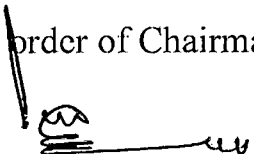


FORM OF ORDER SHEET

Court of _____

Case No.- 1623/2022

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1-	14/11/2022	<p>The appeal of Mr. Naimatullah presented today by Mr. Noor Muhammad Khattak Advocate. It is fixed for preliminary hearing before Single Bench at Peshawar on _____. Notices be issued to appellant and his counsel for the date fixed.</p> <p>By the order of Chairman</p> <p> REGISTRAR</p>

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

APPEAL No. 1623/2022

NAIMAT ULLAH

VS

SOCIAL WELFARE DEPT:

INDEX

S.NO.	DOCUMENTS	ANNEXURE	PAGE
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2.	Appointment Order dated 18.07.1990	A	5
3.	Order dated 16.01.2015	B	6
4.	Notification dated 22.10.2019	C	7-8
5.	Judgment	D	9-14
6.	Notification and Pay slips	E & F	15-16
7.	Notification dated 25.11.2019	G	17
8.	Departmental appeal	H	18
9.	Vakalatnama		19

m. = m/lot

APPELLANT

Through:

[Signature]
NOOR MOHAMMAD KHATTAK
ADVOCATE
SUPREME COURT OF PAKISTAN

**BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR**

APPEAL NO. 1623 /2022

Mr. Niamat Ullah, Religious Teacher (BPS-17), Center for Mentally Retarded & Physically Handicapped Children, Bannu.

..... **APPELLANT**

VERSUS

- 1- Government of Khyber Pakhtunkhwa through Chief Secretary Civil Secretariat, Peshawar
- 2- The Secretary, Government of Khyber Pakhtunkhwa, Social Welfare, Special Education, Women Empowerment, Ushar & Zakat Department, Peshawar.
- 3- The Director Social Welfare, Special Education & Women Empowerment, Department, Opposite Islamia College, Near Agriculture University, Old Jamrud Road, Peshawar
- 4- The Secretary Government of Khyber Pakhtunkhwa, Finance Department, Civil Secretariat Peshawar.
- 5- The District Accounts Officer, District Bannu.

..... **RESPONDENTS**

APPEAL UNDER SECTION-4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974 AGAINST THE INACTION OF THE RESPONDENTS BY NOT ALLOWING/GRANTING SPECIAL HEALTH ALLOWANCE TO THE APPELLANT IN LIGHT OF NOTIFICATION DATED 25.11.2019 & JUDGMENT OF THE APEX COURT AND AGAINST NOT TAKING ACTION ON THE DEPARTMENTAL APPEAL OF APPELLANT WITHIN THE STATUTORY PERIOD OF NINETY DAYS

PRAYER:

That on acceptance of this appeal, the appellant may kindly be granted Special Health Allowance with all back benefits in light of the Notification dated 25.11.2019 and apex Court Judgment. Any other remedy which this august Tribunal deems fit that may also be awarded in favor of the appellant.

R/SWETH:

ON FACTS:

- 1. That the appellant was appointed as Religious Teacher BPS-08 in the office of the Manager, Mental Retarded & Physically Handicapped Children, Bannu vide order dated 18.07.1990. Copy of the Appointment Order dated 18.07.1990 is attached as annexure **A.**

2. That through order dated 16.01.2015 the appellant was awarded higher pay scale to BPS-16 being Special Education Teacher. Copy of the Order dated 16.01.2015 is annexed as Annexure **B.**
3. That the appellant was awarded higher pay scale to BPS-17 vide notification dated 22.10.2019 being Special Education Teacher. Copy of the Notification dated 22.10.2019 is annexed as Annexure **C.**
4. That the federal Government Finance Department issued notification for special health allowance for special education teachers which was granted to some hospitals.
5. That some candidates being aggrieved from the Finance Department filed Civil Appeal before Federal Service Tribunal Islamabad which were allowed on 05.10.2015, 11.01.2016 and 18.07.2017 against which the Federation of Pakistan through Secretary Capital Administration etc. filed a Civil Petition before the Supreme Court of Pakistan which was dismissed by the Apex Court on 17.11.2018 whereby the same judgment was reported in 2018 PLC (CS) Page 669. Copy of the judgment is annexed as Annexure.....**D.**
6. That through Notification dated 21.06.2017 one Rashid Ullah Shah was given administrative charge as Principal and awarded Special Health Allowance on the basis of above mentioned judgment. Copies of the Notification and *pay slip* are attached as Annexure.....**E & F.**
7. That it is worth mentioning that regulation wing of the Finance Department, Government of Khyber Pakhtunkhwa through notification dated 25.11.2019 stated that it ***"has been pleased to approve Health Allowance at the rate of one running basic pay to the devolved employees working in the Special Education Institution from the date of their devolution to provincial Government of Khyber Pakhtunkhwa"***. Copy of the Notification dated 25.11.2019 is attached as Annexure**G.**
8. That being identical and on same legal footing, the appellant filed Departmental Appeal on the ground of parity and to be treated according to their colleagues but his departmental appeal was not decided till date. Copy of the Departmental appeal is attached as annexure**H.**
9. That appellant feeling highly aggrieved and dissatisfied by the action and inaction, inconsistency, illegality, discrimination of the respondents and having no other remedy but to file the instant appeal on the following grounds amongst the others.

