


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 cost of Rs 2000/-. Adjourned. To come up for reply/comments on 04.10.2022 before S.B.

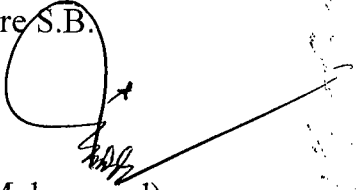


(Mian Muhammad)
Member (E)

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.

Respondents have not submitted written reply/comments. Learned AAG requested for further time to submit reply/comments of respondents and cost on the next date. Request is accepted. To come up for written reply/comments and cost on 25.11.2022 before S.B.



(Mian Muhammad)
Member (E)

1627/2021

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.

Rs 500/-
Appellant Deposited
Security & Process Fee

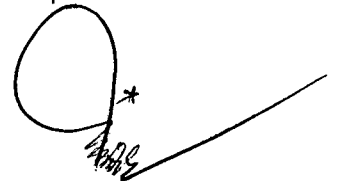
[Signature]
18.05.2022



Chairman

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.

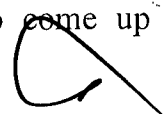


(Mian Muhammad)
Member (E)

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

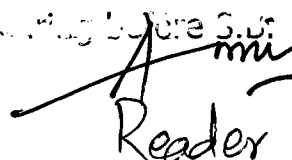
Junior to counsel for the appellant present. Preliminary arguments heard. 150

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.


Chairman

01.04.2021
29.11.2021

Nemo for appellant.
Due to unavailability of DB, the case is adjourned to 04/02/2022 for preliminary arguments before S.J.


Reader

(Rozina-Rahman)
Member

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.





Reader

Form- A

FORM OF ORDER SHEET

Court of _____

Case No. 1627 /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. Najeeb 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 →</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>

BEFORE THE KPK SERVICE TRIBUNAL PESHAWAR.

Appeal No. **1627** / 2021

Najeeb Ullah

.....Appellant.

V E R S U S

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-Pashto of appellant degree	"B"	8
5	Copy of Judgment dated: 08/06/2017	"C"	9-23
6	Copy of Departmental Appeals Dated: 07/09/2020	"D & E"	24-29
7	Waqalat Nama		30

(Najeeb Ullah)
APPELLANT.

Dated; ___/01/2021.

Through:-

(Farhan Uallah 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

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.

.....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,

②

The appellant respectfully submits as under:-

- 1) That the appellant was appointed on 05-10-1994 as Teacher, and now working as S.E.T (BPS-17) 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 (Pashto) in 2001, 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-Pashto 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:

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- 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

9 (S)

BEFORE THE KPK SERVICE TRIBUNAL PESHAWAR.

Appeal No. _____ / 2021


Najeeb Ullah
.....Appellant.

V E R S U S

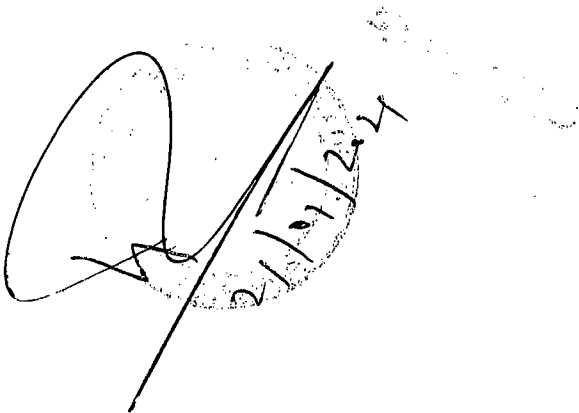
Secretary E & SE, KPK & Others
.....Respondents.

A F F I D A V I T

I, 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, 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

Najeeb Ullah
.....Appellant.

V E R S U S

Secretary E & SE, KPK & Others
.....Respondents.

ADDRESSES OF THE PARTIES

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.

.....Appellant.

V E R S U S

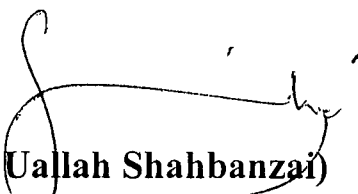
- 1) Secretary education (E & SE), Govt of Khyber Pukhtoonkhwa, at
Civil Secretariat, Peshawar.
- 2) Secretary Finance, Govt of Khyber Pukhtoonkhwa, at Civil
Secretariat, Peshawar.
- 3) District Education Officer (SDW-Bannu), at District Bannu.

.....Respondents.

Dated; ___/01/2021.


A P P E L L A N T.

Through:-


(Farhan Uallah Shahbanzai)
Advocate High Court,
PESHAWAR

(7)

Annex "A"

OFFICE OF THE AGENCY EDUCATION OFFICER FRONTIER REGION BANNU.

