear distinction between the employees covered by the labour laws and other statutory dispensation vis-a-vis employees in 'Executive and Officers' cadre. This principle was so held in Sail Ex-Employees Association case (Supra). In a case reported Muhammad Shabbir Ahmed Nasir v. Secretary, Finance Division, Islamabad (1997 SCMR 1026) and Farman Ali v. State (1997 SCMR 1026 = 1997 PLC (C.S.) 903) it was held by this Court that grouping for good governance by the employer of its employees serving in BPS-01 to BPS-16 into one category and those serving in BPS-17 to BPS-22 to another category for the purpose of

granting greater monetary benefit, cannot be challenged on ground of arbitrariness or unreasonable classification and as violative of Article 25 of the Constitution.

8. Above proposition is also supported by the judgments rendered in the cases of V. Markendeya and others v. State of Andhra Pradesh and others (1989) 3 Supreme Court Cases 191, Ajau Hasia v. Khalid Mujib (AIR 1981 Supreme Court 487) and E.P Royappa v. State of Tamil Nadu (AIR 1974 Supreme Court 555).

9. In view of the foregoing, the impugned judgment dated 26.11.2018 is set aside and appeal is allowed. The above are the reasons for our short order dated 4.9.2019, which reads as follow:

"For the reasons to be followed, this appeal is allowed."

MWA/H-11/SC

Appeal allowed.



2020 S C M R 1689

Supreme Court of Pakistan]

Present: Gulzar Ahmed, C.J., Ijaz ul Ahsan and Qazi Muhammad Amin Ahmed, JJ

GOVERNMENT OF BALOCHISTAN through Chief Secretary Quetta and others---Appellants

Versus

Dr. MUHAMMAD TARIQ JAFAR and others---Respondents

Civil Appeals Nos. 429, 430 and 442 of 2020, decided on 20th August, 2020.

(Against the judgment dated 12.04.2019 passed by the Balochistan Service Tribunal, Quetta in Service Appeals Nos. 195 and 404 of 2017 and 326 of 2016)

(a) Limitation Act (IX of 1908)---

---S. 5---Constitution of Pakistan, Art. 185---Appeal to Supreme Court---Condonation of delay---Scope---Three appeals filed before the Supreme Court against the same judgment of the Service Tribunal---Two appeals barred by time, whereas one filed within time---Held, that admittedly one of the three appeals was filed within time---Further, important questions of law had been raised in the three appeals and in order to avoid legal complications and anomalous situations arising out of the judgment of the Tribunal being left intact in appeals which were barred by time and possibly setting aside the same in the appeal which was filed within time, a case had been made out for condonation of delay---Accordingly, applications for condonation of delay were allowed and the delay caused in filing the two appeals was condoned.

(b) Constitution of Pakistan---

---Art. 25---Civil service---Distinct and separate groups---Intelligible differentia---Orderly allowance and special additional pension in lieu of such orderly allowance after retirement ('allowances in question'), payment of---Doctors working in teaching cadre as Professors (BS-20) in Province of Balochistan not paid allowances in question, whereas, officers and employees of Grade-20 and above working in the Civil Secretariat of the Province of Balochistan, the Federal Government as well as the other Provinces (Punjab, Sindh and Khyber Pakhtunkhwa) paid the allowances in question---Whether the doctors were discriminated against---Held, that respondents by reason of their job descriptions, service structure, emoluments and allowances constituted a distinct and separate group of officers compared to the Secretaries and other officials placed in Grade-20 and above in Balochistan Civil Secretariat---Intelligible differentia existed between the two sets of officers which could easily be differentiated and such differentiation was clearly understood as logical and lucid and it was neither artificial nor contrived---Furthermore respondents had and continued to be adequately and sufficiently compensated by reason of special allowances which were specific and germane to their cadre and were not available to other civil servants despite the fact that such civil servants were working in BS-20 and above---Respondents had not been discriminated against as alleged by them and none of their rights guaranteed by the Constitution had been violated by reason of denial of the allowance in question.