GROUND:

- A- That by not allowing/granting special Health allowance to the appellant by the respondents in light of the notification dated 25.11.2019 and judgments of the superior courts is against the law, facts and norms of natural justice.
- B- That the appellant has not been treated by the respondents in accordance with law and rules and as such the respondents violated Article 4 and 25 of the Constitution of Pakistan, 1973.
- C- That the Special Health Allowance as granted to one Rashid Ullah Shah Principal being same in rank as well as to the other colleagues of the department, the appellant has legitimate right of Special Health Allowance thus the act of the respondents is discriminatory in nature and the case of the appellant cum within the ambit of Article 25 of the constitution of Pakistan, 1973.
- D- That appellant is entitled to be treated at par with his colleagues already being granted the Special Health Allowance by the respondents, the case of the appellant being identical and same in nature having not extended the benefit of the same to the appellant is against Article 4 of the constitution of 1973 of Pakistan thus the inaction of the respondents to be declared as illegal, unlawful, void ab initio and without lawful authority.
- E- That the same subject matter came under consideration before Federal Service Tribunal and after thorough probe, the service appeal was accepted and was confirmed by the Apex Supreme Court of Pakistan meaning thereby the subject matter was finalized.
- F- That as per verdicts of the apex court when any relief is extended to similarly placed persons, the same shall also be extended to those who are not even litigants in the case. Supreme Court in a judgment reported as 1996 SCMR 1185, the relevant portion whereof is re-produced below for ready reference.

"We may observe that if the tribunal or this court decides a point of law relating to the terms service of a civil servant which covers not only the case of the civil servant who litigated but also of other civil servants, who may have not taken any legal proceedings, in such a case, the dictates of justice and rule of good governance demand that the benefit of the above judgment be extended to other civil servants, who may not be parties to the above litigation instead of compelling them to approach the Tribunal or any other legal forum".

The above view was re-iterated in 2005 PLC (CS) 368
followed in 2006 PLC (CS)11, 2009 SCMR Page-1.

- G- That appellant seeks permission to advance other grounds and proofs at the time of hearing.

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

Dated: 11.11.2022

APPELLANT

m u l l a h

NIAMAT ULLAH

THROUGH:

g
NOOR MOHAMMAD KHATTAK
ADVOCATE SUPREME COURT

Waleed
WALEED ADNAN

Umar Farooq
UMAR FAROOQ MOMAND

Ayub
MUHAMMAD AYUB

128 &
KHANZAD GUL
ADVOCATES HIGH COURT

CERTIFICATE:

No such like appeal is pending or filed between the parties on the subject matter before this Honorable Tribunal.

[Signature]
ADVOCATE

AFFIDAVIT

I, Niamat Ullah s/o Habib Ullah Khan, Religious Teacher (BPS-17), Center for Mentally Retarded & Physically Handicapped Children, Bannu, do hereby solemnly affirm on oath that the contents of the above appeal are true and correct to the best of my knowledge and believe and nothing has been concealed from this Honorable Tribunal.

m u l l a h
DEPONENT

"A" -5-

GOVERNMENT OF N.W.F.P.
DIRECTORATE OF SOCIAL WELFARE
SADDIQUE COLONY EID GAH ROAD
PESHAWAR

No. E-4/64/DSW/ 673-77

Dated Peshawar the 18/7/1990.

To ✓

Mr. Niamat Ullah, C/O Molvi Mohammad Ali,
Near Mahrajul Ulloom, Androon Lakki Gate,
Bannu.

SUB: APPOINTMENT AS RELIGIOUS TEACHER BPS-8 790-34-1470.

The Departmental Selection Committee, Health And Social Welfare Department has been pleased to select you for appointment as Religious Teacher in the office of the Manager, Centre for Mentally Retarded & Physically Handicapped, Bannu. at Rs. 790/- P.M. plus other usual allowance as admissible under the rules from time to time in the scale of Rs. 790-34-1470.

