

25th Oct., 2022

Counsel for the appellant present. Mr. Naseerud Din Shah, Assistant Advocate General alongwith Munawar Khan, ADEO for respondents No. 1 to 3 present.

Respondents have not submitted reply/comments.

Learned Assistant Advocate General sought adjournment.

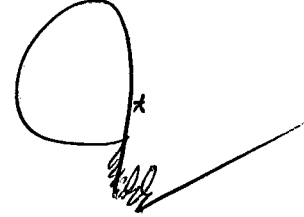
Another
~~is~~ chance is given to the respondents. Fresh notice be issued to respondent No. 4 through registered post. To come up for reply/comments on 15.11.2022 before S.B.


(Fareeha Paul)
Member(E)

13.07.2022

Learned counsel for the appellant present. Mr. Kabirullah Khattak, Additional Advocate General alongwith Mr. Munawar Khan ADEO for the respondents present.

Reply/comments on behalf of respondents not submitted. Representative of the respondents seeks time to submit reply/comments. Adjourned. To come up for reply/comments on 14.09.2022 before S.B.



(MIAN MUHAMMAD)
MEMBER (EXECUTIVE)

14th September, 2022

Counsel for the appellant present. Mr. Naseerud Din Shah, Asstt. AG alongwith Munawar Khan, ADEO for the respondents present.

Learned AAG requested for further time to submit reply/comments. Last chance is given. To come up for written reply/comments on 25.10.2022 before S.B.

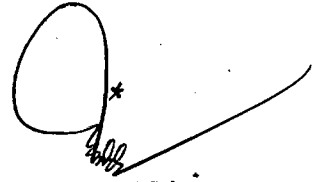


(Kalim Arshad Khan)
Chairman

18.10.2021

Clerk of learned counsel for the appellant present.

Former requests for adjournment due to general strike of the Bar. Adjourned. To come up for preliminary hearing before the S.B on 21.12.2021.



(MIAN MUHAMMAD)
MEMBER (E)

21.12.2021

Junior to counsel for appellant present.

File to come up alongwith connected Appeal No.7074/2021 on 15.02.2022 before S.B.



(Rozina Rehman)
Member (J)

15.02.2022

Due to retirement of the Worthy Chairman the Tribunal is defunct, therefore, case is adjourned to 10.05.2022 for the same as before.



Reader

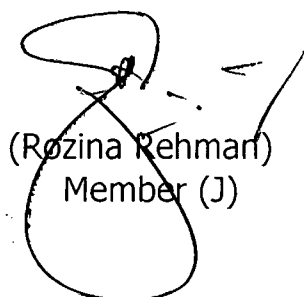
10.05.2022

Appellant present through counsel. Preliminary arguments heard. Record perused.

Points raised need consideration. Instant appeal is admitted for regular hearing subject to all legal objections with direction to appellant to deposit security and process fee within 10 days. Thereafter, notices be issued to respondents for reply/comments. To come up for written reply/comments on 13.07.2022 before S.B.

Rs-600/-
Appellant Deposited
Security & Process Fee

Handwritten signature
18/5/22



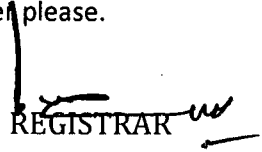


(Rozina Rehman)
Member (J)

Form- A

FORM OF ORDER SHEET

Court of _____

Case No.- 2077 /2021

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1-	19/07/2021	<p>The appeal of Mst. Gul Hareena resubmitted today by Mr. Muhammad Amin Ayub Advocate may be entered in the Institution Register and put up to the Worthy Chairman for proper order please.</p> <p style="text-align: right;"> REGISTRAR</p> <p>This case is entrusted to S. Bench for preliminary hearing to be put up there on <u>03/09/21</u>.</p> <p style="text-align: right;"> CHAIRMAN</p>
	03.09.2021	<p>Counsel for the appellant present.</p> <p>Learned counsel for the appellant requested for adjournment on the ground that he has not made preparation for arguments. Adjourned. To come up for preliminary hearing before the S.B on 18.10.2021.</p> <p style="text-align: right;"> (MIAN MUHAMMAD) MEMBER (E)</p>

The appeal of Mst. Gul Hareena Caller GGPS Mughal Baz District Khyber received today i.e. on 06.07.2021 is incomplete on the following score which is returned to the counsel for the appellant for completion and resubmission within 15 days.

- 1- The authority to whom the departmental appeal was made/preferred has not been arrayed a necessary party.
- 2- Annexure-G of the appeal is illegible which may be replaced by legible/better one.


No. 1168 /S.T,

Dt. 07/07 /2021


REGISTRAR
SERVICE TRIBUNAL
KHYBER PAKHTUNKHWA
PESHAWAR.

Mr. M. Amin Ayub Adv. Pesh.

That after merger of the FAIA through 25th amendment the respondent No 2 is correctly arrayed as a party.


17/7/21

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 2077/2021

Gul Hareena Appellant

Versus

The Govt. of KPK and others Respondents

INDEX

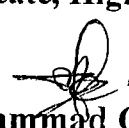
S.No.	Description of Documents	Date	Annexure	Pages
1.	Memo of Service Appeal with Affidavit			1-5
2.	Press-Clipping	09.03.2021	A	6
3.	Affidavit		B	7
4.	Service Certificate		C	8
5.	Judgment in W.P No.6652/2018	15.05.2019	D	9-13
6.	Order in COC No.599/2019	20.08.2019	E	14-19
7.	Letter	05.07.2019	F	20
8.	Inquiry Report	18.01.2020	G	21-22
9.	Order in COC No.213/2020	16.06.2020	H	23-25
10.	Departmental Appeal	11.03.2021	I	26-27
11.	Wakalat Nama			

Through

Appellant


Muhammad Amin Ayub
Advocate, High Court

&


Muhammad Ghazanfar Ali
Advocate, High Court

4-B, Haroon Mansion
Khyber Bazar, Peshawar
Off: Tel: 091-2592458
Cell # 0313-9040434

