

BEFORE THE HONORABLE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 1546/2019.

Mukhtiar Khan PSHT, Govt. Primary School No. 2 Shah Pasand Kaly CharsaddaAppellant

VERSUS

Govt. of Khyber Pakhtunkhwa through Chief Secretary & others..... Respondents

WRITTEN REPLY/PARAWISE COMMENTS ON BEHALF OF RESPONDENTS NOS. 1 TO 3.

Respectfully Sheweth:-

Preliminary Objections:-

1. That the applicant has no cause of action to file the instant application.
2. That the judgments of August Supreme Court of Pakistan and this Honourable Tribunal have lost their efficacy for the purpose of implementation by clear intendment through sections 1 & 2 of Khyber Pakhtunkhwa Cessation of Payment of Arrears on Advance Increments on Higher Educational Qualification Act No. IX of 2012.
3. The Act was passed by the Provincial Assembly and assented by the Governor Khyber Pakhtunkhwa. The answering respondents are bound to obey the will of the legislature & cannot deviate from any provision of enactment.
4. That the legislator has authority to legislate as they have mandate to do so by a recognize process and services law do not provides the provision of judicial review, hence, application is not tenable.
5. That the applicant was at liberty to join service after due process of law equivalent to his qualification & the Government is not bound to pay advance increment.
6. **That this Tribunal has already dismissed the service appeal No. 430/2015 of applicant on 19-10-2017 hence, the Principle of Estoppel is also applicable in the case of applicant.**
7. That the instant application is time barred. Hence liable to be dismissed.
8. **That the instant application is against the notification dated 27-10-2001 whereby, the basis of the claim of applicant stood erased. In the year 2012 the Khyber Pakhtunkhwa Cessation of Payment of Arrears on Advance Increments on Higher Educational Qualification Act No. IX of 2012 was promulgated which was made retrospective from 2001. Hence, the instant application is liable to be dismissed on this score alone.**
9. That the instant application is not maintainable in its present form.

10. That the applicant has filed the present application just to pressurize the respondents.
11. **That the August Supreme Court of Pakistan suspended the impugned judgment on 18-12-2019 regarding the Advance Increments on account of higher qualification in CP No. 397-P/2017, 409-P/2017, 420-P/2017, 72-P/2019 & 733-P/2019.**
12. That the applicant has not come to this Honorable Tribunal with clean hands.
13. That the applicant is estopped to sue due to his own conduct.
14. That the instant application is not maintainable due to non-joinder and mis-joinder of necessary parties.
15. That the instant application is against the rules and policy of the Government.

On Facts:-

1. That para-1 pertains to the service record.
2. That analyzing pay rules (National pay scales) introduced w.e.f. 01-03-1972 for civil employees, while for the teaching staff separate national pay scales (NPS) introduced w.e.f. 01-07-1973, it is evident that there are separate advance increment schemes on acquiring higher qualification for teaching and non-teaching staff.
3. On the introduction of basic pay scales (BPS) in 1983, 1987 & 1991, advance increment schemes on acquiring higher qualification was separate and different for teaching and non-teaching staff as well.
4. Basic pay scale rules of 1983 Notification No. FD(SR-i)1-67/82 dated 24-08-1983, for teaching staff, the advance increments scheme on acquiring higher qualification was separately introduced which continued with some amendments till 30-11-2001 and was discontinued w.e.f. 01-12-2001. "Vide Govt. of NWFP Finance Department (Regulation Wing) letter No. FD(PRC)1-1/2001, dated 27-10-2001 as per para-09: advance increments to school teachers on attaining/ acquiring higher qualification vide No. FD(SR-II)67/83, Govt. of NWFP Finance Department Peshawar, the 24th August 1983".
5. That vide letter No. FD(PRC)1-1/89 dated Peshawar the 7th August 1991, the advance increments sanctioned by FD vide para-09 of its letter No. FD(SR-i)1-67/82 dated 24-08-1983 will not be admissible on acquiring/ possessing qualifications for which higher pay scales are being sanctioned through this notification which was amended vide FD letter No. FD (SR-V)2-123/98 dated 22-03-1999 and FD letter No. SO(R-V)2-123/91 dated 25-09-1995, re-continuing the advance increments only on acquiring higher qualification on which higher scales was not granted earlier.
6. That Finance Department Govt. of Khyber Pakhtunkhwa vide its letter No. FD(SR-II)2-123/83 dated 31-01-1998, further clarified in the light of para-6(a) that "it is clarified the order is not applicable to the teachers". Then, vide Notification No FD(PRC) 1-1/89, dated 11-08-1991 as para-5, grant of advance increments to officials for possessing/attaining higher education qualification:
 - i. From 1-6-1991 onwards advance increments shall be allowed without the condition of 2nd division to the officials in BPS 1-15 for possessing or acquiring higher educational qualification over and above prescribed qualification in the relevant recruitment rules to the extent given below:

S.No.		Matric	FA/FSc	BA/BSc	MA/MSc
a)	Where the prescribed qualification is non- matric	2	4	6	8
b)	-do- Matric	Nil	2	4	6
c)	-do- FA/FSc	Nil	Nil	2	4
d)	-do- BA/BSc	Nil	Nil	Nil	2

This scheme reflects the previous scheme of advance increments for non-teaching staff mentioned in pay revision rules 1987, clearly indicates that the revision of Basic pay scales (BPS) 1991 is also not applicable to teaching staff.