2. The appointment is purely temporary and can be terminated at any time without any notice or without any reason.

3. You will be governed by rules and orders relating to leave T.A. and Medical Attendance as may be prescribed by the Govt: servant of your status.

4. You will be governed by the Govt: servants Conduct Rules and any other instructions which may be issued by the Govt: from time to time.

5. You are liable to be transferred to any where in N.W.F.P.

6. You will be on probation for a period of two years.

7. Your service shall be subject to verification of your antecedents and medical fitness.

8. In case of leaving service, you will be required to give one month's notice or other-wise surrender one month's Pay in lieu of the notice.

9. No T.A. & D.A. will be admissible for joining the post.

If you accept the offer of appointment on the above terms and conditions you are advised to report for duty to the Manager, Centre

For Mentally Retarded & Phy: Handicapped Bannu upto 25.8.1990.

In case you do not report for duty by this date, the offer shall be deemed to have been cancelled.

[Signature]
DIRECTOR
SOCIAL WELFARE, N.W.F.P.

[Handwritten signature]

[Handwritten signature]
18/7/90

Endst: No. E-4/64/DSW/ _____ Dated Peshawar the _____ 1990.

Copy for information & necessary action to:

1. The Accountant General, N.W.F.P. Peshawar.
2. The District Accounts Officer Bannu.
3. The Manager/ ~~Superintendent~~ Principal Mentally Retarded Centre Bannu.
4. The Social Welfare Officer R.C.D/U.C.D, Project XXXXXX
5. The Section Officer, Social Welfare Deptt: N.W.F.P, Peshawar.



GOVERNMENT OF KHYBER PAKHTUNKHWA
DIRECTORATE OF SOCIAL WELFARE, SPECIAL EDUCATION
& WOMEN EMPOWERMENT

"B"

@@@@@@@

No.F.E -17/77/DSW/2015/ 7934-46 Peshawar the 16th Jan-2015

-6-

To
The Accountant General
Khyber Pakhtunkhwa,
Peshawar

**SUBJECT;- AWARD OF HIGHER PAY SCALE (PERSONAL) TO THE TEACHERS OF
SPECIAL EDUCATION KHYBER PAKHTUNKHWA**

In pursuance of the decision of Peshawar High Court Bannu Bench in Writ Petition No. WP-54-B/2012 and Peshawar High Court Peshawar in WP-216/2013 and in terms of Finance Department order No.FD(SR)1-9/84-III dated 24/7/1986, the following teachers working in Special Education Khyber Pakhtunkhwa are here by awarded higher pay scale from the date shown in column-5 .

S.No.	Name & Designation	BPS	HPS	From
	2	3	4	5
1	Mr. Mohammad Mushtaq Senior Teacher (MA, M.Ed) MRPH, Bannu	15	16	02/04/2001
2	Mr. Naimat Ullah Khan Religious Teacher (BA) MRPH, Bannu	11	16	24/8/2007
3	Mr. Ikram Ullah Senior Teacher (MA, B.Ed) MRPH, Peshawar	15	16	30/6/2005
4	Mst. Safiya Begum Religious Teacher (BA) GIB (G) Peshawar	9	16	05/02/2010
5	Mr. Mumtaz Khan C. Teacher (MA, M.Sc. CT, B.Ed) GIB, D.I.Khan	9	16	24/8/2008
6	Mst. Naila Tabasum C. Teacher (MSc. M.Ed) GIB (G), Peshawar	9	16	25/8/2010
7	Mufti Habib Ullah Religious Teacher (BA, B.Ed) GIB, Swat	9	16	24/3/2009
8	Mr. Faisal Haq Brail Teacher (MA) GIB, D.I.Khan	9	16	23/8/2004
9	Mst. Amina Bibi Junior Teacher (MA, B.Ed) MRPH Haripur	11	16	26/11/2007
10	Mr. Mohammad Shah Music Teacher (BA) GIB, Mardan	9	16	28/12/1998
11	Mr. Shahid Ali Junior Teacher (MA, B.Ed) Deaf School Gulbahar, Peshawar	9	16	26/7/2008

2. The seniority of the above teachers will be in tact as per their actual BPS and regular post occupied from the date of their initial appointment. The higher pay scale will be treated personal and the post occupied by them will be downgraded on vacation automatically. The remaining terms & conditions of the Finance Department will be applicable. This issue with the approval of Director (SWSE&WE) Khyber Pakhtunkhwa.

