14th July, 2022

Learned counsel for the appellant present. Mr. Kabir Ulfah Khattak, Addl. AG for respondents present.

- 2. Learned counsel for the appellant submitted an application for withdrawal of the instant service appeal wherein he stated that grievance of the appellant has been redressed and he wants to withdraw the instant appeal. Application is placed on file. Dismissed accordingly. Consign.
- 3. Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal on this 14th day of July, 2022.

(Faleeha Paul) Member (E) (Kalim Arshad Khan) Chairman



12.04.2022

Learned counsel for the appellant present. Mr. Sultan Nabi, Budget & Accounts Officer alongwith Mr. Riaz Ahmed Paindakhel, Assistant Advocate General for the respondents present.

Learned counsel for the appellant sought adjournment being not prepared for arguments today. Adjourned. To come up for arguments on 16.05.2022 before the D.B.

(Mian Muhammad) Member (E) (Salah-ud-Din) Member (J)

16.05.2022

Junior of learned counsel for the appellant present. Mr. Kabir Ullah Khattak learned Additional Advocate General for the respondents present.

Junior of learned counsel for the appellant requested for adjournment on the ground that learned counsel for the appellant is not available due to some domestic engagements. Adjourned. To come up for arguments on 20.05.2022 before the D.B.

(Rozina Rehman) Member (J)

(Salah-Ud-Din) Member (J)

20.05.2022

Learned counsel for the appellant present. Mr. Tariq Shah Accounts Officer and Mr. Muhammad Sultan Budget & Accounts Officer alongwith Mr. Kabir Ullah Khattak, Additional Advocate General for respondents present and stated at the bar that the issue shall be resolved till the next date. Adjourned. To come up for arguments on 14.07.2022 before the D.B

(Rozina Rehman) Member (J) (Salah-Ud-Din) Member (J)

Before The K.P. Sorrie Tribual, Peshawar cm No .__ / Appeal No: 90/2019. Mst. Rehama Gul Vs Education Application for withdrawal of the fitted appeal Respectfully Shouth I that the titled appeal is ferding adjudication before this Homble Trom I which in fræd for today ie 3) Mal granar og the appellant has been redrieved by the dept department, hence the case become antractors. and wants to withdraw. It is thepere required that by aupho this application the titled emeal maybe withdrawn Applicant Appellant Deted 14/7/2012 Thegu Af. Moor Muhamel Rhot



14.04.2021

Due to demise of the Worthy Chairman, the Tribunal is non-functional, therefore, case is adjourned 29.07.2021 for the same as before.

29.07.2021

Appellant present through counsel.

Mr. Riaz Khan Paindakheil learned Assistant Advocate General for respondents present.

Former made a request for adjournment. Request is accorded. To come up for arguments on 16.12 2021 before D.B.

(Rozina Rehman) Member (J)

Cháirman

16-12-21

DB is on Toux case to come up For the Same on Dated 12.4-22

Due to summer vacation case to come up for the same on 28.10.2020 before D.B.

28.10.2020

Junior to counsel for the appellant and Addl. AG alongwith Umar Zada, B&A.O for the respondents present.

The Bar is observing general strike, therefore, the matter is adjourned to 04.01.2021 for further proceedings before the D.B.

Atiq-ur-Rehman Wazir) Member

Chairman

04.01.2021

Junior to counsel for the appellant present.

Riaz Khan Paindakhel Assistant Advocate General alongwith Muhammad Sultan Superintendent and Safdar Khan Assistant for respondents present.

Former requests for adjournment as senior counsel for the appellant is not available today.

Adjourned to 14.04.2021 for arguments before D.B.

Jr-Rehman Wazir)

Member (E)

(Rozina Rehman) Member (J)

15.01.2020

Appellant absent. Learned counsel for the appellant absent. Umar Daraz Budget & Accounts Officer representative of the respondents present. Due to general strike of the Bar on the call of Khyber Pakhtunkhwa Bar Council, the case is adjourned. To come up for arguments on 24.03.2020 before D.B. Appellant be put to notice for the date fixed.

Member

Member

24.03.2020

Due to public holidays on account of Covid-19, the case is adjourned. To come up for the same on 10.06.2020 before D.B.

1,0.06.2020

Bench is incomplete as one learned Member (J) is on leave. Therefore, the case is adjourned. To come up for the same on 24.08.2020 before D.B.

05.09.2019

Junior to counsel for the appellant present. Mr. Usman Ghani, District Attorney alongwith Mr. Zakiullah, Senior Auditor for respondent no. 3 and 4, Mr. M. Shafique, Senior Clerk and Mr. Umar Daraz B&AO for respondents present. Written reply on behalf of respondents no. 3 and 4 not submitted. Requested for adjournment. Adjourned. To come up for written reply/comments on behalf of respondents no. 3 and 14 on 03.10.2019 before S.B.

(Ahmad Hassan) Member

03.10.2019

Junior counsel for the appellant and Mr. Kabirullah Khattak, Additional AG alongwith Mr/S Umar Daraz, Budget & Account Officer and Sajid, Superintendent for respondents No. 1, 2, 5 & 6 present.

