

12.05.2022

Muhammad Adeel Butt, learned Additional Advocate General present on behalf of petitioner.

Noor Muhammad Khattak, Advocate present on behalf of respondents.

Learned AAG requested for withdrawal of the instant petition. In this regard, his statement was recorded and is placed on file.

Keeping in view the statement of learned AAG coupled with his request, instant petition filed U/S 12(2) of Civil Procedure Code, 1908, stands dismissed as withdrawn. File be consigned to the record room.

Announced
12.05.2022


(Rozina Rehman)
Member (J)

22.12.2021

Kabir Ullah Khattak learned Additional Advocate General alongwith Haseen Ullah Litigation Assistant present on behalf of petitioner.

Noor Muhammad Khattak Advocate present for respondent.

Representative of petitioner as well as learned AAG (Kabir Ullah Khattak) requested for adjournment. Last chance is given. To come up on 17.02.2022 for hearing before S.B..


(Rozina Rehman)
Member (J)

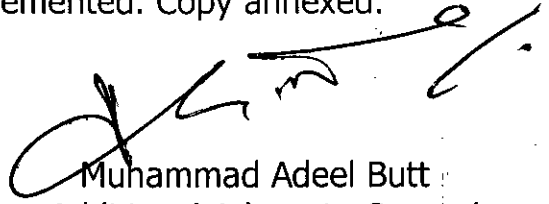
17.02.2022

Due to retirement of the Worthy Chairman, the Tribunal is defunct, therefore, case is adjourned to 12.05.2022 for the same as before.


Reader

Statement of Muhammad Adeel Butt, learned
Additional Advocate General on oath:

As the subject matter is pending before the
Supreme Court of Pakistan, I do not resist the instant
12(2) application. It is also stated that vide letter dated
Peshawar the 17th June, 2021, the subject matter has
been provisionally implemented. Copy annexed.



Muhammad Adeel Butt
Additional Advocate General

Dated: 12.05.2022


R.O & A.C

(Rozina Rehman)
Member (J)

26.08.2021

None present for the petitioner. Mr. Noor Muhammad Khattak, Advocate, for the respondent present.

Previous date was changed on Reader Note, therefore, notice for prosecution of the petition be issued to the petitioner and to come up on 26.10.2021 before the S.B.



(SALAH-UD-DIN)
MEMBER (J)

26.10.2021

Learned counsel for the petitioner present. Mr. Said Khan, Advocate junior of learned counsel for the respondent present.

Junior of learned counsel for respondent requests for adjournment on the ground that learned senior counsel for respondent is not available today. Granted. To come up for further proceedings on 22.12.2021 before S.B.


Chairman

09.12.2020 Mr. Abdul Wahid, Litigation Officer for the petitioner present. Nemo for respondent.

On the last date of hearing, notice was required to be issued to respondent for hearing today. The record shows that requisite notice was duly issued and sent through registered post. The respondent is, however, not represented today. Keeping in view the nature of petition and the proposition involved therein it is deemed appropriate to send another notice to respondent for 28.01.2021. The office shall do the needful.

Adjourned.


Chairman

28.01.2021 Mr. Abdul Wahid, Litigation Officer, for petitioner is present. Mr. Noor Muhammad Khattak, Advocate, for the respondent is also present.

Due to paucity of time, proceeding in the instant petition could not be conducted, therefore, adjourned to 11.05.2021 before S.B.


(MUHAMMAD JAMAL KHAN)
MEMBER (JUDICIAL)


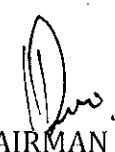

11.05.2021 Due to demise of the Worthy Chairman the Tribunal is defunct, therefore, case is adjourned to 26.08.2021 for the same as before.


Reader

FORM OF ORDERSHEET

Court of _____

Petition 12(2) No. 124 /2020 in appeal no. 1641/2019

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1	31/08/2020	<p>The joint petition U/S 12 (2) C.P.C submitted by Director E&SE Khyber Pakhtunkhwa may be entered in the relevant Register and put up to the Court for proper order please.</p> <p style="text-align: right;">  REGISTRAR <u>31/8/2020</u> </p>
2	02.10.2020	<p>This Petition be put up before S. Bench on <u>02/10/2020</u></p> <p style="text-align: right;">  CHAIRMAN </p> <p>Mr. Abdul Wahid, A.D (Litigation) for the applicant present.</p> <p>Notice be issued to respondent, for 09.12.2020. The expenses/process fee shall be deposited by the applicant within 10 days.</p> <p style="text-align: right;">  Chairman </p>

Appellant Deposited
Process Fee

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

Application NO. ¹²⁴...../2020 IN SERVICE APPEALS NO: 1641/2020

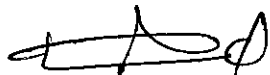
The Government of Khyber Pakhtunkhwa through the Chief Secretary & 04 others
.....Applicants/Petitioners

VERSUS

Muhammad Nassem, SPST B-14 GPS Hashim Dir Lower & others
.....Respondents/Appellants.

INDEX SHEET

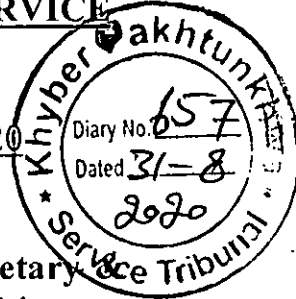
S/#	Description of document	Annexure	Page No.
1	12/2 Application	—	1-4
2	Revise Notification	- A	-5
3	H.C Judgement in WP 3162-	B -	6-12
4	Judgement of Tribunal 13-2-020	- C -	13
5	APPEAL copy	—	13-16


Asstt: Director (Lit: II)
E&SE Department, Khyber
Pakhtunkhwa, Peshawar.

①

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

124
Application NO...../2020 IN SERVICE APPEALS NO: 1641/2020



The Government of Khyber Pakhtunkhwa through the Chief Secretary
04 othersApplicants/Petitioners

VERSUS

Muhammad Nassem, SPST B-14 GPS Hashim Dir Lower ~~& others~~
.....Respondents/Appellants.

**APPLICATION UNDER SECTION 12(2) OF CIVIL PROCEDURE
CODE 1908 AGAINST THE ORDER & JUDGMENT DATED 13-02-2020
OF THIS TRIBUNAL IN THE TILTED SERVICE APPEALS
WHEREBY, THE JUDGMENT DATED 01-10-2019 OF THE
HONORABLE PESHAWAR HIGH COURT PESHAWAR IN WRIT
PETITION NO.3162-P/2019 TITLED AKHTAR HUSSAIN ETC VS
GOVT; OF KPK & OTHERS HAS WRONGLY BEEN INTERPRETED
BY THE RESPONDENTS/APPELLANTS FOR AVAILING THE
BENEFITS CONVEYANCE ALLOWANCE FOR CIVIL SERVANTS
FROM BPS-1-15 DURING THE SUMMER VACATIONS UNDER THE
NOTIFICATION NO.FD/SO(SR-II)/52/2012 DATED 20-12-2012 OF THE
FINANCE DEPARTMENT GOVT. OF KPK WHICH IS ILLEGAL &
LIABLE TO BE SET ASIDE IN FAVOR OF THE APPLICANTS AS THE
HONORABLE HIGH COURT HAS DISMISSED THE TITLED
PETITION.**

Respectfully Sheweth:-

The Petitioners/Applicants submit as under:-

ON FACTS.

