

16.08.2022

Learned counsel for the appellant present. r. Kabirullah Khattak, Additional Advocate General alongwith Mr. Dilawar Khan, Deputy DEO for the respondents present.

Reply/comments on behalf of respondents not submitted. Representative of the respondents requested for time to submit reply/comments. Last opportunity is extended subject to payment of costs of Rs 2000/-. Adjourned. To come up for reply/comments on 04.10.2022 before S.B.

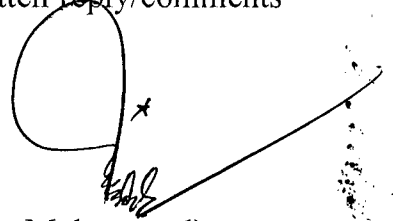


(Mian Muhammad)
Member (E)

04.10.2022

Counsel for the appellant present. Mr. Asif Khan, Assistant for respondent No. 3 alongwith Mr. Muhammad Adeel Butt, Addl. AG for the respondents present.

Representative of the respondent No. 3 submitted reply/comments alongwith cost of Rs. 2000/-. Cost of Rs. 2000/- paid to learned counsel for the appellant and receipt placed on file. Learned AAG requested for further time to submit reply/comments of respondents No. 1 & 2 alongwith cost on the next date. To come up for written reply/comments and cost on 25.11.2022 before S.B.



(Mian Muhammad)
Member (E)

1626/2021

15th April, 2022

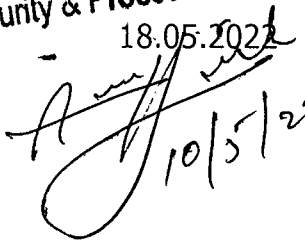
Counsel for the appellant present. Security and process fee have been deposited. Official concerned is directed to make necessary entry in the file. Thereafter, notices be issued to the respondents for submission of written reply/comments on 18.05.2022 before S.B.



Chairman

500/-
Appellant Deposited
Security & Process Fee

18.05.2022


10/5/22

Learned counsel for the appellant. Mr. Muhammad Adeel Butt, Addl. AG alongwith Mr. Sajid Superintendent for the respondents present.


Written reply/comments not submitted. Representative of the respondents seeks time to submit written reply/comments. Granted. To come up for written reply/comments on 24.06.2022 before S.B.


(Mian Muhammad)
Member (E)

24th June, 2022

Learned Counsel for the appellant present. Mr Muhammad Adeel Butt, Addl. AG alongwith Mr. Sajid Superintendent for respondents present.

Respondents have not submitted written reply/comments. Learned AAG seeks time for submission of written reply/comments. Last chance is given. To come up for written reply/comments on 16.08.2022 before S.B.


(Kalim Arshad Khan)
(Chairman)

08.07.2021

Junior to counsel for the appellant present. Preliminary arguments heard. *DB*

Points raised need consideration. The appeal is admitted to regular hearing, subject to all just and legal objections including of limitation. The appellant is directed to deposit security and process fee within 10 days. Thereafter, notices be issued to the respondents for submission of written reply/comments in office within 10 days after receipt of notices, positively. If the written reply/comments are not submitted within the stipulated time, the office shall submit the file with a report of non-compliance. File to come up for arguments on 29.11.2021 before the D.B.

[Signature]
Chairman

29-11-2021

Due to unavailability of DB,
the case is adjourned to 4-02-2022

[Signature]
Reader

04.02.2022

Due to retirement of the Worthy Chairman, the Tribunal is defunct, therefore, case is adjourned to 15.04.2022 for the same as before.




[Signature]
Reader

Form- A

FORM OF ORDER SHEET

Court of _____

Case No. 1626 /2021

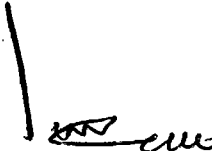
| S.No. | Date of order Proceedings | Order or other proceedings with signature of judge or Magistrate |
|-------|---------------------------|---|
| 1 | 2 | 3 |
| 1 | 25.01.2021 | <p>The appeal of Mr. Muhib Ullah resubmitted by Mr. Farhan Ullah Shahbanzai Advocate may be entered in the Institution register and put up to the Worthy Chairman for proper order.</p> <p style="text-align: right;"> REGISTRAR 25/1/2021</p> |
| 2 | | <p>This case is entrusted to S. Bench for preliminary hearing to be put up there on <u>01/04/21</u>.</p> <p style="text-align: right;"> CHAIRMAN</p> |
| | 01.04.2021 | <p>Nemo for appellant.</p> <p>Notice be issued to appellant/counsel for <u>8/07/2021</u> for preliminary hearing before S.B.</p> <p style="text-align: right;"> (Rozina Rehman) Member (J)</p> |

The joint appeal of Mr. Mohibullah and Najeebullah received today i.e. on 08 .01.2021 is in complete on the following score which is returned to the counsel for the appellants for completion and resubmission within 15 days.

- 1- Memorandum of appeal may be got signed by the appellants.
- 2- Sub-rule- 2 of rule-3 of the appeal rules 1986 requires that every affected civil servant shall prefer the appeal separately. Therefore, the appeal of the above named appellants may be filed separately/individually.
- 3- Copies of appointment orders of the appellants mentioned in Para-1 of the memo of appeal are not attached with the appeal which may be placed on it.
- 4- Three copies/sets of the appeal along with annexures i.e. complete in all respect for Tribunal and one for each respondent in each appeal may also be submitted.

No. 40 /S.T

Dt. 11/01 /2021


REGISTRAR
SERVICE TRIBUNAL
KHYBER PAKHTUNKHWA
PESHAWAR.

Mr. Farhanullah Shahbanzai Adv. Pesh.

①

BEFORE THE K.P.K SERVICE TRIBUNAL, PESHAWAR

Khyber Pakhtunkhwa
Service Tribunal

Appeal No. 1626 / 2021

Diary No. 506

Dated 08/11/2021

1. Muhib Ullah S/O Naqeeb Ullah Khan R/O Bannu, Presently Working as P.T.C (BPS-15), at Govt High School, Awal Khan (Sub-Division Wazir Bannu), District Bannu.
2. Najeeb Ullah S/O Nikam Khan R/O Bannu, Presently Working as S.E.T (BPS-17), at GHS, Awal Khan, (Sub Division Wazir Bannu), District Bannu.

.....Appellants.

VERSUS

- 1) Secretary education (E & SE), Govt of Khyber Pukhtoonkhwa, at Civil Secretariat, Peshawar.
- 2) Secretary Finance, Govt of Khyber Pukhtoonkhwa, at Civil Secretariat, Peshawar.
- 3) District Education Officer (SDW-Bannu), at District Bannu.

.....Respondents.

APPEAL U/S 4 OF THE K.P.K SERVICES TRIBUNAL ACT, 1974, BY NOT ALLOWING TWO ADVANCE INCREMENTS ON THE BASIS OF ATTAINING HIGHER EDUCATIONAL QUALIFICATION UNDER NOTIFICATION NO. FD (PRC)1-1/89, DATED: 11-08-1991 TO THE APPELLANTS ALONG WITH ARREARS.

Filed to-day
[Signature]
Registrar
08/01/2021

PRAYER

On acceptance of this appeal, respondents may kindly be directed to allow two advance increments on the basis of attaining higher educational qualification under notification no. FD (PRC)1-1/89, dated: 11-08-1991 to the appellants along with arrears & all back benefits etc.

Filed to-day
[Signature]
Registrar
25/11/2021

BEFORE THE KPK SERVICE TRIBUNAL PESHAWAR.

Appeal No. **1626** / 2021

Muhib Ullah

.....Appellant.

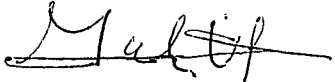
VERSUS

Secretary E & SE, KPK & Others

.....Respondents.

I N D E X

| S/No | Description of Documents | Annexure | Page No. ^s |
|------|--|----------|-----------------------|
| 1 | Memo of Appeal Along with Affidavits | | 1-5 |
| 2 | Addressees of the Parties | - | 6 |
| 3 | Copy of Appointment Order | "A" | 7 |
| 4 | Copy of MA-English of appellant degree | "B" | 8-9 |
| 5 | Copy of Judgment dated: 08/06/2017 | "C" | 10-24 |
| 6 | Copy of Departmental Appeals Dated: 07/09/2020 | "D & E" | 25-34 |
| 7 | Waqalat Nama | | 35 |



APPELLANT.