Written reply on behalf of respondents No. 1, 2, 5 & 6 already submitted. None present on behalf of respondents No. 3 & 4,therefore, notices be issued to them for submission of written reply. Adjourned to 30.10.2019 but as a last chance.

CHAIRMA

30.10.2019

Junior to counsel for the appellant and Addl. AG alongwith Umar Daraz, B&A.O and Zakiullah, Senior Auditor for the respondents present.

Representative of respondents No. 3 & 4 has furnished parawise comments on behalf of the said respondents. The appeal is assigned to D.B for arguments on 15.01.2020. The appellant may submit rejoinder, within a fortnight, if so advised.

Chairman

08.05.2019

Counsel for the appellant Rehana Gul present. Preliminary arguments heard. It was contended by learned counsel for the appellant that the respondent-department has made entry in the service book of the appellant regarding recovery of over payment amount to Rs. 48804/-. It was further contended that feeling aggrieved from the said entry, the appellant filed departmental appeal on 26.09.2018 but the same was not responded hence, the present service appeal. It was further contended that since recovery of alleged over payment has been made by the Audit Para in the service book of the appellant without any reason therefore, the same is illegal and liable to be expunged.

The contention raised by the learned counsel for the appellant needs consideration. The appeal is admitted for regular hearing subject to all legal objections. The appellant is directed to deposit security and process fee within 10 days, thereafter, notice be issued to the respondents for written reply/comments for 16.07.2019 before S.B.

(Muhammad Amin Khan Kundi) Member

16.07,2019

Mr. Mir Zaman Safi, Advocate on behalf of learned was accounsel for the appellant and Asstt. AG alongwith Sajid Suptdt for the respondents present. 1, 2, 5 and 6 present. Nemo for respondents No. 3 & 4.

Joint Parawise/written comments on behalf of respondents No. 1, 5 and 6 submitted which are placed on file. Representative of respondents No. 2 states that the said respondent relies on the written reply submitted today by respondents No. 1, 5 and 6. Fresh notice be issued to respondents No. 3 and 4 for submission of their written reply on 05.09.2019 before S.B.

Chairman



Form- A

FORM OF ORDER SHEET

Court of_			••	
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Case No.			90 /2019	
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S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
• • •		
1-	21/1/2019	The appeal of Mst. Rehana Gul presented today by Mr. Noor Muhammad Khattak Advocate, may be entered in the Institution
		Register and put up to the Worthy Chairman for proper order please.
		REGISTRAR 24/1/19
2-		This case is entrusted to S. Bench for preliminary hearing to be
		put up there on $4-3-19$.
	·	CHAIRMAN,
	'i' -	CHAIRMAN
	04.03.2019	Learned counsel for the appellant present and seek
		adjournment for proper assistance. Adjourn. To come up fo
	• •	preliminary hearing on 05.04.2019 before S.B
	;	
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	08.04.2019	Counsel for the appellant present and seeks adjournmen
	as	he has not prepared the case. Adjourned to 08.05.2019 fo
	pre	liminary hearing before S.B.
	÷	
		(Ahmad Hassan)
		Member
and the second		

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Appeal No. 90 /2019

REHANA GUL

VS

EDUCATION DEPIT:

INDEX

S.NO.	DOCUMENTS	ANNEXURE	PAGE
1	Memo of appeal	*****	1- 3.
2	Judgment & record	Α .	4- 9.
3	Order	В	10.
4	Service book	C	11- 21.
5	Departmental appeal	D	22.
6	Vakalat nama		23.

APPELLANT

THROUGH:

NOOR MOHAMMAD KHATTAK ADVOCATE

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL **PESHAWAR**

APPEAL NO. 90 /2018

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Mst: Rehana Gul, Senior Arabic Teacher (BPS-16), GGHS Mitha Khel, District Karak...... APPELLANT

VERSUS

- The Secretary (E&SE) Department, Khyber Pakhtunkhwa, 1-Peshawar.
- **1**2-The Secretary Finance Department, Khyber Pakhtunkhwa. Peshawar.
- **d**3-The Accountant General Khyber Pakhtunkhwa, Peshawar.
- The Pay Fixation Party, Khyber Pakhtunkhwa, Peshawar.
- √5-The Director (E&SE) Department, Khyber Pakhtunkhwa, Peshawar.
- The District Education Officer (F), District Karak. **J**6-

..... RESPONDENTS

APPEAL UNDER SECTION 4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT, AGAINST THE INACTION OF THE RESPONDENTS BY NOT DELETING/EXPUNGING THE ENTRY OF OVER PAYMENT FROM THE SERVICE **BOOK OF THE** Filedto-day APPELLANT AND AGAINST NOT TAKING ACTION ON THE DEPARTMENTAL APPEAL OF THE APPELLANT WITHIN THE STATUTORY PERIOD OF NINETY DAYS

Registrar 11119

PRAYER:

That on acceptance of this appeal the respondents may kindly be directed to implement the order dated 27.10.2015 in letter and spirit by deleting/expunging the entry of over payment from the service book of the appellant. Any other remedy which this august Tribunal deems fit that may also be awarded in favor of the appellant.