7. The scheme of advance increments was wrongly extended to teaching staff which created the confusion resulted in distress to the department. It is a settled law that ill-gotten gain cannot be made a precedent.
8. In the Supreme Court of Pakistan verdict/judgment in case of Abdul Haq Khan & others Vs Haji Ameer Zada & others reported as PLD 2017 Supreme Court PP 105, "It is otherwise settled by now that courts of law have no jurisdiction to add or subtract to the clear words of a statute"
9. Basic pay scales rules 24-08-1983, advance increments detail on higher qualification, Finance Department letter, clarification dated 31-01-1988, revision of basic pay scale 1991 and Finance Department letter dated 12-01-1995 are hereby annexed as (A,B,C & D).
10. That at this stage, the claim of the appellant cannot be entertained in the light of Section-ii of the Khyber Pakhtunkhwa cessation of payment of arrears on advance increments on higher educational qualification Act, 2012 by virtues of which the instant petitions may be graciously be allowed. There is plethora of judgments of the Apex Court of Pakistan in this regard. Reliance is placed on un-reported judgment of this court dated 07-12-2018 in CPs No. 172-P & 173-P/2013. Judgment Annexed as (E).
11. That in the instant case the appellant is seeking arrears on the basis of Notification dated 11-08-1991 and in the light of Section-2 of the Act of 2012, his claim cannot be entertained and is not justifiable. Reliance is placed on unreported judgment of this court dated 29-08-2013 passed in Civil Petition No. 360/2013. The petitioners have not challenged the virus of the Act. Therefore,, these petitioners stand abated under Act of 2012, as a result leave to appeal is declined and these petitions are dismissed.
12. That para-8 is incorrect to the extent to file appeal by the appellant to the respondent because no such appeal was available in the office record of the respondent.
13. Incorrect and denied. Detailed reply has already been submitted in forgoing paras. The instant Service Appeal may dismissed inter alia on the following grounds:-

ON GROUNDS:

- A. This para is related to Articles of constitution no comments, while the appellant intend to misconstrue, mislead the said Article of the constitution, hence, denied.
- B. Incorrect. The statement of the appellant in this para is misleading one and against the facts. The Govt. had already discontinued the scheme of advance increment w.e.f. 27-10-2001 as mentioned in the Khyber Pakhtunkhwa cessation of payment of arrears on advance increments on higher educational qualification Act, 2012.
- C. Incorrect. The Govt. had already discontinued the scheme of advance increment w.e.f.

- D. Incorrect. The appellant has been treated in accordance with law.
- E. Incorrect. The said Act is not discriminative one, the same is enacted by the Provincial Assembly i.e. representative of the people including the appellant hence, denied.
- F. Incorrect. The Act No.IX of 2012 does not violate the constitution of Pakistan.
- G. The scheme of advance increments was wrongly extended to teaching staff which created the confusion resulted in distress to the department. It is a settled law that III-gotten gain cannot be made a precedent. In the Supreme Court of Pakistan verdict/judgment in case of Abdul Haq Khan & others Vs Haji Ameer Zada & others reported as PLD 2017 Supreme Court 105, "It is otherwise settled by now that courts of law have no jurisdiction to add or subtract to the clear works of a statute" basic pay scales rules 24-08-1983, advance increments detail on higher qualification, Finance Department letter, clarification dated 31-01-1988, revision of basic pay scale 1991 and Finance Department letter dated 12-01-1995.
- H. As already explained in forgoing para.
- I. As already explained in forgoing para.
- J. As already explained in forgoing para.
- K. As already explained in forgoing para.
- L. As already explained in forgoing para

In view of the above submissions, it is, therefore, most humbly prayed that this Honourable Tribunal may very graciously be pleased to dismiss the instant service appeal with cost in favour of the Respondents in the interest of justice.


**Secretary E&SED
Khyber Pakhtunkhwa**


**Secretary Finance
Khyber Pakhtunkhwa**

Annex A

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GOVERNMENT OF NWFP
FINANCE DEPARTMENT

Dated, Peshawar, the 24th August, 1983.

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The Secretary to Government of NWFP,
Finance Department.

1. All Administrative Secretaries to Govt. of NWFP.
2. The Senior Member, Board of Revenue NWFP.
3. All Heads of Attached Departments in NWFP.
4. All Commissioners/Deputy Commissioners/Political Agents/District and Session Judges in NWFP.
5. The Registrar, High Court, Peshawar.
6. The Secretary to Governor, N.W.F.P.
7. The Chairman, Public Service Commission NWFP.
8. The Chairman, Services Tribunal NWFP.
9. The Secretary, Board of Revenue NWFP.

SUBJECT: SCHEME OF BASIC PAY SCALES AND PRINCE BENEFITS OF PROVINCIAL CIVIL SERVANTS (1983).

Sir,

In pursuance to the decision of the President of Pakistan, the Governor, N.W.F.P. has been pleased to sanction, with effect from 1st July, 1983, a scheme as detailed below, of the Basic Pay Scales, Allowances and other Fringe Benefits, 1983 for the Provincial Civil Servants:-

PART-I-BASIC SCALES AND ALLIED MATTERS.