Dated; ___/01/2021.

Through:-


(Farhan Ullah Shahbanzai)
Advocate High Court,
PESHAWAR

Cell-0321-9171522

Office: FF 30, 5th Floor, Bilor Plaza, Peshawar Cantt:

(1)

BEFORE THE K.P.K SERVICE TRIBUNAL, PESHAWAR.

Appeal No. _____ / 2021

Muhib Ullah S/O Naqeeb Ullah Khan R/O Bannu, Presently Working as P.T.C (BPS-15), at Govt High School, Awal Khan (Sub-Division Wazir Bannu), District Bannu.

.....Appellant.

V E R S U S

- 1) Secretary education (E & SE), Govt of Khyber Pukhtoonkhwa, at Civil Secretariat, Peshawar.
- 2) Secretary Finance, Govt of Khyber Pukhtoonkhwa, at Civil Secretariat, Peshawar.
- 3) District Education Officer (SDW-Bannu), at District Bannu.

.....Respondents.

APPEAL U/S 4 OF THE K.P.K SERVICES TRIBUNAL ACT, 1974, BY NOT ALLOWING TWO ADVANCE INCREMENTS ON THE BASIS OF ATTAINING HIGHER EDUCATIONAL QUALIFICATION UNDER NOTIFICATION NO. FD (PRC)1-1/89, DATED: 11-08-1991 TO THE APPELLANT ALONG WITH ARREARS.

PRAYER

On acceptance of this appeal, respondents may kindly be directed to allow two advance increments on the basis of attaining higher educational qualification under notification no. FD (PRC)1-1/89, dated: 11-08-1991 to the appellant along with arrears & all back benefits etc.

Respected Sir,

The appellant respectfully submits as under:-

- 1) That the appellant was appointed on 10-05-1995 as Teacher, and now working as P.T.C (BPS-15) in district Bannu, while the appellant always worked hard with honesty and dedication and had never been acted against the rules and procedure of the department.

(Copy of appointment order is annexed as "A")

- 2) That appellant during service has attaining higher education i.e, MA (English) in 1999, as such on the basis of attaining higher educational qualification during service under Notification No.FD(PRC)1-1/89, Dated: 11-08-1991, appellant is entitled for two advance increments under the ibid notification.

(Copy of MA-English Degree is annexed as "B")

- 3) That despite legal entitlement of the appellant he has not been benefited for the said relief as such withholding the same is totally illegal, without lawful authority and the same amount to deprive the appellant from his legal & lawful rights and the same is liable consideration of your good self.

- 4) That similarly place teachers has been allowed the said increments which was further affirm by the Hon'able Peshawar High Court, Peshawar vide W.P 913-P/2014, 1418-P/2014, 2053-P/2014, through a common/ consolidated judgment dated: 08-06-2017 but appellant plea has not been considered till date.

(Copy of Judgment dated: 08-06-2017 is annexed as "C")

- 5) That with utter violation of the rights of the appellant, Finance Department of Khyber Pakhtunkhwa is also not willing to proceed with the case of the appellant, which is totally incorrect & amount to injustice with appellant as such the appellant file his departmental appeals/ Representation before Respondent No.01 & 02 on 07-09-2020, but till dated the same has not been responded.

(Copy of department appeals dated:07-09-2020 of appellant is annexed as "D & E")

- 6) That being aggrieved from the above conduct of the respondents and by not allowing two advance increments by attaining higher education during service as per notification dated: 11-08-1991 along with arrears, the appellant filed the instant service appeal before this Hon'able forum on the following grounds.

Grounds:


(3)

- A. That not allowing two advance increments on the basis of attaining higher education during service as per notification dated: 11-08-1991, and withholding the said benefits of the appellant is against law, facts, and violation of the procedure.
- B. That not extending the benefits under the said notification to the appellant is without any legal justification and against due course of law.
- C. That despite legal entitlement of the appellant and not allowing the same without assigning any reason, which is highly unjust and prejudicial to the rights of the appellant, and the same clearly suggested that the concern authority is not acting in accordance, which against the mandate of law & justice.
- D. That in respect of allowing two advance increments under the ibid Notification the Hon'able Peshawar High Court, Peshawar, vide Writ Petitions No.913-P/2014, 1418-P/2014, 2053-P/2014, through a common/ consolidated judgment dated: 08-06-2017, has also extended the said benefit to the entitled teachers, as imperative part of the said judgment is reproduce as under;
- "15. Hence, these petitions are allowed and the respondents are directed to provide them the benefits of two advance increments according to notification dated: 11-08-1991 on attaining higher qualifications during service within the period of two months from the receipt of this judgment according to prescribed manner under the law then in field.*
- Hence the appellant is also entitled for similar treatment, as per the directions of the August Peshawar High Court, Peshawar.
- E. That by ignoring these facts vide which superior court has already allowed two advance increments to the teaching staff, the department treating the appellant with discriminately which is not allowed under the constitution of Islamic republic of Pakistan 1973, and such unjustified treatment is not liable to be remain in field.

(4)

F. That the concern department not allowing two advance increments on the basis of higher education during service along with arrears to the appellant is against rules, regulation and policy, which amount to deprive the appellant from his legal and lawful rights and such violation on part of the concern department cannot be allowed to prevail under the law.

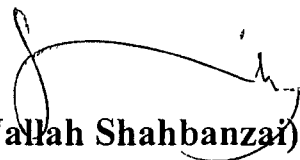
It is therefore most humbly prayed that on acceptance of instant appeal, respondents my kindly be directed to allow two advance increments on the basis of attaining higher education during service as per Notification dated: 11-08-1991 along with arrears with all back benefits etc to the appellant, and any such denial on part of the concern department by not allowing the said benefits may kindly be declared null & void, and without any legal effect and with any justification, with any other remedy specifically not prayed for my also be granted.



APPELLANT.

Dated: ___/01/2021

Through:-



(Farhan Uallah Shahbanzai)
Advocate High Court,
PESHAWAR

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BEFORE THE KPK SERVICE TRIBUNAL PESHAWAR.

Appeal No. _____ / 2021

Muhib Ullah

.....Appellant.

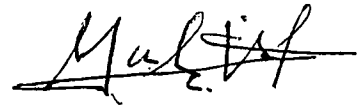
V E R S U S

Secretary E & SE, KPK & Others

.....Respondents.

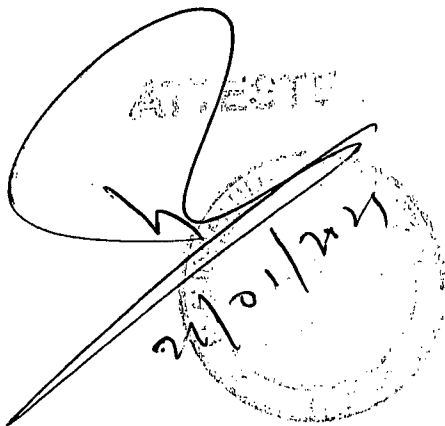
A F F I D A V I T

I, Muhib Ullah S/O Naqeeb Ullah Khan R/O Bannu, Presently Working as P.T.C (BPS-15), at GHS, Awal Khan (Sub-Division Wazir Bannu), District Bannu, do hereby solemnly affirm and states on oath that the contents of accompanying appeal are true and correct to the best of my knowledge and belief and nothing has been concealed from this Hon' able Court.



(Deponent)

Dated; ___/01/2021



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BEFORE THE KPK SERVICE TRIBUNAL PESHAWAR

Appeal No. _____ / 2021

Muhib Ullah

.....Appellant.

V E R S U S

Secretary E & SE, KPK & Others

.....Respondents.

ADDRESSES OF THE PARTIES

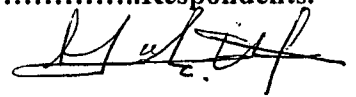
Muhib Ullah S/O Naqeeb Ullah Khan R/O Bannu, Presently Working as P.T.C (BPS-15), at Govt High School, Awal Khan (Sub-Division Wazir Bannu), District Bannu.