Dated: 06 /07/2021

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. _____/2021

Mst. Gul Hareena

W/o Sher Mir (Caller) GGPS Mughal baz,

District Khyber.....**Appellant**

VERSUS

1. **The Govt. of Khyber Pakhtunkhwa**
through Secretary,
Elementary & Secondary Education,
Civil Secretariat, Peshawar.
2. **The Director Education,**
Elementary & Secondary Education,
Khyber Pakhtunkhwa, Peshawar.
3. **The District Education Officer (Female),**
District Khyber
4. **The District Accounts Officer,**
District Khyber at Jamrud.....**Respondents**

SERVICE APPEAL UNDER SECTION 4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNALS ACT, 1974 WHEREBY DEPARTMENTAL APPEAL DATED 11.03.2021 FILED BY THE APPELLANT TO RESPONDENT NO.2 FOR RELEASING OF THE SALARIES FROM DECEMBER 2015 TILL AUGUST 2019 HAS NOT BEEN RESPONDED WITH IN THE STATUTORY PERIOD OF 90 DAYS.

PRAYER:

On acceptance of the instant appeal, the Respondents may kindly be directed to release the outstanding salaries of the appellant with effect from December, 2015 to August, 2019 with any other relief as deemed appropriate in the circumstances of case not specifically asked for, may also be granted to appellant.

Respectfully Sheweth,

Facts giving rise to the present appeal are as under:-

1. That the appellant got appointed as Class-IV employee on 08.02.2008 and was adjusted against the post of Caller in the Govt. Girls Primary School, Mughal Baz, Ekka khel, District Khyber. It is adduced here that from the very inception applicant has been discharging her duties to the entire satisfaction of her superiors.
2. That during the era of Talibanization i.e. 2009 to 2015 all Educational Institutions were either demolished or were non-functional which caused the ultimate damage to the learners and teachers in different aspects owing to subvert activities of the Tehreek-e-Taliban. Since the District Khyber was the most volatile area where all kinds of activities including Government Schools were closed, as is evident from the Press-Clipping dated 09.03.2021 (*Annex:-A*), albeit appellant continued performing her duties as is evident from the Affidavit (*Annex:-B*) which fact was also conceded by the concerned quarter vide Service Certificate (*Annex:-C*) and verified that the appellant had been performing her duties from the month of December 2015 till August 2019 but the salaries could not be paid owing to the cited circumstances. It would be significant to allege here that in the year 2015 the Government writ was maintained and all the institutions were re-opened.
3. That appellant was quite hopeful regarding releasing of her due salaries. As appellant was assured that her salaries would be released soon but the matter was kept pending without any legal justification, inspite of the fact that appellant had been performing her duties during that crucial period. It is advantageous to elaborate here that utter discrimination has been meted out towards the appellant by Respondent No.3 that even salaries were paid to those Government employees who did not perform their duties during that period which is clear depreciation of Article 25 & 27 of Constitution of Islamic Republic of Pakistan, 1973. Appellant time and again visited the concerned office for payment of her due/outstanding salaries but they turn the deaf ear where-after a series of written requests were also moved by the appellant but to no avail.
4. That appellant was constrained to invoke the jurisdiction of the Hon'ble Peshawar High Court in W.P No.6652/2018 which was put on hearing on 15.05.2019 and adjudicated (*Annex:-D*) in the following terms:-

“Waheedullah ADFO, Bara present in court candidly stated that petitioners are serving as regular employees of the respondents and they will be paid their salary. As such, this petition is allowed and respondents are directed to pay the monthly salary to the petitioners”.

After procuring the attested copy of the judgment *ibid*, the same was provided to the Respondent No.3, for implementation but in spite of the commitment made by the Representative at the bar, the salaries of the appellant could not be released which led to COC No.599/2019 which was decided on 20.08.2019 (*Annex:-E*) by virtue of office letter dated 05.07.2019 (*Annex:-F*) whereby the salary of the appellant was released, however, unpaid salaries were not paid to her, despite the same that appellant had been performing her duties which fact was categorically acceded to by the Respondents.

5. That it is Significant to expound here that later on an inquiry was conducted (*Annex:-G*) by the Inquiry Officer Mr. Muhammad Zahid, Vice Principal, Govt. High School Kohi Sher Haider, Bara, to probe into the matter of the outstanding salaries of the appellant who concluded the same on the following term:-

“Persons under Inquiry or serving in education department NMD (District Khyber). It is evident from their record that they have been rendering their service regularly in this department. The court verdict reveals the fact that the ADEO Bara Mr. Waheedullah has candidly stated that Petitioners (All of the employees under inquiry) are serving as regular employees of Respondents i.e. Education Department, District Khyber, and they will be paid their salaries but the court decision does not clearly mention about the back benefit i.e. arrears to be paid.

Recommendations :-

As the employees have been recognized as “Regular Employees” of the Education Department by District Education Officer, Khyber, therefore, the arrears of the period for which they did not get any salary may please be paid as per rule.

5. That thereafter appellant was hopeful that her salaries would be released as she was regularly performing her duties therefore, was entitled to be paid the arrears of salaries w.e.f. December 2015 till August 2019 would also be

paid but to the utter bewilderment of the appellant the same was refused. Eventually, appellant again knocked the door of the Hon'ble Peshawar High Court, Peshawar in COC No. 213/2020 for implementation of the judgment dated 15.05.2019. The Department was served upon Notices who appeared and resultantly the COC was disposed of on 16.06.2020 (*Annex:-H*) wherein appellant plea was considered to be genuine but appellant was directed to approach this Hon'ble Tribunal

6. That thereafter appellant availed the remedy of Rule-3 of Appeal Rules, 1986 and preferred Departmental Appeal dated 11.03.2021 (*Annex:-I*) before Respondent No.2 for grant of arrears of salaries w.e.f. December, 2015 to August, 2019 but the same was not disposed of within the statutory period of 90 days, hence appellant being aggrieved of the acts and omissions of the Respondents/Department prefers this Service Appeal inter-alia on the following grounds:-.