OFFICE ORDER./

Mr. Najibullah NIC GNS, Shoi Khel F.R. Bannu is hereby directed to work at Govt: Middle School Kotka Awal Khan F.R. Bannu in the interest of public service till further orders.

Agency Education Officer,
Frontier Region Bannu.

Order No. 678-21 F.R. Bannu Dated the 5/11/1991

Copy forwarded to:-

1. H/Teacher GNS, Shoi Khel F.R. Bannu.
2. H/M GNS, Awal Khan F.R. Bannu.
3. A.A.E.O. Circle Concerned.

Agency Education Officer,
Frontier Region Bannu...

[Handwritten signature]

Serial No. 34649

Registration No. 226-GUM-99

Roll No. 3921

Session:

Annex 'B' **GOMAL UNIVERSITY**
DERA ISMAIL KHAN
N. W. F. P.
P A K I S T A N



Provisional Certificate

[Handwritten signature]

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This is to certify that Mr. / Miss. / Mrs. NAJIBULLAH

Son / Daughter / Wife of NEEM KHAN

of the Department / Institute of PRIVATE CANDIDATE OF DEGREE B.A. DU

has passed B.A. ANNUAL, 2000 PART I Examination held in APRIL, MAY, 2001

in the subject of PASHTO

He / She was placed in 2. COND

division, Securing 373 marks out of 800

The examination was taken as a whole / in parts:

Dera Ismail Khan

Dated 26-09-2001

[Handwritten signature]
CONTROLLER OF EXAMINATIONS

(9)

Amer

C²

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

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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

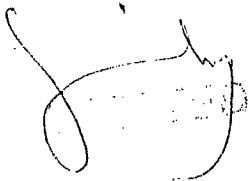


No.3600/2010 titled as Muhammad Iqbal etc Vs Provincial Police Officers, K.P.K Police and others by giving it retrospective effect from 01.12.2001 so to the extent of retrospectivity given in Section 2 of the ibid impugned Act is liable to be truck down.

ii) WP No.1418-P/2014:

The petitioners are employees of Education Department working on the posts of AT and TT 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.

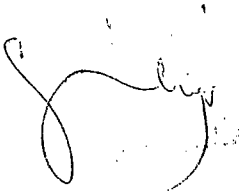
iii) WP No.2053-P/2014:



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/departamental 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.



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.

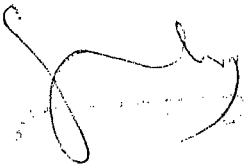
3. Comments from respondents were called who submitted the same wherein they took stance that the petitioners have no any vested rights in view of notification dated 03.01.2009 and new enactment said K.P.K. Cessation of Arrears Act IX of 2012 and notification dated 03.01.2009. Respondents contended that 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


ATTORNEY

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



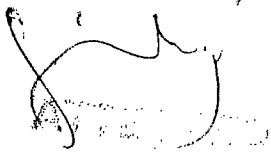
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nomenclature as Khyber Pakhtunkhwa Cessation of Payment of Arrears on Advance Increments on Higher Educational Qualification Act, IX of 2012 is to nullify the effects of aforesaid judgments passed by this Court and to annul the beneficial effects of 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

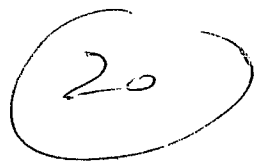
Court as well as of Honourable Sindh High Court. In this respect paragraphs No.165, 166 and 167 of said cited judgment are reproduced below:

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:

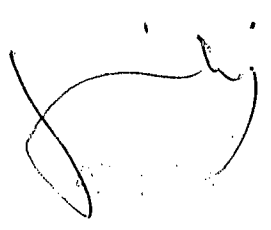
"The general rule is that the legislature may not destroy, annul set aside, vacate, reverse, modify, or impair the final judgment of a Court of competent jurisdiction, so as to take away private rights which have become vested by the judgment. A statute attempting to do so has been held unconstitutional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



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 Fecto 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....."



(4)

(21)

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



22

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



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

(24)

Annex "D"

To,

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

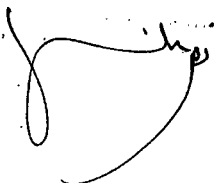
Secretary Finance
Hyderabad
21/9/90

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 appellant/petitioner respectfully submits as under:-

- 1) That the appellant was appointed on 05-10-1994 as Teacher, and now working as S.E.T (BPS-17) 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 (Pashto) in 2001, 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-Pashto 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.
(Copy of Monthly Salary Statement for is annexed as "C")



(28)

4) That similarly placed teachers have been allowed the said increments which was further affirmed 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's plea has not been considered till date.

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

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 & amounts 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 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.