R/SHEWETH: ON FACTS:

Brief facts giving rise to the present appeal are as under:

1-That proper recommendation/approval the Departmental Selection Committee of Elementary and Secondary Education Department, the appellant was appointed as AT in the year 1998.

- 2- That in response the appellant submitted her charge report and Medical Certificate and started performing her duty at the concern station quite efficiently and up to the entire satisfaction of her superiors.
- 3- That during service the appellant was granted BPS-14 w.e.f. 1.12.1998 on the basis of Finance Department Notification dated 7.8.1991. That later on the appellant was granted BPS-15 w.e.f. 14.12.2007 in light of the Finance Department Notification dated 23.5.2006. That the respondent Department without any reason reverted the appellant to BPS-9 w.e.f. 1.12.1998 and also ordered recovery of Rs.40512/= from the appellant.

- 8- That appellant having no other remedy filed the present appeal on the following grounds amongst the others.

GROUNDS:

A- That the inaction of the respondent No.2, 3 and 4 by not implementing the order dated 27.10.2015 and not deleting the entry of over payment from the service book of the appellant is against the law, facts and norms of natural justice.

- B- That the appellant has not been treated by the respondent Department in accordance with law and rules on the subject noted above and as such the respondents violated Article 4 and 25 of the Constitution of Islamic Republic of Pakistan 1973.
- C- That the respondent Department acted in arbitrary and malafide manner by not implementing the order dated 27.10.2015 and not deleting the entry of over payment from the service book of the appellant.
- D- That the inaction of the respondents by not implementing the order dated 27.10.2015 and not deleting the entry of over payment from the service book of the appellant is the clear violation of the Fundamental rights of the appellant.
- E- That the respondents discriminated the appellant by not implementing the order dated 27.10.2015 and not deleting the entry of over payment from the service book of the appellant.
- F- That the respondents are under legal obligation to implement the order dated 27.10.2015 by deleting the entry of over payment from the service book of the appellant.
- G- That appellant seeks permission to advance other grounds and proofs at the time of hearing.

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

Dated: 08.01.2019

REHANA GUL

THROUGH:

NOOR MOHAMMAD KHATTAK ADVOCATE (0345-9383141) <u>BEFORE THE KHYBER PAKHTUNKHWA SERVICE</u>

Appeal No. 1632/2010

Date of Institution.

24.8.2010

Date of Decision

31.5.2012

Miss Farzana Naheed (AT) GGMS Mirza Khel, District Karak.

(Appellant)

VERSUS

1. Government of Khyber Pakhtunkhwa through Elementary & Secondary Education, Peshawar.

2. Secretary to Government of Khyber Pakhtunkhwa, Finance Department,

3. Director, Elementary and Secondary Education, Khyber Pakhtunkhwa, Peshawar.

4. Executive District Officer, E&SE, District Peshawar.

(Respondents)

APPEAL U/S 4 OF KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT 1974 AGAINST WITDRAWAL OF BPS-14 FROM THE APPELLANT THROUGH PAY FIXATION PARTY AND RECOVERY OF THE OVER PAYMENT HAS STARTED FROM THE APPELLANT.

MR. GHULAM NABI, Advocate

For appellant

MR. SHERAFGAN KHATTAK, Addl. Advocate General

For respondents.

SYED MANZOOR ALI SHAH, MR. NOOR ALI KHAN,

MEMBER MEMBER



SYED MANZOOR ALI SHAH, MEMBER. This appeal has been filed by Mst. Farzana Naheed, the appellant under Section 4 of the Khyber Pakhtunkhwa Service Tribunal Act 1974 against the order of Audit Staff of the Accountant General office whereby she has been reverted to BPS-09 w.e.f. 1.12.1998 and against the recovery amounting to Rs. 40512/-. It has been prayed that on acceptance of the appeal, entry in respect of reversion and recovery may be set aside.

Brief facts of the case are that the appellant appeared in Shahadatul 2. Alamia in Arabic examination held in October 1998 in Madrasa Miftah-ul-Quran - the arrangements of Ittehad-ul-Madarris Mardan under



Roll No. 133 and was declared a successful candidate in the above said examination. Respondent No. 4 sent the above Sanad to the Peshawar University for determination of equivalency. The Chairman Department of Islamiyat issued equivalence certificate regarding the Shahadat-ul-Alamia. The appellant was granted BPS-14 on the basis of notification dated 7.8.1991 of the Finance Department w.e.f. 1.12.1998. Due to her service career, the appellant was granted again BPS-15 in the light of notification dated 23.5.2006 w.e.f. 14.12.2007. The Audit Staff of the Accountant General Office, Peshawar reverted the appellant to BPS-9 w.e.f. 1.12.1998 and also ordered recovery of Rs. 40512/being over payment made to the appellant. Feeling aggrieved, she filed departmental appeal to the Director, Elementary & Secondary Education, Khyber Pakhtunkhwa Peshawar on 3.5.2010, which elicited no response within the statutory period, hence the present appeal.

- The appeal was admitted to regular hearing on 27.9.2010 and notices were issued to the respondents. Respondents have filed their joint written reply and contested the appeal. The appellant also filed rejoinder in rebuttal.
- 4. Arguments heard and record perused.

5.