Grounds:

- A. **That** the appellant has not been treated fairly, justly as the District Education Officer, Khyber unlawfully refused her request for the payment/release of outstanding salary without any cogent reason because appellant performed her duties without any interruption, therefore, she had to be paid the salaries but she was unlawfully deprived of her lawful right of salary which is not sustainable in the eye of the law and is against natural justice.
- B. **That** it is a well settled principle of law that salary of an employee cannot be stopped even during the course of her suspension from service, despite the fact that appellant performed her duties with utmost devotion but still the salaries of appellant had illegally been stopped, which amounts to forced labour, therefore, Respondent No.3 has acted in violation of Article-11 of the Constitution of the Islamic Republic of Pakistan, 1973.
- C. **That** appellant has been serving the Department to the best of her capabilities with unblemished service record. Even the high-ups admired the performance of the appellant and throughout her service no complaint whatsoever has ever been lodged against her, thus the refusal of


Respondents to pay her salaries is without any legal justifications is totally deviation from law, hence not sustainable in the eye of law.

- D. **That** the writ petition of the appellant was allowed on the commitment of the Respondents/Department wherein they stated at the bar that appellant is a regular employee of the Department and has been discharging her duties w.e.f. December 2015 till August 2019, which did not left any room to pay the due salaries of the appellant.
- E. **That** under the law an employee cannot be deprived from her salary which amounts to usurp bread from the mouth of a poor employee and her family. The foundation of the Constitution of Islamic Republic of Pakistan, 1973 is based upon the non-exploitation and equality of citizens, thus, appellant was highly exploited by not paying the due/outstanding salaries which is sheer violation of Article-11 of the Constitution. Moreover, the Department applied a different yard stick and paid salaries to other employees of Respondent No.3 while the appellant was singled out which is also against the principle of natural justice.
- F. That appellant would like to offer some other grounds during the course of arguments.


It is, therefore, humbly prayed that the instant appeal may graciously be accepted as prayed for above.

Appellant

Through


Muhammad Amin Ayub,
Advocate, High Court

&


Muhammad Ghazanfar Ali,
Advocate, High Court

Dated: 06/07/2021

Affidavit

I, Jan Muhammad S/o Yara Jan, Chowkidar, GGPS Mughal Baz, District Khyber, do hereby solemnly affirm and declare on oath that the contents of this Appeal are true and correct to the best of my knowledge, and nothing has been concealed from this Hon'ble Tribunal.

Deponent

Doc "A"

6

Tuesday

March 9, 2021

Rajab 24, 1442 A.H.

18 pages
Price Rs. 2500

NATIONAL 3

School at Durand Line reopens after 7 years closure

Ashrafuddin Pirzada

He said the school had suffered damage due to its long closure. He said they would start construction work soon and construct extra rooms in the school. "Initially, both boys and girls can be enrolled in the school as there are no separate schools in the nearby locality", said ADEO Shalmani.

He requested the officials to release the allocated funds at the earliest so that they could start the reconstruction and renovation work.

Misal Khan said the security forces officials at the request of the Education Department had issued the clearance to reopen the school. He said sector commander north had ordered the reopening of the school.

Commandant Colonel Suhail Tanveer and Major Aamir said peace had been restored in Loey Shalman border areas and the security forces had done fencing to block the terrorists' movement.

Misal Khan Shalmani said Rs.09 million had been allocated in the current year's funding to the school.

THE NEWS INTERNATIONAL

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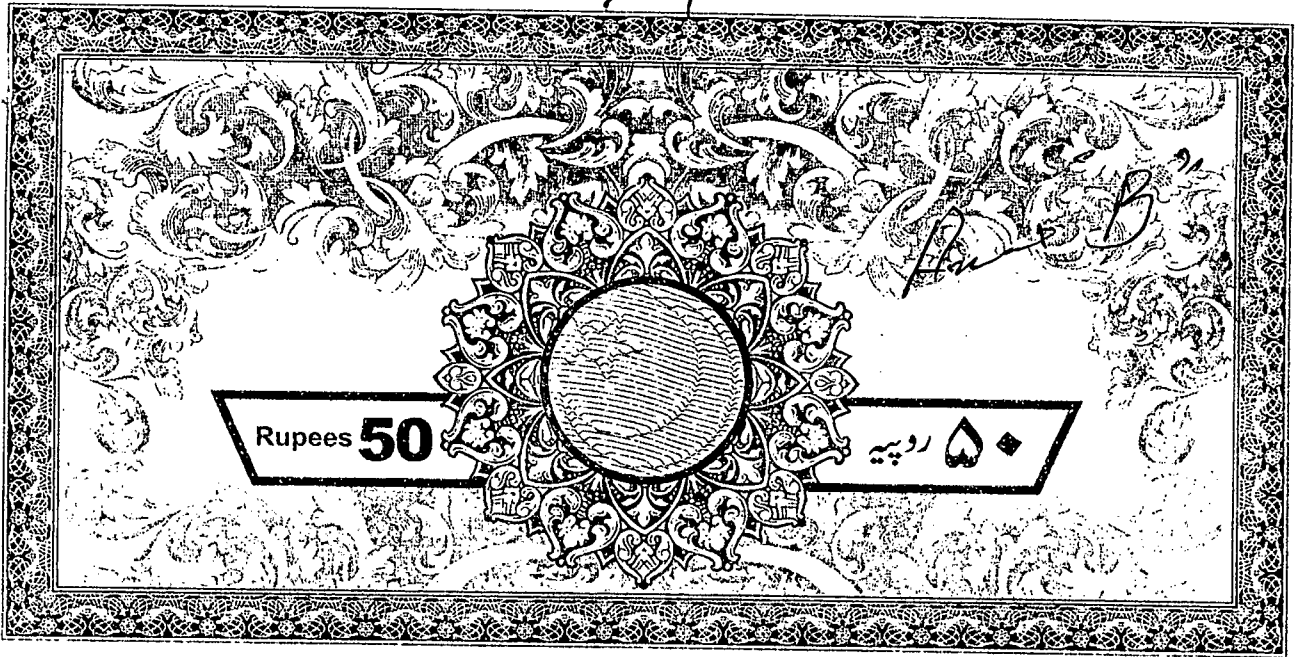
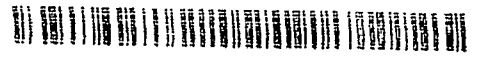
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9



