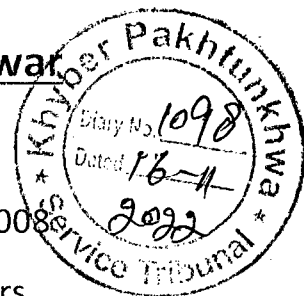


Before the Khyber Pakhtunkhwa service tribunal Peshawar



Execution petition No. 22-2011 in service appeal No. 1542 / 2008

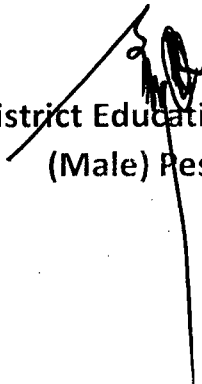
Sohrab Hayat

vs

Govt. of KPK and others

Index

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01.	Objection Petition		1-2
02.	Copy of Notification	A	3-4
03.	Copy of Act 2012	B	4,5 & 6
04.	Copy of Supreme Court order 02-06-2021	C	7 - 8

  
District Education Officer  
(Male) Peshawar

**Before the Khyber Pakhtunkhwa service tribunal Peshawar**

Execution petition No. 22-2011 in service appeal No. 1542 / 2008

Sohrab Hayat

vs

Govt. of KPK and others

**Objection petition under section 47 civil procedure code, 1908.**

Respectfully Sheweth:-

The Respondents submits as under:-

1. That the above cited Execution petition is pending before this Honorable Tribunal where in next hearing date is fixed for 16-11-2022
2. That in the above cited service appeal, this Hon'ble Service Tribunal passed judgement/order announced on 26-05-2009 as  
**"Council for the appellant and A.G.P argued the case. Vide as per detailed order of today in connected service appeal No. 1539 of 2008 titled Maqsd Hayat vs Govt. of NWFP through secretary schools and literacy NWFP Peshawar etc. we dispose of the present appeal also as per detailed order"**
3. That in the above cited service appeal the appellant has prayed for granting advance increments on the basis of M.Ed. it is pertinent to mention here that as per SECTION – XII of basic pay scale (1 – 15) non- Gazetted (1991). M.Ed has not been mentioned in the notification because advance increment were granted only on the basis of higher academic qualification while the appellant has professional degree at that time.  
**{Copy of the Notification is attached as Annex:A}**
4. That the appellant had concealed the above mentioned fact from this Hon'ble tribunal as the pray of the appellant was not covering in the umbrella of the notification regarding granting of advance increment for possessing / attaining higher education qualification.

That keeping in a view the above mentioned notification the present execution petition of the appellant is not executable as suffering from legal lacuna.

Beside the above mentioned facts, according to section -2 of the Khyber Pakhtunkhwa Cessation of payment of arrears on advance increments on higher educational qualification Act of 2012 clarified the position of the instant, matter as:

Cessation of payment of arrears on advance increments on higher educational qualification. (1). Notwithstanding anything contained in any decision, judgement and other of any tribunal or court including High Court or Supreme

Court of Pakistan, for the purpose of any claim for payment of arrears on account of the advance increment on higher educational qualification sanctioned in pursuance of any order letter, office memoranda, notification, instructions and other instruments issued before 01-12-2001, such orders, letters, office memoranda, notifications, instructions and other instruments shall be deemed to be non-existent, ceased or revoked and no further claim whatsoever on the basis of these instruments shall be entertained and all cases in respect of such claims pending in any court or tribunal including High Court and Supreme court of Pakistan shall stand abated.

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

**Removal of difficulties:-**

If any arises, in giving effect to the provisions of this ordinance, the Provincial Government may make such orders as it may deem just equitable. Therefore, according to the above said Act, petitioner also cannot be granted advance increments on Higher Education Qualification.

**(Copy of Act of 2012 is attached as Annex: B)**

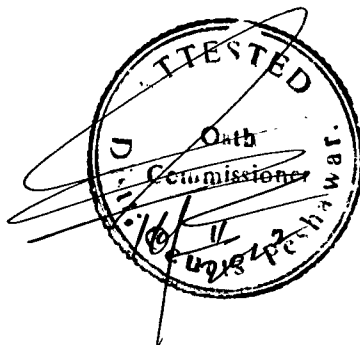
5. That the same nature case CP No. 2-P/2020 the Supreme Court of Pakistan remanded to the High Court Peshawar for re-deciding which is still pending before the Hon'ble Peshawar High Court.