2. Basic Scales of Pay:- The Basic Scales of Pay, 1983, as shown in Annexure-I to this circular letter shall replace the existing revised National Scales of Pay (RNPS). The Basic Scales shall not be regarded as grades and shall not be referred to as grades in official communications. Officials shall henceforth be appointed/promoted to posts and not in grades.

3. Initial Fixation of Pay:- (i) The initial pay of an existing employee, i.e. an employee, who has been in Government Service since before the 1st of July, 1983, shall be fixed at the stage in the relevant Basic Pay Scales which is as many stages above the minimum as the stage occupied by him above the minimum of the existing revised National Pay Scales, provided that where the pay so determined does not give the employee concerned a minimum advantage of 10% of his existing Basic Pay plus Dearness Allowance over and above the present emoluments drawn by him, his pay shall be fixed at the lowest stage in the Basic Scale that gives him that advantage, provided further that the maximum of the relevant Basic Scale shall not be exceeded in any case. In this fixation formula, "emoluments" would mean the sum of pay, Dearness Allowance and Local Compensatory Allowance, if any.

P.T.O.

[Signature]
Distt. Education Officer
(Male) Swabi

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No.FD (SR-I)1-67/03
Government of N.W.F.P.
FINANCE DEPARTMENT

Dated, Peshawar the 24th August, 1983

From.

The Secretary to Government of NWFP,
Finance Department.

To.

1. All Administrative Secretaries to Govt: of NWFP.
2. The Senior Member, Board of Revenue NWFP.
3. All Heads of Attached Department in NWFP.
4. All Commissioner/Deputy Commissioners/Political Agents/District and Session Judges in NWFP.
5. The Registrar, High Court, Peshawar.
6. The Secretary to Governor, N.W.F.P.
7. The Chairman, Public Service Commission NWFP.
8. The Chairman. Service Tribunal NWFP.
9. The Secretary, Board of Revenue, NWFP.

SUBJECT: SCHEME OF BASIC PAY SCALES AND FRINGE BENEFITS OF PROVINCIAL CIVIL SERVANTS (1983).


Sir,

In pursuance to the decision of the President of Pakistan, the Governor, N.W.F.P has been pleased to sanction, with effect from 1st July, 1983, a scheme as detailed below, of the Basic Pay Scales, Allowances and other Fringe Benefits, 1983 for the Provincial Civil Servants:-

PART-I BASIC SCALES AND ALLIED MATTERS.

2. Basic Scales of Pay:- The Basic Scales of Pay, 1983 as shown in Annexure-I to this circular letter shall replace the existing revised National Scale of Pay (RNPS). The Basic Scales shall not be regarded as "grades" and shall not be referred to as grades in official communications. Officials shall henceforth be appointed/promoted to posts and not in grades.

3. Initial Fixation of Pay:- (i) The initial pay of an existing employee, i.e, an employee, who has been in Government Service since before the 1st of July, 1983, shall be fixed at the stage in the relevant Basic Pay Scales which is as many stages above the minimum as the stage occupied by him above the minimum of the existing revised National Pay Scales provided that where the pay so determined does not give the employee concerned a minimum advantage of 10% of his existing Basic Pay plus Dearness Allowance over and above the present emoluments drawn by him, his pay shall be fixed at the lowest stage in the Basic Scale that gives him that advantage; provided further that the maximum of the relevant Basic Scale shall not be exceeded in any case. In this fixation formula, " emoluments" would mean the sum of pay, Dearness Allowance and Local Compensatory Allowance, if any.


Distt: Education Officer
(Male) Swabi

P.T.O.

(ii). Annual increment shall continue to be admissible subject to existing conditions on the 1st of December each year under this scheme. However, the first annual increment of existing employees in the Basic Scales shall accrue on the 1st of December, 1983.

4. Fixation of Pay on Promotion:— The existing provision regulating the fixation of pay in case of promotion of employees from a lower to a higher post shall continue to apply.

5. Move-Over:— The existing provision regulating the concession of Move-Over without promotion to the next higher pay scale of employees in revised National Pay Scale-1(B-1) to revised National Pay Scale-16(B-16) shall continue to be applicable in this scheme.

6. The existing concession of "Move-Over" of employees from revised National Pay Scale-16 to revised National Pay Scale-17 (B-17) and RNS-17(B-17) to RNS-18(B-18) shall be extended up to B-20 and regulated as under:—

- (a) The existing condition of the period of stay of 3 years at the maximum of Pay Scale B-16 and B-17 in the case of Non-Technical and Non-Professional categories shall continue to be applicable.
- (b) No Move-over beyond B-18 in the case of categories of employees mentioned at (a) above shall be permissible.
- (c) The Move-over in the case of Technical and Professional categories e.g. Doctors, Engineers, Educationists, Economists, Management Accountants, Scientists, Archaeologists, Geologists, Meteorologists, Experts in Agriculture, Animal Husbandry and Forestry shall be permissible upto B-20, without the condition of stay at the maximum for 3 years; provided that in cases where it is intended to allow move-over to the category of officers other than Doctors, Engineers, Educationists, Experts in Agriculture, Animal Husbandry and Forestry, prior concurrence of Finance Department shall be obtained.
- (d) Move-over shall be allowed in cases where an employee who is otherwise considered fit for promotion to higher post, cannot be promoted for want of a vacancy.
- (e) Normal promotion procedure as is observed in cases of promotion through the Competent Authority, e.g. SSG/D/Selection Board shall be followed in allowing Move-over to Basic Scales 19 and 20.