بیانِ خلفی

میں نے گلہا رینز زونڈ شریسر، کالمر آف جی جی جی ایس مفل بازار ایچ
 خدمات ایسٹن کمریج سے سرایا لارڈ زونڈی ریلوں اور
 میری شخواہ دسمبر 2019 سے لے کر اگست 2019 تک لڈی
 اور ان سے 2019 میں جاری کردہ 4 لڈی ایس
 سٹین بائی حکارتہ شخواہ ایس دسمبر 2019 سے لے کر اگست 2019
 تک بھی جاری کردہ 4 لڈی ایس

میں نے بیانِ خلفاً دینی ہو گا

شناختی کارڈ 4
21201-9662500-0

دراخواست گزار
گلہا رینز

She is serving
her nationality

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2025
2025
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20/11/2018

تقدیمی بیان

میں محبت پیدائش آف جی جی پی ایس مغل بادہ
بادہ اکاؤنٹ کٹر پری بنون دیتے ہیں کہ جان محمد
چولیدار اور گل حسرتہ کالر درجہ بالا سکول میں
اعسن لم پچے سے خدمات سرانجام دے رہے ہیں
ہذا خدمات کی بنیاد پر انکے بند نخواستہ جاری
کیا جائے۔

عمری تقدیمی بیان کی بنیاد پر قانونی طور پر
انکے نخواستہ جاری کرنے میں معاونت کی جائے
درجہ بالا ملازمین کی نخواستہ دسمبر 2018 سے بند پورے سے

District Khyber
CPD, Mughalbad
Belh

c

BEFORE THE PESHAWAR HIGH COURT, PESHAWAR



W.P No. 6652 /2018

1. Gul Harina W/o Sher Mir Khan R/o Miran Talab Aka Khel Bara District Khyber presently at Caller of Govt Girls primary School Mughal Baz Eka Khel Bara District Khyber.

2. Jan Muhammad S/o ^{Ya}Jan R/o Mughal Baz Aka Khel Bara District Khyber, presently Chowkidar in Government Girls Primary School Mughal Baz Eka Khel Bara District Khyber.

.....Petitioners

VERSUS

1. Secretary Education for Government of Khyber Pakhtunkhwa Peshawar.
2. Additional Chief Secretary (FATA) Warsak Road Peshawar.
3. Director Education FATA Newly Merged District (NMD) Warsak Road Peshawar.
4. DEO District Khyber.

.....Respondents

WRIT PETITION UNDER ARTICLE 199
OF THE CONSTITUTION OF ISLAMIC
REPUBLIC OF PAKISTAN 1973 READ
WITH OTHER ENABLING PROVISIONS
OF LAWS APPLICABLE IN THE
MATTER, TO ISSUE APPROPRIATE
WRIT AGAINST THE RESPONDENTS TO
RELEASE THE MONTHLY PAYABLE
SALARIES OF BOTH THE PETITIONERS
OF PREVIOUS 37 MONTHS, LYING
REMAINED UNPAID TILL DECEMBER

ATTESTED
EXAMINER
Peshawar High Court

ATTESTED
EXAMINER
Peshawar High Court

120 -11-

G R O U N D S:

A. That the act of the respondents with regard to non payments of the payable salaries amount of approximately 96 months, lying remained unpaid since January 2011, are quit illegal, unlawful, unjust, unfair not warranted by any regulations ab-initio, not sustained in the eye of law hence liable to be strictly intervene.

B. That the petitioners have been treated by the respondents against the law and they were also willfully be deprived from their legal rights of monthly salaries, protected under the equal protection of law as guaranteed by Article 4 and 25 of Constitution of Islamic Republic of Pakistan, thus committed gross exploitation.

C. That it is the set precedents of the Hon'ble Apex courts of Pakistan in such like matters that no one can be deprived from the relaxation and facilitation of the monthly salary particularly of the government reply, it has further suggested that since the whole family of any such like aggrieved is relying upon the monthly salary therefore for to quash the daily routine hardships, their right cannot be snatched on any ground.

ATTESTED
EXAMINER
Peshawar High Court

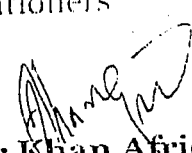
D. That any other ground will be taken at the time of argument with the kind permission of their Hon'ble Court.

(41)

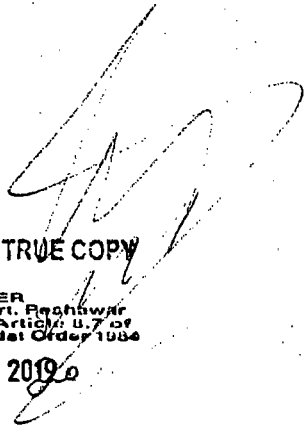
19

It is therefore most humbly prayed that on acceptance of their writ petition the appropriate writ may graciously pleased be issued to the respondent to release the monthly salaries of both above petitioners i.e. 96 months, yet remained unpaid since January 2011.