**(Copy of order dated: 02-06-2021 of the Supreme Court is attached as Annex: C)**

It is therefore most humbly prayed before this Hon'ble Tribunal that on the acceptance of this objection Petition, the instant Execution Petition kindly be dismissed with cost.

Affidavit

Stated on oath the content of objection petition is correct to the best of my knowledge and nothing has been concealed from this Hon'ble Service Tribunal.



  
District Education Officer  
(Male) Peshawar

### GRANT OF ADVANCE INCREMENTS – FIXATION OF PAY

The undersigned is directed to refer to Para-5 of this Division's O.M. No.1(12)-Imp.II/91 dated 15-4-1992, on the subject noted above and to say that references have been received in this Division seeking extension beyond the stipulated period of three months regarding the fixation of pay of employees in B-1 – 15 who have been allowed advance increments on qualification basis.

2. The case was examined in this Division and it has been decided by the Competent Authority to allow extension in the option beyond the stipulated period of three months upto six months with effect from 16-7-1992 to 15-1-1993.

---

[Authority: F.D. O.M. No. F. 1(13)-imp./92, dated the 7<sup>th</sup> December, 1992.]

### GRANT OF ADVANCE INCREMENTS ON HIGHER QUALIFICATION

The undersigned is directed to refer to this Division's O.M. No.1(12)-Imp.II/91 dated 29-6-1991, in which Advance Increments have been allowed to the employees drawing pay in B-1--15 on possessing/acquiring higher qualification over and above the prescribed qualification for the post in the relevant Recruitment Rules.

2. A question has been raised as to whether such employees B-1--15 would also be entitled to the advance increments on account of holding promotional posts for which there is no prescribed qualification in the Recruitment Rules as no direct entry is made to these posts.

3. The case has been considered in this Division and it has been decided that such employee holding the post on or after 1-6-1992 for which there is no prescribed qualification in the Recruitment Rules and is filled by 100% promotion basis, will be allowed advance increments on possessing/acquiring higher qualification than prescribed for the feeding post as per criteria laid down in Para-5(i) of Finance Division O.M. No.1(12)-Imp.II/91 dated 29-6-1991 w.e.f. 1-6-1991 for the purpose of fixation of pay. Pay so fixed will be admissible with effect from 1-10-1992.

---

[Authority: F.D. O.M. No. F. 1(9)-Imp.II/91-Pt.(G), dated the 4<sup>th</sup> October, 1992.]

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### PROTECTION OF PERSONAL PAY FOR HIGHER QUALIFICATION

The undersigned is directed to state that under para-5(d)(ii) of the Finance Division's Office Memorandum No.F.1(12)-Imp.II/91 dated 29<sup>th</sup> June, 1991, the advance increments on higher qualification beyond the maximum of the relevant pay scale are treated as personal pay to be absorbed at the time of move-over/promotion of the Government Servant concerned. Since such absorption of the personal pay amounts to reducing the specific incentive allowed by the Government and may also result in anomaly *vis-a-vis* the junior Government Servant drawing pay below the maximum of the pay scale, it has been decided that the personal pay on account of higher qualification shall not be absorbed/adjusted but shall be treated as part of the time scale of pay for the purpose of fixation of pay of the Civil Servant concerned on his promotion/selection grade/move-over. No arrears prior to 01-5-1995 shall, however, be admissible.

[Authority: F.D. O.M. No.F.2 (1)/R.I/95, dated 17<sup>th</sup> May, 1995.]