.....Appellant.

V E R S U S

- 1) **Secretary education (E & SE), Govt of Khyber Pukhtoonkhwa, at Civil Secretariat, Peshawar.**
- 2) **Secretary Finance, Govt of Khyber Pukhtoonkhwa, at Civil Secretariat, Peshawar.**
- 3) **District Education Officer (SDW-Bannu), at District Bannu.**

.....Respondents.



A P P E L L A N T.

Dated; ___/01/2021.

Through:-


(Farhan Uallah Shahbanzai)
Advocate High Court,
PESHAWAR

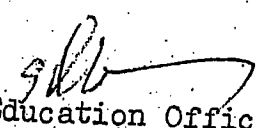
Annex "A"

OFFICE OF THE AGENCY EDUCATION OFFICER FRONTIER REGION BANNU.
APPOINTMENT ORDER.

Consequent upon the approval of the Director of Education FATA, N.W.F.P. Peshawar, Mr./Miss Mohibullah Khan Son/D/O, Haji Maqbul Khan is hereby appointed against Newly created/Vacant Post as P.T.C. on Rs. 1480/-PM in BPS, No. 7 & Rs. 1605/-PM in BPS, 9 for those FA/F.Sc in 2nd Division ~~at~~ plus usual allowances as admissible under the rules at G.P.S. Shoikhel, F.R. Bannu in the interest of public Service with effect from his/her taking over charge in the Schools.

TERMS AND CONDITIONS.

1. His/Her appointment is made purely on temporary basis and is liable to termination at any time without any notice. If he/she wishes to resign from the post he/she should produce one month's prior notice OR one month's pay in lieu thereof.
2. He/She should produce his original Educational Qualifications (Certificates) and copies thereof may be placed on record.
3. He/She should produce his/her Health and age Certificate from the Medical Superintendent Distt: Head Quarter Hospital Bannu.
- ~~4. He/she should produce his/her original Domicile Certificate.~~
5. He/She should not be handed over charge if he/she is below 18 years OR above 30 years of age. If he/she did not resume the charge within 15 days his/her appointment will be considered as cancelled.
6. Charge reports should be submitted in duplicate to all concerned.


Agency Education Officer,
Frontier Region Bannu...

Endst: No 3330-32 /PTC F.R. Bannu Dated the 9/9/1995

Copy forwarded to the:-

1. Director of Education FATA, N.W.F.P. Peshawar.
2. H/Teacher & G.P.S. Shoikhel F.R. Bannu
3. Candidate Concerned.

~~Accountant Local Office~~


AGENCY EDUCATION OFFICER,
FRONTIER REGION BANNU.

(Raja)*****

Serial No GU 02241

(8)
بِسْمِ اللَّهِ الرَّحْمَنِ الرَّحِيمِ

Annex "B"

GOMAL UNIVERSITY

DERA ISMAIL KHAN

(P.W.P.) PAKISTAN



(Session 1994-96)

HAZIB ULLAH SON of HAZIB ULLAH KHAN and

a student of the

GOVT. POST GRADUATE COLLEGE, BANNU,

having passed the prescribed examination in ARABIC, 19 98

is this day admitted by the Gomal University to the DEGREE of

MASTER OF ARTS

in the IND Class

The subject of examination being ENGLISH.

The Examination was taken as a whole/~~in parts~~.

Registered No. 5037-2-92

Roll No. 549

JANUARY 5, 19 99

Countersigned

Controller of Examinations

Vice-Chancellor

GOMAL UNIVERSITY



DERA ISMAIL KHAN

Passed/Re-appear/Failed in Agg

DETAILED MARKS CERTIFICATE

5: 1994-96

MA English Examination 19 Annual / Supplementary / Final Term.

Roll No. 549 Held in August 1998

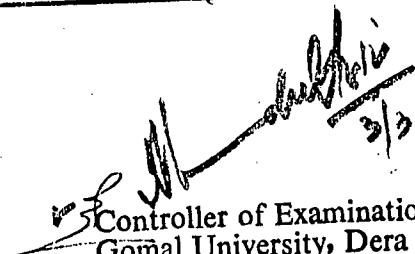
Mr / Miss Muhle ullah

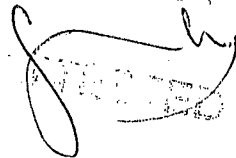
The candidate secured the following marks & has been placed in Third Division.

| SUBJECTS | Total Number of Marks allotted | MARKS OBTAINED | |
|------------------|--------------------------------|----------------|----------------------------------|
| | | In figures | In words |
| 1. Poetry | 100 | 41 | Forty one |
| 2. Drama | 100 | 40 | forty only. |
| 3. Criticism | 100 | 45 | forty five |
| 4. Essay | 100 | 63 | Sixty three |
| 5. Viva Voce | 100 | 45 | forty five |
| 6. Aggregate 3rd | 300 | 118 | one hundred + eighteen |
| 7. " 2nd | 300 | 104 | one hundred + four only. |
| " 1st | 300 | 136 | one hundred + thirty six |
| TOTAL | 1400 | 592 | Five hundred + ninety two |

No 027986

Dated 11.1.1999


3/3/99
Controller of Examinations,
Gomal University, Dera Ismail Khan.



(10)

(10)

Ames

(10) "C"

Judgment Sheet

**IN THE PESHAWAR HIGH COURT,
PESHAWAR**

(Judicial Department)

WP No. 913-P/2014

Muhammad Iqbal & two others

Vs

Govt. of Khyber Pakhtunkhwa through

Secretary to Government, Finance

Department, Peshawar & three others

JUDGMENT

Date of hearing. 08.06.2017

Petitioner (s) by: Mr. Fazal Shah Mohmand, Advocate

Respondent (s) by: Syed Qaiser Ali Shah, AAG

MUHAMMAD YOUNIS THAHEEM, J.-

Through this single judgment we propose to decide the instant writ petition alongwith connected *WP No.1418-P/2014* titled *Molvi Muhammad & four others Vs Govt. of KPK through Secretary Education (E&S), Peshawar & others* and *WP No.2053-P/2014* titled *Saeed Ullah & 32 others Vs Govt. of KPK through Secretary S & GAD & others*, as in all above petitions common question of law and facts regarding non-granting of two advance increments on attaining



higher educational qualifications, granted under Notification No. FD(PRC)1-1/89 dated 11.08.1991 Paragraph 5 are involved. Brief facts of the instant writ petition and connected petitions are separately given below:

i) WP No.913-P/2014:

The petitioners served in police department and retired as Inspectors, claimed above said relief after attaining higher educational qualifications by acquiring LL.B Degrees, they filed WP No.3600/2010 which was allowed by this Court vide judgment dated 28.10.2010 and were declare entitled for the benefit of two advance increments already given to other civil servants but inspite of favourable judgment of this Court in their favour, the petitioners were refused relief, therefore, they filed contempt of Court petition bearing COC No.201-P/2013, wherein this Court after hearing the parties passed an order for the implementation of judgment instead Khyber Pakhtunkhwa Cessation of Payment of Arrears on Advance Increments on Higher Educational Qualification Act IX, 2012 was promulgated, which has been challenged on the ground that it is to nullify the effects of judgment dated 28.10.2010 in WP



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No.3600/2010 titled as Muhammad Iqbal etc Vs Provincial Police Officers, K.P.K Police and others by giving it retrospective effect from 01.12.2001 so to the extent of retrospectivity given in Section 2 of the ibid impugned Act is liable to be truck down.

ii) WP No.1418-P/2014:

The petitioners are employees of Education Department working on the posts of AT and TF who attained Master Degrees during service, so claimed same relief as were deprived, so filed WP No.1791/2009 which was decided by this Court vide order dated 08.09.2009 with the direction to decide the matter of advance increments within 03 months, but respondents gave deaf ear to the grievance of the petitioners rather to make the aforesaid judgment as effectless, promulgated enactment known as Khyber Pakhtunkhwa Cessation of Payment of Arrears on Advance Increments on Higher Educational Qualification Act-IX of 2012 which is ineffective upon the rights of petitioners, so be declared as null and void and its retrospectivity given in Section 2 be expunged.

iii) WP No.2053-P/2014:

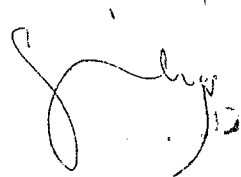
(13)

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The petitioners in the above referred petition are provincial government civil servants in different capacity from BPS-1 to BPS-15 in the education department who also during service attained higher qualifications, so sought relief provided vide notification dated 11.08.1991. The petitioners approached respondent No.4 by filing representation/departmental appeal for the grant of two advance increments but their said representation has not been considered but took shelter in the notification dated 03.01.2009 which contemplates as following:

"Now it has been decided that those who are although entitled but have not availed the same facilities so far will not be given advance increments in future"

but said notification dated 03.01.2009 has been declared discriminatory and violative of law by Honourable Supreme Court in judgments passed in *CPLA No.525 of 2007* titled as *Rashid Iqbal Khan Vs District Coordination Officer, Abbottabad & others* and *CPLA No.526 of 2007* titled as *Muhammad Haroon Qureshi Vs District Coordination Officer, Abbottabad & others* decided on 19.07.2007.