Through Petitioners



Jahangir Khan Afridi
Advocate, High Court
Peshawar

Date: 19-12-18


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EXAMINER
Peshawar High Court, Peshawar
Authorised Under Article 47 of
The Quinine-Attached Order 1984

20 FEB 2019

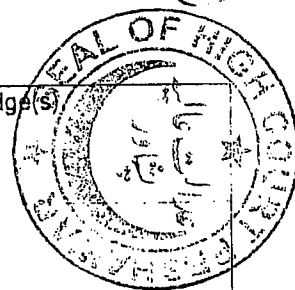

ATTESTED

EXAMINER
Peshawar High Court

13

IN THE PESHAWAR HIGH COURT, PESHAWAR

FORM OF ORDER SHEET



Date of order or proceedings.	Order or other proceedings with signature (s) of Judge(s)
(1)	(2)
15.05.2019	<p><u>W.P.No.6652-P/2018</u></p> <p><u>Present:</u> MR. Jehangir Khan Afridi, Advocate for the petitioners.</p> <p>Mr. Rab Nawaz Khan, AAG for the respondents alongwith Waheed Ullah, ADEO, Bara.</p> <p style="text-align: center;">***</p> <p><u>IKRAMULLAH KHAN, J.:-</u> Waheedullah ADEO, Bara present in court candidly stated that petitioners are serving as regular employees of the respondents and they will be paid their salary. As such, this petition is allowed and respondents are directed to pay the monthly salary to the petitioners.</p>

JUDGE

No. 20650

Date of Presentation of Application 19/2/2020

No of Pages 2

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Total ---

Date of Preparation of Copy 19/2/2020

Date of Delivery of copy 19/2/2020

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JUDGE

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EXAMINED
Peshawar High Court, Peshawar
Authorized Under Article 177 of
The Constitution of Pakistan

20 FEB 2020

Shahid Ali, P.S. (DB) (Hon'ble Mr Justice Ikramullah Khan and Hon'ble Justice Musarrat Hishali)

⑤ 14

1st Coc ✓ E
Rana E

BEFORE THE PESHAWAR HIGH COURT, PESHAWAR

COC No. 599/601 of 2019

in

Writ Petition No. 6652-P/2018



- 1 Gul Harina W/o Sher Mir Khan R/o Miran Yalab Aka
Khel Bara District Khyber presently at caller of govt
girls primary School Mughal Baz Aka Khel Bara
District Khyber

 - 2 Jan Muhammad S/o Yara Jan R/o Mughal Baz Aka
Khel Bara District Khyber, Presently Chowkidar in
Government Girls Primary School Mughal Baz Aka
Khel Tehsil Bara Districts Khyber.
- Petitioners

VERSUS

Muhammad Jadoon Wazir, District Education Officer
(DEO) District Khyber

... .. Respondents

**PETITION UNDER ARTICLE 204 OF CONSTITUTION
OF ISLAMIC REPUBLIC OF PAKISTAN, 1973 READ
WITH SECTION 3 & 4 OF THE CONTEMPT ACT 2003,
FOR INITIATING CONTEMPT OF COURT
PROCEEDINGS, AGAINST THE RESPONDENT AND
AWARDING EXEMPLARY PUNISHMENT, WHEREBY
DESPITE OF THE ADMISSION MADE ON BEHALF OF
THE REPRESENTATIVE OF THE WORTHY EDUCATION
DEPARTMENT, I.E. DEO BARA, WHEREBY HE
ENSURED TO THIS HON'BLE COURT THAT THE
MONTHLY SALARY OF THE PETITIONER WOULD BE
PAID, BUT SINCE THE ORDER PASSED BY THIS
HON'BLE COURT DATED 15.05.2019, ON THE
CONFIRMATION OF THE RESPONDENTS, THE**

... .. Wazir DFC, full USB 16 PG

E
ATTESTED
EXAMINER
Peshawar High Court

② - 15

**PETITIONERS ARE STILL SUFFERING WITH THEIR
UNRELEASED SALARIES.**

Respectfully Sheweth: -

Petitioner most humbly submits as below:

1. That the titled Writ Petition was preferred on behalf of the petitioners against the illegal unlawful act of the respondents, whereby the monthly salaries since December 2015 till now, are not released to the petitioners.

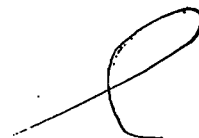
2. That while the above titled case was taken up by this Hon'ble court on 15.05.2019, the representative of the worthy department of education i.e. Mr. Waheed Ullah ADEO Bara was duly present before this hon'ble court and stated at the bar, reproduced his statement herein with the further directions of this Hon'ble court:

“ Waheedullah ADEO, Bara present in court candidly stated that petitioners are serving as regular employees of the respondents and they will be paid their salary. As such, this petition is allowed and respondents are directed to pay the monthly salary to the petitioners.”

(Copy of order of this Hon'ble court dated 15.05.2019 is attached as annex A)

3. That despite of the above commitment of ADEO Bara before this Hon'ble court almost sufficient enough era of

ATTESTED
EXAMINER
Peshawar High Court



two and half month has been passed away but till now the petitioners are surviving with their legal rights of salaries. Hence this contempt of court petition.

- 4. That the act of the respondents is neglectful in nature, which amounts to warrant interference of this Hon'ble under the enactment & applicable codification Article 204 and section 3&4 of contempt of court Act, 2003 as well.
- 5. That since December 2015 till now, the consistent services of the petitioners have passed away but not a single penny has paid in reward of that service to the petitioners by the respondents till now, which is gross violation of the fundamental as well as natural rights of the petitioners.
- 6. That the act and attitude of the respondent against the above subsequent orders of this Hon'ble court, is speaking contempt of this Hon'ble court and need to be treated accordingly.

It is thus prayed that in the light of the above sketch, this Hon'ble Court may graciously be put into notice to respondents by initiating contempt proceedings against him directed to release the monthly payable salaries of the petitioners of since December 2015 till now.