1. That the Respondents/Appellants ^{is} ~~are~~ working against the ~~various~~ Teaching Cadre Post in the Respondent Department & have filed the tilted service appeals before this Honorable Tribunal for the grant of directions to the E&SE Department KPK Peshawar for the payment of conveyance allowance under the provision of Notifications No.FD (PRC) 1-1/2011

dated 14/7/2011 & FD/SO(SR0-II)/52/2012 dated 20-12-2012 which was later on revised vide another Notification dated 20/12/2013 by the Finance Department Govt; of KPK Peshawar for the Teaching staff of E&SE Department working in BPS-1-15 to the extant grant of Conveyance allowance during the Summer & Winter vacations as the case may be by placing reliance on a Judgment dated 01-10-2019 of the Honorable Peshawar high Court Peshawar rendered in writ petition No.3162-P/2019 case titled Akhtar Hussain etc Vs Govt; of KPK whereby, the Honorable Peshawar High Court Peshawar has dismissed the petition of the petitioners under the provision of Article 212 of the constitution of Islamic Republic of Pakistan read with Chapter-2 of the KPK Civil Servants Act 1973 & the operative part of the judgment under reference is hereby re-produced for ready reference as, *For the reason given hereinabove, the petitioners are Civil servants & their claim falls in the terms & conditions of service enumerated in Chapter-2 of KPK Civil Servants Act 1973, wherein, the jurisdiction of this Court is expressly barred by the Article 212 of the constitution of Islamic Republic of Pakistan 1973. Resultantly, this & the connected writ petitions mentioned above stand dismissed being not maintainable, (copies of the Notification & Judgment are attached as Ann-A & B).*

2. That as per law & rules, the conveyance allowance is not allowed to the Teachers concerned during leave period. Hence, the same was not paid to the Appellants/Respondents & others Teachers in the summer vacations during the months of June, July & august.
3. That an employee of the Federal Directorate of Education Govt; of Pakistan has filed a SA No. 1888 (R) CS/2016 before the Honorable Federal Service Tribunal (FST) Islamabad for the grant of Conveyance Allowance during the summer vacations/leave period allowed vide judgment dated 3/12/2018 in favor of the Respondents/Appellants to the extent of Employee/ Teacher working under the domain & jurisdictions of Federal Govt; only, whereas the appellant is an employee of the provincial Govt; of KPK Peshawar against the SPST B-14 post in District Dir Lower etc.
4. That the Appellants/Respondents have filed a Departmental Appeal before the authority concerned for the grant of Conveyance Allowance during the summer vacations which was not decided within 90 days by the Respondent Department. Hence, the Applicants further submit on the following grounds inter alia :-

ON GROUNDS.


- A. That the Honorable Peshawar High Court Peshawar has dismissed the above titled case/petition in favor of the applicants/E&SE Department but the Honorable Tribunal has ignored this aspect & has passed an order dated 13-02-2020 whereby, conveyance allowance has been allowed to the Respondents. (Copy of the said order & judgment dated 13/02/2020 is attached as Annexure-C).
- B. That the order dated 13-02-2020 of the Honorable KPK Service Tribunal Peshawar in the titled case/petition is also illegal & even in violation of the relevant provisions of law & rules passed on the analogy of the judgment dated 1/10/2019 dismissed of the Honorable Peshawar High Court Peshawar & not tenable in the eyes of law.
- C. That no notice for submission of Joint Para wise Comments has been served upon to the E&SE Department by the Honorable Service Tribunal Peshawar while passing the impugned order dated 13/02/2020 at the cost of legal rights of the aggrieved party/Govt; which is against the provision of section 12 (2) & order 39 Rule 1&2 CPC 1908.
- D. That huge financial & legal rights are involved with the instant case of the E&SE Department which cannot be snatched under any provisions of law.
- E. That the Appellants/Respondents are habitual litigants & at present have filled so many pending cases before various courts of law.
- F. That Honorable Court and Tribunal have failed to consider the facts & legal grounds of the case prior to the passing of the impugned order & judgment dated 13/02/2020 against the E&SE Department KPK Peshawar which is a non-trading concerned & is mainly imparting free of cost Education to the lower class of the society.
- G. That the aggrieved party/E&SE Department has been condemned unheard while passing the order dated 13/02/2020 by the Honorable KPK Service Tribunal Peshawar.
- H. That the instant case is within time limitation & this Honorable Tribunal has got jurisdictions to honor the instant Application under section 12 (2) CPC of 1908 for regular hearing on behalf of the E&SE Department Govt. of KPK.

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I. That the matter in question directly relates to the financial matter and the burden of the said order & judgment dated 13-02-2020 shall directly affect the Govt. Treasury.

J. That there is no legal bar in entertaining the instant case by this Honorable Tribunal rather it would be in the interest of justice.


Therefore, in view of the foregoing submissions, it is most humbly prayed that the order & Judgment dated 13-02-2020 of this Honorable Tribunal may very kindly be set aside under the provisions as referred in the heading of the instant application in the interest of justice please.

Dated ___ / ___ /2020.


Director
E&SE Khyber Pakhtunkhwa,
Peshawar (Respondents No.1-5)

AFFIDAVIT

I, Hayat Khan Asstt. Director (Lit: II) E&SE Department Khyber Pakhtunkhwa, Peshawar do hereby solemnly affirm and declare on oath that the contents of the instant application under section 12 (2) CPC 1908 is true & correct to the best of my knowledge & belief.


Deponent

(5) ✓

Annex (A)

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A-5



GOVERNMENT OF KHYBER PAKHTUNKHWA
FINANCE DEPARTMENT
(REGULATION WING)

NO. FD/SC(SR-III)/8-52/2012
Dated Peshawar the: 20-12-2012

From:

The Secretary to Govt. of Khyber Pakhtunkhwa,
Finance Department,
Peshawar.

To:

1. All Administrative Secretaries to Govt. of Khyber Pakhtunkhwa.
2. The Senior Member, Board of Revenue, Khyber Pakhtunkhwa.
3. The Secretary to Governor, Khyber Pakhtunkhwa.
4. The Secretary to Chief Minister, Khyber Pakhtunkhwa.
5. The Secretary, Provincial Assembly, Khyber Pakhtunkhwa.
6. All Heads of Attached Departments in Khyber Pakhtunkhwa.
7. All District Coordination Officers in Khyber Pakhtunkhwa.
8. All Political Agents / District & Sessions Judges in Khyber Pakhtunkhwa.
9. The Registrar, Peshawar High Court, Peshawar.
10. The Chairman, Public Service Commission, Khyber Pakhtunkhwa.
11. The Chairman, Services Tribunal, Khyber Pakhtunkhwa.

Subject:

REVISION IN THE RATE OF CONVEYANCE ALLOWANCE FOR THE CIVIL EMPLOYEES OF THE KHYBER PAKHTUNKHWA PROVINCIAL GOVERNMENT BPS 1-19

Dear Sir,

The Government of Khyber Pakhtunkhwa has been pleased to enhance / revise the rate of Conveyance Allowance admissible to all the Provincial Civil Servants Govt. of Khyber Pakhtunkhwa (working in BPS-1 to BPS-19) w.e.f from 1st September, 2012 at the following rates. However, the conveyance allowance for employees in BPS-16 to BPS-19 will remain unchanged.

S.NO	BPS	EXISTING RATE (PM)	REVISED RATE (PM)
1.	1-4	Rs. 1,500/-	Rs. 1,700/-
2.	5-10	Rs. 1,500/-	Rs. 1,840/-
3.	11-15	Rs. 2,000/-	Rs. 2,720/-
4.	16-19	Rs. 5,000/-	Rs. 5,000/-

2. Conveyance Allowance at the above rates per month shall be admissible to those BPS-17, 18 and 19 officers who have not been sanctioned official vehicles.

Yours Faithfully,

(Sahibzada Saad Ahmad)
Secretary Finance

Encl: NO. FD/SC(SR-III)/8-52/2012

Dated Peshawar the 20th December, 2012.

A Copy is forwarded for information to the:-

1. Assistant General, Khyber Pakhtunkhwa, Peshawar
2. Secretaries to Government of Punjab, Sindh & Balochistan Finance Department
3. All Autonomous / Semi Autonomous Bodies in Khyber Pakhtunkhwa

(IMTAZ AYUB)
Additional Secretary (Reg)

ATTENDED

MCB

(6) Annex (B)

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E-9

Judgment Sheet

IN THE PESHAWAR HIGH COURT, PESHAWAR,
JUDICIAL DEPARTMENT.

Writ Petition No. 3162-P/2019 Akhtar Hussain and
others vs. Govt of Khyber Pakhtunkhwa



JUDGMENT

Date of hearing.....01.10.2019.....

Petitioner(s) by Mr. Noor Mohammad Khattak, Advocate.

Mr. Mujahid Ali Khan, AAG, for respondents.

ROOH-UL-AMIN KHAN, J:- Through this common judgment we, proposed to decided the instant as well as the connected writ petitions as all having involved common question of law and facts, the particulars of which are given below.

- i. WP No. 3162-P/2019 titled Akhtar Hussain etc..vs..Government of Khyber Pakhtunkhwa through Chief Secretary, Peshawar and 4 others.
- ii. WP No. 3064-P/2019 titled Habeeb Ullah etc...Vs.. Government of Khyber Pakhtunkhwa through Chief Secretary, Peshawar and 7 others.
- iii. WP No. 3084-P/2019 titled Sikandar Khan etc...Vs.. Government of Khyber Pakhtunkhwa through Chief Secretary, Peshawar and 4 others.
- iv. WP No. 3178-P/2019 titled Abdur Rehman etc...Vs.. Government of Khyber Pakhtunkhwa through Chief Secretary, Peshawar and 4 others.