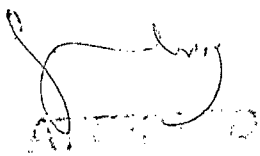
9/13

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Moreover, the petitioners have also challenged the vires of ibid KPK Act IX of 2012.

2. The petitioners in all the above said petitions have invoked the constitutional jurisdiction of this Court for the relief regarding grant of two advance increments on attaining higher educational qualifications and in this regard the notification dated 03.01.2009 has been set aside in WP No.368/2009. Petitioners have also challenged the vires of K.P.K Cessation of Arrears on Advance Increments on Higher Educational Qualification (hereinafter called impugned Act IX of 2012) to the extent of giving it retrospective effect before 01.12.2001 as against law with prayer to declare it null and void and it be expunged to the extent of retrospectivity.

3. Comments from respondents were called who submitted the same wherein they took stance that the petitioners have no any vested rights in view of notification dated 03.01.2009 and new enactment said K.P.K. Cessation of Arrears Act IX of 2012 and notification dated 03.01.2009. Respondents contended that the existing scheme of advance increments has been discontinued w.e.f. 03.01.2009 and vide Section 2 of ibid impugned Act before 01.12.2001 and have



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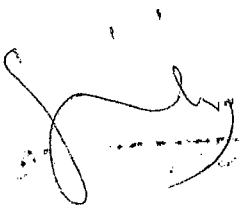
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given it retrospective effect which is within legislative powers of Pakhtunkhwa Assembly.

4. The learned counsel for the petitioners argued that issuance of notification dated 03.01.2009 and giving retrospective effect to the impugned enactment K.P.K. Cessation Act, 2012 is only aimed to nullify the beneficial effects of judgment of this Court in WP No.3600/2010 vide which notification dated 03.01.2009 has been set aside by this Court and by Honourable Supreme Court in above mentioned CPLAs decided on 19.07.2007, so this Court can examine the constitutionality of the piece of legislation by ibid impugned Section 2 of K.P.K. Cessation Act-IX of 2012 to the extent of giving it retrospective effect. He added that so many civil servants of provincial government had been benefited earlier from the notification dated 11.08.1991 but petitioners have been deprived, so the impugned enactment is malafide to nullify the judgment of this Court and prayed for striking it down to the extent of Section 2 of impugned ibid Act by giving it retrospective effect before 01.12.2001.

5. On the other hand learned counsel for the respondents supported the impugned notification dated



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03.01.2009, relied on their comments and impugned Act. He further argued that this enactment is neither aimed at to nullify the judgment of this Court nor that of Honourable Supreme Court. He lastly argued that petitioners are not entitled for the advance increments due to aforesaid notification dated 03.01.2009 and ibid impugned Act IX of 2012.

6. Arguments heard and record perused.

7. From the perusal of record it is admitted position that vide paragraph 5 of the notification dated 11.08.1991 issued by Finance Department, it was provided that any civil servant of Provincial Government Department who attained higher qualifications during service, would be entitled for two advance increments and due to said notification admittedly so many civil servants had already been benefited. However, above said relief has not been extended to petitioners despite of representations to their higher competent authorities and judgment passed by this Court as well as by Honourable Supreme Court particularly in WP No.1791/2009 decided on 08.09.2009 vide which direction was given to the respondents to decide the representation of the petitioners within 03 months but neither the



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respondents have decided the matter nor given said advance increments, on this inaction, petitioner filed COC Petition No.133/2010 which was disposed of vide order dated 11.10.2012 as abated in the light of impugned Act, IX of 2012 known as Khyber Pakhtunkhwa Cessation of Payment of Arrears on Advance Increments on Higher Educational Qualification Act, 2012 in the light of provision by giving it retrospective effect before 01.12.2001, so the petitioners feeling aggrieved have challenged the vires of above said notification and impugned enactment to the extent of giving it retrospective effect.

8. In brief the reliefs sought by the petitioners in all petitions is, one for the grant of two advance increments in purview of notification dated 11.08.1991, second for the implementation of beneficial judgments in WP No.368/2009 dated 24.03.2009 & WP No.3600/2010 dated 28.10.2010 and in third to declare the retrospective effect of impugned ibid Act, IX of 2012 as null and void and for expunction.

9. The question for determination before this Court is as to whether impugned enactment passed by the Pakhtunkhwa Assembly with legislative



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nomenclature as Khyber Pakhtunkhwa Cessation of Payment of Arrears on Advance Increments on Higher Educational Qualification Act, IX of 2012 is to nullify the effects of aforesaid judgments passed by this Court and to annul the beneficial effects of notification dated 11.08.1991 from which earlier so many civil servants of different departments of Khyber Pakhtunkhwa have been benefited.

10. We examined the impugned notification dated 03.01.2009 and whole of impugned ibid Act IX of 2012 by giving it retrospective effect before 01.12.2001. A query was put to the learned counsel for respondents as to whether before promulgation of impugned Act, its cause was removed and as whether that same provision in the impugned legislation would not amount to nullify the effects of judgment passed by this Court in the light of judgment of Honourable Apex Court cited as *2013 SCMR 1752*, on this learned counsel for the respondents failed to provide some reasonable and rational explanation for giving the impugned Act as retrospective effect before 01.12.2001. The Honourable Supreme Court while taking cognizance about the anomaly and miscarriage of justice caused to other civil servants in the Sindh

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Province for giving out of turn promotions by way of deputation and absorption of different officers in the province of Sindh through legislation by way of amending Sindh Civil Servants (Amendment) Act, 2013 and Sindh Civil Servants (Second Amendment) Act, 2013 but said piece of enactment in aforesaid enactment through amendment was struck down in the referred judgment i.e. *2013 SCMR 1752 (Contempt Proceedings case)*.

11. In the above cited judgment the Honourable Supreme Court held that Supreme Court either on its own or on petition by party is vested with the judicial power to examine, review and expunge the vires of such piece of legislation/amendment relating to the rights of civil servants and having public importance.

12. The Honourable Supreme Court vide above said judgment set aside the piece of legislation promulgated by the Sindh Assembly with regard to out of turn promotions of some officers by way of deputation /absorption. In the said judgment certain principles have been enunciated regarding instruments/piece of legislation which had nullified the effects of the judgments passed by Honourable Apex

Court as well as of Honourable Sindh High Court. In this respect paragraphs No.165, 166 and 167 of said cited judgment are reproduced below:

165. The leading judgment on the subject issue, which our Courts have approvingly referred to the case of Indira Nehru Gandhi V. Raj Narain (AIR 1975 SC 2299) which relates to amendment in the Election Laws of India. In the said judgment Paras 190 and 191 are importance and reproduced hereunder:-

"190. A declaration that an order made by a Court of law is void is normally part of the judicial function and is not a legislative function.....

