

BEFORE THE HONORABLE SERVICES TRIBUNAL PESHAWAR

Service Appeal No. 838 to 861 / 2022

Mr. Rehmat Nawaz..... (Appellant)

VERSUS

Government of Khyber Pakhtunkhwa through Chief Secretary, Civil Secretariat Peshawar

INDEX

S. No	Description of documents	Page #
1	Reply to Para-wise comments	1-4
2	Flag-A	5

BEFORE THE PESHAWAR SERVICE TRIBUNAL PESHAWAR

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Mr. Rehmat Nawaz & others..... (Appellant)

Versus

Government of Khyber Pakhtunkhwa

AFFIDAVIT

I Syed Nabi Gul, Superintendent (Lit), Directorate of Social Welfare, Special Education & Women Empowerment Khyber Pakhtunkhwa, do hereby solemnly affirm and declare on oath that the contents of the accompanying reply/comment are true and correct to the best of my knowledge and belief and that nothing has been concealed therein from this Hon'ble Tribunal.

DEPONENT

CNIC No.17101-0377128-9

Cell# 03469148582

BEFORE THE SERVICE TRIBUNAL KHYBER PAKHTUNKHWA PESHAWAR

Appeal No. 838 to 861 /2022

Mr. Rehmat Nawaz, Senior Special Education Teacher (BPS-18), Govt. Institute for Mentally
Retarded & Physically Handicapped Children Chitral & 23
others.....Appellants

VERSUS

Govt. of Khyber Pakhtunkhwa through Chief Secretary Khyber Pakhtunkhwa &
Others..... (Respondents)

Respectfully Sheweth:

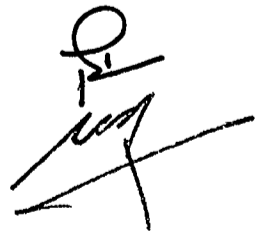
PARA-WISE COMMENT ON BEHALF OF RESPONDENT NO. 1, 2, 3 & 5

PRE-LIMINARY OBJECTIONS:

1. The appellant has got no cause of action to file this appeal.
2. That the appeal is not maintainable in its present form.
3. That the appellant has no locus standi or cause of action to file the present appeal.
4. That the appeal of the appellant is badly time barred.

FACTS:

1. Correct to the extent that the appellant is working as Senior Special Education Teacher (BPS-18 Personal) in Social Welfare, Special Education & Women Empowerment Department Khyber Pakhtunkhwa. As far as his services with quite efficiency and up to the entire satisfaction of his superiors is concerned, the same depends on his yearly Performance Evaluation Reports.
2. Incorrect, hence denied. Before promulgation of 18th constitutional amendment, the following Special Education Institutions were working in the Province of Khyber Pakhtunkhwa, under the Ministry of Social Welfare and Special Education Govt. of Pakistan:
 - A) Special Education Complex Hayatabad Peshawar.
 - B) Special Education Center Sheikh Maltoon Town Mardan
 - C) Special Education Center Kohat
 - D) Special Education Center, Swat and
 - E) Special Education Center DIKhan.



The above named Special Education Institutions under the 18th Constitutional Amendment transferred to the Provincial Government of Khyber Pakhtunkhwa. As far as the appellants are concerned, their initial recruitments were made in the Special Education Institutions under the administrative control of Social Welfare, Special Education & Women Empowerment Department Govt. of Khyber Pakhtunkhwa and they are not the part of the employees who have been devolved from the Federal Government. Therefore, the Special Education Institute i.e. Center for Mentally Retarded & Physically Handicapped Children Chitral is a Provincial entity and has not been devolved from the Federal Government.

3. Correct to the extent that the Federal Govt. granted Health Professional Allowance to the employees of Special Education Institutions working under the administrative control of Directorate General of Special Education Islamabad, Govt. of Pakistan and not to the employees working in Special Education Institutions under the administrative control of Social Welfare & Special Education & Women Empowerment, Govt. of Pakhtunkhwa. As far as judgments dated 18.07.2017, 11.01.2016 and 05.10.2015 of the Federal Service Tribunal against the stoppage of allowance, the said judgments were purely in the favor of the employees working under the Directorate General of Special Education Islamabad Govt. of Pakistan and not for the employees working in Special Education Institutions under the control of Social Welfare, Special Education & Women Empowerment, Govt. of Khyber Pakhtunkhwa
4. Correct to the extent that the August Supreme Court of Pakistan dismissed the CPLA in its judgment dated 17.01.2018 with the view that the entitlement of employees of the Directorate General of Special Education Govt. of Pakistan Islamabad and its allied Institutions for allowance of Health Professional Allowance is affirmed.
5. Correct to the extent that the Govt. of Khyber Pakhtunkhwa Finance Department vide Notification No. FD(SOSR)-7/2019-53 dated 25-11-2019 granted Health Professional Allowance to the employees of ~~employees~~ of those Special Education Institutions which were devolved under the 18th amendment and were under the administrative control of Directorate General Special Education Govt. of Pakistan, Islamabad The contents of the order of Finance Department Govt. of Khyber Pakhtunkhwa are re-produced as under:

“In pursuance of the Supreme Court of Pakistan Civil Appeal No. 811/2016 titled “Muhammad Atique ur Rehman and others vs Federal Government through Secretary Capital Administration etc”, the Government of Khyber Pakhtunkhwa (Provincial Cabinet) has been approved health professional allowance at the rate of one basic pay to the devolved employees working in

the Special Education Institutions from the date of their devolution to Provincial Government of Khyber Pakhtunkhwa.

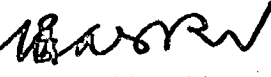
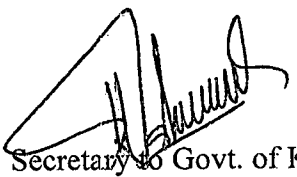
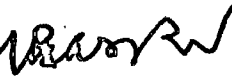
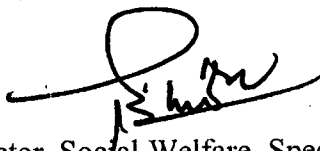
Thus the above said allowance will be admissible only to the employees of the Special Education Institutions of Khyber Pakhtunkhwa devolved under the 18th constitutional amendment.” (F/A).

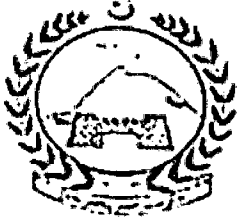
6. Correct to the extent that the Provincial Government approved summary in connection with award of Health Professional Allowance to the employees of Devolved Special Education Institution in compliance of judgment dated 19.09.2018 in Writ Petition No. 4301-P/2018 titled “Nazeer Shah VS Govt of Khyber Pakhtunkhwa who was an employee of the devolved Special Education Institution. It is further to clarify that the writ petition was for the purpose of non-deduction of Health Professional Allowance and continuation of the said allowance.
7. The factual position has been explained in Para-6 above.
8. The factual position has been explained in Para-5 above.
9. Incorrect, hence denied. The factual position has been explained in Para-5 above.
10. Incorrect, hence denied. The appellant has no cause of action to file this present appeal.

GROUNDS

- A. Incorrect, hence denied. The factual position has been explained in the preceding para.
- B. Incorrect hence denied. The factual position has been explained in the preceding para.
- C. Incorrect, hence denied. The appellants have not been discriminated and their fundamental rights have been violated.
- D. Incorrect, hence denied. Factual position has been explained in the preceding paras.
- E. Incorrect, hence denied. The actions of the respondents are legal, constitutional, within the legal authority. They have not been discriminated nor there is any malafide on the part of the respondents.
- F. Incorrect, hence denied. The factual position has been explained in the preceding paras.
- G. Incorrect, hence denied. Para-G of the grounds do not solve its purpose.
- H. Incorrect, hence denied. The factual position has been explained in the preceding paras.
- I. The Respondents also seeks permission of this Honorable Service Tribunal to argue any others grounds at the time of arguments.

It is therefore, humbly prayed that on the acceptance of this reply / comments, the appeal of the appellants may graciously be dismissed with cost.


Govt. of Khyber Pakhtunkhwa through
Chief Secretary
(Respondent No. 1)
Secretary to Govt. of Khyber
Pakhtunkhwa, Finance Department
(Respondent No. 2)
Secretary to Govt. of Khyber
Pakhtunkhwa, Social Welfare, Special
Education & Women Empowerment
Department (Respondent No. 3)
Director, Social Welfare, Special
Education and Women Empowerment
Khyber Pakhtunkhwa
(Respondent No. 5)



F/A

9

GOVERNMENT OF KHYBER PAKHTUNKHWA
FINANCE DEPARTMENT
(REGULATION WING)

Dated Peshawar the 25-11-2019

NOTIFICATION

- 53

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

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

Secretary to Govt of Khyber Pakhtunkhwa
Finance Department

Endst: No. & Date Even.

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

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

SECTION OFFICER (SR-II)
FINANCE DEPARTMENT