7. (A). Modification of Scales in case of certain posts.

In the case of certain posts, the pay scales indicated in Schedule-II to this circular letter will be allowed.

(B). Fixation of Pay in cases under (A) above. In cases where the scale under (A) above higher than the scale which correspond to the revised National Pay Scales have been allowed, initial fixation of pay of the employees concerned shall first be made in the Basic Scale corresponding to his existing revised National Pay Scale in the light of the initial fixation of pay formula mentioned in para 3 above, and

[Signature]
Distt. Education Officer
(Male) Swabi

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(ii). Annual increment shall continue to be admissible subject to existing conditions on the 1st of December each year under this scheme. However, the first annual increment of existing employees in the Basic Scales shall accrue on the 1st of December, 1983.

4. Fixation of Pay on Promotion:- The existing provision regulating the fixation of pay in case of promotion of employees from a lower to a higher post shall continue to apply.

5. Move-over:- The existing provision regulating the concession of Move-over without promotion to the next higher pay scale of employees in revised National Pay Scale-I (B-I) to revised National Pay Scale-16 (B-16) shall continue to be applicable in this scheme.

6. The existing concession of "Move-Over" of employees from revised National Pay Scale-16 to revised National Pay Scale-17 (B-17) and RNPS-17 (B-17) to RNPS-18 (B-18) shall be extended up to B-20 and regulated as under:-

- (a) The existing condition of the period of stay of 3 years at the maximum of Pay Scale B-16 and B-17 in the case of Non- Technical and Non-Professional categories shall continue to be applicable.
- (b) No Move-over beyond B-18 in the case of categories of employees mentioned at (a) above shall be permissible.
- (c) The Move-over in the case of Technical and professional categories e.g Doctors, Engineers, Educationists, Economists, Management Accountants, Scientists, Archaeologists, Geologists, Meteorologists, Expert of Agriculture, Animal Husbandry and Forestry shall be permissible up to B-20, without the condition of stay at the maximum for 3 years; provided that in cases where it is intended to allow move-over to the category of officers other than Doctors, Engineers, Educationists, Experts in Agriculture, Animal Husbandry and Forestry, prior concurrence of Finance Department shall be obtained.
- (d) Move-over shall be allowed in cases where an employee who is otherwise considered fit for promotion to higher posts, cannot be promoted for want of vacancy.
- (e) Normal promotion procedure as is observed in cases of promotion through the Competent Authority, e.g S&GAD/Selection Board shall be followed in allowing Move-over to Basic Scales 19 & 20.

7. (A). Modification of Scales in case of certain posts. In the case of certain posts, the Basic Pay Scales indicated in Annexure-II to this circular letter will be allowed.

(B). Fixation of Pay in cases under (A) above. In cases where the Basic Scales under (A) above higher than the scale which correspond to the revised National Pay Scales have been allowed, initial fixation of pay of the employees concerned shall first be made in the Basic Scale corresponding to his existing revised National Pay Scale in the light of the initial fixation of pay formula mentioned in para, 3 above, and

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Education Officer

Education Officer

thereafter their pays in the higher Basic Scales shall be fixed at the next higher stage.

B. Special Pays:- (a) The existing special pays admissible to officials of various categories working as Private Secretaries and Personal Assistants shall be revised as under:-

<u>Name of Post.</u>	<u>Existing Rs.</u>	<u>Revised Rs.</u>
P.S to Ministers/ Chief Secretary.	150/220	200
P.S to Add: Chief Secretary.	150/220	150
P.S to Secretaries.	100	150
P.A to Minister.	60	100
P.A to Chief Secretary/ Additional Chief Secretary/ Secretary.	50	75

(b) The existing Private Secretaries who are in receipt of special pay exceeding Rs. 150/- p.m shall continue to draw it at the existing rates as personal to them for so long as they hold these post

C. Advance increments to School Teachers on attaining higher qualifications.

Primary, Middle and High School teachers who possess or acquire while in service higher qualifications shall be allowed advance increments as under:-

I. Primary School.

- (I) A teacher who possesses or acquires P.A./P.Sc shall be allowed two advance increments.
- (II) A teacher who (in addition to P.A./P.Sc) also acquires C.T shall be allowed one additional advance increment.
- (III) A teacher who acquires a Degree of B.A/B.Sc shall be allowed three additional advance increments.

II. Middle School.

A teacher who possesses or acquires a Degree of B.A/B.Sc shall be allowed three advance increments.

III. High School.

A teacher who possesses or acquires Master's Degree shall be allowed three advance increments. In case of a teacher who possesses or acquires Master's Degree in Education (M.Ed) and also a Master's Degree in any academic subject shall be allowed six advance increments.

Provided that a teacher who has already drawn increments for possessing higher educational qualification under the existing scales shall be allowed increments equal to shortfall in the number of increments, if any, between the increments obtained by him and the increments which he is entitled to.