Respondents were doctors working in teaching cadre as Professors (BS-20) and their grievance was that orderly allowance and special additional pension in lieu of orderly allowance was given to officers in Grade-20 and above who were working in the Civil Secretariat of the Province of Balochistan; that allowance in question had also been extended to Government employees in BS-20 and above working in the Federal Government as well as the Governments of the Provinces of Punjab, Sindh and Khyber Pakhtunkhwa, however, the respondents were singled out and discriminated against by denial of such allowance and pension. Respondents filed departmental representations which were not responded to. This prompted them to file Service Appeals before the Tribunal, which allowed their appeals vide the impugned judgment.

The respondents on the one hand and the civil servants including Secretaries and others placed in Grade-20 and above working in the Province of Balochistan Civil Secretariat on the other, could neither be placed in the same category nor were in the same classification in so far as they belonged to two totally different cadres, performed totally different functions, had different job descriptions and career progression channels. Such difference and classification based on such aspects could clearly and unambiguously be understood on the basis of an intelligible differentia.

By reason of different classifications and job descriptions, the respondents were receiving a number of additional allowances which were not paid to the Secretaries and other employees working in Grade-20 and above in Balochistan Civil Secretariat. Such Secretaries and others placed in Grade-20 and above working in Balochistan Civil Secretariat had not and could not claim the same additional allowances as were being paid to the respondents.

On the basis of different classifications, job descriptions, salary and allowances structure, a considered policy had been formulated by the Government of Balochistan on the basis of its own ground realities by incentivising various cadres with different allowances. Such policy decisions unless they were arbitrary, capricious and ex facie discriminatory or violative of constitutional guarantees and norms of justice could not be interfered with in exercise of powers of judicial review.

The facts and circumstances of the present matter did not admit of interference in policy matters and the Tribunal had not recorded any reasons or furnished any justification other than a perceived and an overly simplistic view and interpretation of the concept of discrimination to support its judgment.

The finding of the Tribunal that since the allowance in question was being paid to all civil servants working in Grade-20 and above in the Federal as well as other Provincial Governments, the respondents are also entitled to the same was clearly and patently in ignorance of the law laid down by the Supreme Court in its order dated 10-03-2015 passed in Civil Appeals Nos.46 and 47 of 2013 titled Government of Balochistan through Secretary Public Health Engineering Department, Quetta and others v. Muhammad Daud and others.

Finding of the Tribunal that there was no intelligible differentia was also ex facie erroneous and incorrect in so far as the

job descriptions, nature of job and qualifications, career structures and progression scheme of civil servants, Secretaries etc working in Balochistan Civil Secretariat was diametrically different from that of the respondents who were medical doctors and working in the teaching cadres as Professors. One could not be equated with the other, both constituted a different class and the concept of intelligible differentia between the two was clearly and patently discernable could be easily understood being logical and lucid and it was neither artificial nor contrived. There has been no discrimination against the respondents as alleged by them and held in the impugned judgment of the Tribunal and none of their rights guaranteed by the Constitution had been violated by reason of denial of the allowance in question.

Dr. Mobashir Hassan and others v. Federation of Pakistan and others PLD 2010 SC 265; Alleged Corruption in Rental Power Plants etc in the matter of Human Rights Cases Nos.7734-G/2009, 1003-G/2010 and 56712 of 2010, decided on 30th March, 2012 2012 SCMR 773 and Mehar Muhammad Nawaz v. Managing Director, Small Business Finance Corporation and 2 others 2009 SCMR 187 distinguished.

Each Province had its own ground realities, policies and priorities and freedom to formulate such policies as were permissible within the framework of the Constitution while maintaining provincial autonomy provided under the law and the Constitution. The policy subject matter of present appeals which had been framed by the Government of Balochistan was not in conflict with any provision of the Constitution or the law. Appeals were allowed and judgment of Service Tribunal was set-aside.

Ayaz Khan Swati, Additional A.G. Balochistan for Appellant.

M. Rauf Atta, Advocate Supreme Court for Respondents Nos. 1, 3 to 6 (in C.A. No. 429 of 2020).

Nemo for Respondents (in C.As. Nos. 430 and 442 of 2020).