Mohammad Rauf
16/01/2015
(MOHAMMAD RAUF)
Assistant Director (Estab)

Copy for Information to:-

1. PS to Secretary (SWSE&WE).
2. Section Officer-II (SWSE&WE)
3. District Accounts Officer Bannu, D.I.Khan, Mardan, Swat, Haripur. Mardan
4. Official concerned.
5. DO (SW) Concerned.
6. Principal/Superintendent/Manger Concerned.

Annex - 2

"C"

-7-



GOVERNMENT OF KHYBER PAKHTUNKHWA
ZAKAT, USHR, SOCIAL WELFARE SPECIAL EDUCATION & WOMEN
EMPOWERMENT DEPARTMENT

Dated: Peshawar the 22 / 10 / 2019

NOTIFICATION:

No. SO-VI/SWD/11-100/H.P.S/FCI/1387-1410. In pursuance of the decision taken in the meeting of Department Promotion Committee held on 18-10-2019 and after full filling the codal formalities envisaged in the Finance Department circular letter No. FD(SR-1)/1-9/84-III dated 24-07-1986. The following teachers are awarded higher pay scales as mentioned against their names with immediate effect.

Sr. #	Name of Teacher	Designation with BPS	Place of Posting	Date of appointment	Qualification	Higher Pay Scale Awarded
1	Naimatullah	Religious Teacher BPS-11	MR&PHC Bannu	18.07.1990	B.A/B.Ed	BPS-17
2	Fayazud Din	Drawing Master BPS-10	GSDC Kohat	22.01.2010	B.A/B.Ed	BPS-17
3	Naimatullah	Computer Teacher BPS-10	GSDC Kohat	22.10.2010	B.A/B.Ed M.A Spl Ed CT DIT	BPS-17
4	Bushra Malik	Jr. Teacher BPS-12	MR&PHC Mansehra	11.04.2015	M.Sc/B Ed M. Ed	BPS-17
5	Muhammad Tahir	P.T. BPS-9	GIB DI Khan	24.08.2004	M.A/B. Ed	BPS-17
6	Awas Alam	Blind Teacher BPS-9	GIB Male Peshawar	11.11.2016	M.A Political Science, M.A Spl. Ed., B Ed	BPS-17
7	Muhammad Shakeel	Cane Supervisor BPS-9	GIB Abbottabad	21.04.2012	F.A/B.A	BPS-16

The Award of Higher Pay Scale shall be treated as personal to them and shall not confer any right on them to claim seniority over there elsewhere seniors in the normal course of promotion.

Sd/-

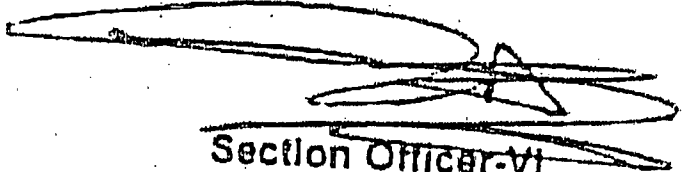
Secretary to Govt. of Khyber Pakhtunkhwa
Social Welfare, Spl: Edu: & Empowerment Deptt

-8-

dst; No & Date Even.

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

1. Accountant General Khyber Pakhtunkhwa Peshawar.
2. Director, Social Welfare, Spl: Edu & W. Empowerment Peshawar.
3. District Accounts Officer, Abbottabad, Peshawar, Mansehra, Kohat and Bannu.
4. District Officers, Social Welfare Peshawar, Abbottabad, Mansehra, Kohat and Bannu.
5. P S to Secretary Social Welfare Peshawar.
6. Principal, Govt. School for Deaf Children, Kohat.
7. Manager, MR & PHC Mansehra & Bannu.
8. Superintendent Govt. Institute for the Blinds D.I. Khan, Abbottabad and Peshawar.
9. Officials Concerned.


Section Officer-VI,
Social Welfare Department

2018 PLC (C.S.) 669

[Supreme Court of Pakistan]

Present: Mian Saqib Nisar, C.J., Umar Ata Bandial and Ijaz ul Ahsan, JJ

FEDERATION OF PAKISTAN through Secretary Capital Administration and Development Division, Islamabad and others

Versus

NUSRAT TAHIR and others

Civil Appeals Nos. 1631 to 2112 of 2017, Civil Appeal No. 216 of 2016 and Civil Appeals Nos. 806 to 811 of 2016, decided on 17th January, 2018.