### GRANT OF ADVANCE INCREMENTS TO THE EMPLOYEES DRAWING PAY IN BPS - 16

In partial modification of this Division's Office Memorandum No.1(7)-Imp.II/87, dated 1-7-1987 and No.1(12)-Imp.II/91 dated 29-6-1991 on the above subject, the competent authority has been pleased to allow advance increments to the Federal Government Servants drawing pay in BPS-16 also on acquiring/possessing higher qualification as under: -

	Matric	F.A/F.Sc.	B.A/B.Sc.	M.A/M.Sc.
Where the prescribed qualification is Matric	Nil	2	4	6
Where the prescribed qualification is F.A/F.Sc.	Nil	Nil	2	4
Where the prescribed qualification is B.A/B.Sc.	Nil	Nil	Nil	2

2. These orders will take effect from 1<sup>st</sup> July, 1996.

[Authority: F.D. O.M. No. F. 6(10)-Imp/91-Vol.III, dated the 8<sup>th</sup> July, 1996.]

Annex 'B'

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

(KHYBER PAKHTUNKHWA ACT NO. IX OF 2012)

*[first published after having received the assent of the Governor of  
the Khyber Pakhtunkhwa in the Gazette of Khyber Pakhtunkhwa  
(Extraordinary), dated the 15<sup>th</sup> May, 2012].*

AN  
ACT

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

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

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

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

It is hereby enacted as follows:

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

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

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

**2. Cessation of payment of arrears on advance increments on higher educational qualification.**---(1) Notwithstanding anything contained in any decision, judgment and order of any Tribunal or Court including High Court or Supreme Court of Pakistan, for the purpose of any claim for payment of arrears on account of advance increments on higher educational qualification sanctioned in

pursuance of any order, letter, office memoranda, notification, instructions and other instruments issued before 1.12.2001, such orders, letters, office memoranda, notifications, instructions and other instruments shall be deemed to be non-existent, ceased or revoked and no further claim whatsoever on the basis of these instruments shall be entertained and all cases in respect of such claims pending in any Court or Tribunal including High Court and Supreme Court of Pakistan shall stand abated.

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

3. **Removal of difficulties.**--- If any difficulty arises, in giving effect to the provisions of this Act, the Provincial Government may make such orders as it may deem just and equitable.

4. **Repeal.**---The Khyber Pakhtunkhwa Cessation of Payment of Arrears on Advance Increments on Higher Educational Qualification Ordinance, 2012 (Khyber Pakhtunkhwa Ordinance NO. I of 2012), is hereby repealed.

SUPREME COURT OF PAKISTAN  
(Appellate Jurisdiction)

PRESENT:

Mr. Justice Gulzar Ahmed, CJ  
Mr. Justice Mazhar Alam Khan Mankhel  
Mr. Justice Sayyed Mazahur Ali Akbar Naqvi

CIVIL APPEALS NO.2139 TO 2143 OF 2019 AND 986 OF 2020  
AND  
CIVIL PETITION NO.2-P OF 2020

[Against the judgments dated 8.6.2017, 20.6.2019, 29.10.2019 and 23.10.2019, passed by the Peshawar High Court, Peshawar, in W.Pa. No.2053 of 2014, 913-P of 2014, 1418 of 2014, 3081-P of 2012, 1182-P of 2018, 2326-P of 2019 and 4713-P of 2018, respectively]

CA.2139 of 2019 Government of Khyber Pakhtunkhwa through Secretary Establishment Department, Peshawar and others Vs. Saeedullah and others

CA.2140 of 2019 Government of Khyber Pakhtunkhwa through Secretary Finance, Peshawar and others Vs. Muhammad Iqbal and others

CA.2141 of 2019 Government of Khyber Pakhtunkhwa through Secretary Elementary & Secondary Education, Peshawar and others Vs. Molvi Muhammad and others

CA.2142 of 2019 Government of Khyber Pakhtunkhwa through Chief Secretary, Peshawar and others Vs. Anyat Ullah Khan and others

CA.2143 of 2019 Government of Khyber Pakhtunkhwa through Chief Secretary, Peshawar and others Vs. Muhammad Rehman and others

CA.986 of 2020 Government of Khyber Pakhtunkhwa through Secretary Elementary & Secondary Education, Peshawar and others Vs. Muhammad Anwar

CP.2-P of 2020 Provincial Police Officer, Khyber Pakhtunkhwa, Peshawar and others Vs. Muhammad Akbar Khan and others

TESTED



Court Associate  
Court of Pakistan

For the Appellants  
and Petitioners

: Mr. Zahid Yousaf Qureshi,  
Additional Advocate General,



(in all cases)