Date of hearing: 20th August, 2020.

JUDGMENT

IJAZ UL AHSAN, J---Through this single judgment, we propose to decide Civil Appeals Nos. 429, 430 and 442 of 2020 as all three appeals are directed against the same judgment of the Balochistan Service Tribunal, Quetta ("the Tribunal") dated 12.04.2019.

2. At the very outset, it has been pointed out to us by learned counsel for the Respondents that leave to appeal in this case was granted subject to the question of limitation in view of the fact that two of the appeals i.e. Civil Appeal No.429 of 2020 and Civil Appeal No.430 of 2020 were barred by time. It is submitted by the learned counsel that the reasons disclosed in the applications (C.M.A. No.354-Q of 2019 and C.M.A. No.356-Q of 2019) for condonation of delay are not such as would constitute sufficient ground for the condonation sought. He has, therefore, prayed for dismissal of the appeals on the question of limitation.

3. However, the learned Additional Advocate General, Balochistan representing the appellants in these appeals submits that the Tribunal had heard the parties on 01.04.2019 and judgment was reserved. Apparently, the judgment was announced on 12.04.2019 without notice to the office of Advocate General, Balochistan and such announcement was not in the notice or knowledge of the Government of Balochistan. It was only when the Respondents sought implementation of the impugned judgment that the appellants gained knowledge of the same and immediately thereafter the petitions were filed. As such, these appeals from the date of gaining knowledge were within time. He has further argued that one of the appeals i.e. Civil Appeal No.442 of 2020 was filed within time. He relies upon a judgment of this Court reported as PLD 1975 SC 397 to argue that where a number of appeals are filed against the same judgment, some of which are within time and the others are hit by limitation, the policy of law has been to condone the delay in order to avoid legal complications and anomalous situations.

4. Having heard the learned counsel for the parties and going through the record, we find that admittedly one of the three appeals i.e. Civil Appeal No.442 of 2020 was filed within time Further, important questions of law have been raised in these appeals and in order to avoid legal complications and anomalous situations arising out of the judgment of the Tribunal being left intact in appeals which are barred by time and possibly setting aside the same in the appeal which is within time, a case has been made out for condonation of delay. Accordingly, C.M.A. No.354-Q of 2019 and C.M.A. No.356-Q of 2019 are allowed and the delay caused in filing Civil Appeals Nos. 429 and 430 of 2020 is condoned.

5. Briefly stated the facts necessary for disposal of the lis in hand are that the Respondents are Doctors by profession and were working in the teaching cadre as Professors (BS-20) in the Province of Balochistan. They felt aggrieved by denial of the financial benefit of orderly allowance and special additional pension in lieu of such orderly allowance after retirement. It was stated that orderly allowance and special additional pension in lieu of orderly allowance was given to officers in Grade-20 and above who were working in the Civil Secretariat of the Province of Balochistan. However, the same allowance was denied to the Respondents for no lawful reason or justification. It was further stated that non payment of such allowance to the Respondents was discriminatory and violative of the rights guaranteed to them under the Constitution of the Islamic Republic of Pakistan, 1973. It was pointed out that the allowance in question had been extended to Government employees in BS-20 and above working in the Federal Government as well as the Governments of the Provinces of Punjab, Sindh and Khyber Pakhtunkhwa. However, the Respondents were singled out and discriminated against by denial of a right being lawfully asserted by them. In this regard, the Respondents filed departmental representations which were not responded to. This prompted them to file Service Appeals before the Tribunal seeking the following relief:

"Declare that denial of orderly allowance and benefits attached with the same to the appellants by the respondents is discrimination and is in violation to the constitution as well as number of judgments of apex Court.

Declare that appellants are entitled for orderly allowance and pension benefits, which are being received by other officers of BPS-20 in Federal Government, sister provinces and administrative secretaries of Government of Balochistan.

Any other relief which this Hon'ble Court deems fit and proper may also be awarded in favour of the appellants, in the interest of justice."

