

**BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
CAMP COURT ABBOTTABAD**

Execution Petition No. 271/2021 out of Service Appeal No. 723/2018

MUNIR HUSSAIN,**APPELLANT/DECREE HOLDER**

VERSUS

**SECRETARY E&SE, GOVT: OF KHYBER PAKHTUNKHWA & OTHERS
.....RESPONDENTS**

**OBJECTION PETITION U/S 47 CPC ALONGWITH ALL THE ENABLING
PROVISION OF LAW**

Respectfully Sheweth,

The respondents most humbly submit as under:-

1. That the above titled execution petition is fixed for today before this Honorable Tribunal.
2. That the Respondents / Petitioners submits the objection petition.
3. That the Execution Petition alongwith Service Appeal titled above is liable to be dismissed on the following grounds inter alia.


Grounds

- A. That the Decree Holder/Respondent has filed an earlier Service Appeal No. 1084/2016 before this Honorable Tribunal (Copy of the Service Appeal is Annex-A).
- B. That after the conclusion in Service Appeal No. 1084/2016 the Honorable Chairman Service Tribunal dismissed the Service Appeal of the Respondent/Munir Hussain (Copy of judgment Annex-B).
- C. That feeling aggrieved the appellant/Decree Holder filed CPLA before the August Supreme Court of Pakistan which was also dismissed (Copy of judgment of Supreme Court is Annex-C)
- D. That the Respondent/Decree Holder than filed another Service Appeal No. 723/18 before this Honorable Tribunal on the same cause of action (Main File of Service Appeal No. 723/2018 is before this Honorable Tribunal).
- E. That the applicant/judgment debtor in their parawise comments took the plea in Para-15 that the Service Appeal on the same cause of action was earlier dismissed but the same was overlooked by this Honorable Tribunal (Copy of Parawise Comments are Annex-D)

- F. That this Honorable Tribunal has passed the judgment in favor of this appellant/Decree Holder which is void abinitio.
- G. That the Decree Holder has concealed the fact of Re-Judicata from this Honorable Tribunal.
- H. That the Decree Holder has committed fraud and mis-representation to this Honorable Tribunal.
- I. That the judgement dated 17-03-2021 is not sustainable in the eye of law and liable to be struck down.

Prayers:-

It is therefore, most humbly prayed that this Honorable Tribunal on acceptance of this objection petition, may consider the averments been made by the Applicant/Judgment Debtor and also may kindly pass an order under the circumstances in favour of the Applicant/Judgment Debtor and against the decree holder.


Secretary
E&SE Department.
(Respondents No.01 to 03)


Legal Advisor
ESED

Annex - A

Anx. ¹ B²

BEFORE THE SERVICE TRIBUNAL, KHYBER PAKHTUNKHWA, PESHAWAR



Service Appeal No. 1084 /2016

Munir Hussain, SS/ Incharge, Principal, GHSS Kawai, District Mansehra.

...APPELLANT
Khyber Pakhtunkhwa Service Tribunal

VERSUS

Diary No. 1116

Dated 24-

- ✓ 1. Govt. of Khyber Pakhtunkhwa, through Chief Secretary, Khyber Pakhtunkhwa, Peshawar.
- x 2. Secretary Finance, Khyber Pakhtunkhwa, Peshawar.
- ✓ 3. Secretary, Elementary & Secondary Education, Khyber Pakhtunkhwa, Peshawar.
- ✓ 4. Accountant General, Khyber Pakhtunkhwa, Peshawar.
- 5. District Education Officer (Male), District Mansehra.
- ✓ 6. District Accounts Officer, District Mansehra.