[Signature]
Distt. Education Officer
(Male) Swabi

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thereafter their pay in the higher Basic Scales shall be fixed at the next higher stage.

B. Special Pays:- (a) The existing special pays admissible to officials of various categories working as Private Secretaries and Personal Assistant shall be revised as under:-

<u>Name of Post</u>	<u>Existing</u> Rs.	<u>Revised.</u> Rs.
P.S to Ministers/ Chief Secretary.	150/220	200
P.S to Addl: Chief Secretary.	150/220	150
P.S to Secretaries.	100	150
P.S to Ministries.	60	100
P.A to Chief Secretary/ Additional Chief Secretary/ Secretary.	50	75

(b) The existing Private Secretaries who are in receipt of special pay exceeding Rs. 150/- p.m shall continue to draw it at the existing rates as personal to them for so long as they hold these posts.

9. Advance Increments to School Teachers on attaining higher qualifications.
Primary, Middle and High School teachers who possess or acquire while in service higher qualifications shall be allowed advance increments as under:-

I. Primary School.

- (i) A teacher who possesses or acquires F.A/F.FSc shall be allowed two advance increments.
- (ii) A teacher who (in addition to Fa/F.Sc) also acquire C.T shall be allowed one additional advance increment.
- (iii) A teacher who acquires a Degree of B.A/B.Sc shall be allowed three additional advance increments.


II. Middle School.

A teacher who possesses or acquires a Degree of B.A/B.Sc shall be allowed three advance increments.

III. High School.

A teacher who possesses or acquires Master's Degree shall be allowed three advance increments. In case of a teacher who possesses or acquires Master's Degree in Education (M.Ed) and also Master's Degree in any academic subject shall be allowed six advance increments.

Provided that a teacher who has already drawn increments for possessing higher educational qualification under the existing scales shall be allowed increments equal to short fall in the number of increments, if any, between the increments obtained by him and the increments.


Distt. Education Officer
(Male) Swabi

Annex-B

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GOVERNMENT OF NWFP
FINANCE DEPARTMENT

No. FD(SR-ET)2-123/83

Dated Pesh: the 31.1.1988

1. All Administrative Secretaries to Government of NWFP.
2. The Senior Member Board of Revenue, N.W.F.P., Peshawar.
3. The Secretary to Governor, NWFP, Peshawar.
4. The Secretary, Provincial Assembly, NWFP.
5. All Commissioners/Deputy Commissioners/Political Agents/District & Session Judges in N.W.F.P.
6. All Heads of the Attached Department in N.W.F.P.
7. The Registrar, Peshawar High Court, Peshawar.
8. The Secretary, Public Service Commission, N.W.F.P., Peshawar.
9. The Registrar Services Tribunal, NWFP.
10. The Secretary, Board of Revenue, NWFP.

Subject: GRANT OF ADVANCE INCREASMENTS TO OFFICIALS FOR POSSESSING/AcQUIRING HIGHER QUALIFICATIONS.

Sir,

I am directed to refer to the subject noted above and to state that in Para-6(a) of this Department letter No. FD(PRC)4-1/87-VIII dated 23rd July, 1987, advance increments have been allowed to the officials in BPS-1-15 for possessing or acquiring higher qualification over and above the qualification prescribed in the relevant recruitment rules. A question has been raised as to whether:-

- a) this order is also applicable to the teaching staff; and
- b) an official who has drawn advance increment before 1.7.1987 for possessing higher qualification under the existing rules is entitled to fresh increment sanctioned now.

In respect of question (a) it is clarified that the order is not applicable to the teachers. The teachers are still to be governed by rules of the

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No. FD (SR-II) 2-123/83
Dated Peshawar the 31.1.1988.

To.

1. All Administrative Secretaries to Government of NWFP.
2. The Senior Member Board of Revenue, N.W.F.P, Peshawar.
3. The Secretary to Governor, NWFP, Peshawar.
4. The Secretary, Provincial Assembly, NWFP.
5. All Commissioners/ Deputy Commissioners/ Political Agents/District & Session Judges in N.W.F.P.
6. All Heads of the Attached Department in N.W.F.P.
7. The Registrar, Peshawar High Court, Peshawar.
8. The Secretary Public Service Commission, N.W.F.P, Peshawar.
9. The Registrar Services Tribunal, NWFP.
10. The Secretary, Board of revenue, NWFP.


Subject:- GRANT OF ADVANCE INCREMENTS TO OFFICIALS FOR POSSESSING/ACQUIRING HIGHER QUALIFICATIONS.

Sir,

I am directed to refer to the subject noted above and to state that in para-6 (a) of this Department letter No.FD (PRC) 1-1/87-VIII dated 23rd July, 1987, advance increments have been allowed to the officials in BPS-1-15 for possessing or acquiring higher qualification over and above the qualification prescribed in the relevant recruitment rules. A question has been raised as to whether:-

- a) This order is also applicable to the teaching staff
- b) an official who has drawn advance increment before 1.7.1987 for possessing higher qualification under the existing rules is entitled to fresh increment sanctioned now.

In respect of question (a) it is clarified that the order is not applicable to the teachers. The teachers are still to be governed by rules of the


Distt. Education Officer
(Male) Swabi

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Schemes of Basic Pay Scales and Fring Benefits of Civil Servants, 1937

As regards question (b) above it is clarified that the officials who have already drawn advance increments for higher qualifications before 1.7.1937, shall be allowed increments equal to short fall between the increments already drawn by them and the increments which have been sanctioned now.