The Tribunal allowed their appeals vide the impugned judgment dated 12.04.2019 which has been challenged before this Court through the instant Civil Appeals.

6. Leave to appeal was granted by this Court on 26.03.2020 in the following terms:

"We have heard the learned Additional Advocate General, Balochistan.

2. Subject to the limitation, leave to appeal is granted to consider whether the learned Balochistan Service Tribunal, Quetta (the Tribunal) was at all competent to grant the benefit of two Notifications dated 02.08.2016 and 22.09.2016 to the respondent and the said Notifications were not applicable to him; whether reasonable classification was made in the two Notifications and the Tribunal was not justified to impose its own will and grant the benefit from the public exchequer to the respondent, without such being available to him; whether the policy of other provinces or even that of the Federation could be applied to the province of Balochistan. The appeal stage paper books be prepared from the available record with permission to the parties to file additional documents, if any, within a period of one month. As the matter relates to service, office is directed to fix the same expeditiously preferably after three months."

7. The learned Additional Advocate General, Balochistan submits that the Tribunal has failed to take into consideration that orderly allowance and special additional pension in lieu thereof is paid under a policy of the Government of Balochistan incorporated in Balochistan Finance Manual, 2008 Volume-I. It is specially meant for those officers of Grade-20 and above who are serving at the Balochistan Civil Secretariat and have opted for orderly allowance in lieu of residence orderly. For officers of Grade-20 and above who do not work in the Balochistan Civil Secretariat and render services in the field, orderly allowance is neither provided under the rules nor the policy. As such, the findings of the Tribunal to the effect that all officers serving in Grade-20 and above are paid the said allowance are ex facie and patently incorrect. He further maintains that the appeals filed by the Respondents were patently barred by time in so far as the allowance in question has been paid since 1986 to civil servants in Grade 20 and above working in the Balochistan. Civil Secretariat and throughout the duration of their service, the Respondents never claimed or challenged the same to eligible officers working in the Civil Secretariat of Balochistan. It was only at the end of their careers that they raised this issue by way of departmental appeals which were clearly and obviously barred by time. He further submits that the Respondents being medical professionals are paid a number of allowances including Health Professional Allowance, Non Practicing Allowance, Rural incentive Allowance and Basic Medical Science Allowance, etc. None of these allowances are paid to other employees of the Provincial Government notwithstanding their grades. He further maintains that the said allowances are most certainly not paid or payable to the officers in Grade-20 and above working in the Balochistan Civil Secretariat. The learned Law Officer further maintains that the Tribunal has exceeded its jurisdiction by incorrectly interpreting the provisions of Article 25 of the Constitution of Pakistan and such interpretation is clearly against the interpretation of said Article given by this Court in various pronouncements on the subject. He finally submits that reliance by the Tribunal on *Mehar Muhammad Nawaz v. Warming Director Small Business Finance Corporation and 2 others* [2009 SCMR 187] is misplaced and totally out of context.

8. Learned counsel for the Respondents on the other hand has defended the impugned judgment. He maintains that the Respondents have clearly been discriminated against in so far as similarly placed civil servants working in the Federal as well as the Provincial Governments a Punjab, Sindh and Khyber Pakhtunkhwa have been granted similar allowance but the Respondents have been denied the said benefit. He further submits that the Respondents as well as the Secretaries working in the Balochistan Civil Secretariat are placed in Grade-20 and above. Consequently, they constitute one class and should enjoy equal pay and allowances. He has however candidly admitted that the Secretaries and other officers placed in Grade-20 and above in Balochistan Civil Secretariat cannot claim the additional allowances which are received by the Respondents by virtue of the posts held by them as doctors working in the teaching cadre.