The learned counsel for the appellant argued that the appellant passed Shahadat-ul-Alamia in Arabic examination from Madarasa Miftah-ul-Quran Mitha Khel, District Karak under the arrangement of Ittehadul Madarris Mardan. The $\sqrt{}$ Madrassa Miftahul Quran was was a recognized Darul Uloom and never objected by the respondent department. Sanad of the appellant was sent to Peshawar University which was declared equivalent to M.A Arabic/Islamiyat. He further argued that the appellant was granted BPS-14 on the basis of notification dated 7.8.1991 of the Government of Khyber Pakhtunkhwa Finance Department w.e.f. 1.12.1998, the date of acquiring the Sanad and valuable rights have been accrued to her under the principles of locus poenitentiae. He stated no prior notice was: issued to the appellant nor proper enquiry conducted and she has been condemned unheard. The learned counsel for the appellant further stated that similar cases have been accepted by this Tribunal vide consolidated judgment dated 17.6.2006, in Service Appeal No. 490/2009. The respondents challenged the aforementioned judgment before the august Supreme Court of Pakistan. Vide judgment dated 6.2.2009 in CP Nos. 660-P to 662-P of 2006, Supreme Court of Pakistan upheld the judgment of this Tribunal. The appellant is also entitled to the same treatment. He requested that the appeal may be



- 6
- 6. The learned AAG argued that the appellant acquired Sanad of Shahadatul Alamia in Arabic from a Madrasa, which was not registered/recognized by the Higher Education Commission. As per notification of Higher Education Commission Sanad of the appellant is not equivalent to M.A. He further argued that Islamiyat Department, University of Peshawar is not competent to declare any Sanad of other institutions at par to M.A. He stated that BPS- 14 has been granted to the appellant due to mis-conception and the Audit Department has the power to dis-continue such benefit from the appellant and to recover the amount over paid to her. He requested that the appeal may be dismissed.
- 7. The Tribunal observes that the appellant acquired Sanad of Shahadatul Alamia in Alamia from Madrassa Mifta-ul-Quran district Karak under the arrangement of Ittehadul Madarris Mardan. Her Sanad was duly verified and declared equivalent to M.A by the Peshawar University Islamiyat Department. The appellant was granted BPS-14 on the basis of aforementioned Sanad w.c.f. 1.12.2008 by the competent authority and valuable rights have been accrued to her on the basis of locus poenitentiae. This Tribunal, vide judgment dated 17.6.2006 had already decided similar nature cases in Service Appeal No. 490/2005, of Rozi Khan and others, and upheld by the august Supreme Court of Pakistan vide judgment dated 6.2.2009 in C.P Nos. 660-P to 662-P/2006, the appellant is also entitled to the same treatment. The Tribunal agrees with the arguments advanced by the learned counsel for the appellant.
- 8. In view of the above, the appeal is accepted the impugned entry is set aside from service book of the appellant and restores BPS- 14 to her with all back benefits. Parties are left to bear their own costs. File be consigned to the record.

9. This order will also dispose of similar nature appeal No. 1633/2010, Miss Rehana Gul Versus Government of Khyber Pakhtunkhwa through Elementary & Secondary Education, Peshawar etc." in the same manner.

ANNOUNCED

31.5.2012

31.5.2012

Contributed to the topon cuppy

Services (allowed)

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

Execution Petition no. 2-33/2016

Service Appeal No. 1633/2010

Miss. Rehana Gul (AT)
GGHS Mitha Khel District Karak

Applicant/Appellant

VERSUS

- 1. Govt. of K.P.K. through Elementary & Secondary Education, Peshawar.
- 2. Secretary to Govt. of K.P.K. Finance Deptt: Civil Secretariat, Peshawar.
- 3. Director Education Elementary & Secondary Education, K.P.K. Peshawar.
- 4. Executive District Officer, Elementary & Secondary Education, District Karak.

 \dots Respondents.

ATTERN

APPLICATION FOR THE IMPLEMENT ATION OF THE JUDIMENT/ORDER DATED 31-05-2012 OF THIS HON'BLE TRIBUNAL PASSED IN THE ABOVE MENTIONED SERVICE APPEAL.

DN ANTHY (). Depice of the endove Depice telepool.

WRESPECTFULLY SHEWETH:

- 1. That the above noted service appeal was filed by the appellant in this Hon'ble Tribunal.
- That the said appeal was fixed for hearing in this Hon'ble Tribunal on 31-05-2012 and was decided vide judgment/order dated 31-05-2012. (Copy attached).
- That the judgment/order of this Hon'ble Tribunal was officially received by the respondents/department and the respondents have not implemented the worthy judgment/order mentioned above.
 - That the concern respondents are not inclined towards implemenyation of the order of this Hon'ble Court mentioned above.

(8)

It is, therefore, respectfully prayed that on acceptaone of this application, the concern respondents may please be directed to implement the above mentioned judgment/order of this Hon'ble Tribunal dated 31-05-2012 in its letter and spirit.