Dated:- 08.08.2019

Through
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 Peshawar High Court, Peshawar
 Authorized Under Article 67 of
 the Qanun-e-Shahadat Order 1988
23 AUG 2019
 08/08/2019 Gulistan, Muhammad Jadon, Wazir, DEO full USB 16 PG

Petitioners

Jahangir Khan Afrifi
Advocate High Court,
Peshawar

17

BEFORE THE PESHAWAR HIGH COURT, PESHAWAR

COC No. _____ of 2019

in

Writ Petition No. 6652-P/2018

Cul Harina & another Petitioners

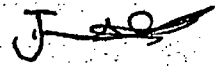
VERSUS

Muhammad Jadoon Khan Wazir, District Education
Officer (DEO) District Khyber

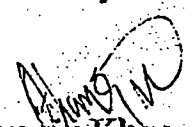
..... Respondents

AFFIDAVIT

I, Jan Muhammad S/o Yaqub Jan R/o Mughal Baza Eka Khel bara
District Khyber, (petitioner No. 2) do hereby solemnly affirm
and declare on oath that the contents of the accompanying
Contempt of Court Petition are true and correct to the best of my
knowledge and belief and nothing has been concealed from this
Hon'ble Court.



Identified by:



Jahangir Khan Afridi
Advocate, Peshawar

DEPONENT
CNIC: 21201-8674194-7
Cell No. 0336-4221002

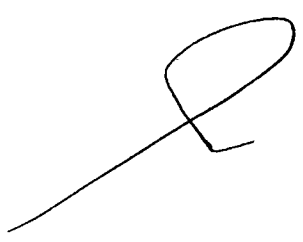
25/8/19

Judicial
Magistrate
District Khyber

17 Jan Muhammad
Khyber
Jahangir



CERTIFIED TO BE TRUE COPY
Peshawar High Court, Peshawar
Authorized Under Article 177 of
The Qanun-e-Shahadat Order 1984
23 AUG 2019



JUDGMENT SHEET

IN THE PESHAWAR HIGH COURT, PESHAWAR.
JUDICIAL DEPARTMENT
COC No: 599-P of 2019 in W.P
No.6652-P/2018,
JUDGMENT



Date of hearing: 20.08.2019.....
Appellant(s)/Petitioner (s) By Mr. Jehangir Khan Afridi,
Advocate.....

Respondent (s) By: Mr. Muhammad Sohail Khan AAG.

MUHAMMAD NAFEM ANWAR, J:- The instant

COC No.599-P/2019 and COC No.601-P/2019
are the outcome of W.P No.6652-P/2018
decided on 15.05.2019, as such, both the
applications are being decided through this
single order.

2. Petitioners of COC No.599-P/2019 and
petitioners of COC No.601-P/2019 have sought
initiation of contempt of Court proceedings
against the respondent for his failure to
implement the order of this Court dated
15.05.2019.

3. At the very outset, the learned AAG
produced letter bearing No.8925 dated
05.07.2019 from the office of District Education
Officer, Khyber Tribal District at Jamrud,
whereby the salaries of the petitioners of the

ATTESTED

EXAMINER
Peshawar High Court

aforementioned COCs have been released through the aforementioned order and the external inquiry was also ordered.

4. Mst Gul Harina wife of Sher Mir Khan and Jan Muhammad son of Yara Jan are the petitioners of COC No.599-P/2019, whereas Sar Mir Khan son of Rasool Jan and Muhammad Jan son of Yara Jan are the petitioners of COC No.601-P/2019.

5. We have gone through the order of this Court in W.P No.6652-P/2018 wherein on 15.05.2019 the said petition was allowed and the respondents were directed to pay the monthly salary to the petitioners.

6. Keeping in view the office order as produced by the learned AAG as the salaries of petitioners have already been released, therefore, both the COCs are dismissed accordingly.

Announced:
20.08.2019
(Ayub)

Ayub
JUDGE

Ayub
JUDGE

HL Hon'ble Mr. Justice Lal Jan Khattak.
Hon'ble Mr. Justice Muhammad Naeem Anwar.

VERIFIED TO BE TRUE COPY

Examiner, Proceedings
Sindh High Court, Pakistan
Authorised Under Article 177 of
The Constitution of Sindh, 1973

23 AUG 2019

HL

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(38)
A. F.

The District Accounts Officer,
Khyber Tribal District at Jamrud.

Subject:

PAY RELEASE IN R/O (04) EMPLOYEES / COURT CASE W.P NO. 6652-P/2018
& 6655-P/2018 DATED 15.05.2019

Memo:

Reference is made to the subject cited above in respect of the following official of Education Khyber to release Pay with immediate effect as per the judgement of Peshawar High Court Peshawar of the above mentioned subject and recommendation of ~~Subject~~ Inquiry Officer dated; 05/07/2019.

S.NO.	Name/Desig.	School	Personnal No.
1	Mohammad Jan-Sweeper S/O Yara Jan	GMS Yara Jan Killi Bara	00411614
2	Sar Mir Khan N/Qasid S/O Rasool Jan	GMS Yara Jan Killi Bara	00411612
3	Gul Harina Caller W/O Sher Mir	GGPS Mughal Baz Killi Bara	00423582
4	Jan Muhammad S/O Yara Jan	GGPS Mughal Baz Killi Bara	00423569

Encl. No. _____

DISTRICT EDUCATION OFFICER
KHYBER TRIBAL DISTRICT AT JAMRUD
Dated _____ 2019

- Copy of the above is forwarded to the:
1. Registrar Peshawar High Court Peshawar w/r to subject cited above.
 2. Director Education NMTDs at Peshawar.
 3. Deputy Commissioner Khyber Tribal District at Peshawar.

F

RECOMMENDATIONS

As the employees have been recognized as "Regular Employees" of the Education Department by the Education Office, Khuzdar, therefore, the arrears of the pay and/or which they did not receive should be paid as arrears.