9. We have heard the learned counsel for the parties and have gone through the record with their assistance. The basic and fundamental question raised by the Respondents before the Tribunal was that they were being discriminated against in so far as despite being in Grade-20 and at par as far as their grades and basic emoluments were concerned with Secretaries working in the Balochistan Civil Secretariat, they were being deprived of orderly allowance and special additional pension in lieu of the orderly allowance after retirement. This, according to the Respondents was discriminatory treatment, violative of the fundamental rights guaranteed to them under the Constitution of Pakistan. The Tribunal agreed with the stance taken by the Respondents and in this respect cited a number of judgments of this Court including *Dr. Mobashir Hassan and others v. Federation of Pakistan and others* (PLD 2010 SC 265), *Alleged Corruption in Rental Power Plants etc. in the matter of Human Rights Cases Nos.7734-G/2009, 1003-G/2010 and 56712 of 2010*, decided on 30th March, 2012 (2012 SCMR 773) and *Mehar Muhammad Nawaz v. Managing Director, Small Business Finance Corporation and 2 others* (2009 SCMR 187).

10. The second foundational argument on which the Tribunal based its judgment was a finding that officers in Grade-20 and above working in the Federal as well as the Provincial Governments of Punjab, Sindh and Khyber Pakhtunkhwa were receiving financial benefits of orderly allowance and special additional pension in lieu of the orderly allowance after retirement and therefore the Respondents were being discriminated against by reason of non payment of the same allowance to them which was being paid to similarly placed officers in the Federal and other Provincial Governments. The Tribunal also came to the erroneous conclusion that the Respondents were similarly placed and in the same category as Secretaries and other employees of the Provincial Government placed in Grade-20 and above working in the Balochistan Civil Secretariat.

11. As far as the question of discrimination is concerned, the findings of the Tribunal are erroneous and incorrect for the following reasons:

a) The Respondents on the one hand and the civil servants including Secretaries and others placed in Grade-20 and above working in Balochistan Civil Secretariat on the other hand can neither be placed in the same category nor are in the same

classification in so far as they belong to two totally different cadres, perform totally different functions, have different job descriptions and career progression channels. Such differences and classification based on these aspects can clearly and unambiguously be understood on the basis of an intelligible differentia.

- b) There is no denial of the fact and has candidly been admitted even by the learned counsel for the Respondents before us that by reason of different classifications and job descriptions, the Respondents are receiving a number of additional allowances which are not paid to the Secretaries and other employees working in Grade-20 and above in Balochistan Civil Secretariat. There is also no denial of the fact that such Secretaries and others placed in Grade-20 and above working in Balochistan Civil Secretariat have not and cannot claim the same additional allowances as are being paid to the Respondents.
- c) On the basis of different classifications, job descriptions, salary and allowances structure, a considered policy has been formulated by the Government of Balochistan on the basis of its own ground realities by incentivising various cadres with different allowances. Such policy decisions unless they are arbitrary, capricious and ex facie discriminatory or violative constitutional guarantees and norms justice cannot be interfered with in exercise of powers of judicial review.
- d) The facts and circumstances of the instant matter did not admit of interference in policy matters and the Tribunal has not recorded any reasons or furnished any justification other than a perceived and an overly simplistic view and interpretation of the concept of discrimination to support its judgment.
- e) The finding of the Tribunal that since the allowance in question is being paid to all civil servants working in Grade-20 and above in the Federal as well as other Provincial Governments, the Respondents are also entitled to the same is clearly and patently in ignorance of the law laid down by this Court in its order dated 10.03.2015 passed in Civil Appeals Nos.46 and 47 of 2013 titled Government of Balochistan through Secretary Public Health Engineering Department, Quetta and others v. Muhammad Daud and others, wherein it was held as follows:

"The learned Service Tribunal has proceeded on a premise that in other Provinces, Planning Officers have been upgraded to BS-17. This, however, is not a valid reason for holding that the respondents are being discriminated against. We may note that under the Constitution, Pakistan is a Federation and each Federating Unit, within its own domain, is entitled to make rules and regulations for its employees as well as their terms and conditions of service. This is the natural underpinning of a federal system because each Province is aware of its own circumstances and budgetary constraints etcetera. Therefore, the employees of one Province cannot claim terms and conditions which have been granted to the employees of other Provinces on the plea that they are being discriminated against."