(On appeal from the judgments dated 18.7.2017, 11.1.2016, 05.10.2015 of the Federal Service Tribunal, Islamabad passed in Appeals Nos. 565 to 573, 757 to 793, 894-918-A, 919-943, 998-1005, 1005-A, 1006-1045, 1108-1179, 1224-1243, 1265-1325, 2327-2350, 2352-2368-A, 2369, 2370, 2372-2443, 2446-2449, 2453, 2451, 2452, 2450, 2454, 2484, 2487-2501, 2508-2520(R)CS/2016, 867-872(R)CS/13, 224(R)CS/15 etc.)

Career Structure for Health Personnel Scheme Ordinance (VI of 2011)---

---S. 2(b) & Sched. I---Employees of different institutions functioning under the Directorate General of Special Education---Entitlement to payment of health allowance---Health allowance was allowed to said employees vide certain Office Memoranda ("the Memorandums")---Plea of Federal Government that health allowance was only for employees of a health organization, whereas the employees in question were engaged in the process of education, training and rehabilitation of disabled children and therefore did not fall within the ambit of a health organization; held, that education, training and rehabilitation of disabled persons were services provided in the health sector---Said services fell within the terms of Schedule-I to the Career Structure for Health Personnel Scheme Ordinance, 2011 and therefore the providers thereof qualified as health personnel---Memorandums issued by the Finance Division, Government of Pakistan still held the field in their original terms---Grant of the health allowance and the terms of eligibility to receive the same were determined by the competent authority, i.e. Ministry of Finance in accordance with Rules of Business of the Federal Government---Memorandums were acted upon for a certain period of time before the Finance Division stopped the payment of allowance to the employees in question---Payment of the health allowance to the employees had conferred a vested right upon them, thus, in such circumstances, the Executive was barred by the rule of locus poenitentiae from unilaterally rescinding and retrieving the benefit availed by its recipients---Appeals were dismissed by the Supreme Court and the entitlement of employees of the Directorate General of Special Education, allied institutions/centers, National Council for Rehabilitation of Disabled Persons ("NCRDP") and National Trust for the Disabled ("NTD") to receive the health allowance was affirmed. [pp. 674, 675] A, B, C & D

Pakistan through the Secretary, Ministry of Finance v. Muhammad Himayatullah Farukhi PLD 1969 SC 407 and The Engineer-in-Chief Branch v. Jalaluddin PLD 1992 SC 207 ref.

Sajid Ilyas Bhatti, DAG, Syed Rifaqat Hussain Shah, Advocate-on-Record, Ms. Saadia Kanwal, S.O. Fin. Abid Hussain Channa, S.O. Fin. Sajid Javed, Assistant, Legal Fin. and

Sajid Ilyas Bhatti

8/17/2018, 9:24 AM

Abdul Razzaq, AAO MEG Rawalpindi for Appellants (in all cases).

Respondents in person.

Muhammad Ilyas Lodhi, Advocate Supreme Court and Malik Itaat Hussain Awan, Advocate Supreme Court for Respondents (in C.A. No. 216 of 2016).

Muhammad Makhdoom Ali Khan, Senior Advocate Supreme Court and Sikandar Bashir Mohmand, Advocate Supreme Court for Amicus Curiae.

Date of hearing: 17th January, 2018.

JUDGMENT

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

"Government of Pakistan

Finance Division

(Regulations Wing)

Islamabad, the 04th Feb, 2012

F.No.2(13)R-2/2011

OFFICE MEMORANDUM

Subject:

GRANT OF AD HOC ALLOWANCE EQUAL TO ONE BASIC PAY AT THE INITIAL OF THE SCALE TO THE HEALTH PERSONNEL IN BPS SCHEME.

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

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

*e.T.C
Ranoo*

8/17/2018, 9:24 AM 4

Sd/-

(M. Munir Sadiq)

Deputy Secretary (R-I)"

"Government of Pakistan

Finance Division

(Regulations Wing)

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

OFFICE MEMORANDUM

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

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

Sd/-

(Manzoor Ali Khan)

Sr. Joint Secretary (Regulations)"

(emphasis supplied)

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

etc
2/17/2012

2/17/2012, 9:21 AM

submissions before the Court that highlighted important facts and documents on record which simplified the controversy appreciably.

3. It transpires that an Office Memorandum dated 27.03.2012 by the Finance Division (Regulations Wing) clarifies that the term "health personnel" used in the above mentioned memoranda bears the meaning given to that expression in section 2(b) of the Ordinance. This definition refers to the contents of Schedule-I to the Ordinance which specifies the service providers who qualify as health personnel. A perusal of Schedule-I shows that live categories of service providers are classified as health personnel, namely: Doctors, Allied, Nurses, Paramedics and Support. The services specified under the categories of Paramedics and Support include Teachers, Audiovisual Operators, Technicians, Librarians, etc.