M. Yousaf
MOHAMMAD YOUSAF
Deputy Officer
VICE PRINCIPAL
GHS KOTI, KHUZDAR, BALUCHAN

M. Yousaf
MOHAMMAD YOUSAF
Deputy Officer
VICE PRINCIPAL
GHS KOTI, KHUZDAR, BALUCHAN

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Amir H

(3)

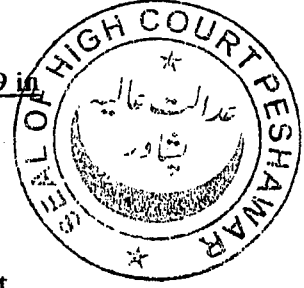
Judgment Sheet
PESHAWAR HIGH COURT, PESHAWAR
JUDICIAL DEPARTMENT.

COC No. 213-P/2020 in COC No. 599-P/2019 in

W.P.No.6652-P/2018

Gul Harina and another
Versus

Muhammad Shoukat Khan, District
Education Officer (DEO) District Khyber.



Date of hearing 16.06.2020

Petitioners by: Mr. Jehangir Khan Afridi, advocate.

JUDGEMENT

IJAZ ANWAR. J:- The instant petition has been filed under Article 204 of the Constitution of Islamic Republic of Pakistan, 1973 read with Section 3/4 of the Contempt of Court Act for initiating Contempt proceedings against the respondents for non-compliance of order of this Court dated 20.08.2019 passed in COC No. 599-P/2019 in WP No. 6652-P/2018.

2. In essence, the grievance of petitioners is that despite order of this Court, dated 15.5.2018

ATTESTED


EXAMINER
Peshawar High Court

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passed in W.P No.6652-P/2018 followed by order dated 20.8.2019 in COC No. 599-P/2019, the respondent is not paying them their arrears of salaries.

3. Arguments heard and record perused.

4. Perusal of record reveals that this Court vide order dated 15.5.2019 while disposing of writ petition No. 6652-P/2018 allowed the writ petition with direction to respondent to pay monthly salaries to the petitioners. When the order of this court was not complied with, the petitioners have filed COC No. 599-P/2019 in this court which was dismissed when the learned AAG conveyed that the salary of petitioners has already been released vide order dated 20.8.2019. Learned counsel representing the petitioners was confronted with these facts and dismissal of the earlier contempt petition, he argued that the arrears of salaries are not paid to him.

ATTESTED

EXAMINER
Peshawar High Court



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5. Since this court has not given any direction for the arrears of salaries, as such, the order of this court stood complied with and there is no question of any violation of order of this Court. The petitioners have, if any grievance regarding arrears of salaries, they may approach the Services Tribunal in accordance with law. However, so far as this petition is concerned, the same is misconceived which stands dismissed.

Ijaz
JUDGE

JUDGE

Announced on;
Dated. 16.06.2020

D.B. Hon'ble Mr. Justice Lat Jan Khattak & Hon'ble Mr. Justice Ijaz Anwar

[Signature]
CERTIFIED TO BE TRUE
Committee
Petitioner High Court, Islamabad
Authorized Under Section 47 of
the Qanun-e-Shadal Order 1987
20 JUN 2020

No. 38511
Date of Presentation of Application 17-6-2020
No of Pages 07 P
Copying fee 28/-
Total 28/-
Date of Preparation of Copy 20/6/2020
Date of Delivery of copy 20-6-2020
Received By Syjad

To,

The Director Education FATA,
Newly Merged District Khyber,
Warsak Road, Peshawar.

26
Amir I
Diary Number 1032
dated 11-03-2021

Subject: Departmental Representation for the grant of arrears of salaries w.e.f. December, 2015 to August, 2019.

Respected Sir,

With due respect I have the honour to submit this departmental representation for your kind consideration and favorable action on the following facts and grounds:

1. That the applicant got appointed as Class-IV employee on 08.02.2008 and was adjusted against the post of Caller in the Govt. Girls Primary School, Mughal Baz, Ekka khel, District Khyber. It is adduced here that from the very inception applicant has been discharging his duties to the entire satisfaction of his superiors.
2. That during the era of Talibanization from i.e. 2009 to 2015 all the Educational Institutions were either demolished or non-functional which caused the ultimate damage to the learners and teachers in different aspects owing to subvert activities of the Tehreek-e-Taliban. Since the District Khyber was the most volatile area where all kinds of activities including Government Schools were closed, as is evident from the press clipping dated 09.03.2021, albeit applicant continued performing his duties but the salaries could not be paid owing to the cited circumstances. It would be significant to allege here that in the year 2015 the Government writ was maintained and all the institutions were re-opened.
3. That applicant was quite hopeful regarding releasing of his due salaries. As applicant was assured that his salaries would be released soon but the matter was kept pending without any legal justification, In spite of the fact that applicant had been performing his duties during that crucial period. It is advantageous to elaborate here that utter discrimination has been meted out towards the applicant by the District Education Officer, Khyber that even salaries were paid to those Government employees who did not perform their duties during that period which is clear depreciation of Article 25 & 27 of Constitution of Islamic Republic of Pakistan, 1973. Applicant time and again visited the office/ District Education Officer, Khyber for payment of his due/outstanding salaries but the turn the deaf ear whereafter a series of written requests were also moved by the applicant but to no avail.
4. That applicant was constrained to invoke the jurisdiction of the Hon'ble Peshawar High Court in WP No. 6652/2018 which was put on hearing on 15.05.2019 and adjudicated in the following terms:-

"Waheedullah ADFO, Bara present in court candidly stated that petitioners are serving as regular employees of the respondents and they will be paid their salary. As such, this petition is allowed and respondents are directed to pay the monthly salary to the petitioners".

After procuring the attested copy of the judgment ibid, the same was provided to the District Education Officer, Khyber for implementation but in spite of the commitment made by the Representative at the bar, the salaries of the applicant could not be released which led to COC No. 599/2019 which was decided on 20.08.2019 by virtue of office letter dated 05.07.2019 whereby the salary of the applicant was released, however, unpaid salaries were not paid to him, despite the same that applicant had been performing his duties which fact was categorically acceded to by the District Education Officer, Khyber.