- f) The finding of the Tribunal that there is no intelligible differentia is also ex facie erroneous and incorrect in so far as the job descriptions, nature of job and qualifications, career structures and progression scheme of civil servants, Secretaries etc working in Balochistan Civil Secretariat is diametrically different from that of the Respondents who are medical doctors and working in the teaching cadres as Professors. One cannot be equated with the other, both constitute a different class and the concept of intelligible differentia between the two is clearly and patently discernable can be easily understood being logical and lucid and it is neither artificial nor contrived. Although the Tribunal has referred to the judgment of this Court reported as Dr. Mobashir Hassan and others v. Federation of Pakistan and others (PLD 2010 SC 265) unfortunately it has neither understood the ratio of the said judgment nor applied it correctly to the facts and circumstances of the present case.

12. We have also carefully examined two other judgments relied upon by the Tribunal in the impugned judgment namely Alleged Corruption in Rental Power Plants etc in the matter of Human Rights Cases Nos.7734-G/2009, 1003-G/2010 and 56712 of 2010, decided on 30th March, 2012 (2012 SCMR 773) and Mehar Muhammad Nawaz v. Managing Director, Small Business Finance Corporation and 2 others (2009 SCMR 187). The first judgment relates to interpretation of the Constitution and the word "life" occurring in Article 9 of the Constitution. We have not been able to understand or appreciate the relevance of the excerpt from the judgment reproduced by the Tribunal in its judgment to the facts and circumstances of the present case.

13. Likewise, we have carefully gone through the judgment of this Court reported as Mehar Muhammad Nawaz v. Managing Director, Small Business Finance Corporation and 2 others (2009 SCMR 187). This judgment relates to conversion of penalty of dismissal from service into compulsory retirement of a civil servant who had died during pendency of his appeal and entitlement to pensionary benefits of the legal heirs. Although there is reference to the principle of non-discrimination and the constitutional safeguard of equality before law, the same is in a totally different context. How the said judgment is relevant and advances the case of the Respondents is a question we have not been able to answer from the impugned judgment nor the learned counsel for the Respondents has been able to shed light on the relevance of the ratio of the said judgment in the present case.

14. On the basis of material examined by us and the arguments advanced by learned counsel for the parties before us, we find that the Respondents by reason of their job descriptions, service structure, emoluments and allowances constitute a distinct and separate group of officers compared to the Secretaries and other officials placed in Grade-20 and above in Balochistan Civil Secretariat. There is an intelligible differentia between the two sets of officers which can easily be differentiated and such differentiation is clearly understood as logical and lucid and it is neither artificial nor contrived. We therefore find that there has been no discrimination against the Respondents as alleged by them and held in the impugned judgment of the Tribunal and none of the rights guaranteed by the Constitution to the citizens of Pakistan have been violated by reason of denial of the allowance in question to the Respondents for the reasons enumerated above.

15. We also find that the mainstay of the impugned judgment namely payment of similar allowance to all officers working in Grade-20 and above in other Provinces is neither supported by the record nor does it constitute discrimination on account of the

fact that this Court has already settled the question by observing that each Province has its own ground realities, policies and priorities and freedom to formulate such policies as are permissible within the framework of the Constitution while maintaining provincial autonomy provided under the law and the Constitution. The policy subject matter of these appeals which has been framed by the Government of Balochistan has not been found by us to be in conflict with any provision of the Constitution or the law. We also find that the Respondents have and continue to be adequately and sufficiently compensated by reason of special allowances mentioned above which are specific and germane to their cadre and are not available to other civil servants despite the fact that such civil servants are working in BS-20 and above.

16. It would be an absurd argument if it is stated that although the Respondents can claim all allowances irrespective of their nature or tenor which are received by the Secretaries and other civil servants in Grade-20 and above who are working in Balochistan Civil Secretariat but such officers cannot reciprocatively claim the said allowances that are received by the Respondents. This absurdity can easily and logically be resolved by the principle of classification of the two groups and treating them as distinct and separate parts of one whole service but at the same time, structuring their allowances in a manner which would commensurate with the actual work performed by such set of civil servants. Even otherwise, as noted above, the Provincial Government is within its legal and constitutional power to formulate its employment policies and the argument of discrimination raised by the learned counsel for the Respondents on the ground that other Provinces had different terms and conditions, pay and allowances structure is not available to the civil servants of a particular Province.