...RESPONDENTS

Filed to-day

[Signature]
Registrar

24/10/16

APPEARED

[Signature]
Khyber Pakhtunkhwa Service Tribunal
Peshawar

SERVICE APPEAL UNDER SECTION 4 OF
KPK SERVICE TRIBUNAL ACT, 1974, FOR
DECLARATION TO THE EFFECT THAT THE
APPELLANT IS DRAWING AND
DISBURSING OFFICER OF GOVT. HIGHER

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BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
CAMP COURT ABBOTTABAD

Service Appeal No. 1084/2016

Date of Institution... 24.10.2016

Date of decision... 19.03.2018



Munir Hussain SS/Incharge Principal, GHSS Kawai, District Mansehra.
... (Appellant)

Versus

1. Government of Khyber Pakhtunkhwa through Chief Secretary, Peshawar
and 5 others. (Respondents)

MR. MUHAMMAD ARSHAD KHAN TANOLI,

Advocate

... For appellant.

MR. USMAN GHANI, ✓

District Attorney

... For respondents.

MR. NIAZ MUHAMMAD KHAN,

MR. AHMAD HASSAN,

... CHAIRMAN

... MEMBER

JUDGMENT

NIAZ MUHAMMAD KHAN, CHAIRMAN: Arguments of the learned
counsel for the parties heard and record perused.

FACTS

2. The appellant was entrusted with the duties of Drawing & Disbursing Officer in addition to his own post (Subject Specialist) on 11.5.2010 in place of one Ajmal Ahmad. Then again on 17.4.2012 he was entrusted with the same duty in place of Muhammad Haroon. The appellant's grievance is that he was entitled for Additional Charge Allowance at the prevailing rates for the said additional duties. He moved a departmental appeal on 30.6.2016 which was forwarded on 01.10.2016. The same was not responded to and thereafter he filed the present service appeal on 24.10.2016.

ATTESTED

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal,

37 (S) 74

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ARGUMENTS

3. The learned counsel for the appellant argued that the appellant was given additional charge of the post of Principal as well as job of D.D.O in place of above mentioned officers. That in accordance with a letter issued by the Finance Department in the year, 1999 dated 7th August, 1999 the appellant was entitled for the said allowance. He also relied upon Rule-49 of the Fundamental Rules.

4. On the other hand, the learned District Attorney argued that the appellant was not authorized as D.D.O by the competent authority. Secondly, prior approval of the Finance Department was must which was not obtained. Thirdly that in view of letter dated 12.08.1997 issued by the Finance Department Government of Khyber Pakhtunkhwa the same allowance could be granted only if the charge of the post is entrusted in its entirety to a government servant. Fourthly in the said letter a maximum period of such additional charge was 6 months and fifthly another condition in the said letter was that this additional charge was to be given to the government servant of equal post.

CONCLUSION.

5. F.R-49 is also in consonance with the letter relied upon by the learned District Attorney. Both FR-49 and that letter clearly lay down that for Additional Charge Allowance, the charge of the post in its entirety is to be given to the claimant. Both these also further lay down that the approval of the Secretary/Head of attached Department etc. is much. Both these letters lay down that such additional charge cannot exceed beyond six months. Admittedly, the Subject Specialist is not of the equal scale/status to the Principal. Secondly, the appellant in his memo of appeal only seek this Additional Charge Allowance for his performance as DDO. The DDO is one of the item of the job descriptions of the Principal. So the appellant was not given the charge of the post of Principal in its entirety (leaving aside the discussion on the competency of the authority delegating the powers).

ATTIATED

ESAWNER
Khyber Pakhtunkhwa
Services Board, Peshawar

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Better Copy

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ARGUMENTS

3. The learned counsel for the appellant argued that the appellant was given additional charge of the post of Principal as well as job of D.D.O in place of above mentioned officers. The in accordance with a letter issued by the Finance Department in the year, 1999 dated 7th August, 1999 the appellant was entitled for the said allowance. He also relied upon Rule-49 of the Fundamental Rules.

4. On the other hand, the learned District Attorney argued that the appellant was not authorized as D.D.O by the competent authority. Secondly, prior approval of the Finance Department was must which was not obtained. Thirdly that in view of letter dated 12.08.1997 issued by the Finance Department Government of Khyber Pakhtunkhwa the same allowance could be granted only if the charge of the post is entrusted in its entirety to a government servant. Fourthly in the said letter a maximum period of such additional charge was 6 months and fifthly another condition in the said letter was that this additional charge was to be given to the government servant of equal post.