Applicant

through

(Ghulam Nabi Khan)

(Barrister Mian Tajammal Sh

PESHAWAR

24-11-2016

AFFI DAVIT

I, Ghulam Nabi Khan, Advocate, Peshawar as per instruction of my client do hereby declare and affirm that the contents of the above application are true and correct to the best of my knowledge and belief and nothing has been concealed from this Hon'ble Tribut

Deponent

Coumission Coumission

Astested

E.P. No 233/2016 Miss Rehaira GILC 15 Cyanton

01.08.2018



Mr. Mian Tajamul Shah, Advocate counsel for the petitioner present. Mr. Sher Aslam, ADO(Sports) alongwith Mr. Muhammad Riaz Paindakhel, Asst: AG for respondents present and made a request that EDO is sick today therefore no proper implementation order would be produced.

Need not to mention here that the petitioner is trying for the reaping fruits of her struggle for years but due to one or the other pretext of the respondents, she could not succeed. As such, last chance and last warning is given to the respondents to implement the directions/judgment of this Tribunal and produce implementation order without fail. To come up for implementation report on 09.08.2018 before S.B.

09.08.2018

Mr. Rabnawaz, father of the petitioner Miss. Rehana Gul alongwith her counsel Mian Tajammul Shart. Advocate present. Mr. Muhammad Sajawal. Supdt alongwith Mr. Kabirullah Khattak. Addl: AG for respondents present and submitted implementation report which is placed on file.

The above report was confronted with the petitioner and her counsel and after going through the entry made in the service book they expressed satisfaction and did not want to-wish to proceed further the instant execution petition in hand, hence disposed off accordingly. Parties are left to bear their own costs. File be consigned to the record room.

Announced: 09.08.2018

Atherted

Chairman 26.3

OFFICE OF THE DISTRICT EDUCATION OFFICER FEMALE KARAK SANCTION TO THE RESTORATION OF SANCTION TO THE AWARD OF BPS-14

Consequent upon the decision of Honourable court of Service Tribunal Khyber Pakhtunkhawa Peshawar in service appeal No 1633/2010 and 1632/2010 dated 🛪 🖘 വു and correction of clerical mistake in para-07 dated12.10.2015, Sanction to the restoration of BPS-14 w.e.f 1.12.1998 on passing ShahadatUl Alamia from Ittehad-Ul-Mudaris Mardan is hereby accorded in favour of following female AT of the school noted AGAINST each.

- 1.Rehana Gul SAT GGHS Mitha Khel(Karak
- 2. Farzana Naheed AT GGMS Mirza Khel(Karak).

(SABIRA PARVEEN.) DISTRICT EDUCATION OFFICER FEMALE KARAK Dated 27/10 /2015

2976-77

Endst:No /AE-III(F)

Copy to the:

1. Headmisitress GGHS Mitha Khel/GGMS Mirza Khel(Karak)w/r to their No

& Date Nil.

2.DAO Karak..

District Education Officer Female Karak...

1. Name (t) Rehand Gul 2. Nationality and Religion Lakistoner 3. Residence Mitha Khel (Karak) " (مشعل رائش) 4. Father's name and residence Rab Nama? (والدكا يام لوزية) 5. Date of birth by Christian era as 05-7- 1979 Date of birth by Christian era as sometimes seventy nearly as can be ascertained 5 th July, Ninteen Seventy Nine. (آمن ميدائش مطابق من ميسوي) 6. Exact height by measurment 5 - 5 7. Personal mark of identification A bluck mole an Right
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Joban Hard

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(انمخت شارت) Fore Finger

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OFFICE:

Room No.1, Upper Floor, Islamia Club Building, Khyber Bazar,

Peshawar City.
Phone: 091-2211391

Before the Khyber Pakhtunkhwa Service Tribunal

Peshawar

Appeal No.90/2019

Mst.Rehana Gul	Appellant
V/S	
Secretary Elementary & Secondary Education Department, Khyber Pakhtunkhwa, Peshawar and others	Respondents

(Para wise Reply on Behalf of Respondent No. 3&.4)

Preliminary Objections:-

- 1. That the appellant has no cause of action.
- 2. That the appellant has no locus standi.
- 3. That the appellant has not come to this Court with clean hands.
- 4. That the appeal is time barred.
- 5. That the appeal in hand is not maintainable.
- 6. That an identical case Writ Petition No.2819/2009 titiled Mst.Bakht pari v/s Accountant General Khyber Pkhtunkhwa (Pay Fixation Party) and others has already been dismissed by the Peshawar High Court Peshawar vide its Judgment dated 05.04.2012 (Annex-A).

Respectfully Sheweth-

- Para:-1 Relates to record, however liable to be proved by the appellant.
- Para :- 2 Relates to record, however liable to be proved by the appellant.
- Para: 3 That the appellant is not entitled to BPS-14 on the Sanad obtained from Madrassa P'ar Hoti Mardan which is not recognized by Higher Education Comission (HEC) in light of Notification No.8-16/HEC/A&A/2004/572, dated:07/04/2004 (Annex-B) hence the appellant is not entitled to BPS-14 and has been reverted to BPS-9 and recovery of Rs.40512/- is under the rules.
- Para:-4 Incorrect, the referred appeal No.1632/2010 in Para No.4, is not in the name of appellant. However it is pertinent to mention here that an identical Writ Petition No.2819/2009 has already been dismissed by the Peshawar High Court (Annex-A)
- Para :- 5 As mentioned in para "4" above, the appellant is not entitled for BPS-14 under the rules.
- Para: 6 That Respondent No.3 & 4 are bound to follow the rules and instructions issued by the Provincial Government of Khyber Pakhtunkhwa from time to time.
- Para: 7 Relates to Respondent No.1, 5 & 6, hence no comments.
- Para:-'8 No Comments.