Rooh-ul-Amin

ATTESTED

EXAMINER
Peshawar High Court

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- (7)
- (13)
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- v. WP No. 3233-P/2019 titled Amjid Ali etc...Vs..
Government of Khyber Pakhtunkhwa through Chief
Secretary, Peshawar and 4 others.
- vi. WP No. 3283-P/2019 titled Gul Saeed etc. Vs..
Government of Khyber Pakhtunkhwa through Chief
Secretary, Peshawar and 4 others.
- vii. WP No. 3287-P/2019 titled Syed Israr Shah etc... Vs..
Government of Khyber Pakhtunkhwa through Chief
Secretary, Peshawar and 7 others.
- viii. WP No. 3288-P/2019 titled Firdous Khan etc... Vs..
Government of Khyber Pakhtunkhwa through Chief
Secretary, Peshawar and 4 others.
- ix. WP No. 3353-P/2019 titled Hafiz Inam Ur Rehman
etc... Vs.. Government of Khyber Pakhtunkhwa
through Chief Secretary, Peshawar and 6 others.
- x. WP No. 3366-P/2019 titled Jehanzeb Khan etc... Vs..
Government of Khyber Pakhtunkhwa through Chief
Secretary, Peshawar and 4 others.
- xi. WP No. 3390-P/2019 titled Haji Rehman etc... Vs..
Government of Khyber Pakhtunkhwa through Chief
Secretary, Peshawar and 2 others.
- xii. WP No. 3520-P/2019 titled Mohammad Khalid
etc... Vs.. Government of Khyber Pakhtunkhwa
through Chief Secretary, Peshawar and 4 others.

ATTESTED

EXAMINER
Peshawar High Court

- (8) 3
- (12)
- (11)
- xiii. WP No. 3567-P/2019 titled Husnur Rehman etc... Vs.. Government of Khyber Pakhtunkhwa through Chief Secretary, Peshawar and 3 others.
- xiv. WP No. 3667-P/2019 titled Maqсад Hayat etc... Vs.. Government of Khyber Pakhtunkhwa through Chief Secretary, Peshawar and 4 others.
- xv. WP No. 3939-P/2019 titled Syed Khurshid Shah etc... Vs.. Government of Khyber Pakhtunkhwa through Chief Secretary, Peshawar and 5 others.
- xvi. WP No. 4072-P/2019 titled Subhan Ullah etc... Vs.. Government of Khyber Pakhtunkhwa through Chief Secretary, Peshawar and 6 others.
- xvii. WP No. 4758-P/2019 titled Sohrab Hayat etc... Vs.. Government of Khyber Pakhtunkhwa through Chief Secretary, Peshawar and 4 others.

2. As per averments of the writ petition, the petitioners are serving in the Elementary & Secondary Education Department on their respective posts. On 14.7.2011 the Government of Khyber Pakhtunkhwa enhanced the conveyance allowance to all the Civil Servants i.e. from BPS-1 to 15, including the petitioners, which was subsequently revised vide another notification dated 20.12.2012 and was further enhanced. But the respondents without any valid and justifiable reasons stopped / deducted the payment of conveyance

ATTESTED

EXAMINER
Peshawar High Court

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allowance under the wrong and illegal pretext that the same is not allowed for the leave period.

3. In essence, the grievance the petitioners is that they were receiving the conveyance allowance under the notifications mentioned above, which was stopped without any justifiable reason.

4. Since the matter pertain to grant of conveyance allowance which is part and parcel of pay. Similar controversy came before this Court in Writ Petition No. 3509-P/2014 titled (Hafiz Mohammad Ilyas etc..vs..Government of Khyber Pakhtunkhwa), wherein the pay and salary were defined in the following manner.

"7. To resolve the controversy as to whether payment of allowances to a civil servant falls in chapter-2 of Khyber Pakhtunkhwa Civil Servants Act, 1973 i.e. terms and conditions of service, it is necessary to reproduce the definition of "pay" provided in section 2(e) of the Khyber Pakhtunkhwa Civil Servants Act, 1973 which reads as under:

" 2. (e)—"Pay" means the amount drawn monthly by a civil servant as pay, and includes special pay, personal pay and any other emoluments declared by the prescribed authority to be paid." (emphasis provided).

The word "emolument" used in the above quoted definition clause of the Civil Servants Act, 1973, according to its dictionary meaning, denotes wages and benefits received as compensation for

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EXAMINER
Peshawar High Court

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holding an office or having employment. The word emolument is basically derived from the Latin word emolumentum. It originally meant "the sum paid to a miller for grinding a customer wheat". Today, the term exists mostly as a bit of archaic legalese, but it might be within the route of expression i.e. "grinding out a living". From the above it is manifest that emoluments are essentially the benefits that one gets from the working of being employed. Emolument is the profit from employment and is compensation in return of services, hence the emoluments are part and parcel of pay. Section 17 being part of chapter-2 i.e. terms and conditions of service of a civil servant provides that, a civil servant appointed to a post shall be entitled, in accordance with rules, to the pay sanctioned for the post. Likewise, Rule 9(21) of (FR/SR) provide, the definition of pay which means the amount drawn monthly by a government servant as ;

- (i) the pay, other than special pay or pay granted in view of his personal qualification, which has been sanctioned for the post held by him substantively or in an officiating capacity, or to which he is entitled by reason of his position in a cadre, and
- (ii) overseas pay, technical pay, special pay and personal pay and
- (iii) any other emoluments which may be specially classed as pay by the governor general.

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The legislature in its wisdom has wisely used the word "pay" instead of salary in definition clause and section 17 of Khyber Pakhtunkhwa Civil Servants Act, 1973. The word 'pay' connotes

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 EXAMINER
 Peshawar High Court

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payment of wages including emolument in broader spectrum while the salary is used for amount that one receives in return for work and or service provided, which is paid periodically i.e. over a specified interval of time such as weekly or most commonly monthly. The term "salary" has been dealt with at page-553 of Corpus Juris Secundum Vol. 77 as under:-

"Salary". The word "Salary" is defined has meaning fixed compensation regularly paid by the year, quarter, month or week; fixed compensation for regular work, or for continuous services over a period of time; periodical compensation for services; compensation for services rendered; per annum compensation mean in official and in some other situation, or station; legal compensation.

Salary is also defined as meaning stipulated periodical recompense; or consideration paid, or stipulated to be paid to a person on regular interval for services usually a fixed sum to be paid by the year or half year, quarter, reward or consideration paid or agreed to be paid to a person on a regular intervals by the year, month or week for services; reward of fixed or recompense for services rendered or performed; reward or compensation of services rendered or performed.

From the above mentioned definition it is manifest that the "salary" of a civil servant is a fixed amount regularly paid as compensation to the employee, whereas the pay means an amount received by a civil servant including other emoluments i.e. allowances."

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EXAMINER
Peshawar High Court

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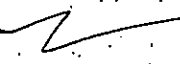

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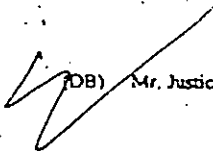
5. Besides, certain other petitions filed by the Teachers /employees of the same department serving from other corners of the province which were decided by Abbottabad Bench of this Court, wherein it was held that the conveyance allowance being part of pay fall in terms and conditions of civil servant and it can adequately be claimed through an appeal by adopting the prescribed procedure under the Khyber Pakhtunkhwa Civil Servants Act, 1974.

6. For the reasons given hereinabove, the petitioners are civil servants and their claim falls in terms and conditions of service enumerated in Chapter-2 of the Khyber Pakhtunkhwa Civil Servants Act, 1973, wherein the jurisdiction of this Court is expressly barred by Article 212 of the Constitution of Islamic Republic of Pakistan, 1973. Resultantly, this and the connected writ petition mentioned above stand dismissed being not maintainable. However, the petitioners are liberty to approach the proper forum, if so desire.

Announced on;
1st of October, 2019
"Jaishad"


JUDGE

JUDGE

ANNOUNCED
M


(DB) Mr. Justice Rooh Ul Amin Khan & Mr. Justice Mohammad Nazam Anwar

CERTIFIED TO BE TRUE COPY

EXAMINER
Peshawar High Court, Peshawar
Authorized Under Article 87 of
The Constitution of Pakistan Order 1008

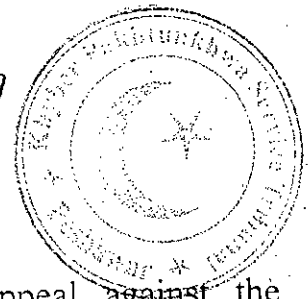
21 OCT 2019

13.02.2020

Learned counsel for the appellant present. Heard.