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

5. The discontinuation of their Health Allowance was taken to the Islamabad High Court by some of the respondents. Vide order dated 17.9.2015 the learned High Court referred the dispute to the Secretary CADD for passing a speaking order thereon; and till then restrained recovery of past payments of the Health Allowance from the affected employees of DGSE and allied centers. The Secretary CADD heard the parties and by order dated 21.3.2016 rejected the entitlement of the respondents to receive the said allowance. The principal ground of his decision is that employees of the DGSE were engaged in the process of education, training and rehabilitation of disabled children and therefore did not fall within the ambit of a health organization. The respondents successfully challenged the said order before the learned Federal Service Tribunal which has, inter alia, by the impugned judgment dated 18.07.2017 declared that the respondents are entitled to the grant of Health Allowance.

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

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

"b) "health personnel" means a person who holds a post in any institute or organization delivering services in the health sector and included in Schedule-I, but does not include:

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5 - 13 -

i) a person who is on deputation to the Federal Government from any Province or other authority;

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

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

9. Accordingly, not only do the respondents fall within the category of persons who are, in terms of Finance Division Memoranda dated 06.2.2012 and 27.3.2012, eligible for grant of the Health Allowance but their entitlement has in fact been admitted by both the Ministry of CADD and Ministry of Finance. In this respect the aforementioned letter dated 13.3.2013 issued by the Ministry of CADD is referred. Also the affidavit of the Secretary Finance, Government of Pakistan filed in the Islamabad High Court pursuant to that Court's order dated 20.3.2015 passed in Writ Petition No. 4007 of 2014, specifically records that the proposal approved by the Prime Minister vide Summary dated 25.1.2012 did not restrict admissibility of the Health Allowance to the personnel of the three hospitals (identified by the learned DAG). For that reason the Finance Division Memoranda dated 04.2.2012 and 6.2.2012 made the allowance available to all health personnel employed by the Federal Government in the BPS Scheme.

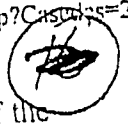
10. As a result, the said allowance was paid to the health personnel of the DGSE and its allied institutions until 27.10.2014 when the Finance Division instructed the AGPR to confine the grant of the allowance to employees of Federal Government hospitals and clinics. This instruction represents merely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

11. As a secondary and also tenuous argument, learned Deputy Attorney General contended that the Health Allowance is granted under executive fiat without any statutory backing therefore the same can be withdrawn by the Federal Government at any time. That is clearly a flawed contention. It is admitted that grant of the Health Allowance and the terms of eligibility to receive the same were determined by the competent authority, Ministry of Finance in accordance with Rules of Business of the Federal Government. The original terms of the said lawful grant still hold the field. These were acted upon and payment of the Health Allowance to the respondents has conferred a vested right upon them. In such circumstances, the executive is barred by the rule of locus poenitentiae from unilaterally rescinding and retrieving the benefit availed by its recipients. Reference is made to Pakistan, through the Secretary, Ministry of Finance v. Muhammad Himayatullah Farukhi (PLD 1969 SC 407) and The Engineer-in-Chief Branch v. Jalaluddin (PLD 1992 SC 207). Therefore without a change of the terms of eligibility for the Health Allowance even the prospective exclusion of the respondents from receipt of the benefit shall constitute arbitrary and unlawful action.

C. I. Zaman

8/17/2018, 9:24 AM

-14-



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

Appeals dismissed.

MWA/F-1/SC

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17

GOVERNMENT OF KHYBER PAKHTUNKHWA
ZAKAT, USHR, SOCIAL WELFARE, SPECIAL EDUCATION
AND WOMEN EMPOWERMENT DEPARTMENT

Dated: Peshawar the 21st June, 2017.

NOTIFICATION:

No. SO-VI/SWD/6-73/KC 2943-51 Mr. Rashidullah Shah, Senior Teacher (BPS-17) Special Education Complex Hayatabad, Peshawar is hereby transferred and posted as Principal, Government School for Deaf Children, Bannu against the vacant post in the public interest with immediate effect.

-sd-

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

Indst No. and Date even:

Copy forwarded for information and necessary action to the:-

1. Accountant General, Khyber Pakhtunkhwa.
2. Director Social Welfare, Khyber Pakhtunkhwa.
3. District Officer, Social Welfare Peshawar.
4. District Officer, Social Welfare Bannu.
5. District Account officer, Bannu.
6. PS to Special Assistant to Chief Minister for Transport & Mass Transp. Khyber Pakhtunkhwa w/r to his letter No. PS/SA/ to CM/TS&MT/1-6/Soc:Welfare/2014 dated 15.03.2017.
7. Officer concerned.
8. PS to Secretary SW, SE, WED, Khyber Pakhtunkhwa.
9. Personal files.