GROUNDS:-

- A. That Respondent No.3&4 are bound to follow the rules and instructions issued by the Provincial Government of Khyber Pakhtunkhwa from time to time.
- B. As mentioned in para "3 & 6" above Respondent No.(3 & 4), has not violated any rule or law.
- C. That in light of Higher Education Comission Notification No.8-16/HEC/A & A /2004/572 dated: 07/04/2004 (Annex-B), the appellant is not entitled for BPS-14 and over payment in this regard is liable to be recovered under the rules.
- D. As mentioned in para "C" above. Respondent No. "3 & 4" has not violated any rule or law
- E. That in light of HEC (Islamabad) Notification No.8-16/HEC/A & A/2004/572, dated: 07/04/2004, DEO (F) Karak has no power to issue the orders dated: 27/10/2015 (Annex-D).
- F. As mentioned in Para "E" above.
- G. No comments.

Keeping in view the above mentioned facts, it is , therefore , humbly prayed that the appeal in hand having no merits may be dismissed with cost.

ACCOUNTS OFFICER PAY FIXATION PARTY - II

ACCOUNTANL GENERAL KHYBER PAKHTUNKHWA

Director, Schools NWFP, Postbanar.

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Judgment Sheet

PESHAWAR HIGH COURT, MINGOR (DAR-UL-QAZA), SWAT JUDICIAL DEPART

Writ Patition No. 2819 of 2009,

Petitioner (Mest Barks first) by M. Sadiy Warde Gurestu Alva

F- Petitioner, Mst. Bakht Pari

has asked for issuance of appropriate writ directing the respondent No.1 to release the monthly salary of the petitioner in BPS-14 alongwith all back benefit since 15.12.1999 and onwards on acquiring/ possessing the higher qualification/Deeni Sanad from a Deeni Madaris. 2.

Precise facts of the writ petition and the arguments of learned counsel for the petitioner are that petitioner was appointed in the education department, Government of KPK and was subsequently accorded BPS-14 due to possessing higher education/qualification of Shadat-ul-Allamia Fill Islamia and Arabic from Etihadul Madaris Par Hoti Mardan. It is also contended that the said qualification obtained from Etihadul Madarisa, Par Hoti Mardan is recognized by Services Tribunal KPR and upheld by the upex Court of the Country and as such rest.

petitioner is being discriminated by not allowing the said BPS-

- 3. As against this, learned counsel for the respondents submitted that petitioner is not entitled to BPS-14 as the competent authority i.e. Higher Education Commission has not yet approved Deeni Madarisa i.e. Etihadul Madaris Al-Arrabia Pakistan Par Hoti, Mardan and as such the decree as obtained from the said Madarisa is not recognized one.
- 4. Arguments heard and record perused.
- Commission was impleaded as respondent No.12 and subsequently they filed their comment/objection which are on file and according to which Etihadul ul Madarasa Al-Arrabia, Par Hoti Mardan is not an approved Deeni Madarasa, therefore, Deeni Sanad held by petitioner from the said Madarasa is not recognized by the competent authority i.e. Higher Education Commission. In view of the above comments of the competent authority, this Court cannot direct the concerned authorities i.e. respondent No.1 to treat the said Deeni Sanad equivalent to M.A. and to grant/award BPS-14, as the same is not recognized by the competent authority.
- As regarding the discrimination claimed on the basis in color of already delivered judgments of the Service Tribunal KPK, uphelcl by the apex Court, regarding the same Deeni Sanad, on the principle enshrined in the reported judgments 2009 SCMR-01

and 1996 SCMR-1185. In this respect, we have gone through the said judgments and are of the view that firstly, in those judgments the Higher Education Commission was not a party and secondly, in those judgments the question of equivalency was dealt with but the court/tribunal has not gone to the basic fact that whether the said Sanad is recognized one or not. In view of the comments filed by respondent No.12 this Court cannot shut its eyes on the fact that the very Deeni Sanad issued by an institution is not recognized one. These are the reasons for not treating the petitioner at par with the judgment in Appeal No.490/2005 decided on 17.06.2006.

In view of the above, this writ petition is dismissed 7. with no order as to costs.

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BEFORE THE N.W.F.P SERVICE TRESUNAL, PESHAWAR

SERVICE APPEAL NO. 323/2004

26.04.2004 Date of institution

28.11.2005 Date of decision

Keleem Nawaz alias Kalcemullah S/o Rab Nawaz R/O Kaleem Abid, D. I. Khan, presently C/O EDO(S&L), D.T.Khan.