Khyber Pakhtunkhwa  
Fazale Khalil,  
Lit. Officer/DEO Swabi  
Iftikhar Ghani, DEO (M) Bunir  
Shakir Ullah, S.O. (Lit),  
F. Department, KPK

For Respondents : Mr. Muhammad Isa Khan Khalil,  
No.1, 2, 4 to 9, 12 to : ASC  
14, 16 to 32 in  
CA.2139 of 2019

Respondents in : Nemo  
CA.2140 of 2019

For Respondents : Mr. Amjad Ali, ASC a/w  
No.2 to 5 in CA.2141 : Mr. Anis Muhammad Shahzad,  
of 2019 and 29, 32 : AOR  
and 33 in CA.2142 of  
2019

For Respondent No.1 : Mr. Muhammad Amir Malik, ASC  
in CA.2143 of 2019 : Syed Rifaqat Hussain Shah, AOR

Sole respondent in : Mr. Misbah Ullah Khan, ASC  
CA.986 of 2020

Respondent in CP.2- : N.R.  
P of 2020

Remaining : Nemo  
Respondents in all  
C.As.

Date of Hearing : 02.06.2021

ORDER

GULZAR AHMED, CJ.- The learned Additional Advocate General, Khyber Pakhtunkhwa (AAG), contends that in the very writ petitions filed before the Peshawar High Court, Peshawar (the High Court), the respondents have challenged the vires of the Khyber Pakhtunkhwa Cessation of Payment of Arrears on Advance Increments on Higher Educational Qualification Act (Act No.IX) of 2012 (the Act of 2012), but no notice under Order XXVII-A CPC was issued to the Advocate General, Khyber

ESTED

*Sir*  
Court Associate  
Court of Pakistan  
Islamabad

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Pakhtunkhwa, which is the mandatory requirement of law in terms of judgment passed by a 14-Member Bench of this Court reported as Federation of Pakistan through Secretary, Ministry of Law, Justice and Parliamentary Affairs, Islamabad and others v. Aftab Ahmad Khan Sherpao and others (PLD 1992 SC 723). He further relies upon the judgments of this Court in the cases of Superintendent Central Jail, Adyala, Rawalpindi v. Hammad Abbasi (PLD 2013 SC 223) and Federal Public Service Commission and others v. Syed Muhammad Afaq and others (PLD 2002 SC 167).

2. The learned counsel appearing for the respondents were confronted with the issue, as raised by the AAG, who were unable to show that the High Court may have passed order complying with the mandatory requirement of Order XXVII-A CPC. The issuance of notice to the Advocate General being itself a mandatory requirement of law, as laid down in the above cited judgments of this Court, the High Court deciding the writ petitions without issuing of such notice and also declaring Section 2 of the Act of 2012, as ultra vires the Constitution was, therefore, not in accordance with the law, rather contrary to law as laid down by this Court in the above cited cases.



3. In view of the above, the impugned judgments are set aside and the matters are remanded to the High Court for re-deciding the writ petitions under Order XXVII-A CPC to the Advocate General

ESTED

Associate  
of Pakistan

Pakhtunkhwa, in accordance with law.

4. The appeals stand allowed, while the civil petition is converted into appeal and allowed, in the above terms.

5. As the matters are quite old, it is expected that the High Court will decide the same expeditiously, preferably within a period of four months.

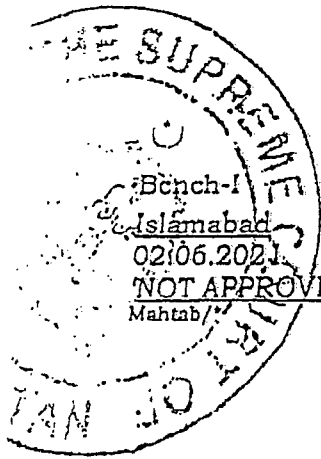
Sd/-HCJ

Sd/-J

Sd/-J

Certified to be True Copy

Senior Court Associate  
Supreme Court of Pakistan  
Islamabad



NOT APPROVED FOR REPORTING  
Mahtab

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