5. That since the Representative of the District Education Officer, Khyber candidly conceded that applicant is regular employee of the Department and discharging his duties, therefore, applicant was assured that arrears of salaries w.e.f. December, 2015 to August, 2019 would also be paid but to the utter bewilderment of the applicant the same was refused. Eventually,

applicant again knocked the door of the Hon'ble Peshawar High Court, Peshawar in COC No. 213/2020 for implementation the judgment dated 15.05.2019. The Department was served upon Notices who appeared and resultantly the COC was disposed of on 16.06.2020 wherein applicant plea was considered to be genuine but applicant was directed to approach the Khyber Pakhtunkhwa Service Tribunal.

6. That now the applicant being aggrieved of the acts and omission of the Department prefers this departmental Representation inter-alia on the following grounds:-

Grounds:

- A. That the applicant has not been treated fairly, justly as the District Education Officer, Khyber unlawfully refused his request for the outstanding salary without any cogent reason because applicant performed his duties without any interruption, therefore, he had to be paid the salaries but he was unlawfully being deprived of his lawful right of salary which is not sustainable in the eye of the law and against natural justice.
- B. That it is a well settled legal principle of law that salary of an employee cannot be stopped even during the course of his suspension from service, despite the fact that applicant performed his duties with utmost devotion but still the salaries of applicant had illegally been stopped, which amounts to forced labour, therefore, District Education Officer, Khyber has violated Article-11 of the Constitution of the Islamic Republic of Pakistan, 1973.
- C. That applicant has been serving the Department to the best of his capabilities with unblemished service record. Even the high-ups admired the performance of the application and throughout his service no complaint whatsoever has ever been lodged against him, thus the refusal to pay him salaries on the part of Department is without any legal justifications is totally deviation from the law, hence not sustainable in the eye of law.
- D. That the writ petition of the applicant was allowed on the commitment of the Department wherein they stated at the bar that applicant is a regular employee of the Department and discharging duties, therefore, did not left any room to pay the due salaries of the applicant w.e.f December, 2015 to August, 2019.
- E. That under the law an employee cannot be deprived from his salary which amounts to usurp bread from the mouth of poor employee and his family. The foundation of the Constitution of Islamic Republic of Pakistan, 1973 is based upon the non-exploitation and equality of citizens, thus, applicant was highly exploited by not paying the due/outstanding salaries which is sheer violation of Article-11 of the Constitution. Moreover, the Department made a different yard stick and paid salaries to other employees of the District Education Officer, Khyber while the applicant was singled out which is also against the principle of natural justice.

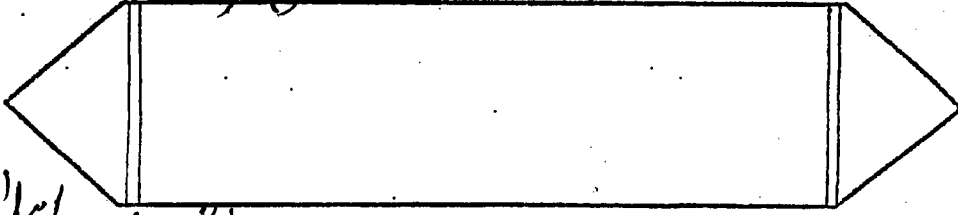
It is, therefore, humbly requested that on acceptance of this Departmental Representation, the arrears of salaries w.e.f December, 2015 to August, 2019 may kindly be paid to the appellants forthwith.

Dated: 10/03/2021

Yours faithfully

Mst Gul Harceena W/o
Sher Meer (Caller)
GGPS, Mughal Baz
District Khyber

بعدالت ایک سرحدی فیصلہ کی صورت



اسرار ال

2022ء منجانب اور عدالت
محل فریضہ بنام

مورخہ
مقدمہ
دعویٰ
جرم

باعث تحریر آنکے

مقدمہ مندرجہ عنوان بالا میں اپنی طرف سے واسطے پیروی اور جواب دہی دیکل کاروائی متعلقہ /
آن مقام کے اقرار کیا جاتا ہے۔ کہ صاحب موصوف کو مقدمہ کی کل کاروائی کا کامل اختیار ہوگا۔ نیز
دیکل صاحب کو راضی نامہ کرنے و تقرر ثالثہ فیصلہ پر حلف دیئے جواب دہی اور اقبال دعویٰ اور
بصورت ڈگری کرنے اجراء اور وصولی چیک و روپیہ اور عرضی دعویٰ اور درخواست ہر قسم کی تصدیق
زرائیں پر دستخط کرانے کا اختیار ہوگا۔ نیز صورت عدم پیروی یا ڈگری یکطرفہ یا اپیل کی برآمدگی اور منسوخی
نیز دائر کرنے اپیل نگرانی و نظر ثانی و پیروی کرنے کا اختیار ہوگا۔ از بصورت ضرورت مقدمہ مذکور
کے کل یا جزوی کاروائی کے واسطے اور دیکل یا مختار قانونی کو اپنے ہمراہ یا اپنے بجائے تقرر کا اختیار
ہوگا۔ اور صاحب مقرر شدہ کو بھی وہی جملہ مذکورہ باختیارات حاصل ہوں گے اور اس کا ساختہ
پر داخستہ منظور قبول ہوگا۔ دوران مقدمہ میں جو خرچہ ہر جانشینانہ مقدمہ کے سبب سے ہوگا۔
کوئی تاریخ پیشی مقام دورہ پر ہو یا حد سے باہر ہو تو دیکل صاحب پابند ہوں گے۔ کہ پیروی
مذکورہ کریں۔ لہذا وکالت نامہ لکھ دیا کہ سند ہے۔

المرقوم 06
ماہ جولائی 2022ء



بمقام
کے لئے منظور ہے۔

Handwritten signature.