(13)

Amended



The appellant has filed the present service appeal against the deduction of conveyance allowance of the government servant/teacher working in school/college during vacations period.

Learned counsel for the appellant stated at the bar that identical nature Service Appeal No.1452/2019 has already been disposed of by this Tribunal vide order dated 11.11.2019. Learned counsel for the appellant stressed that being an identical nature case, the present service appeal may also be disposed of in terms of the said order dated 11.11.2019 passed in Service Appeal No.1452/2019.

Order dated 11.11.2019 of this Tribunal passed in Service Appeal No.1452/2019 perused. Judgment dated 03.12.2018 passed by learned Federal Service Tribunal in Appeal No.1888(R)CS/2016 and judgment dated 01.10.2019 of the Hon'ble Peshawar High Court Peshawar in Writ Petition No.3162-P/2019 referred to in the order dated 11.11.2019 in Service Appeal No.1452/2019, also gone through and plea taken by the learned counsel for the appellant is found genuine. Consequently the instant service appeal is also disposed of in terms of order dated 11.11.2019 passed in Service Appeal No.1452/2019, with the observation that the judgment of Hon'ble Peshawar High Court passed in writ petitions including Writ Petition 3162-P/2019 shall be honored and implemented by the respondents within shortest possible time.

This may also be observed that perusal of the judgment of Federal Service Tribunal in Appeal No.1888(R) CS/2016 reflects that in an identical nature case, the Federal Service Tribunal has held that the conveyance allowance is payable to the appellants w.e.f the vacations of the year when the departmental appeal/representation was filed by the appellants.

File be consigned to the record room.

Signature

(Muhammad Hamid Mughal)
Member (J)

Announced
13.02.2020

Federal Service Tribunal
Peshawar

(14)

✓

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR

APPEAL NO. 1641 /2019

Khyber Pakhtunkhwa
Service Tribunal

Diary No. 1765

Date 04/12/2019

Mst: **MUHAMMAD NASIM**, SPST (BPS-14),
GPS Hashim, Dir Lower.

.....**APPELLANT**

VERSUS

- 1- The Government of Khyber Pakhtunkhwa through Chief Secretary, Khyber Pakhtunkhwa, Peshawar.
- 2- The Secretary (E&SE) Department, Khyber Pakhtunkhwa, Peshawar.
- 3- The Secretary Finance Department, Khyber Pakhtunkhwa, Peshawar.
- 4- The Accountant General, Khyber Pakhtunkhwa, Peshawar.
- 5- The Director of (E&SE) Department, Khyber Pakhtunkhwa, Peshawar.

.....**RESPONDENTS**

APPEAL UNDER SECTION-4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974 AGAINST THE IMPUGNED ACTION OF THE RESPONDENTS BY ILLEGALLY AND UNLAWFULLY DEDUCTING THE CONVEYANCE ALLOWANCE OF THE APPELLANT DURING WINTER & SUMMER VACATIONS AND AGAINST NO ACTION TAKEN ON THE DEPARTMENTAL APPEAL OF THE APPELLANT WITHIN THE STATUTORY PERIOD OF NINETY DAYS.

PRAYER:

That on acceptance of this appeal the respondents may kindly be directed not to make deduction of conveyance allowance during vacations period (Summer & Winter Vacations) and make the payment of all outstanding amount of Conveyance allowance which have been deducted previously with all back benefits. Any other remedy which this august Tribunal deems fit that may also be awarded in favor of the appellant.

4/12/19

R/SHEWETH:

ON FACTS:

- 1- That the appellant is serving in the Elementary & Secondary Education Department as SPST (BPS-12) quite efficiently and up to the entire satisfaction of their superiors.
- 2- That the Conveyance Allowance is admissible to all the Civil Servants and to this effect a Notification No. FD (PRC)1-1/2011 dated 14.07.2011 was issued. That later on vide revised Notification dated 20.12.2012 whereby the conveyance allowance for employees working in BPS 1 to 15 were enhance/revised while employees from BPS- 16 to 19 have been treated under the previous Notification by

not enhancing their conveyance allowance. Copy of the Notification dated 20.12.2012 are attached as annexure..... **A.**

3- That appellant was receiving the conveyance allowances as admissible under the law and rules but the respondents without any valid and justifiable reasons stopped/deducted the payment of conveyance allowance under the wrong and illegal pretext that the same is not allowed for the leave period. Copies of the Salary Slips of working/serving month and vacations (deduction period) are attached as annexure..... **B & C.**

4- That appellant feeling aggrieved from the action of the respondents regarding deduction of conveyance allowance in vacations period/months filed Departmental appeal but no reply has been received so far. That feeling aggrieved the appellant along with his other colleagues filed Writ Petition No. 3162-P/2019 before the Peshawar High Court, Peshawar which was disposed of vide judgment dated 01.10.2019 with the directions to approach the proper forum i.e. Service Tribunal. Copies of the Departmental appeal & judgment is attached as annexure..... **D & E.**

5- That some of colleagues of the appellant approached to this august Tribunal in different service appeal which was allowed by this august Tribunal vide its judgment dated 11.11.2019. Copy of the judgment is attached as annexure..... **F.**

6- That where after the appellant waited for the statutory period of ninety days but no reply has been received from the respondents. That appellant feeling aggrieved and having no other remedy filed the instant service appeal on the following grounds amongst the others.

GROUND:

A- That the action and inaction of the respondents regarding deduction of conveyance allowance for vacations period/months is illegal, against the law, facts, norms of natural justice.

B- That the appellant have 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 action of the respondents is without any legal authority, discriminatory and in clear violation of fundamental rights duly conferred by the Constitution and is liable to be declared as null and void.

D- That there is clear difference between leave and vacation as leave is applied by the Civil Servant in light Government Servant Revised Leave Rules, 1981 while the vacations are always announced by the

Government, therefore under the law and Rules the appellant fully entitled for the grant of conveyance allowance during vacations period.

- E- That the Government Servants Revised Leave Rules, 1981 clearly explain that the civil servants who avail the vacations are allowed only one leave in a month whereas, the other civil servants may avail 04 days leave in a calendar months and the same are credited to his account and in this way he may avail 48 days earned leave with full pay, whereas the Government servants to avail vacation such as appellant is allowed one day leave in a month and twelve (12) days in a year and earned leave for twelve days in a year are credited to his account and there is no question of deduction of conveyance allowance for vacation period, the respondents while making the deduction of conveyance allowance lost sight of this legal aspects and illegally and without any authority started the recovery and deduction of conveyance allowance from appellant.
- F- That as the act of the respondents is illegal, unconstitutional, without any legal authority and not only discriminatory but is also the result of malafide on the part of respondents.
- G- That appellant has the vested right of equal treatment before law and the act of the respondents to deprive the petitioners from the conveyance/allowance is unconstitutional and clear violation of fundamental rights.
- H- That according to Government Servants Revised leave Rules, 1981 vacations are holidays and not leave of any kind, therefore, the deduction of conveyance allowance in vacations is against the law and rules.
- I- That according to Article 38 (e) of the Constitution of Islamic Republic of Pakistan, 1973 the state is bound to reduce disparity in the income and earning of individuals including persons in the services of the federation, therefore in light of the said Article the appellant fully entitle for the grant of conveyance allowance during vacations.
- J- That the petitioners seeks permission of this Honorable Court to raise any other grounds available at the time of arguments.

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

APPELLANT

Naseer
MUHAMMAD NASIM

THROUGH:

N
NOOR MOHAMMAD KHATTAK

&

MZ
MIR ZAMAN SAFI
ADVOCATES

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

Application NO. ¹²⁴...../2020 IN SERVICE APPEALS NO: 1641/2020

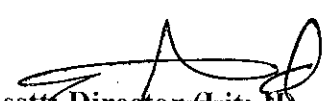
The Government of Khyber Pakhtunkhwa through the Chief Secretary & 04, others
.....Applicants/Petitioners

VERSUS

Muhammad Nassem, SPST B-14 GPS Hashim Dir Lower & ~~others~~
.....Respondents/Appellants.