191. The position as it prevails in the United States, where guarantee of due process of law is in operation, is given on pages 318-19 of Vol. 46 of the American jurisprudence 2d as under:

"The general rule is that the legislature may not destroy, annul set aside, vacate, reverse, modify, or impair the final judgment of a Court of competent jurisdiction, so as to take away private rights which have become vested by the judgment. A statute attempting to do so has been held unconstitutional as an attempt on the part of the legislature to exercise judicial power, and as to violation of the constitutional guarantee of due process of law. The legislature is not only prohibited from reopening cases

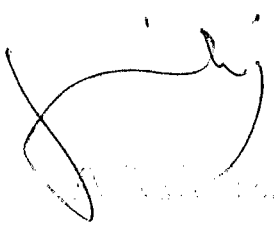
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previously decided by the Courts, but is also forbidden to affect the inherent attributes of a judgment. That the statute is under the guise of an act affecting remedies does not alter the rule. It is worthy of notice, however, that there are cases in which judgments requiring acts to be done in the future may validly be affected by subsequent legislation making illegal that which the judgment found to be illegal, or making legal that which the judgment found to be illegal."

13. Similarly Paragraphs No.166 and 167 of the cited judgment (2013 SCMR 1749) are reproduced as under:

"166. This Court in the case of Fectio Belarus Tractor Ltd. V. Government of Pakistan through Finance Economic Affairs and others (PLD 2005 SC 605) has held that when a legislature intends to validate the tax declared by a Court to be illegally collected under an individual law, the cause for ineffectiveness or invalidity must be removed before the validation can be said to have taken place effectively....."





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167. In order to nullify the judgment of the Court, unless basis for judgment in favour of a party is not removed, it could not affect the rights of a party in whose favour the same was passed. The issue of effect of nullification of judgment has already been discussed in the case of Mobashir Hassan reported in (PLD 2010 SC 265), Para-76 discusses the effect of nullification of a judgment by means of a legislation. In the said case, the view formed is identical to the one in the case of Indira Nehro Gandhi V. Raj Narain (AIR 1975 SC 2299) and Fecto Belarus Tractor Ltd. V. Government of Pakistan through Finance Economic Affairs and others (PLD 2005 SC 605) and it was observed that the legislature cannot nullify the effect of the judgment and there are certain limitations placed on its powers including the one i.e. by amending

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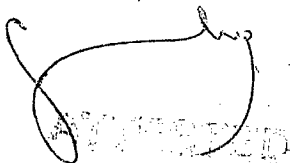
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the law with retrospective effect on
the basis of which the order or
judgment has been passed thereby
removing basis of the decision."

(Underlining are ours for emphasis)

14. In the petitions in hand the Government of Pakhtunkhwa by means of issuing notification dated 03.01.2009 had nullified the effect of notification dated 11.08.1991 and same notification dated 03.01.2009 had been declared null and void by this Court in judgment passed in WP No.3600/2010 dated 28.10.2010 and Honourable of Supreme Court in above referred CPLAs No.525 and 526 of 2007. So the petitioners were and are entitled for the benefits arising out of notification dated 11.08.1991 and the judgments passed by this Court, therefore, respondents were not legally authorized to deprive the petitioners from the beneficial effects of the aforesaid notification dated 11.08.1991 and aforesaid judgments through impugned ibid Act, IX of 2012 before first removing the cause that is entitlement and the aforesaid beneficial effects of judgments in the impugned notification dated 03.01.2009 and through the



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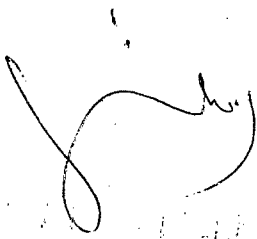
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impugned *ibid* Cessation of Advance Increments Act-IX of 2012.

15. Thus in view of above discussion, we are of the firm view that by promulgating impugned piece of legislation and giving it retrospective effect is nothing but to destroy, annul and make the judgments of this Court as well as of Honourable Supreme Court as effectless, therefore, to the extent of Section 2 by giving it retrospective effect before 1.12.2001 is declared null and void so is hereby expunged and struck down from the aforesaid impugned Act IX of 2012. Hence, these petitions are allowed and the respondents are directed to provide them the benefits of two advance increments according to notification dated 11.08.1991 on attaining higher qualifications during service within the period of two months from the receipt of this judgment according to prescribed manner under the law then in field.

Announced:
08.06.2017

JUDGE



Ihsan

JUDGE



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Annex "D"

To,

1. The secretary ,
Elementary & Secondary Education ,KPK,
Peshawer.
2. The Secretary,
Finance Department,
KPK, Peshawer.
3. District Education Officer , (SDW,Bannu),
at District Bannu.

Secretary Finance
Peshawar
11/9/90

Subject ; Departmental Appeal / Representation for not allowing two advance increments on the basis of attaining higher educational qualification under Notification No .FD (PRC) 1-1/89, Dated ; 11-08-1991 to the appellant along with arrears.

Respected Sir ,

The applicant /petitioner respectfully submits as Under.

- 1) That the appellant was appointed on 10-05-1995 as teacher ,
and now working as P.T.C(BPS-15) in district Bannu, while the
appellant always worked hard with honesty and dedication and

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had never been acted against the rules and procedure of the department.

(Copy of Service Book annexed as "A")

- 2) That appellant during service has attained higher education i.e MA (English) in 1999, as such on the basis of attaining higher educational qualification during service under Notification No, FD(PRC)1-1/89, Dated 11-08-1991, appellant is entitled for two advance increments under the ibid notification.

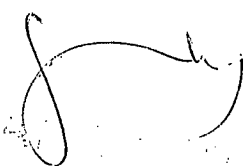
(copy of MA-English Degree is annexed as "B")

- 3) that despite legal entitlement of the appellant he has not been benefited for the said relief as such with holding the same is totally illegal, without lawful authority and same amount to deprive the appellant from his legal & lawful rights and the same is liable consideration of your good self.

- 4) That similarly place teachers has been allowed the said increments which was further affirm by the Hon'able Peshawar High Court vide W.P 913P/2014,1418-P/2014, 2053-P/2014, through a common / consolidated judgment dated : 08-06-2017 but appellant plea has not been considered till date.

(copy of judgment dated :08-06-2017 is annexed as "C")

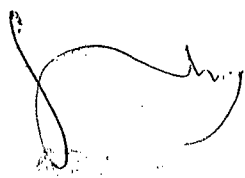
- 5) that with utter violation of the rights of the appellant, Finance Department of Khyber Pakhtunkhwa is also not willing to proceed with case of appellant, which is totally incorrect & amount to injustice with appellant.



- 6) that being aggrieved from not allowing two advance increments by attaining higher education during service as per notification dated 11-08-1991 along with arrears, the appellant filed the instant departmental appeal/representation before this Hon'able forum on the following grounds.

Grounds:

- A. That not allowing two advance increments on the basis of attaining higher education service as per notification dated 11-08-1991, and withholding the said benefits of the appellant is against law, facts and violation of the procedure.
- B. That not extending the benefits under the said notification to the appellant is without any legal justification and against due course of law.
- C. That despite legal entitlement of the appellant and not allowing the same without assigning any reason, which is highly unjust and prejudicial to the rights of the appellant, and the same clearly suggested that the concern authority is not acting in accordance, which against the mandate of law & justice.
- D. That in respect of allowing two advance increments under the ibid Notification the Hon'able Peshawar High Court, Peshawar vide Writ petitions No.913-p/2014, 1418-p/2014, 2053-p/2014, through a common /consolidated judgment dated 08-06-2017, has also extended the said benefit to the entitled teachers, as imperative part of the said judgment is reproduced as under;





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"15. Hence , these petitions are allowed and the respondents are directed to provide them the benefits of two advance increments according to notification dated :11-08-1991 on attaining higher qualification during service within the period of two months from the receipt of this judgment according to prescribed manner under the law then in field".

Hence the appellant is also entitled for similar treatment , as per the direction of the August Peshawar High Court, Peshawar.

E) That by ignoring these facts vide which superior court has already allowed two advance increments to the teaching staff, the department treating the appellant with discriminately which is not allowed under the constitution of islami republic of Pakistan 1973, and such unjustified treatment is not liable to be remain in field.

F) that the concern department not allowing two advance increments on the basis of higher education during service along with arrears to the appellant is against rules, regulation and policy, which amount to deprive they appellant from his legal and lawful rights and such violation on part of the concern department cannot be allowed to prevail under the law.