VERSUS

- 1. Secretary to Govt. of NWFP, Education Department, Peshawar.
- 2. Director of Education (SEL), NAFP, Peshawar.
- Executive District Officer (S&L), D.I. Khan.
- District Accounts Officer, D. I. Khan. Responder ta

AFPEAL AGAINST THE ORDER DATED 12.01.2004 OF RESPONDENT NO.4 VIDE WHICH THE AFFELLANT HAS DEEN HILD TO BE NOT ENTITLED FOR FAT IN B-15 AND THE RECOVERY HAS BEEN ORDERED TO BE MADE FROM THE APPELLANT FROM THE DATE OF HIS APPOINTMENT.

Sayed Zafur Abbus Zaidi Rarmanullah Khattak Advocates

Mr. Noor Zaman Khan, addl: Govt.Pleader.

For appellint

Mr. Abdul Satter Khan, Mr. Azmet Henif Crakeai Chairman.

JUDGKLNT

ABBUL SATTAR KHAH, CHATRMAN: The appellan

namely Kaleem Nawaz is serving as PET in the Education Department ever-since his appointment on 11.01.96. He

is also holder of qualifications of B.A M.Sc Physical Education. It is alleged that Physical Education is taught as a subject in Matric as well as in colleges. The teachers who perform the same duties in colleges are known as DPEs That requirement for Tocth in schools brancoineges established in one of SDPE. The appointees in the colleges are given B-16 while the appointment in schools, in case of SDPEs was in 3-45 in accordance with the instructions issued by the Government of NAFP Finance Department vide Notification dated 24th August, 1983. It is further alleged that the Education Department in consultation with the Finance Department also allowed three advance increments to all those appointees who had Master Begrees to their credit in the field of Physical Education. That the appellant was initially appointed in BS-14. He was allowed BS-15 w.e.f 13.01.96 on the basis of Netification, of the Finance Department, referred to above. However, this concession was withdrawn and the PETs' appointments were specified to be in B-9 and when the matter was finally considered, all the teachers who have been granted BS-15 were later on ordered to be having BSwere given BS-15 as personal grades w.e.f 12.1.95. On this analogy, the appellant was also entitled to the same benefit on the principle of consistency and to avoid discriminatory treatment. However, in dis-regard of the above facts, respondent No.4 has re-agitated the matter and a recovery has been ordered from the appellant from his pay on the mistaken view that the appellant was not entitled to BS-15. After exhausting his departmental remedy, the appellant has come up in appeal

ATTENDED TO

to the Tribural for the redressal of his grievences.

Notices were sent to the respondents. They turned up; and contested the appeal by filing their separate written replies. Various factual and legal pleas were raised. It was also interalia alleged that existing entries appearing against S.No. 6 of annex-II of impugned circular letter dated 24/8/83 were deleted ab-initio and enserted with new entries vide Finance Department corri-Sendum No. FD(PRC)5-1/93 dated 9.6.94. Hence, due to deletion of these entries, the appellant was not entitled to be allowed E-15. However, as per Finance Department letter dated 12.1.95, only those existing PETs were eligible for B-15(as personal to them) who were possessing prescribed ucudewic/professional qualification and serving in High Schools. Similar nature appeal of Shafiq-ur-Remmun, PET has already been dismissed by the Hon ble High Court vide its decision dated 23.4.02 in appeal-No. 153/99. That the appellant is also not entitled to three advance increments on the basis of M.Sc.;qualifi cation. No replication, in rebuttal, was filed by the appellant..

Arguments heard and record perused

on the basis of principle of locus-poenitentiae, the appellant is entitled to BS-15; that the benefit once enjoyed cannot be withdrawn after the lapse of 8 years; that the circular letter of 1994 of Finance Department has no legal value and it cannot over-ride the powers of the competent authority and more-so when it is not notified in the official gazette and that there is no



material/notification to the effect that the Administrative Department has consented to it. Lastly, it was argued that the appellant has been discriminated as some of his colleagues are receiving/enjoying the benefit of 35-15, while the appellant has been deprived of the same tenefit. As such the appellant is entitled to BS-15 and so recovery be made from him.

- 5. In reply it was urged that similar nature of case was decided by the High Court on 23.4.02 and no relief was granted to the petitioner; that the case of the present appellant is also at par with those who have teen denied the benefit of BS-15 and that the circular letter of 1994 is a legal one, therefore, the appeal is liable to be dismissed.
- 1 The Tribunal holds that the claim of the appellant is groundless. He is not entitled to the award of BS-15. The award of BS-15 to the appellant was an error which was rectified through a corrigendum issued by the Finance Department vide letter No. FD(PRC)5-1/93 dated PETs 9.6.94. However, to compensate those/already in receipt of BS-15, the Provincial Government allowed BS-15 to F.D them as personal vide/letter dated 12.1.95, therefore, the provision of the above letter was specific to those mentioned above and not general. The relevant para of the Finance Department's letter dated 12.1.95 reads as under

"lay Scales of P.T.Is

BPS-15 would be admissible with effect from 1.7.1983 to the existing P.T.Is with BA/B.Sc qualifications with senior diploma in physical education and working in the Government High/Comprehensive High Schools as personal to them.

