

Execution Petition No. 145/2020

2<sup>nd</sup> Dec, 2022

1. Learned counsel for the petitioner present. Mr. Muhammad Adeel Butt, Addl: AG for respondents present.

02. Learned counsel for the petitioner produced copy of a judgment of the Tribunal passed on 12.07.2021 in service appeal No. 12889/2020 and submitted that the execution petition may be disposed of in view of the said judgment. Learned AAG on behalf of the respondents submitted that the order of the Tribunal in the instant matter was passed on 03.06.2020 disposing of the appeal of the appellant in the light of judgment dated 11.11.2019 passed in appeal No. 1452/2019 in the following manner:-

**“Learned counsel referred to the judgment passed by learned Federal Service Tribunal in Appeal No. 1888(R)CS/2016 which was handed down on 03.12.2018. Through the said judgment the issue of payment of Conveyance Allowance to a civil servant during summer and winter vacation was held to be within his entitlement and the deduction already made from him was to be reimbursed. Similar reference was made to the judgment by Honourable Peshawar High Court passed on 01.10.2019 in the case of appellant.**

**Learned counsel, when confronted with the proposition that the issue, in essence, was dilated upon by the Honourable Peshawar High Court in the case of appellant, stated that in case the respondents are required to execute the judgment of Peshawar High Court, the appellant will have no cavil about disposal of instant appeal.**

**The record suggests that while handing down judgment in the Wirt petition preferred by the appellant, the Honourable High Court not only expounded the definition of “pay” as well as “Salary” but also entitlement of a civil servant for the Conveyance Allowance during the period of vacations. It is important to note that the respondents were represented before the High Court during the proceedings.**



**1In view of the above noted facts and circumstances and in order to protect the appellant from a fresh round of litigation which may protract over a formidable period, the appeal in hand is disposed of with observation that the judgment of Honourable Peshawar High Court passed in Writ petitions including W.P No. 3162-P/2019 shall be honoured and implemented by the respondents within shortest possible time. The appellant shall, however, be at liberty to seek remedy in accordance with law in case his grievance is not redressed by the respondents within a reasonable time. File be consigned to the record.”**

03. In view of the above situation the request of the learned counsel for disposal of the instant petition, in the light of the judgment in appeal No. 12889/2020, is not comprehensible, however, it is requested that the petitions might be disposed of. The learned AAG appearing on behalf of the respondents informed the Tribunal that the relief granted to the petitioner in his appeal, has been duly extended by the department as he was getting the allowance granted vide the judgment passed in the instant matter. It may be because of the relief extended to the petitioner that his learned counsel has requested for decision of the petition. The petitions are thus disposed of on the request of the learned counsel for the petitioner. Consign.

04. *Pronounced in open court in Peshawar and given under my hand and seal of the Tribunal on this 2<sup>nd</sup> day of December, 2022.*



(Kalim Arshad Khan)  
Chairman

Execution Petition No. 145/2020

2<sup>nd</sup> Dec, 2022

1. Learned counsel for the petitioner present. Mr. Muhammad Adeel Butt, Addl: AG for respondents present.

02. Learned counsel for the petitioner produced copy of a judgment of the Tribunal passed, <sup>on 12.07.2021</sup> in service appeal No. 12889/2020 and submitted that the execution petition <sup>might</sup> ~~may~~ be disposed of in view of the said judgment. Learned AAG on behalf of the respondents submitted that the order of the Tribunal in <sup>the instant</sup> ~~this~~ matter was passed on 03.06.2020 disposing of the appeal of the appellant in the light of judgment dated 11.11.2019 passed in appeal No. 1452/2019 in the following manner:-

“Learned counsel referred to the judgment passed by learned Federal Service Tribunal in Appeal No. 1888(R)CS/2016 which was handed down on 03.12.2018. Through the said judgment the issue of payment of Conveyance Allowance to a civil servant during summer and winter vacation was held to be within his entitlement and the deduction already made from him was to be reimbursed. Similar reference was made to the judgment by Honourable Peshawar High Court passed on 01.10.2019 in the case of appellant.

Learned counsel, when confronted with the proposition that the issue, in essence, was dilated upon by the Honourable Peshawar High Court in the case of appellant, stated that in case the respondents are required to execute the judgment of Peshawar High Court, the appellant will have no cavil about disposal of instant appeal.