Section Officer-VI

DISTRICT OFFICER
SOCIAL WELFARE
BANNU

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BETTER COPY PAGE NO 15

GOVERNMENT OF KHYBER PAKHTUNKHWA
ZAKAT, USHR, SOCIAL WELFARE, SPECIAL EDUCATION
AND WOMAN EMPOWERMENT DEPARTMENT

Dated: Peshawar the 27th June, 2017

NOTIFICATION:

No.SO-VI/SW12/6 -73/KC.2943-51 Mr.Rashidullah Shah Senior Teacher BPS-17
Special Education Complex, Hayatabad, Peshawar is hereby transferred and
posted as Principal, Government School for Deaf Children, Bannu against the vacant
post in the public interest with immediate effect

-sd-

Secretary to Govt: Of Khyber Pakhtunkhwa
Zakat, Ushr, Social Welfare, Special Education
Women Empowerment Department

"F" -16-

18

Bannu

P Sec:001 Month:July 2018
BU6151 -Special Edu: School for De
SPECIAL EDUCATION CENTRE

S#:8479

Pers #: 00522536 Buckle:
Name: RASHID ULLAH SHAH
PRINCIPAL
CNIC No.1110135030711
GPF Interest Applied

NTN:
GPF #: 522536
Old #:

BU6151

17 Active Permanent
PAYS AND ALLOWANCES:

0001-Basic Pay
1000-House Rent Allowance
1210-Convey Allowance 2005
1550-Special Allowance
1947-Medical Allow 15% (16-22)
1985-Health Professional Allow
2148-15% Adhoc Relief All-2013
2199-Adhoc Relief Allow @10%
2211-Adhoc Relief All 2016 10%
Gross Pay and Allowances

48,770.00
4,433.00
5,000.00
2,118.00
1,985.00
48,770.00
1,100.00
750.00
3,895.00
351,610.00

DEDUCTIONS:
IT Payable 26,763.66 Deducted 2,434.00
GPF Balance 226,865.00
3501-Benevolent Fund
4004-R. Benefits & Death Comp:

TAX:(3609) 2,434.00
Subrc: 4,270.00
800.00
2,136.00

Total Deductions

9,640.00
341,970.00

D.O.B
25.04.1980
08 Years 03 Months 030 Days

LFP Quota:
NATIONAL BANK OF PAKHAYATABAD BRANCH
2722-8

Bannu

P Sec:001 Month:July 2018
BU6151 -Special Edu: School for De
SPECIAL EDUCATION CENTRE

S#:8480

Pers #: 00522536 Buckle:
Name: RASHID ULLAH SHAH
PRINCIPAL
CNIC No.1110135030711
GPF Interest Applied

NTN:
GPF #: 522536
Old #:

BU6151

17 Active Permanent
PAYS AND ALLOWANCES:
2224-Adhoc Relief All 2017 10%
2247-Adhoc Relief All 2018 10%
5920-Adj Health Prof. Allow

4,877.00
4,877.00
225,035.00

Gross Pay and Allowances
DEDUCTIONS:
IT Payable 26,763.66 Deducted 2,434.00
GPF Balance 226,865.00

subrc:

351,610.00

Total Deductions

9,640.00
341,970.00

D.O.B
25.04.1980
08 Years 03 Months 030 Days

LFP Quota:
NATIONAL BANK OF PAKHAYATABAD BRANCH
2722-8

etc
Ranoo

16/A-

Bannu

SN: 1

P Sec:001 Month:September 2022
BU5317 - Special Education School
SPECIAL EDUCATION CENTRE

Pers #: 00177133 Buckle:
Name: NIAMAT ULLAH KHAN
RELIGIOUS TEACHER
CNIC No:15588292276
GPF Interest Applied

NTN:
GPF #: AGRIBU 926
Old #: 15588292276

BU5317

DAYS AND ALLOWANCES:

0001-Basic Pay	75,850.00
1001-House Rent Allowance 45%	6,650.00
1310-Convey Allowance 2005	5,000.00
1550-Special Allowance	7,016.00
1947-Medical Allow 15% (16-22)	1,751.00
2148-15% Adhoc Relief All-2013	1,020.00
2199-Adhoc Relief Allow @10%	685.00
2315-Special Allowance 2021	6,074.00
2341-Dispr. Red All 15% 2022KP	7,661.00
2347-Adhoc Rel Al 15% 22(PS17)	7,661.00
Gross Pay and Allowances	119,368.00