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sprellant was either appointed after 12.1.95 or has qualified BA/E.Sc with senior diploma in Physical Education after 12.1.95, therefore, he cannot be placed in BS-15. He is only entitled to be placed in the scale as gemissible to him in the light of F.D's letter No. FD(PRC)1-1/89 dated 7.8.91. The appellant is also not entitled to three advance increments on the basis/ strength of higher qualification of M.Sc Physical-Education in view of the Finance Department's Notification. The principle of locus-poenitentiae is not applicable as the appellant was erroneously allowed BS-15 which was later on withdrawn and he has enjoyed the benefit of the Notification of the Finance Department of 1983. The Peshawar High Court, Peshawar in W.P. No. 153 of 1999 filed by Chafiq-ur-Rehman, dis-allowed the concession of BS-15 to those FETs, holding qualifications of BA/B.Sc with senior diplome. It was also held that grant of BPS-15 to the teachers was an error as it was unreasonable that they be given a jump of six steps to be granted BS-15. The error was later on corrected by issuing a corrigendum by the Finance Department.

7. Purther, joint departmental appeal was filed by the present appellant namely Kaleem Nawaz with co-appellants namely Kashif Rehman, Sayed Mohsin Abbas, Jamshed Khan and Mohammad Khalid. Like-wise, joint departmental appeal was filed by Muhammad Aslam appellant with co-appellants namely Muhammad Ayaz S/o Sarfaraz, withammad Younis, Salah-ud-Din, Muhammad Attahar, Munawar-Kussain Shah, Abdul Salam Shmas, Muhammad Sajjid, Muhammad Naveed Ahmad, Muhammad Behram, Habib-ur-Rehman,

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Kuhammad Zahoer, Muhammad Ayaz S/o Rab Nawaz, Azmatullah & Abdul Samad, respectively. Filing of joint departmental appeal is violation of the NWFP Civil Servants (Appeal) Rules, 1986. According to Rule-3, sub-rule(2) where the order of the competent authority affects more than one civil servant, every affected civil servant shall prefer the appeal separately. The present departmental appeal by the appellant has been filed by 8 persons jointly. whereas the appeal filed by Muhammad Aslam and co-appel lants hus been filed by 16 persons jointly. So this departmental appeal as well as the departmental appeal filed by the co-appellants are in total violation of sub-rule(2) of Rule-3 of Appeal Rules ibid which would mean that no departmental appeal has been filed in the present appeal as well as in the connected appeals. whereas filing of departmental appeal is sine-qua-non. Reliance is placed on the authority of the august Supreme Court of Pakistan in C.Ps No. 351-P to 357-P of 1999 titled, "Muhammad Shoaib & 6 others-Vs-Birector" Frimary Education NAFP, Peshawar & 3 others", decided on 15.7.99. Lastly, the appellant is claiming financial benefits, whereas the Govt. of NWPP Finance Department has not been impleaded as party. Impleadment of necessar party i.e. F.D was essential. On this score the instant uppeal and connected appeals No. 324, 325,326 & 327 of 2004 are also liable to be dismissed. As such no case for indulgence of the Tribunal was made out. Accordingly, the instant appeal fails and is dismissed.

This order/judgment shall also dispose of 24 other connected appeals bearing No. 324 to 327 of 2004; 462 to 464/64, 466 to 470/04, 478 to 482/64, 556 and 557 of 2004 as well as appeals No. 598 to 602 of 2004 filed by Kashif Rehman, Sayed Mohsin Abbas, Jamshed Khan, &

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Muhammad Khalid, Muhammad Aslam, Muhammad Ayaz S/o Sarfaraz Muhammad Younis, Salah-ud-Din, Muhammad Attahar, Munawar-Hubsain Shah, Abdul Salam Shmas, Muhammad Sajjid, Muhammad Naveed Ahmad, Muhammad Behram, Habib-ur-Rehman, M. Zahoor, Fuhammad Ayaz s/o Rob Nawaz, Azmatullah & Abdul Samad and Laiq Zaman, Lais Khan, Intikhab Gul, Ikramullah & Maider Muhammad appellants respectively in the same manner involving common questions of law & facts.

This: judgment shall also dispose of Service Appeal No. 819 of 2004 titled, "Dost Muhammad-Vs-Govt. of NMFP through Secretary of Education (S&L) Civil Sectt: : Feshawar & others". The appellant an A.T in the Education Department was allowed B6-14 on getting qualification. of Shahadat-ul-Alumia. The Pay Fixation Party re-fixed his pay in BG-9 and recovery was also ordered to be made from him. Since the appellant has obtained the Sanad of Shahod tul-Alamia from Madrassa of Hoti Mardan which is not recognized by Peshawar University. BS-14 is welmissible to those A.Ts having qualification of Shahadat-ul-Alamia subject to the condition that the degree/sanad is obtained from the Institution declared as authorised by the University of Feshawar vide letter No. 10357/59/9-C/Vol: VXI/9-C/ACAD/V dated 19.4.94. The Sanad of the appellant is not recognized by the Peshawar University, therefore, he is not entitled to BS-14 and/has rightly been fixed in ES-9 by the Pay Fixation Party. However, no recovery be made from all the appellants regarding the excess salary received by them in higher grades. No order as to combs. File be consigned to the record.

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(AZEAT HANIF ORAKZAI)

(ABDUL SATTAR KHAN)
CHAIRMAN
NVFP SERVICE TRIBUNAL
PESHAWAR