CONCLUSION.

5. F.R-49 is also consonance with the letter relied upon by the learned District Attorney. Both FR-49 and the letter clearly lay down that for Additional Charge Allowance, the charge of the post in its entirety is to be given to the claimant. Both these also further lay down that the approval of the Secretary/Head of attached Department etc. is much. Both these letters lay down that such additional charge cannot exceed beyond six months. Admittedly, the Subject Specialist is not of the equal scale/ status to the Principal. Secondly, the appellant in his memo of appeal only seek this Additional Charge Allowance for his performance as DDO. The DDO is one of the item of the job description of the Principal. So the appellant was not given the charge of the post of Principal in its entirety (Leaving aside the discussion on the competency of the authority delegating the power)

(38)

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(Signature)

6. In view of the above discussion, this Tribunal reaches the conclusion that no case is made out by the appellant which is dismissed. Parties are left to bear their own costs. File be consigned to the record room.

(Signature)
(Ahmad Hassan)
Member

(Signature)
(Niaz Muhammad Khan)
Chairman.
Camp Court, A/Abad

ANNOUNCED
19.03.2018

Certified true copy
(Signature)
M. J. Akhbar
Secretary Tribunal,
Peshawar

Date of Presentation of App. No.	30-5-19
Number of Words	1800
Copying Fee	12-
Stamp	2-
Total	14-
Name of Copyist	(Signature)
Date of Completion of Copy	30-5-19
Date of Delivery of Copy	30-5-19

Annex - C

SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

PRESENT:

Mr. Justice Gulzar Ahmed, C.J.
Mr. Justice Ijaz ul Haq

CIVIL APPEAL NO. 2097 OF 2019

[Against the judgment dated 19.3.2018, passed by the
Khyber Pakhtunkhwa Service Tribunal, Camp Court,
Abbottabad, in Service Appeal No. 1084 of 2016]

Munir Hussain

...Appellant

Versus

**Government of Khyber Pakhtunkhwa
through Chief Secretary, KPK, Peshawar
and others**

...Respondents

Appellant : In person

For Respondents : Barrister Qasim Wadood,
Addl. A.G., KPK
Salim Ullah, ADO Litigation
Faheem Anwar, Litigation Officer
Mushtaq Ahmed, DAO, Mansehra
Munir Hussain, AAO, Mansehra

Date of Hearing : 11.02.2021

ORDER

GULZAR AHMED, C.J.- We have heard the appellant,
who appeared in person, so also the learned Additional Advocate
General, Khyber Pakhtunkhwa.

2. The appellant was employed as a Subject Specialist in
the Government Higher Secondary School, Kawai. He was made
incharge Principal and was authorised to act as Drawing and
Disbursing Officer (DDO). The appellant having undertaken such
job, applied for granting of additional allowance to him which was
not allowed. He filed a Service Appeal in the Khyber Pakhtunkhwa Service Tribunal, Camp Court,
Abbottabad, in Service Appeal No. 1084 of 2016.

ATTESTED

Senior Court Associate
Supreme Court of Pakistan
Islamabad

CA.2097 of 2019

Headmaster GHSS Bsit Khel District Lakki
orders were made by the DSC he

(LID)

Service Tribunal, Camp Court, Abbottabad (the Tribunal) which came to be dismissed vide the impugned judgment dated 19.3.2019.

3. The appellant contends that he is entitled to grant of additional charge allowance pursuant to Rule 49 of the Fundamental Rules.

4. On the other hand, the learned Additional Advocate General contends that Rule 49 *ibid* does not cover the case of the appellant as he was not given any independent charge of Principal and DDO. The Tribunal in the impugned judgment has considered the application of Rule 49 *ibid* to the case of the appellant and in doing so observed as follows:

"5. F.R-49 is also in consonance with the letter relied upon by the learned District Attorney. Both FR-49 and that letter clearly lay down that for Additional Charge Allowance, the charge of the post in its entirety is to be given to the claimant. Both these also further lay down that the approval of the Secretary/Head of attached Department etc. in much (sic). Both these letters lay down that such additional charge cannot exceed beyond six months. Admittedly, the Subject Specialist is not of the equal scale/status to the Principal. Secondly, the appellant in his memo of appeal only seek this Additional Charge Allowance for his performance as DDO. The DDO is one of the item of the job descriptions of the Principal. So the appellant was not given the charge of the post of Principal in its entirety (leaving aside the discussion on the competency of the authority delegating the powers).