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4	Judgement copy of Honourable Tribunal 13-2-2020	C -	0—13—
5	Appeal copy	—	13—16


Asstt. Director (Lit. II)
E&SE Department, Khyber
Pakhtunkhwa, Peshawar.

(1)

~~XXXXXXXXXX~~ ~~XXXXXXXXXX~~

**BEFORE THE HONORABLE KHYBER PAKHATUNKHWA SERVICE
TRIBUNAL PESHAWAR.**

Application NO..../2020 IN SERVICE APPEALS NO: 1641/2020

The Government of Khyber Pakhtunkhwa through the Chief Secretary &
04 othersApplicants/Petitioners

VERSUS

Muhammad Nassem, SPST B-14 GPS Hashim Dir Lower ~~& others~~
.....Respondents/Appellants.

**APPLICATION UNDER SECTION 12(2) OF CIVIL PROCEDURE
CODE 1908 AGAINST THE ORDER & JUDGMENT DATED 13-02-2020
OF THIS TRIBUNAL IN THE TILTED SERVICE APPEALS
WHEREBY, THE JUDGMENT DATED 01-10-2019 OF THE
HONORABLE PESHAWAR HIGH COURT PESHAWAR IN WRIT
PETITION NO.3162-P/2019 TITLED AKHTAR HUSSAIN ETC VS
GOVT; OF KPK & OTHERS HAS WRONGLY BEEN INTERPRETED
BY THE RESPONDENTS/APPELLANTS FOR AVAILING THE
BENEFITS CONVEYANCE ALLOWANCE FOR CIVIL SERVANTS
FROM BPS-1-15 DURING THE SUMMER VACATIONS UNDER THE
NOTIFICATION NO.FD/SO(SR-II)/52/2012 DATED 20-12-2012 OF THE
FINANCE DEPARTMENT GOVT. OF KPK WHICH IS ILLEGAL &
LIABLE TO BE SET ASIDE IN FAVOR OF THE APPLICANTS AS THE
HONORABLE HIGH COURT HAS DISMISSED THE TITLED
PETITION.**

Respectfully Sheweth:-

The Petitioners/Applicants submit as under:-

ON FACTS.

1. That the Respondents/Appellants^{is} are working against the various Teaching Cadre Post in the Respondent Department & have filed the tilted service appeals before this Honorable Tribunal for the grant of directions to the E&SE Department KPK Peshawar for the payment of conveyance allowance under the provision of Notifications No.FD (PRC) 1-1/2011

(2)

dated 14/7/2011 & FD/SO(SR0-II)/52/2012 dated 20-12-2012 which was later on revised vide another Notification dated 20/12/2013 by the Finance Department Govt; of KPK Peshawar for the Teaching staff of E&SE Department working in BPS-1-15 to the extant grant of Conveyance allowance during the Summer & Winter vacations as the case may be by placing reliance on a Judgment dated 01-10-2019 of the Honorable Peshawar high Court Peshawar rendered in writ petition No.3162-P/2019 case titled Akhtar Hussain etc Vs Govt; of KPK whereby, the Honorable Peshawar High Court Peshawar has dismissed the petition of the petitioners under the provision of Article 212 of the constitution of Islamic Republic of Pakistan read with Chapter-2 of the KPK Civil Servants Act 1973 & the operative part of the judgment under reference is hereby re-produced for ready reference as, *For the reason given hereinabove, the petitioners are Civil servants & their claim falls in the terms & conditions of service enumerated in Chapter-2 of KPK Civil Servants Act 1973, wherein, the jurisdiction of this Court is expressly barred by the Article 212 of the constitution of Islamic Republic of Pakistan 1973. Resultantly, this & the connected writ petitions mentioned above stand dismissed being not maintainable, (copies of the Notification & Judgment are attached as Ann-A & B).*

2. That as per law & rules, the conveyance allowance is not allowed to the Teachers concerned during leave period. Hence, the same was not paid to the Appellants/Respondents & others Teachers in the summer vacations during the months of June, July & august.
3. That an employee of the Federal Directorate of Education Govt; of Pakistan has filed a SA No. 1888 (R) CS/2016 before the Honorable Federal Service Tribunal (FST) Islamabad for the grant of Conveyance Allowance during the summer vacations/leave period allowed vide judgment dated 3/12/2018 in favor of the Respondents/Appellants to the extent of Employee/ Teacher working under the domain & jurisdictions of Federal Govt; only, whereas the appellant is an employee of the provincial Govt; of KPK Peshawar against the SPST B-14 post in District Dir Lower etc.
4. That the Appellants/Respondents have filed a Departmental Appeal before the authority concerned for the grant of Conveyance Allowance during the summer vacations which was not decided within 90 days by the Respondent Department. Hence, the Applicants further submit on the following grounds inter alia :-

ON GROUNDS.


- A. That the Honorable Peshawar High Court Peshawar has dismissed the above titled case/petition in favor of the applicants/E&SE Department but the Honorable Tribunal has ignored this aspect & has passed an order dated 13-02-2020 whereby, conveyance allowance has been allowed to the Respondents. (Copy of the said order & judgment dated 13/02/2020 is attached as Annexure-C).
- B. That the order dated 13-02-2020 of the Honorable KPK Service Tribunal Peshawar in the titled case/petition is also illegal & even in violation of the relevant provisions of law & rules passed on the analogy of the judgment dated 1/10/2019 dismissed of the Honorable Peshawar High Court Peshawar & not tenable in the eyes of law.
- C. That no notice for submission of Joint Para wise Comments has been served upon to the E&SE Department by the Honorable Service Tribunal Peshawar while passing the impugned order dated 13/02/2020 at the cost of legal rights of the aggrieved party/Govt; which is against the provision of section 12 (2) & order 39 Rule 1&2 CPC 1908.
- D. That huge financial & legal rights are involved with the instant case of the E&SE Department which cannot be snatched under any provisions of law.
- E. That the Appellants/Respondents are habitual litigants & at present have filled so many pending cases before various courts of law.
- F. That Honorable Court and Tribunal have failed to consider the facts & legal grounds of the case prior to the passing of the impugned order & judgment dated 13/02/2020 against the E&SE Department KPK Peshawar which is a non-trading concerned & is mainly imparting free of cost Education to the lower class of the society.
- G. That the aggrieved party/E&SE Department has been condemned unheard while passing the order dated 13/02/2020 by the Honorable KPK Service Tribunal Peshawar.
- H. That the instant case is within time limitation & this Honorable Tribunal has got jurisdictions to honor the instant Application under section 12 (2) CPC of 1908 for regular hearing on behalf of the E&SE Department Govt. of KPK.

(4)

- I. That the matter in question directly relates to the financial matter and the burden of the said order & judgment dated 13-02-2020 shall directly affect the Govt. Treasury.
- J. That there is no legal bar in entertaining the instant case by this Honorable Tribunal rather it would be in the interest of justice.

Therefore, in view of the foregoing submissions, it is most humbly prayed that the order & Judgment dated 13-02-2020 of this Honorable Tribunal may very kindly be set aside under the provisions as referred in the heading of the instant application in the interest of justice please.

Dated ___ / ___ /2020.


Director

E&SE Khyber Pakhtunkhwa,
Peshawar (Respondents No.1-5)

AFFIDAVIT

I, Hayat Khan Asstt: Director (Lit: II) E&SE Department Khyber Pakhtunkhwa, Peshawar do hereby solemnly affirm and declare on oath that the contents of the instant application under section 12 (2) CPC 1908 is true & correct to the best of my knowledge & belief.


Deponent

(5) 18 Annex (A) A-(5)



GOVERNMENT OF KHYBER PAKHTUNKHWA
FINANCE DEPARTMENT
(REGULATION WING)

NO. FD/SC(SR-IT)/8-52/2012
Dated Peshawar the: 20-12-2012

From:

The Secretary to Govt. of Khyber Pakhtunkhwa,
Finance Department,
Peshawar.

To:

1. All Administrative Secretaries to Govt. of Khyber Pakhtunkhwa.
2. The Senior Member, Board of Revenue, Khyber Pakhtunkhwa.
3. The Secretary to Government, Khyber Pakhtunkhwa.
4. The Secretary to Chief Minister, Khyber Pakhtunkhwa.
5. The Secretary, Provincial Assembly, Khyber Pakhtunkhwa.
6. All Heads of Attached Departments in Khyber Pakhtunkhwa.
7. All District Coordination Officers in Khyber Pakhtunkhwa.
8. All Political Agents / District & Sessions Judges in Khyber Pakhtunkhwa.
9. The Registrar, Peshawar High Court, Peshawar.
10. The Chairman, Public Service Commission, Khyber Pakhtunkhwa.
11. The Chairman, Services Tribunal, Khyber Pakhtunkhwa.