17. Finally, the learned counsel for the Respondents has not been able to explain the issue of limitation despite being confronted with the proposition that the allowance in question has been paid since 1986, the Respondents have been aware of such allowance for a long period of time despite being in Grade-20 but have challenged the same when they had retired or were nearing retirement by way of service appeals filed in the year 2016. Perusal of the impugned judgment of the Tribunal shows that it is not well reasoned and some reasons which have been given have neither been found by us to be persuasive nor do they meet the standards of logical legal reasoning appropriate for interpretation of the constitutional provisions. We are therefore in no manner of doubt that the impugned judgment passed by the Tribunal is not sustainable.

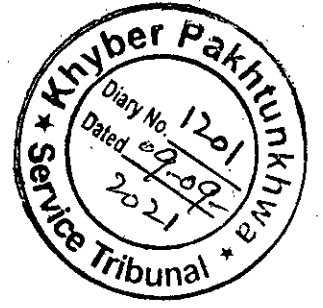
18. For reasons recorded above, we allow these appeals and set aside the impugned judgment of the Tribunal dated 12.04.2019.

MWA/G-10/SC

Appeals allowed.

To

The Hon'ble Chairman
Khyber Pakhtunkhwa Service Tribunal
Peshawar.



Subject: APPLICATION FOR PROVISION OF SHORT ORDER(S) IN SERVICE APPEAL NO. 12889/2020 TITLED MR. JALAL-UD-DIN ALONGWITH 9000+ OTHERS CLUBBED CASES -VS- GOVT. OF KHYBER PAKHTUNKHWA.

Respectfully Sheweth,


Respondents submit as under:-


1. That the titled case alongwith the other clubbed cases (round about 9000+) have been decided by this Hon'ble Tribunal vide judgment dated 12.07.2021.
2. That titled cases have been taken up with Law department for filing CPLA which have been declared them fit cases for filing of CPLA before the Supreme Court of Pakistan.
3. That the undersigned collected certified copies the judgment dated 12.07.2021 from the record room and submitted before Advocate on Record Office for further action
4. That the AOR office returned the case with the observation that a short order in all other connected cases (round about 9000+) be provided for filing of CPLA, otherwise CPLA will not be filed.

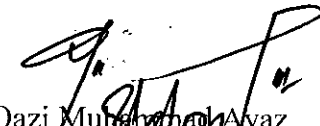
In view of the above, it is humbly prayed that on acceptance of this application provide/issue short order in all cases (round about 9000+) for onward submission in the office of AOR for filing CPLA before the Supreme Court of Pakistan.

Yours Obediently

Dated: 09.09.2021


9/9/21
Saleem Khan
SO (Litigation) E&SE


Dr. Hayat Khan
Assistant Director E&SE


Qazi Muhammad Ayaz
Litigation Officer
HED

ORDER

27.05.2021

Application for early hearing has been put up by the Reader with file. Counsel for the appellant present and heard.

Learned counsel for the appellant seeks early hearing of Appeals No. 13797/2020 and 38 others. It has been brought into the notice of this Bench that this appeal pertains to grievance of the appellant relating to grant of Conveyance Allowance and thousands of similar appeals are pending before this Tribunal at preliminary hearing stage. It would result in abuse of the process of Tribunal, if the similar appeals are separately heard despite being the similarity of claim in all the appeals. Therefore, it would be in the fitness of things to club all appeals with one the oldest in order of chronology in light of the time of institution. The Worthy Registrar of this Tribunal has been called and assigned the duty that list of all the appeals be prepared in chronological order and all the appeals be clubbed with the oldest one, and be submitted for preliminary hearing before this Bench on 18.06.2021, irrespective of the previous dates given on the diary. This application is disposed of accordingly.


Chairman