ATTESTED
Senior Court Associate
Supreme Court of Pakistan
Islamabad

5. We have considered the arguments of both sides. The Tribunal after going into all facts and law applicable to the case of the appellant came to the conclusion that the appellant is not

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entitled to grant of additional charge allowance. No illegality in the impugned judgment is shown calling for interference by this Court. The same is, therefore, maintained and the appeal is dismissed.

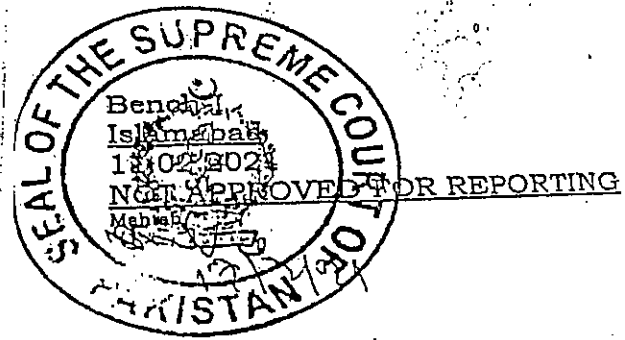
6. Civil Misc. Application No.266 of 2020 is disposed of.

Sd/ CJ

Sd/ J

Certified to be True Copy

Senior Court Associate
Supreme Court of Pakistan
Islamabad



GR No: 2922/21 Civil/Criminal

Date of Presentation: 11-2-21

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Annex 6

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**BEFORE THE HONOURABLE SERVICE TRIBUNAL KPK PESHAWAR
CAMP COURT ABBOTTABAD.**

Service Appeal No. 723-A/2018

Munir Hussain APPELLANT



VERSUS

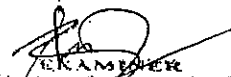
1. Government of Khyber Pakhtunkhwa through Secretary Elementary & Secondary Education KPK Peshawar.
2. Government of Khyber Pakhtunkhwa through Director Elementary & Secondary Education KPK Peshawar.
3. District Education Officer (Male) Mansehra.....RESPONDENTS.

**PARAWISE COMMENTS / WRITTEN REPLY ON BEHALF OF RESPONDENTS NO
2,5 AND 6.**

Respectfully Sheweth:-

1. That the Appellant is not the "AGGRIEVED" person.
2. That the Appellant is stopped by his own conduct.
3. That the Appellant has not come to the Hon'ble Court with clean hand.
4. That the Appellant has no cause of action/locus standi to file the instant Appeal.
5. That instant service appeal is against the prevailing law and rules.
6. That the Appellant has concealed the material facts from this Hon'ble Court in the instant Writ Petition.
7. That the instant service appeal is against the relevant provision of Law.
8. That the appeal is time barred and not maintainable in eye of Law and also time barred hence liable to be dismissed.
9. That the appeal is groundless and based on malafide, alter motive, hence the same is liable to be dismissed.
10. The instant service appeal is not maintainable in the present form and also in the present circumstances of the issue.
11. That the demand of the Appellant is against the law and facts hence the appellant is not entitled for any relief and is liable to be dismissed on this score alone.
12. That the appellant is not entitled for grant of 20% additional charge allowance in view of FR-49 w.e.f 01-05-2010.
13. The appellant is not entitled any pay and allowances of BPS-18 w.e.f from 17/05/2010 to 30/06/2012 because his order is issued on temporary basis just for the sake of look after the responsibilities of the school.
14. That no formal notification to the extent of grant of 20% additional charge allowance has been issued by the competent authority.