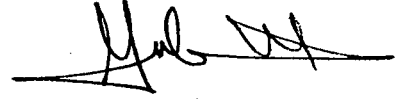
It is therefore most humbly prayed that on acceptance of instant departmental /representation appellant my kindly be allowed two advance increments on the basis of attaining

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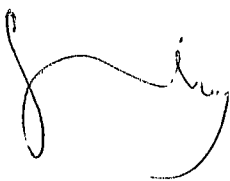
higher education during service as per Notification dated 11-08-1991 along with arrears, and any such denial on part of the concern department by not allowing the said benefits may kindly be declared null & void, and without any legal effect and with any justification.

Your obediently

Dated; 26 /08/2020



Muhib Ullah S/O Nageeb Ullah Khan
Working as P.T.C (BPS-15), at GHS
,Awal khan,(Sub-Division Wazir
Bannu) District Bannu.
Mob : 03329740327
CNIC ;



To,

(30)

Annex "E"

1. The secretary ,
Elementary & Secondary Education ,KPK,
Peshawer.
2. The Secretary,
Finance Department,
KPK, Peshawer.
3. District Education Officer , (SDW,Bannu),
at District Bannu.

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2/9/20

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(Copy of Service Book annexed as "A"

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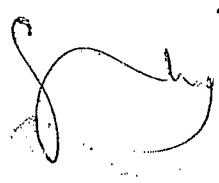
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- 3) that despite legal entitlement of the appellant he has not been benefited for the said relief as such with holding the same is totally illegal, without lawful authority and same amount to deprive the appellant from his legal & lawful rights and the same is liable consideration of your good self.

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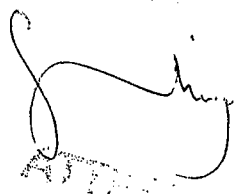
- 5) that with utter violation of the rights of the appellant, Finance Department of Khyber Pakhtunkhwa is also not willing to proceed with case of appellant, which is totally incorrect & amount to injustice with appellant.



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- B. That not extending the benefits under the said notification to the appellant is without any legal justification and against due course of law.
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ATTORNEY

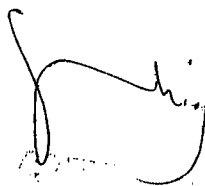
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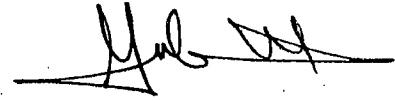
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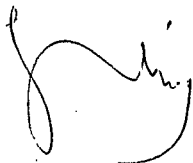
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Your obediently

Dated; 26/08/2020



Muhib Ullah S/O Nageeb Ullah Khan
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,Awal khan,(Sub-Division Wazir
Bannu) District Bannu.
Mob : 03329740327
CNIC ;



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|---|-------|---|--|---|
| قیمت 50 روپے | 68001 |  |  |  |
| ایڈوکیٹ: <u>ضرحان اللہ الیٹروکیٹ</u> | | پشاور بار ایسوسی ایشن، خیبر پختونخواہ | | |
| بار کونسل ایسوسی ایشن نمبر: <u>hc-11-3153</u> | | | | |
| رابطہ نمبر: <u>0321-9171522</u> | | | | |

بعدالت جناب: سروس ٹریبونل KPK پشاور

| | |
|------------------------|-------------------------|
| مخاطب: <u>ایڈوانسٹ</u> | دعویٰ: <u>سروس ایپل</u> |
| محبت اللہ | علت نمبر: _____ |
| بنام | مورخہ: _____ |
| سیکرٹری انجکشن | جرم: _____ |
| | تھانہ: _____ |

بامث تحریر آتھ

مقدمہ مندرجہ عنوان بالا میں اپنی طرف سے واسطے پیروی و جواب دہی کارروائی متعلقہ آن مقام پشاور کیلئے ضرحان اللہ الیٹروکیٹ وزیر الیٹروکیٹس کو وکیل مقرر کر کے اقرار کیا جاتا ہے کہ صاحب موصوف کو مقدمہ کی کل کارروائی کا کامل اختیار ہوگا، نیز وکیل صاحب کو راضی نامہ کرنے و تقرر ثالث و فیصلہ برحلف دینے جواب دعویٰ اقبال دعویٰ اور درخواست از ہر قسم کی تصدیق زریں پر دستخط کرنے کا اختیار ہوگا، نیز بصورت عدم پیروی یا ڈگری یکطرفہ یا ایپل کی برآمدگی اور منسوخی، نیز دائر کرنے اپیل نگرانی و نظر ثانی و پیروی کرنے کا مختار ہوگا اور بصورت ضرورت مقدمہ مذکورہ کے کل یا جزوی کارروائی کے واسطے اور وکیل یا مختار قانونی کو اپنے ہمراہ یا اپنے بجائے تقرر کا اختیار ہوگا اور صاحب مقرر شدہ کو وہی جملہ مذکورہ با اختیارات حاصل ہوں گے اور اس کا ساختہ پر داختم منظور و قبول ہوگا دوران مقدمہ میں جو خرچہ ہر جانہ التوائے مقدمہ کے سبب سے ہوگا کوئی تاریخ پیشی مقام دورہ یا حد سے باہر ہو تو وکیل صاحب پابند نہ ہوں گے کہ پیروی مذکورہ کریں، لہذا وکالت نامہ لکھ دیا تاکہ سند رہے

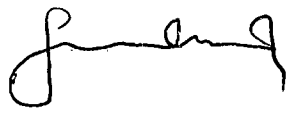
المرقوم: 25 جنوری 2021

المقام پشاور گواہ شد کے لیے منظور ہے۔

Accepted

نوٹ: اس وکالت نامہ کی فوٹو کاپی ناقابل قبول ہوگی۔





محبت اللہ وکیل لکھنؤ خاتک ملکن بلوچ

“B”

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR.
JUDICIAL COMPLEX (OLD), KHYBER ROAD,
PESHAWAR.

No.

Resd

SB

Appeal No. *1626 & 1627* of 20 *21*

Muhib ulloah & Other Appellant/Petitioner

Versus

Secy Education, Govt of KPK Peshawar Respondent
Respondent No. *(3)*

Notice to: —

*District Education Officer (SDW-Bannu) at
District Bannu.*

WHEREAS an appeal/petition under the provision of the Khyber Pakhtunkhwa Province Service Tribunal Act, 1974, has been presented/registered for consideration, in the above case by the petitioner in this Court and notice has been ordered to issue. You are hereby informed that the said appeal/petition is fixed for hearing before the Tribunal *on *18/05/2022* at 8.00 A.M. If you wish to urge anything against the appellant/petitioner you are at liberty to do so on the date fixed, or any other day to which the case may be postponed either in person or by authorised representative or by any Advocate, duly supported by your power of Attorney. You are, therefore, required to file in this Court at least seven days before the date of hearing 4 copies of written statement alongwith any other documents upon which you rely. Please also take notice that in default of your appearance on the date fixed and in the manner aforementioned, the appeal/petition will be heard and decided in your absence.

Notice of any alteration in the date fixed for hearing of this appeal/petition will be given to you by registered post. You should inform the Registrar of any change in your address. If you fail to furnish such address your address contained in this notice which the address given in the appeal/petition will be deemed to be your correct address, and further notice posted to this address by registered post will be deemed sufficient for the purpose of this appeal/petition.

Copy of appeal is attached. Copy of appeal has already been sent to you vide this office Notice No. dated

Given under my hand and the seal of this Court, at Peshawar this *11/5*

Day of *May* 20 *22*

For Reply

[Signature]
Registrar,
Khyber Pakhtunkhwa Service Tribunal,
Peshawar.

Note: 1. The hours of attendance in the court are the same that of the High Court except Sunday and Gazetted Holidays.
2. Always quote Case No. While making any correspondence.

“B”

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR.
JUDICIAL COMPLEX (OLD), KHYBER ROAD,
PESHAWAR.

SB

No.

Appeal No. 1626 & 1627 of 20 21

Munib ulah & 0 other

Appellant/Petitioner

Secy Education (E&SE) Govt of KPK Peshawar

Versus

Respondent

Respondent No.