Your obedient servant,
M. Jan
(MTAN SAHIB JAN)
DEPUTY SECRETARY (REG.)

Encls: No. PD(SR-II)2-123/83 dated 2/2/1938.

- Copy forwarded for information to:-
1. All Heads of Autonomous and Semi Autonomous Bodies in NWFP.
 2. The Secretary, Finance Department, Government of NWFP, SIND & Baluchistan.

Abdul Wahab
(ABDUL WAHAB)
SECTION OFFICER (SR-II)
dated 2/2/1938.

Encls: No. PD(SR-II)2-123/83 dated 2/2/1938.

- Copy forwarded to:-
1. Accountant General, NWFP, Peshawar.
 2. All District/Agency Accounts Officers in N.W.F.P.
 3. The Treasury Officer, Peshawar.
 4. P.S. to the Finance Minister, NWFP.
 5. P.S. to Secretary Finance, NWFP.
 6. P.As to A.S. I, II & III/Dy. Secretaries Finance Department, NWFP.
 7. All Section Officers/Budget Officers in Finance Department, NWFP.
 8. The Director Local Fund Audit, NWFP, Peshawar.

Abdul Wahab
(ABDUL WAHAB)
SECTION OFFICER (SR-II)

No. H-34(73)M/7
Copy forwarded to
-and- Secy U.S.

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Distt. Education Officer
(Male) Swabi

Subject

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Scheme of Basic Pay Scale and fring benefits of Civil Servants, 1983.

As regards question (b) above it is clarified that the officials who have already drawn advance increments for higher qualifications before 1.7.1987, shall be allowed increments equal to short fall between the increments already drawn by them and the increments which have been sanctioned now.

Your obedient servant,
Sd/-
(MIAN SAHIB AN)
DEPUTY SECRETARY (REG:)
dated 2/2/1988

Endst: No. FD (SR-II_2-123/83

Copy forwarded for information to:-

1. All Heads of Autonomous and Semi Autonomous Bodies in N.W.F.P.
2. The Secretary Finance Department. Government of Punjab, Sind & Baluchistan.

Sd/-
(ABDUL WAHAB)
SECTION OFFICER (SR-II)

Endst: No. FD (SR-II)2-123/83

dated 2/2/1988.

Copy forwarded to:-

1. Accountant General, NWFP, Peshawar.
2. All District/Agency Accounts Officers. in N.W.F.P.
3. The Treasury Officer, Peshawar.
4. P.S, to the Finance Minister, NWFP.
5. P.S, to Secretary Finance, NWFP.
6. P.As to AFS.I, II & III/Dy Secretaries Finance Department, NWFP.
7. All Section Officers/Budget Officers in Finance Department, NWFP.
8. The Director Local Fund Audit, NWFP, Peshawar.


Distt: Education Officer
(Wakai Swabi)

Sd/-
(ABDUL WAHAB)
SECTION OFFICER (SR-II)

Islamabad, the 29th June, 1991.

OFFICE MEMORANDUM


Subject:- REVISION OF BASIC PAY SCALES AND FRINGE BENEFITS OF CIVIL EMPLOYEES OF THE FEDERAL GOVERNMENT (1991).

The President has been pleased to sanction the revision of Basic Pay Scales for the civil employees of the Federal Government, paid directly from the Civil Estimates or from the Defence Estimates as detailed in the following paragraphs.

2. Basic Pay Scales: The existing, modified and the revised pay scales are detailed in the Annexure to this O.M. The revised pay scales shall replace the Basic Pay Scales, 1987 and shall be effective from the first of June, 1991.

3. Initial fixation of pay: (1) The initial pay of the existing employees who have been in government service since before the 1st June 1991, shall first be fixed in the modified scale at the stage having the same pay or if there is no such stage, at the next higher stage. Thereafter the pay shall be fixed in the revised pay scale non point to point basis i.e. at the stage in the relevant revised basic pay scale which is as many stages above the stage occupied by him above the minimum of the modified basic scale.

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Distt. Education Officer
(Male) Swabi

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No. F1 (12)- Imp.II/91

Islamabad, the 29th June, 1991.

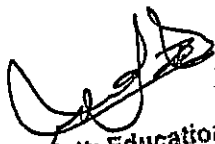
OFFICE MEMORANDUM

Subject:- REVISION OF BASIC PAY SCALES AND FRINGE BENEFITS OF CIVIL EMPLOYEES OF THE FEDERAL GOVERNMENT (1991).

The president has been pleased to sanction the revision of Basic Pay Scale for the civil employees of the Federal Government, paid directly from the Civil Estimates or from the Defence Estimates as detailed in the following paragraphs.

2. Basic Pay Scales: The existing, modified and the revised pay scales are detailed in the Annexure to this O.M. The revised pay scales shall replace the Basic Pay Scales, 1981 and shall be effective from the month of June, 1991.