ATTESTED


K. KAMBER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

- 15. The same has been dismissed by the Honourable Ser Khyber Pakhtunkhwa Camp Court Abbottabad in Se No.1011-A/2016 in year 2018.

FACTUAL OBJECTIONS.

- 1. Para No.01 is correct to the extent that the appellant E&SE Department against the Subject Specialist Post District Mansehra.
- 2. Incorrect and denied on the ground that basically the working against the SS Post in the respondent department rest of the Para regarding service against the In-charge since 01-05-2010 is against the facts as each & every H a sanction post of a Principal, Head master/Principal situation has been raised wherein, the petitioner has to look-after the day to day affairs of the said school being it does not accrued any kind of vested/legal Notification, whereas Respondent No.06 is not competent Hence the order dated 17-04-2012 of the then EDC Mansehra is not competent & valid for the drawl of additional charge by the petitioner against the said hence, he is not entitled any pay and allowances of BPS 17/05/2010 to 30/06/2012 and from 01/07/2012 because his order is issued on temporary basis just to look after the responsibilities of the school.

(Copy of said order is annexed as annexure)


- 3. Incorrect and denied. The cited provision of FR-49 is not applicable upon the case of the petitioner as formal sanction & Notification to this effect has not been issued by the Respondent No.06 competent authority in such like cases.

(Copy of the cited provision of Law is annexed as annexure)

- 4. Incorrect and denied on the grounds that the notification No.3-1192 date 07/03/2018 is not applicable upon the case of the petitioner for the grant of 20% additional charge allowances of BPS-19 as he is not formally authorized through a formal notification by Respondent No.2 whereas, respondent No.6 is not competent in this regard the cited Provision FR-49 is not applicable upon the case of the petitioner as formal sanction & Notification to this effect has not been issued by the respondent No.2 who is the competent authority in such like cases.

(Copy of the said Notification is attached as annexure)

That the appellant is not aggrieved person, that the appeal is bereft of merit, hence liable to be dismissed, on the following grounds.

ATTEST

 [Official Stamp/Signature]

(18)

(19)

(20)

GROUNDS.

- a. In correct and denied because the appellatant has not entitled in the present case.
- b. Para B is correct to the extent that the appellatant has been allowed on acting charge basis till the arrival of the full fledge principal of the said school by the DEO (M) Mansehra (Respondent No.6) for the purpose of the smooth function of the school activities which occurred any kind of legal right in the favour of the appellatant for the drawl of 20% additional pay and charge allowance of BPS-18 and BPS-19 on the basis of the temporary notification issued by the DEO(M) Mansehra. It is possible only, when the respondent No.2 will issue a proper notification, who is competent in this regard.
- c. Incorrect and denied.
- d. Incorrect and denied because the appellatant has been allowed on acting charge basis till the arrival of the full fledge principal of the said school by the DEO (M) Mansehra (Respondent No.6) for the purpose of the smooth function of the school which occurred any kind of legal right in the favour of the appellatant for the drawl of 20% additional pay and charge allowance of BPS-18 BPS-19.
- e. Incorrect and denied, because the provision of FR-49 is not applicable upon the case of the appellatant as formal sanction & Notification to this effect has not been issued by the Respondent No.02 , who is the competent authority in such like cases. So the temporary order issued by the respondent No.2 has no legality and the appellatant has no right to draw 20% additional pay and allowance of BPS-18 and BPS-19.
- f. Para f relate to the Legal right of the appellatant. Need no comments.
- g. Need no comments.
- h. Need no comments.
- i. Need no comments.

PRAYERS

It is therefore, humbly prayed that on acceptance of the above submissions, the instant writ petition may very graciously be dismissed in the favour of the answering Respondents in the interest of the Justice .

Respondent

The Secretary,
Elementary & Secondary Education
Khyber Pakhtunkhwa Peshawar.

The Director,
Elementary & Secondary Education
Khyber Pakhtunkhwa Peshawar.

Certified to be true copy

District Education Officer,
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

District Education Officer,
(Male) Mansehra