DEDUCTIONS:

IT Payable 33,038.91 Deducted 11,013.00	TAX:(3609) 3,671.00
GPF Balance 1134,241.00	Subrc: 4,270.00
3501-Benevolent Fund	1,500.00
4004-R. Benefits & Death Comp:	900.00
6174-CM Flood Relief Fund17-22	18,171.00
Total Deductions	28,512.00

90,856.00

D.O.B
07.03.1969
32 Years 02 Months 013 Days

LFP Quota:
NATIONAL BANK OF PAKDANNU
PLS A/C 8600-9



GOVERNMENT OF KHYBER PAKHTUNKHWA
FINANCE DEPARTMENT
(REGULATION WING)

Dated Peshawar the 25-11-2019

NOTIFICATION

53

No.FD(SOSR-II)8-7/2019. In pursuance of the Supreme Court of Pakistan Civil Appeal No.811/2016 titled "Muhammad Atique-Ur-Rehman & Others v/s Federal Government of Pakistan through Secretary Capital Administration etc." the Government of Khyber Pakhtunkhwa (Provincial Cabinet) has been pleased to approve Health Allowance at the rate of one running basic pay to the devolved employees working in the Special Education Institutions from the date of their devolution to Provincial Govt of Khyber Pakhtunkhwa.

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

Secretary to Govt of Khyber Pakhtunkhwa
 Finance Department

Endst: No. & Date Even.

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

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

SECTION OFFICER (SR-II)
 FINANCE DEPARTMENT

AS (S.W.), 9

29.11.2019

25.11.19

To,

The Secretary,
Government of Khyber Pakhtunkhwa,
Finance Department, Peshawar.

SUBJECT: DEPARTMENTAL APPEAL AGAINST NOT ALLOWING/
GRANTING SPECIAL HEALTH ALLOWANCE TO THE
APPELLANT.

Respectfully stated:

With reference to the subject noted above it is stated with great respect that the appellant was appointed as Religious Teacher BPS-08 in the office of the Manager, Mental Retarded & Physically Handicapped Children, Bannu vide order dated 18.07.1990.

That through order dated 16.01.2015 the appellant was awarded higher pay scale to BPS-16 being Special Education Teacher. The appellant was awarded higher pay scale to BPS-17 vide notification dated 22.10.2019 being Special Education Teacher.

That the federal Government finance department issued notification for Special Health Allowance for Special Education Teachers which was granted to some hospitals. Some candidates being aggrieved from the Finance Department filed Civil Appeal before Federal Service Tribunal Islamabad which were allowed on 05.10.2015, 11.01.2016 and 18.07.2017 against which the Federation of Pakistan through Secretary Capital Administration etc. filed a Civil Petition before the Supreme Court of Pakistan which was dismissed by the Apex Court on 17.11.2018.

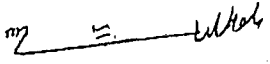
That through Notification dated 21.06.2017 one Rashid Ullah Shah was given administrative charge as Principal and awarded Special Health Allowance on the basis of above mentioned judgment.

That it is worth mentioning that regulation wing of the Finance Department, Government of Khyber Pakhtunkhwa through notification dated 25.11.2019 stated that it *"has been pleased to approve Health Allowance at the rate of one running basic pay to the devolved employees working in the Special Education Institution from the date of their devolution to provincial Government of Khyber Pakhtunkhwa"*.

It is therefore, most humbly prayed that being identical and on same legal footing the appellant may very kindly be granted Special Health Allowance with all back benefits in light of the Notification dated 25.11.2019 and apex Court Judgment.

DATED: 20-07-2022

APPELLANT


NAIMAT ULLAH
Religious Teacher
Office of MR & PHC Bannu

VAKALATNAMA

-19-

BEFORE THE KHYBER PAKHTUNKHWA SERVICE
TRIBUNAL, PESHAWAR

SERVICE APPEAL NO: _____ OF 2022

Naimat Ullah Khan

(APPELLANT)
(PLAINTIFF)
(PETITIONER)

VERSUS

Social Welfare Deptt.

(RESPONDENT)
(DEFENDANT)

I/We

نعمت اللہ خان

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. ____/____/2022

Naimat Ullah
CLIENT

ACCEPTED

NOOR MOHAMMAD KHATTAK
(BC-10-0853)
15401-0705985-5
0345-9383141

ADVOCATE SUPREME COURT

Umar Farooq Mohammad

Waqar Adnan

MAGUB

Advocates

OFFICE:-

Flat No. TF 291-292 Deans trade centre
Peshawar cantt.: Mobile No. 0345-9383141