SECRETARY DIARY

Notice to:

Secy Education (E&SE) Govt of KPK at
Civil Secretariat, Peshawar

WHEREAS an appeal/petition under the provision of the Khyber Pakhtunkhwa Province Service Tribunal Act, 1974, has been presented/registered for consideration, in the above case by the petitioner in this Court and notice has been ordered to issue. You are hereby informed that the said appeal/petition is fixed for hearing before the Tribunal *on 18/05/2022 at 8.00 A.M. If you wish to urge anything against the appellants/petitioner you are at liberty to do so on the date fixed, or any other day to which the case may be postponed either in person or by authorised representative or by any Advocate, duly supported by your power of Attorney. You are, therefore, required to file in this Court at least seven days before the date of hearing 4 copies of written statement alongwith any other documents upon which you rely. Please also take notice that in default of your appearance on the date fixed and in the manner aforementioned, the appeal/petition will be heard and decided in your absence.

Notice of any alteration in the date fixed for hearing of this appeal/petition will be given to you by registered post. You should inform the Registrar of any change in your address. If you fail to furnish such address your address contained in this notice which the address given in the appeal/petition will be deemed to be your correct address, and further notice posted to this address by registered post will be deemed sufficient for the purpose of this appeal/petition.

Copy of appeal is attached. ~~Copy of appeal has already been sent to you vide this office Notice No. dated~~

Given under my hand and the seal of this Court, at Peshawar this 11th

Day of May 20 22

(For Reply)

[Signature]

Registrar,

Khyber Pakhtunkhwa Service Tribunal,
Peshawar.

- Note: 1. The hours of attendance in the court are the same that of the High Court except Sunday and Gazetted Holidays. 2. Always quote Case No. While making any correspondence.

IN THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR.

Service Appeal No – 1626 of 2021

Muhib Ullah..... Appellant

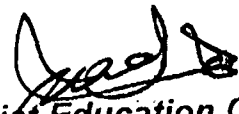
VERSUS

Secretary E & SE and others Respondents

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Dated: 04 / 10 / 2022


District Education Officer
Sub Division Wazir Bannu

①

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR .
Service Appeal NO 1626 of 2021

Muhib Ullah-----Appellant

Versus

Secretary E & SE KPK and others-----Respondents

Joint Comment on behalf of Respondents No. 3

Preliminary Objections

1. That the Appellant has no cause of action, locus standi to file the instant Appeal.
2. That the appellant has concealed material facts from the Honorable Tribunal.
3. That the matter is badly time barred.
4. That the conduct of the Appellant estopped him to bring this instant appeal.
5. That the appeal is barred by Law.

On the facts.

- 1- It is correct to the extent that the appellant is doing his service in Education Department Sub Division Wazir Bannuas PST Teacher at GPS Awal Khan SDW (EX FR Bannu).
- 2- To the extent of higher Qualification the para is pertains to record and the rest of para is incorrect. The said Notification was declared as ineffective vide Notification No F.1(5) Imp/2001,dated Islamabad, the 4th September,2001,as in S. No 10 it is very clearly stated that: **advance increment- the existing scheme of the advance increment is discontinued w.e.f01-12-2002. A fresh Scheme, if any will be introduced in due course. (Copy of Notification is Attached as Annexure – A)**
- 3- In Correct, the said relief has been withdrawn as explained in the above para.

- 4- No comments, the para is pertains to the record of Honorable Peshawar High Court Peshawar.
- 5- In correct, the act of the Finance Department is according to rules and policy as explained above.
- 6- It is in correct to the extent of right of appellant of two advance increment, thus appellant has no cause of action for the this service appeal.

On Grounds:

- A. In correct, the appellant has no right for this increments as explained that the said notification dated 11-08-1991 has been withdrawn, therefore the appellant is not entitled for the advance increments.
- B. In correct, the act of respondents is according to rules and policy, because the appellant has no right for this increments.
- C. incorrect, the appellant is not entitled for this increments therefor the demand of the appellant is illegal and against the law and rules.
- D. No comments, the para is related to the record of Honorable Peshawar High Court Peshawar.
- E. In correct, the appellant is treated according to law and rules and he is not entitled for the said increments as explained in above paras.
- F. In correct, the appeal of the appellant is baseless and has no legal ground and act of the Department is according to rules and policy.

3

Pray


In the light of the above stated facts, it is humbly prayed that appeal of the appellant having no valid legal grounds may very graciously be dismissed with cost.

Respondent No 3


District Education Officer
Sub Division Wazir Bannu

AFFIDAVIT

I Muhammad Asghar focal person litigation District Education Office Sub Division Wazir Bannu do hereby solemnly affirms and declare on oath accompanying parawise comments are true and correct to the best of my knowledge and belief and nothing has been concealed from this Honorable Service Tribunal.


Muhammad Asghar
Deponent

(4)
Government of Pakistan
Finance Division
(Regulations Wing)

No. F.1 (5) Imp/2001

Islamabad, the 4th September, 2001.

OFFICE MEMORANDUM

Subject: REVISION OF BASIC PAY SCALES AND FRINGE BENEFITS OF CIVIL EMPLOYEES (BPS 1-22) OF THE FEDERAL GOVERNMENT (2001)

The President has been pleased to sanction, with effect from 1st December 2001, a Scheme, as detailed below, of the Basic Pay Scales, Allowances and Pensions, 2001 for the civil employees of the Federal Government in BPS 1 to BPS 22 paid from the civil Estimates and from the Defence Estimates respectively as shown in the following paragraphs.

PART I - BASIC SCALES AND ALLIED MATTERS

2. **Basic Pay Scales.** — The existing basic pay scales and the revised basic pay scales are shown in Annexure-I to this O.M. The revised basic pay scales shall replace the existing Basic Pay Scales, 1994, and shall be effective from 1st December, 2001.

3. **Discontinuation of Allowances.** — The following allowances shall cease to be payable on introduction of the revised pay scales *w.e.f.* 01-12-2001:—

(i) Cost of Living Allowance to BS 1 to BS 22 @ 7% of basic pay.

(ii) Adhoc relief of Rs. 300/- p.m. and Rs. 100/- p.m. to BS 1 to 16 (inclusive of BPS-17 by virtue of Move Over).

(iii) Secretariat/Personal Allowance.

4. **Special Additional Allowance.** — Special Additional Allowance sanctioned *vide* Finance Division O.M. No. F.1(7) Imp/99, dated 23rd July 1999 shall be frozen at the level drawn as on date of issue of this O.M.

5. **Initial Fixation of Pay.** — (1) Pay of the employees in service on 30-11-2001 shall be fixed at the stage in the revised pay scales which is as many stages above the minimum as the stage occupied by him above

| | | |
|-------|--|--|
| (iii) | Government servants drawing pay of Rs. 1688/- p.m. and above but less than Rs. 3240/- p.m. and maintaining Motorcycle/Scooter Rs. 130/- p.m. | BS 1—10 maintain- ing Motor Cycle/ Scooter Rs. 230/- p.m. |
| (iv) | Others. Rs. 96/- per month. | BS 1—10 Rs. 170/- p.m. |

12. Daily Allowance. — Daily Allowance rates presently fixed with reference to pay drawn shall be increased and related to Basic Pay Scales as under:—

Proposed

| BPS | Special Rates per day (Rs.) | Ordinary Rates Per day (Rs.) |
|-------|--------------------------------|---------------------------------|
| 1—4 | 110 | 80 |
| 5—11 | 120 | 100 |
| 12—16 | 200 | 180 |
| 17—18 | 350 | 320 |
| 19—20 | 450 | 400 |
| 21—22 | 550 | 450 |

13. Medical Allowance. — Medical Allowance to employees in BS 1—16 shall be increased from Rs. 90/- p.m. to Rs. 160/- p.m.

14. Computer Allowance. — The Computer Allowance shall be increased subject to the existing conditions of admissibility as under:

Existing Rate

Rs. 500/- p.m.

Rs. 1000/- p.m.

Revised Rate

Rs. 750/- p.m.

Rs. 1500/- p.m.