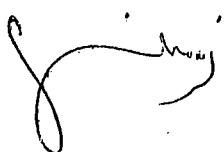
B. That not extending the benefits under the said notification to the appellant is without any legal justification and against due course of law.

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 concerned authority is not acting in accordance, which is 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;

"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 the direction of the August Peshawar High Court



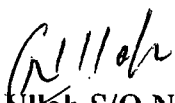
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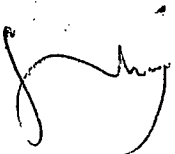
- E. That by ignoring these facts vide which superior court has already allowed two advance increments to the teaching staff, the department treating the appellant with discriminately which is not allowed under the constitution of Islamic republic of Pakistan 1973, and such unjustified treatment is not liable to be remain in field.
- 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 departmental/ Representation appellant may kindly be allowed two advance increments on the basis of attaining 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.

Yours obediently.

Dated: ___/09/2020.


Najeeb Shah S/O Nikam Khan
Working as S.E.T (BPS-17), at GHS, Awal Khan,
(Sub-Division Wazir Bannu), District Bannu.
Mobile:0345-9890064
CNIC:11101-1458213-5



Annex "E"

(27)

To,

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

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 appellant/petitioner respectfully submits as under:-

- 1) That the appellant was appointed on 05-10-1994 as Teacher, and now working as S.E.T (BPS-17) 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 (Pashto) in 2001, 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-Pashto 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.
(Copy of Monthly Salary Statement for is annexed as "C")

Discy No.	9038
Date	21/9/19



(28)

4) That similarly placed teachers have been allowed the said increments which was further affirmed 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's plea has not been considered till date.

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

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 & amounts 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 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 concerned authority is not acting in accordance, which is 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;

"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

(29)

- 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.
- 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 departmental/ Representation appellant may kindly be allowed two advance increments on the basis of attaining 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.

Yours obediently.

Dated: ___/04/2020.

Najeeb
Najeeb Ullah S/O Nikam Khan
Working as S.E.T (BPS-17), at GHS, Awal Khan,
(Sub-Division Wazir Bannu), District Bannu.
Mobile:0345-9890064
CNIC:11101-1458213-5

[Handwritten signature]

50	65683			
ایڈوکیٹ: <u>مرحان اللہ سہیل</u>		پشاور بار ایسوسی ایشن، خیبر پختونخواہ		
بار کونسل ایسوسی ایشن نمبر: <u>313-11-11</u>				
رابطہ نمبر: <u>22 ڈا 9171-0321</u>				

بعدالت جناب: سرس ٹریبیونل KPK

منجانب: <u>مہاراشٹر</u>	دعویٰ: <u>سرس</u>
<p>مجیب اللہ بنام سلر ٹری ایجوکیشن</p>	علت نمبر:
	مورخہ:
	جرم:
	تھانہ:

باعت تحریر آگہ

مقدمہ مندرجہ عنوان بالا میں اپنی طرف سے واسطے پیروی و جواب دہی کاروائی متعلقہ آن مقام سرس اور کیلئے مرحان اللہ سہیل مرحان اللہ سہیل مرحان اللہ سہیل مقرر کر کے اقرار کیا جاتا ہے کہ صاحب موصوف کو مقدمہ کی کل کاروائی کا کامل اختیار ہوگا، نیز وکیل صاحب کو راضی نامہ کرنے و تقرر ثالث و فیصلہ بر حلف 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 اپیل 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 کاروائی 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: 21 جنوری 2021

المقام: سرس

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

Accepted by
[Signature]

اللہ دے صلہ حاصل ہوں اور اس کی سزاوں اور فنان ہوں

IN THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR.

Service Appeal No – 1627 of 2021

Najeeb Ullah..... Appellant


VERSUS

Secretary E & SE and others Respondents

INDEX

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2	-----	---	---
3	Copy of Notification of 4th September 2001	A	4-9

Dated: 04 / 10 / 2022


District Education Officer
Sub Division Wazir Bannu

①

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR .

Service Appeal NO 1627 of 2021

Najeeb 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

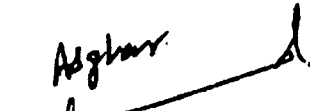
In the light of the above stated facts, it is humbly prayed that appeal of the appellant having no valid legal grounds may very graciously be dismissed with cost.

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 *vide* 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 Overs. — 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	Stg. 15	Stg. 16	Stg. 17	Stg. 18	Stg. 19	Stg. 20	Stg. 21	Stg. 22	Stg. 23	Stg. 24
1994 Pay Scale	3465	3581	3697	3813	3929	4045	4161	4277	4393	4509
2001 Pay Scale	5215	5390	5565	5470	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)**

Increase in net pension

- | | |
|---|-----|
| (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.