3. Initial fixation of pay: (i) The initial pay of the existing employees who have been in government service since before the 1st June, 1991, shall first be fixed in the modified scale at the stage having the same pay or if there is no such stage, at the next higher stage. Thereafter the pay shall be fixed in the revised pay scale "on point to point basis" i.e, at the stage in the relevant revised basic pay scale which is as many stages above the stage occupied by him above the minimum of the modified basic scale.


Distt: Education Officer
(Male) Swabi

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(ii) In the case of those employees whose pay is fixed in the revised scales at a stage which gives less than Rs. 100/- increase in pay of May, 1991 a minimum increase of Rs. 100/- in pay over May, 1991 level would be allowed and thereafter pay fixed at the revised scale. The next 11 months' pay fixation for 1991 has been affected through orders I, II & III in Appendix.

(iii) The annual increment shall continue to be admissible subject to the existing conditions on the first of an ordinary year.

(iv) The increases allowed since 1-7-1989 and below shall come to an administration from 1-6-1991:-

- a) Indexed pay sanctioned vide Finance Division's O.S. No.F. 1(31)-Iv-II/89 dated 1-7-1989.
- b) Adhoc increase of 5% of pay sanctioned vide Finance Division's O.S. No.F. 1(31)-Iv-II/89 dated 15-7-1989.
- c) Adhoc increase of 10% sanctioned vide Finance Division's O.S. No.F. 1(13)Iv-II/89 dated 10-7-1989.
- d) Dearness Allowance of Rs. 33.75 sanctioned vide Finance Division's O.S. No.F. 1(25)Iv-II/89, dated 15-12-1989.

Promotion of pay on promotion

(1) In cases of promotion from a lower to a higher post/scale before the production of a certificate, the pay of the employees concerned in the revised scale may be fixed and so enhanced that it would not be less than the pay that would have been admissible to him if his promotion to the higher

[Handwritten signature]
 Director, D.M.S.
 Mysore

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(II) In the case of these employees whose pay is fixed in the revised scales at a stage which gives less than Rs.100/- increase in pay over May, 1991 level would be allowed and

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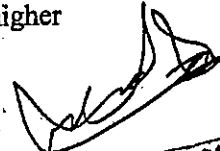
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I, II & III in Appendix.

(III) The Annual increment shall continue to be admissible subject to the existing conditions and the first of December every year.

The increases allowed since 01.07.1983 as detailed below shall cease to be admissible from 01.06.1991:-

- (a) Indexed pay sanctioned vide Finance Division O.M. NO. F.I (31)-Imp.II/88 dated 01.07.1988.
- (b) Adhoc increase of 05% of pay sanctioned vide O.M. No.F.I (31)-Imp-II/89 dated the 2nd July, 1989.
- (c) Adhoc increase of 10% sanctioned vide Finance Division's O.M.No.F.I (13) (mp-II/90 dated the 10/07/1990.
- (d) Dearness Allowance of Rs. sanctioned vide Finance Division's O.M.No.F.I (23) Imp-II/90 dated 15.12.1990. fixation of pay on promotion.
- (i) In case of promotion from a lower to higher post/scale before the introduction of the examining scales, the pay of the employees concerned in the revised scale may be fixed and no enhanced that it would not be less than the pay that would have been admissible to him if his promotion to the higher


 Distt: Education Officer
 (Male) Swabi

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post/scale had taken place after the introduction of these scales.

- 1) Government employees who are allowed selection grade shall be granted one premature increment from 1-6-1991 as is allowed in the case of promotion.

Grant of advance increment to officials for possessing/attaining higher educational qualifications.

- 1) From 1-6-1991 onwards advance increments shall be allowed without the condition of the second Division to the officials in BPS 1-15 for possessing or acquiring higher educational qualifications over and above the prescribed qualifications in the relevant Recruitment Rules, to the extent given below:-

No. of advance increments for obtaining
Matric F.A/F.Sc. B.A/B.Sc. M.A./M.Sc.

a) Where the prescribed qualification is Non-Matric.	2	4	6	8
b) [REDACTED]	Nil	[REDACTED]	[REDACTED]	[REDACTED]
c) Where the prescribed qualification is FA/F.Sc.	Nil	Nil	2	4
d) Where the prescribed qualification is BA/B.Sc.	Nil	Nil	Nil	2

The advance increments already allowed in terms of para 6 of O.M. No.F.1/7/IM.II/87 dated 1st July, 1987 would be doubled from 1-6-1991.

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[Signature]
 Distt. Education Officer
 (Male) Swat

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Posts/scale had taken place after the introduction of these scales.

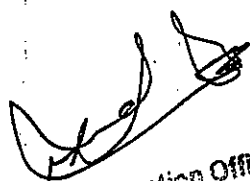
ii) Government employees who are allowed selection grade shall be granted one premature increment from 1-6-1991 as is allowed in the case of promotion.

5. Grant of advance increment to officials for possessing/attaining higher educational qualifications.

i) From 1-6-1991 onwards advance increments shall be allowed without the condition of the second Division to the officials in BPS-1-15 for possessing or acquiring higher educational qualification over and above the prescribed qualification as in the relevant Recruitment Rules, to the extent given below:-

	No. of advance increments for obtaining			
	<u>Matric</u>	<u>F.A/F.Sc</u>	<u>B.A/B.Sc</u>	<u>M.A/M.Sc</u>
a) Where the prescribed qualification is Non-Matric.	2	4	6	8
b) Where the prescribed qualification is Matric	Nil	2	4	6
c) Where the prescribed qualification is FA/F.Sc	Nil	Nil	2	4
d) Where the prescribed qualification is BA/B.Sc	Nil	Nil	Nil	2

The advance increments already allowed in terms of para 6 of O.M. No. F.1/7/IM). II/87 dated 1st July, 1987 would be allowed from 1-6-1991.