Subject: REVISION IN THE RATE OF CONVEYANCE ALLOWANCE FOR THE CIVIL EMPLOYEES OF THE KHYBER PAKHTUNKHWA, PROVINCIAL GOVERNMENT BPS 1-19

Dear Sir,

The Government of Khyber Pakhtunkhwa has been pleased to enhance / revise the rate of Conveyance Allowance admissible to all the Provincial Civil Servants, Govt. of Khyber Pakhtunkhwa (working in BPS-1 to BPS-15) w.e.f from 1st September, 2012 at the following rates. However, the conveyance allowance for employees in BPS-16 to BPS-19 will remain unchanged.

S.NO	BPS	EXISTING RATE (PM)	REVISED RATE (PM)
1.	1-4	Rs. 1,500/-	Rs. 1,700/-
2.	5-10	Rs. 1,500/-	Rs. 1,840/-
3.	11-15	Rs. 2,000/-	Rs. 2,720/-
4.	16-19	Rs. 5,000/-	Rs. 5,000/-

2. Conveyance Allowance at the above rates per month shall be admissible to those BPS-17, 18 and 19 officers who have not been sanctioned official vehicles.

Yours Faithfully,

(Sahibzada Saad Ahmad)
Secretary Finance

Encl: NO. FD/SC(SR-IT)/8-52/2012

Dated Peshawar the 20th December, 2012.

A Copy is forwarded for information to the:-

1. Assistant General, Khyber Pakhtunkhwa, Peshawar
2. Secretaries to Government of Punjab, Sindh & Balochistan Finance Department
3. All Autonomous / Semi Autonomous Bodies in Khyber Pakhtunkhwa

(INTIAZ AYUB)
Additional Secretary (Reg)

ATTENDED

(6) Annex (B)

14

E-9

Judgment Sheet

IN THE PESHAWAR HIGH COURT, PESHAWAR,
JUDICIAL DEPARTMENT.

Writ Petition No. 3162-P/2019 Akhtar Hussain and
others vs. Govt of Khyber Pakhtunkhwa



JUDGMENT

Date of hearing.....01.10.2019.....

Petitioner(s) by Mr. Noor Mohammad Khattak, Advocate.

Mr. Mujahid Ali Khan, AAG, for respondents.

ROOH-UL-AMIN KHAN, J:- Through this common judgment we, proposed to decided the instant as well as the connected writ petitions as all having involved common question of law and facts, the particulars of which are given below.

- i. WP No. 3162-P/2019 titled Akhtar Hussain etc..vs..Government of Khyber Pakhtunkhwa through Chief Secretary, Peshawar and 4 others.
- ii. WP No. 3064-P/2019 titled Habeeb Ullah etc...Vs.. Government of Khyber Pakhtunkhwa through Chief Secretary, Peshawar and 7 others.
- iii. WP No. 3084-P/2019 titled Sikandar Khan etc...Vs.. Government of Khyber Pakhtunkhwa through Chief Secretary, Peshawar and 4 others.
- iv. WP No. 3178-P/2019 titled Abdur Rehman etc...Vs.. Government of Khyber Pakhtunkhwa through Chief Secretary, Peshawar and 4 others.

Rooh-ul-Amin

ATTESTED

EXAMINER
Peshawar High Court

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- v. WP No. 3233-P/2019 titled Amjid Ali etc...Vs..
Government of Khyber Pakhtunkhwa through Chief
Secretary, Peshawar and 4 others.
- vi. WP No. 3283-P/2019 titled Gul Saeed etc. Vs..
Government of Khyber Pakhtunkhwa through Chief
Secretary, Peshawar and 4 others.
- vii. WP No. 3287-P/2019 titled Syed Israr Shah etc... Vs..
Government of Khyber Pakhtunkhwa through Chief
Secretary, Peshawar and 7 others.
- viii. WP No. 3288-P/2019 titled Firdous Khan etc...Vs..
Government of Khyber Pakhtunkhwa through Chief
Secretary, Peshawar and 4 others.
- ix. WP No. 3353-P/2019 titled Hafiz Inam Ur Rehman
etc...Vs.. Government of Khyber Pakhtunkhwa
through Chief Secretary, Peshawar and 6 others.
- x. WP No. 3366-P/2019 titled Jehanzeb Khan etc...Vs..
Government of Khyber Pakhtunkhwa through Chief
Secretary, Peshawar and 4 others.
- xi. WP No. 3390-P/2019 titled Haji Rehman etc...Vs..
Government of Khyber Pakhtunkhwa through Chief
Secretary, Peshawar and 2 others.
- xii. WP No. 3520-P/2019 titled Mohammad Khalid
etc...Vs.. Government of Khyber Pakhtunkhwa
through Chief Secretary, Peshawar and 4 others.

Kookh Sami

ATTESTED

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ATTESTED

EXAMINER
Peshawar High Court

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- (11)
- xiii. WP No. 3567-P/2019 titled Husnur Rehman etc... Vs.. Government of Khyber Pakhtunkhwa through Chief Secretary, Peshawar and 3 others.
- xiv. WP No. 3667-P/2019 titled Maqsad Hayat etc... Vs.. Government of Khyber Pakhtunkhwa through Chief Secretary, Peshawar and 4 others.
- xv. WP No. 3939-P/2019 titled Syed Khurshid Shah etc... Vs.. Government of Khyber Pakhtunkhwa through Chief Secretary, Peshawar and 5 others.
- xvi. WP No. 4072-P/2019 titled Subhan Ullah etc... Vs.. Government of Khyber Pakhtunkhwa through Chief Secretary, Peshawar and 6 others.
- xvii. WP No. 4758-P/2019 titled Sohrab Hayat etc... Vs.. Government of Khyber Pakhtunkhwa through Chief Secretary, Peshawar and 4 others.

2. As per averments of the writ petition, the petitioners are serving in the Elementary & Secondary Education Department on their respective posts. On 14.7.2011 the Government of Khyber Pakhtunkhwa enhanced the conveyance allowance to all the Civil Servants i.e. from BPS-1 to 15, including the petitioners, which was subsequently revised vide another notification dated 20.12.2012 and was further enhanced. But the respondents without any valid and justifiable reasons stopped / deducted the payment of conveyance

M. J.

ATTESTED
EXAMINER
Peshawar High Court

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allowance under the wrong and illegal pretext that the same is not allowed for the leave period.

3. In essence, the grievance the petitioners is that they were receiving the conveyance allowance under the notifications mentioned above, which was stopped without any justifiable reason.

4. Since the matter pertain to grant of conveyance allowance which is part and parcel of pay. Similar controversy came before this Court in Writ Petition No. 3509-P/2014 titled (Hafiz Mohammad Ilyas etc..vs..Government of Khyber Pakhtunkhwa), wherein the pay and salary were defined in the following manner.

"7. To resolve the controversy as to whether payment of allowances to a civil servant falls in chapter-2 of Khyber Pakhtunkhwa Civil Servants Act, 1973 i.e. terms and conditions of service, it is necessary to reproduce the definition of "pay" provided in section 2(e) of the Khyber Pakhtunkhwa Civil Servants Act, 1973 which reads as under:

" 2. (e)—"Pay" means the amount drawn monthly by a civil servant as pay, and includes special pay, personal pay and any other emoluments declared by the prescribed authority to be paid." (emphasis provided).

The word "emolument" used in the above quoted definition clause of the Civil Servants Act, 1973, according to its dictionary meaning, denotes wages and benefits received as compensation for

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EXAMINER
Peshawar High Court

holding an office or having employment. The word emolument is basically derived from the Latin word emolumentum. It originally meant "the sum paid to a miller for grinding a customer wheat". Today, the term exists mostly as a bit of archaic legalese, but it might be within the route of expression i.e. "grinding out a living". From the above it is manifest that emoluments are essentially the benefits that one gets from the working of being employed. Emolument is the profit from employment and is compensation in return of services, hence the emoluments are part and parcel of pay. Section 17 being part of chapter-2 i.e. terms and conditions of service of a civil servant provides that, a civil servant appointed to a post shall be entitled, in accordance with rules, to the pay sanctioned for the post. Likewise, Rule 9(21) of (FR/SR) provide, the definition of pay which means the amount drawn monthly by a government servant as ;

- (i) the pay, other than special pay or pay granted in view of his personal qualification, which has been sanctioned for the post held by him substantively or in an officiating capacity, or to which he is entitled by reason of his position in a cadre, and (ii) overseas pay, technical pay, special pay and personal pay and (iii) any other emoluments which may be specially classed as pay by the governor general.