15. Special Pays/Allowances. — All the Special Pays and Allowances admissible on certain posts as percentage of Pay are revised subject to the following limits:

Pay Fixation on Promotion. — (2) The existing provisions regulating the fixation of pay in case of promotion from lower to a higher post shall continue to apply.

6. Selection Grade and Move Over. — Selection Grade in the scheme of Basic Pay Scales and Move Over scheme shall stand discontinued with effect from the date of issue of this O.M.

7. Pay Fixation of employees in Selection Grade and those who have Moved Over to higher scale. — Pay of an existing employee drawing pay by move over shall be fixed with reference to the pay scale of the post for the time being held by him. In case the employee was drawing pay in a Selection Grade, his pay will be fixed in the Selection Grade pay scale. The stage of fixation will be arrived at after allowing increments on notional basis in the original scale of the post or the Selection Grade, in 1994 Basic Pay Scales, upto the point of existing pay. Pay of the employees will then be fixed at the relevant stage in the revised pay scales 2001.

Example-I

Assistant, BS-11 Selection Grade, BS-15, Moved Over BS-16 and in receipt of pay of Rs. 5490/- Pay will be fixed in BS-15 i.e. Selection Grade pay scale at Rs. 8320/- as under :

| Scale | Stage 15 | Stage 16 | Stage 17 | Stage 18 | Stage 19 |
|------------|----------|----------|----------|----------|----------|
| 1994 Scale | 4845 | 5022 | 5199 | 5376 | 5553 |
| 2001 Scale | 7260 | 7525 | 7790 | 8055 | 8320 |

Example-II

Pay fixation of an employee in BS-11 who has moved over to BS-14 and is in receipt of basic pay of Rs. 4480/- will be fixed after allowing notional increments in BS-11 of 1994 Basic Pay Scales upto the stage of basic pay drawn. Pay in revised BS-11 will be fixed at the corresponding stage of Rs. 6790/- as under :

| BS-11 1994 Pay Scale | Stg. 15 | Stg. 16 | Stg. 17 | Stg. 18 | Stg. 19 | Stg. 20 | Stg. 21 | Stg. 22 | Stg. 23 | Stg. 24 |
|-------------------------------|------------|------------|------------|------------|------------|------------|------------|------------|------------|------------|
| | 3465 | 3581 | 3697 | 3813 | 3929 | 4045 | 4161 | 4277 | 4393 | 4509 |
| BS-11 2001 Pay Scale | 5215 | 5390 | 5565 | 5740 | 5915 | 6090 | 6265 | 6440 | 6615 | 6790 |

Revised

- | | |
|--|---|
| (a) Special Pays/Allowances sanctioned @ 20% and above of Pay. | On existing rates subject to a maximum of Rs. 2000/- p.m. |
| (b) Special Pays/Allowances sanctioned @ 10% — 19% of Pay. | On existing rates subject to a maximum of Rs. 1500/- p.m. |
| (c) Special Pays/Allowances sanctioned @ 5% — 9% of Pay. | On existing rates subject to a maximum of Rs. 1000/- p.m. |

PART III - PENSION AND COMMUTATION

16. Pension. — The Government has made the following reforms in pension/commutation scheme w.e.f. 01-12-2001 in respect of civil pensioners of Federal Government including civilian paid from Defence Estimates as well as retired Armed Forces Personnel.

(a) Commutation Table shall be replaced by the new Commutation Table at Annexure-II to this Office Memorandum.

(b) Commutation upto 40% of gross pension shall be admissible at the option of the pensioner.

(c) The additional benefit of 2 — 10% for extra years of service after completion of 30 years of qualifying service in respect of Civil Pensioners shall be discontinued.

(d) The increase in pension @ 20 — 25% to Civil Pensioners allowed vide this Division's O.M. No. 4(1)-Reg. 6/99 dated 23-07-1999 shall be discontinued.

(e) The benefit of restoration of surrendered portion of pension in lieu of commutation/gratuity shall be withdrawn.

(f) In future, the increase in pension to the pensioners shall be allowed on net pension instead of gross pension.

(g) All the pensioners shall be allowed an increase in net pension (inclusive of dearness increases allowed in the past).

(8)

**REVISION OF BASIC PAY SCALES AND FRINGE BENEFITS
OF CIVIL EMPLOYEES (2001)**

| | <i>Increase in net pension</i> |
|---|--------------------------------|
| (i) Pensioners who retired prior to the introduction of 1991 Basic Pay Scales. | 15% |
| (ii) Pensioners who retired prior to the introduction of 1994 Basic Pay Scales but on or after the introduction of 1991 Pay Scales. | 10% |
| (iii) Pensioners who retired on or after the introduction of 1994 Basic Pay Scales and upto the date of introduction of revised Basic Pay Scales i.e. 01-12-2001. | 5% |

17. Option. — (a) All the existing civil employees (BPS 1 to 22) of the Federal Government shall within 45 days from the date of issue of this office memorandum, exercise an option in writing, addressed to the Audit Office concerned in the case of employees in BPS-16 and above and to the DDO concerned in the case of employees in BPS-15 and below, either to draw pay in the existing Basic Pay Scales of 1994 or in the Revised Basic Pay Scales and pension/commutation scheme 2001 as specified in this O.M. Option once exercised shall be final.

(b) An existing employee as aforesaid, who does not exercise and communicate such an option within the specified time limit, shall be deemed to have opted to continue to draw salary in basic pay scales of 1994 and Pension/Commutation as per existing formula.

18. The government servant who will retire *w.e.f.* 01-07-2001 shall be given the benefit of revised pay scales on presumptive basis discounted by 5% increase in pension if availed, subject to the condition that all those who may like to avail this benefit should opt for the entire package *i.e.* revised schemes of Basic Pay Scales as contained in Part-I and revised package of pension as contained in Part-III of this O.M.

19. All existing rules/orders on the subject shall be deemed to have been modified to the extent indicated above. All existing rules/orders not so modified shall continue in force under this scheme.

20. Anomalies. — An Anomaly Committee shall be set up in the Finance Division (Regulation Wing) to resolve the anomalies if any, arising in the implementation of this Office Memorandum.

Sd/-

Joint Secretary (R)

Example-III

Pay fixation of an employee in BS-5 who has moved over to BS-11 and is in receipt of basic pay of Rs. 3465/- will be fixed after allowing notional increments in BS-5 of 1994 BPS upto the stage of basic pay drawn. Since basic pay of Rs. 3465/- is beyond the 30 stages in notional BS-5, (1994 BPS), & resultantly more than the 30 stages of BPS 2001, therefore, his pay will be fixed at the notional 32nd stage i.e. at Rs. 5300/-. The difference of Rs. 200/- (Rs. 5300-5100) will be personal to him as under :-

| | <u>Stage-30</u> | <u>Stage-31</u> | <u>Stage-32</u> |
|-----------|-----------------|-----------------|-----------------|
| BS-5.1994 | 3380 | 3446 | 3512 |
| BS-5 2001 | 5100 | 5200 | 5300 |

In such cases future increments upto a maximum of 3 years will also be allowed as personal to such employees.

8. **Date of Increment.** — Annual increment shall continue to be admissible subject to the existing conditions, on the 1st December each year.

9. **Special Pays/Allowances for Offices.** — The special Pay/Allowances sanctioned to the offices as percentage of pay shall be discontinued on the introduction of revised pay scales w.e.f. 01-12-2001 and adjusted in future increments.

10. **Advance Increments.** — The existing scheme of advance increments is discontinued w.e.f. 01-12-2001. A fresh scheme, if any will be introduced in due course.

PART II: ALLOWANCES

11. **Conveyance Allowance.** — The rates of Conveyance Allowance and Motorcycle/Motor car maintenance allowance presently fixed with reference to pay drawn shall be increased and related to Basic Pay Scales as follows :

| Sr. No. | Existing | Revised |
|---------|---|---|
| (i) | Government servants drawing pay in BS-16 (Gazetted) and above and maintaining motor car not registered for commercial purpose. Rs. 355/- p.m. | BS-16 (Gazetted) & above Rs. 620/- p.m. |
| (ii) | Government servants drawing pay of Rs. 3240/- per month and above other than those at (i) above. Rs. 193/- p.m. | BS-11 and above Rs. 340/- p.m. |