The record suggests that while handing down judgment in the Wirt petition preferred by the appellant, the Honourable High Court not only expounded the definition of “pay” as well as “Salary” but also entitlement of a civil servant for the Conveyance Allowance during the period of vacations. It is important to note that the respondents were represented before the High Court during the proceedings.

02. Brief facts leading to the institution of service appeal are that the appellant has been working as Computer Operator since 18.07.2014. He was proceeded against for misconduct on account of drawl of cash grant from BISP by his spouse. An enquiry was conducted against him vide order dated 26.08.2020 and after having served show cause notice, he was finally awarded the minor penalty of stoppage of one increment for one year and recovery of Rs. 1,07,874/- vide impugned order dated 04.01.2021. He challenged the impugned order through departmental appeal dated 07.01.2021 which was rejected vide appellate order dated 09.03.2021, hence, the instant service appeal was submitted on 02.04.2021.

03. Notices were issued to the parties who submitted written replies/comments on contents of the appeal. We have heard learned counsel for the appellant as well Additional Advocate General and perused the case file with connected documents thoroughly.

04. The appellant pleaded the appeal himself and contended that prior to joining government service in 2014, his spouse was in receipt of cash grant as beneficiary citizen of Pakistan from the Benazir Income Support Programme (BISP) because he was also jobless. When he joined the present service in the respondent-department on 18.07.2014, he sent a formal request to the District Officer BISP, Bannu via mail post on 14.10.2014 to the effect that cash grant in respect of her spouse be stopped as he is a government servant now and his family does not deserve for financial assistance from BISP any longer. However, it was discontinued in October 2019. He further

In view of the above noted facts and circumstances and in order to protect the appellant from a fresh round of litigation which may protract over a formidable period, the appeal in hand is disposed of with observation that the judgment of Honourable Peshawar High Court passed in Writ petitions including W.P. No. 3162-P/2019 shall be honoured and implemented by the respondents within shortest possible time. The appellant shall, however, be at liberty to seek remedy in accordance with law in case his grievance is not redressed by the respondents within a reasonable time. File be consigned to the record."

03. In view of the above situation the request of the learned counsel for disposal of the instant petition in the light of the judgment in appeal No. 12889/2020 is not comprehensible, however, it is requested that the petitions <sup>might</sup> may be disposed of. The learned AAG appearing on behalf of the respondents informed <sup>the</sup> that Tribunal that the relief granted to the petitioner in his appeal has been duly extended by the department as he was getting the allowance, It may be because of the relief extended to the petitioner that his learned counsel has requested for decision of the petition. The petitions are thus disposed of on the request of the learned counsel for the petitioner. Consign.

granted vide the  
order passed  
in  
the  
instant  
matter.

04. *Pronounced in open court in Peshawar and given under my hand and seal of the Tribunal on this 2<sup>nd</sup> day of December, 2022.*

(Kalim Arshad Khan)  
Chairman

**BEFORE THE KHYBER PAKHTUNKHWA SERVICE  
TRIBUNAL, PESHAWAR.**

Service Appeal No. 4751/2021

Date of Institution	...	02.04.2021
Date of Hearing	...	07.04.2022
Date of Decision	...	07.04.2022

Mir Nawaz Khan S/O Naik Nawaz Khan, resident of Pukhta Masjid, Kandi Arbab Raa Khan, Tehkal Balla, Peshawar, Now Computer Operator (BS-16) FMIU, Finance Department, Civil Secretariat, Peshawar. ... (Appellant)

**VERSUS**

1. The Chief Secretary, Government of Khyber Pakhtunkhwa, Peshawar.
2. Chief Minister, Govt: of Khyber Pakhtunkhwa through Secretary, Establishment Department Peshawar.
3. Secretary, Establishment, Department, Govt: of Khyber Pakhtunkhwa Peshawar.

... (Respondents)

**Present:**

MIR NAWAZ KHAN,

--- In person.

KABIRULLAH KHATTAK,  
Additional Advocate General

--- For respondents.

**KALIM ARSHAD KHAN  
MIAN MUHAMMAD**

--- **CHAIRMAN  
MEMBER(E)**

**JUDGEMENT.**

**MIAN MUHAMMAD, MEMBER(E):-** The service appeal has been submitted involving Section-4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974 against the impugned order dated 04.01.2021 for imposition of minor penalty stoppage of one increment for one year alongwith recovery of Rs. 1,07,874 and rejection of his departmental appeal vide appellate order dated 09.03.2021.