The legislature in its wisdom has wisely used the word "pay" instead of salary in definition clause and section 17 of Khyber Pakhtunkhwa Civil Servants Act, 1973. The word 'pay' connotes

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EXAMINER
Peshawar High Court

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payment of wages including emolument in broader spectrum while the salary is used for amount that one receives in return for work and or service provided, which is paid periodically i.e. over a specified interval of time such as weekly or most commonly monthly. The term "salary" has been dealt with at page-553 of Corpus Juris Secundum Vol. 77 as under:-

"Salary". The word "Salary" is defined has meaning fixed compensation regularly paid by the year, quarter, month or week; fixed compensation for regular work, or for continuous services over a period of time; periodical compensation for services; compensation for services rendered; per annum compensation mean in official and in some other situation, or station; legal compensation.

Salary is also defined as meaning stipulated periodical recompense; or consideration paid, or stipulated to be paid to a person on regular interval for services usually a fixed sum to be paid by the year or half year, quarter, reward or consideration paid or agreed to be paid to a person on a regular intervals by the year, month or week for services; reward of fixed or recompense for services rendered or performed; reward or compensation of services rendered or performed.

From the above mentioned definition it is manifest that the "salary" of a civil servant is a fixed amount regularly paid as compensation to the employee, whereas the pay means an amount received by a civil servant including other emoluments i.e. allowances."

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EXAMINER
Peshawar High Court

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5. Besides, certain other petitions filed by the Teachers /employees of the same department serving from other corners of the province which were decided by Abbottabad Bench of this Court, wherein it was held that the conveyance allowance being part of pay fall in terms and conditions of civil servant and it can adequately be claimed through an appeal by adopting the prescribed procedure under the Khyber Pakhtunkhwa Civil Servants Act, 1974.

6. For the reasons given hereinabove, the petitioners are civil servants and their claim falls in terms and conditions of service enumerated in Chapter-2 of the Khyber Pakhtunkhwa Civil Servants Act, 1973, wherein the jurisdiction of this Court is expressly barred by Article 212 of the Constitution of Islamic Republic of Pakistan, 1973. Resultantly, this and the connected writ petition mentioned above stand dismissed being not maintainable. However, the petitioners are liberty to approach the proper forum, if so desire.

Announced on;
1st of October, 2019
"Jashad"

[Signature]
JUDGE
[Signature]
JUDGE

ANNOUNCED

M

[Signature]

(DB) Mr. Justice Rooh Ul Amin Khan & Mr. Justice Mohammad Naeem Anwar

CERTIFIED TO BE TRUE COPY

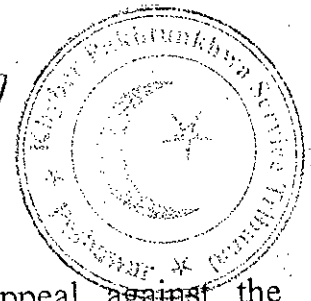
EXAMINER
Feshwar High Court, Feshwar
Authorized Under Article 87 of
The Constitution of Pakistan

21 OCT 2019

13.02.2020

Learned counsel for the appellant present. Heard.

(13) Annex (C)



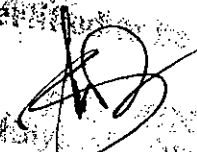
The appellant has filed the present service appeal against the deduction of conveyance allowance of the government servant/teacher working in school/college during vacations period.

Learned counsel for the appellant stated at the bar that identical nature Service Appeal No.1452/2019 has already been disposed of by this Tribunal vide order dated 11.11.2019. Learned counsel for the appellant stressed that being an identical nature case, the present service appeal may also be disposed of in terms of the said order dated 11.11.2019 passed in Service Appeal No.1452/2019.

Order dated 11.11.2019 of this Tribunal passed in Service Appeal No.1452/2019 perused. Judgment dated 03.12.2018 passed by learned Federal Service Tribunal in Appeal No.1888(R)CS/2016 and judgment dated 01.10.2019 of the Hon'ble Peshawar High Court Peshawar in Writ Petition No.3162-P/2019 referred to in the order dated 11.11.2019 in Service Appeal No.1452/2019, also gone through and plea taken by the learned counsel for the appellant is found genuine. Consequently the instant service appeal is also disposed of in terms of order dated 11.11.2019 passed in Service Appeal No.1452/2019, with the observation that the judgment of Hon'ble Peshawar High Court passed in writ petitions including Writ Petition 3162-P/2019 shall be honored and implemented by the respondents within shortest possible time.

This may also be observed that perusal of the judgment of Federal Service Tribunal in Appeal No.1888(R) CS/2016 reflects that in an identical nature case, the Federal Service Tribunal has held that the conveyance allowance is payable to the appellants w.e.f the vacations of the year when the departmental appeal/representation was filed by the appellants.

File be consigned to the record room.


Muhammad Hamid Mughal
Member (J)

Muhammad Hamid Mughal
Member (J)

Announced
13.02.2020

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BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR

APPEAL NO. 1641 /2019

Khyber Pakhtunkhwa
Service Tribunal

Diary No. 1765

Date 24/12/2019

Mst: **MUHAMMAD NASIM**, SPST (BPS-14),
GPS Hashim, Dir Lower.

.....**APPELLANT**

VERSUS

- 1- The Government of Khyber Pakhtunkhwa through Chief Secretary, Khyber Pakhtunkhwa, Peshawar.
- 2- The Secretary (E&SE) Department, Khyber Pakhtunkhwa, Peshawar.
- 3- The Secretary Finance Department, Khyber Pakhtunkhwa, Peshawar.
- 4- The Accountant General, Khyber Pakhtunkhwa, Peshawar.
- 5- The Director of (E&SE) Department, Khyber Pakhtunkhwa, Peshawar.

.....**RESPONDENTS**

APPEAL UNDER SECTION-4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974 AGAINST THE IMPUGNED ACTION OF THE RESPONDENTS BY ILLEGALLY AND UNLAWFULLY DEDUCTING THE CONVEYANCE ALLOWANCE OF THE APPELLANT DURING WINTER & SUMMER VACATIONS AND AGAINST NO ACTION TAKEN ON THE DEPARTMENTAL APPEAL OF THE APPELLANT WITHIN THE STATUTORY PERIOD OF NINETY DAYS.

PRAYER:

That on acceptance of this appeal the respondents may kindly be directed not to make deduction of conveyance allowance during vacations period (Summer & Winter Vacations) and make the payment of all outstanding amount of Conveyance allowance which have been deducted previously with all back benefits. Any other remedy which this august Tribunal deems fit that may also be awarded in favor of the appellant.

4/12/19

R/SHEWETH:

ON FACTS:

- 1- That the appellant is serving in the Elementary & Secondary Education Department as SPST (BPS-12) quite efficiently and up to the entire satisfaction of their superiors.
- 2- That the Conveyance Allowance is admissible to all the Civil Servants and to this effect a Notification No. FD (PRC)1-1/2011 dated 14.07.2011 was issued. That later on vide revised Notification dated 20.12.2012 whereby the conveyance allowance for employees working in BPS 1 to 15 were enhance/revised while employees from BPS- 16 to 19 have been treated under the previous Notification by

not enhancing their conveyance allowance. Copy of the Notification dated 20.12.2012 are attached as annexure..... **A.**

3- That appellant was receiving the conveyance allowances as admissible under the law and rules but the respondents without any valid and justifiable reasons stopped/deducted the payment of conveyance allowance under the wrong and illegal pretext that the same is not allowed for the leave period. Copies of the Salary Slips of working/serving month and vacations (deduction period) are attached as annexure..... **B & C.**

4- That appellant feeling aggrieved from the action of the respondents regarding deduction of conveyance allowance in vacations period/months filed Departmental appeal but no reply has been received so far. That feeling aggrieved the appellant along with his other colleagues filed Writ Petition No. 3162-P/2019 before the Peshawar High Court, Peshawar which was disposed of vide judgment dated 01.10.2019 with the directions to approach the proper forum i.e. Service Tribunal. Copies of the Departmental appeal & judgment is attached as annexure..... **D & E.**

5- That some of colleagues of the appellant approached to this august Tribunal in different service appeal which was allowed by this august Tribunal vide its judgment dated 11.11.2019. Copy of the judgment is attached as annexure..... **F.**

6- That where after the appellant waited for the statutory period of ninety days but no reply has been received from the respondents. That appellant feeling aggrieved and having no other remedy filed the instant service appeal on the following grounds amongst the others.

GROUND:

A- That the action and inaction of the respondents regarding deduction of conveyance allowance for vacations period/months is illegal, against the law, facts, norms of natural justice.

B- That the appellant have 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 action of the respondents is without any legal authority, discriminatory and in clear violation of fundamental rights duly conferred by the Constitution and is liable to be declared as null and void.

D- That there is clear difference between leave and vacation as leave is applied by the Civil Servant in light Government Servant Revised Leave Rules, 1981 while the vacations are always announced by the

Government, therefore under the law and Rules the appellant fully entitled for the grant of conveyance allowance during vacations period.

- E- That the Government Servants Revised Leave Rules, 1981 clearly explain that the civil servants who avail the vacations are allowed only one leave in a month whereas, the other civil servants may avail 04 days leave in a calendar months and the same are credited to his account and in this way he may avail 48 days earned leave with full pay, whereas the Government servants to avail vacation such as appellant is allowed one day leave in a month and twelve (12) days in a year and earned leave for twelve days in a year are credited to his account and there is no question of deduction of conveyance allowance for vacation period, the respondents while making the deduction of conveyance allowance lost sight of this legal aspects and illegally and without any authority started the recovery and deduction of conveyance allowance from appellant.
- F- That as the act of the respondents is illegal, unconstitutional, without any legal authority and not only discriminatory but is also the result of malafide on the part of respondents.
- G- That appellant has the vested right of equal treatment before law and the act of the respondents to deprive the petitioners from the conveyance/allowance is unconstitutional and clear violation of fundamental rights.
- H- That according to Government Servants Revised leave Rules, 1981 vacations are holidays and not leave of any kind, therefore, the deduction of conveyance allowance in vacations is against the law and rules.
- I- That according to Article 38 (e) of the Constitution of Islamic Republic of Pakistan, 1973 the state is bound to reduce disparity in the income and earning of individuals including persons in the services of the federation, therefore in light of the said Article the appellant fully entitle for the grant of conveyance allowance during vacations.
- J- That the petitioners seeks permission of this Honorable Court to raise any other grounds available at the time of arguments.

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

APPELLANT

Naseer

MUHAMMAD NASIM

THROUGH:

NOOR MOHAMMAD KHATTAK

&

MZ

**MIR ZAMAN SAFI
ADVOCATES**

VAKALATNAMA

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

12(2) Petition ~~APPEAL~~ NO: 124 OF 2020

Govt of KP through Chief Secy. (APPELLANT)
(PLAINTIFF)
(PETITIONER)

VERSUS

Muhammad Naseem (RESPONDENT)
(DEFENDANT)

I/We Muhammad Naseem, Respondent,
Do hereby appoint and constitute **NOOR MOHAMMAD KHATTAK, Advocate, Peshawar** to appear, plead, act, compromise, withdraw or refer to arbitration for me/us as my/our Counsel/Advocate in the above noted matter, without any liability for his default and with the authority to engage/appoint any other Advocate Counsel on my/our cost. I/we authorize the said Advocate to deposit, withdraw and receive on my/our behalf all sums and amounts payable or deposited on my/our account in the above noted matter.

Dated. 27 / 1 / 2020

Naseem
CLIENT

Kh
ACCEPTED

NOOR MOHAMMAD KHATTAK
(BC-10-0853)
15401-0705985-5

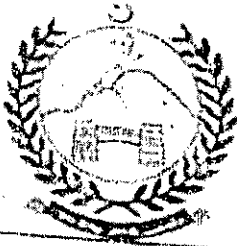
Kamran Khan
KAMRAN KHAN

&

Afrasiyab Wazir
AFRASIYAB WAZIR
ADVOCATES

OFFICE:

Flat No.4, 2ND Floor,
Juma Khan plaza near
FATA Secretariat, Warsak road
Peshawar City. Mobile No. 0345-9383141



**GOVERNMENT OF
KHYBER PAKHTUNKHWA
ELEMENTARY & SECONDARY EDUCATION DEPARTMENT**

No. SOIB/S/1-16/2021/Conveyance Allowance
Dated Peshawar, the 16.12.2021

To :

The Director,
E&SE Peshawar.

[Signature]
16-12-2021

Subject :

IMPLEMENTATION OF THE JUDGEMENT OF EXECUTION PETITION
145/2020/ IN SERVICE APPEAL REGARDING ADMISSIBILITY OF
CONVEYANCE ALLOWANCE DURING SUMMER & WINTER
VACATIONS TO THE EMPLOYEES OF VACATION DEPARTMENT

I am directed to enclose herewith Finance Department letter No. SO/SR/111/D/S-7-2017/40 Dated 13.12.2021, on the subject cited above alongwith its enclosures which is self-explanatory for further necessary action please.

Encl: As above.

[Signature]
(SOIB/S/1-16/2021)
SECTION OFFICER (BUDGET)

Encl: of even No. & Date:

Copy forwarded to the :-

- i. PS to Secretary Elementary & Secondary Education Department
- ii. Master file.

[Signature]
SECTION OFFICER (BUDGET)

~~DD (P&D)~~

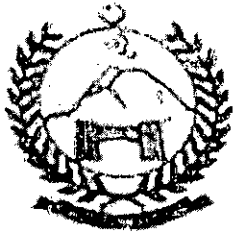
AD (B&A)

As the needful

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1/21/22
AD (P&D)



GOVERNMENT OF KHYBER PAKHTUNKHWA
FINANCE DEPARTMENT
(REGULATION WING)

NO.SO(SR-II)FD/8-7/2017/40
Dated Peshawar the 13.12.2021

To

The Secretary to Govt. of Khyber Pakhtunkhwa,
Elementary & Secondary Department.

Subject:-

IMPLEMENTATION OF THE JUDGEMENT OF EXECUTION PETITION
1457020 IN SERVICE APPEAL REGARDING ADMISSIBILITY OF
CONVEYANCE ALLOWANCE DURING SUMMER & WINTER
VACATIONS TO THE EMPLOYEES OF VACATION DEPARTMENT.

Dear Sir,

I am directed to refer to the subject noted above and to enclose herewith a copy of this Department letter of even No. dated 17.06.2021 for information and further necessary action at your end, please.

Encl: As above

Yours faithfully,

nm
(Muhammad Ilyas Khattak)
SECTION OFFICER (SR-II)

Encls: No & date even

Copy forwarded to the:-

1. PA to Additional Secretary (Regulation), Finance Department.
2. PA to Deputy Secretary (Regulation-I), Finance Department.
3. Master file.

SECTION OFFICER (SR-III)

Sold

please put up.

AST(G)

13-12-21

Please press.

13/12/2021



GOVERNMENT OF KHYBER PAKHTUNKHWA
FINANCE DEPARTMENT
(REGULATION WING)

NO.SO(SR-II)FD-8-2018/40
Dated Peshawar the 17.06.2021

To

The Accountant General,
Govt. of Khyber Pakhtunkhwa,
Peshawar.

Subject:-

IMPLEMENTATION OF THE JUDGEMENT OF EXECUTION PETITION
145/2020 IN SERVICE APPEAL REGARDING ADMISSIBILITY OF
CONVEYANCE ALLOWANCE DURING SUMMER & WINTER
VACATIONS TO THE EMPLOYEES OF VACATION DEPARTMENT.

Dear Sir,

I am directed to refer to your department's letter No LHS.T/S.A/1452-2019
Maqсад Hayat/2018-19/259-61 dated 22.02.2021 on the subject noted above and to state
that the Competent Authority has been pleased to provisionally implement the decision of
the Khyber Pakhtunkhwa Service Tribunal in Service Appeal No.1452/2019 filed by
Mr.Maqsad Hayat, SCT versus Government of Khyber Pakhtunkhwa through Chief
Secretary. The case is regarding payment of Conveyance Allowance to Civil Servants
(Vacation Departments) during summer & winter vacations. The decision will be
provisionally implemented and shall be recoverable subject to final decision/outcome of
the Supreme Court of Pakistan in CPLA file by the Provincial Government against the
decision date 11.11.2019 of Khyber Pakhtunkhwa Service Tribunal, Peshawar.

Yours faithfully.

(Muhammad Ilyas Khatrak)
SECTION OFFICER (SP-II)