Distt: Education Officer
(Matric) Swabi

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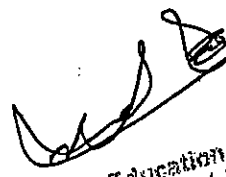
(ii) The advance increments shall be allowed at the time of recruitment or acquisition of higher qualification whichever is later. In cases where the employees is already at the maximum of the scale, he may be allowed the number of advance increments beyond the maximum of the scale as personal pay to be allowed at the time of his move over/promotion. Those employees who had acquired higher qualification in third Division prior to 1-6-1991 and were not granted advance increments earlier would henceforth would be allowed advance increments w.e.f. 1-6-1991.

6. Move over: The concession of move-over shall also be available from 1-6-1991 onwards to these who are enjoying selection grade.

7. Special Pay

i) The existing special pay is admissible to various categories of employees working as Personal Assistants in BPS-15 and confidential Assistants personal in Ministers/Divisions shall be revised from 1-6-1991. as under :-

<u>Name of Post</u>	<u>Existing Revised</u>	
	<u>Rs. P.M</u>	<u>Rs. P.M</u>
PA to Ministers (Federal)	100	150
PA to Ministers of State	100	150
PA to Secretaries (Federal)	100	150
PA to Addl: Secretaries (Federal)	100	150
PA to Secretaries (Provincial)	75	120
PA to Joint Secretaries (Federal)	75	120
Confidential Assistants posted in Ministers/Divisions.	45	65


Distt. Education Officer
(Male) Swabi

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GOVERNMENT OF NORTH WEST FRONTIER PROVINCE
FINANCE DEPARTMENT.

NOTIFICATION

Feshawar, dated the 7th August, 1991.

No. FD(PPC)1-1/89- In exercise of all the powers enabling him in this behalf, the Governor of the North-West Frontier Province is pleased to order the following scales of pay/benefits to various categories of Teachers with effect from 1-7-1991.

1. Name of the Post.	3. Benefits extended
----------------------	----------------------

Primary School Teachers (PTC/J.V)

All the present and future primary school teachers who hold the qualification of F.A/P.Sc. (2nd Division) plus existing prescribed professional training shall be placed in BPS-9 with 1/3rd in selection grade BPS-10.

All other teachers who do not possess higher qualification shall continue getting existing pay scale with selection grade accordingly.

However, the higher scales/grades allowed to these teachers will be personal to them and the inter-seniority will remain intact.

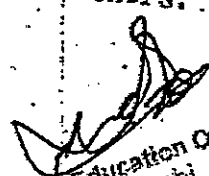
2. Elementary school Teachers (E.S.T/ S.V/P.E.T/ Drawing Masters/PTI.

All the present and future elementary school teachers who possess the qualification of B.A/B.Sc (2nd Division) plus existing prescribed professional training shall be placed in BPS-14 with 1/3rd in Selection Grade BPS-15.

All other teachers who do not possess higher qualifications shall continue getting existing pay scales with Selection Grade accordingly.

However, the higher scales/grade allowed to these teachers will be personal to them and the inter-seniority will remain intact.

Arabic Teachers:


District Education Officer
(Arabic) Feshawar

All the present and future Arabic Teachers who possess the qualification of Trained Fazil with B.A/B.Sc. (2nd Division) and five years teaching experience or M.A. Arabic or equivalent qualifications shall be placed in BPS-14 with 1/3rd in Selection Grade BPS-15.

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**GOVERNMENT OF NORTH WEST FRONTIER PROVINCE
FINANCE DEPARTMENT.**

NOTIFICATION

Peshawar dated the 7th August, 1991.

NO. FD (PRC) 1-1/89 In exercise of all the powers enabling him in this behalf the Governor of the North-West Frontier Province is pleased to order the following scales of pay/benefits to various categories of Teachers with effect from 01.07.1991.

S.No.	Name of the Post	Benefits Extended
1	2	3
1.	Primary School Teachers (PTC/J.V)	<p>All the present and future primary school teachers who hold the qualification of F.A/F.Sc (2nd Division) plus existing prescribed professional training shall be placed in BPS-9 with 13rd in selection grade BPS-10.</p> <p>All other teachers who do not possess higher qualification shall continue getting existing pay scale with Selection grade accordingly.</p> <p>However, the higher Scales/grades allowed to these teachers will be personal to them and the inter-seniority will remain intact.</p>
2	Elementary School Teachers (E.S.T/C.T/S.V/P.E.T/Drawing Masters/PTI)	<p>All the present and future Elementary School Teachers who possess the qualification of B.A/B.Sc (2nd Division) plus existing prescribed professional training shall be placed in BPS-14 with 13rd in selection Grade BPS-15.</p> <p>All other teachers who do not possess higher qualification shall continue getting existing pay scales with selection Grade accordingly.</p> <p>However, the higher Scales/grades allowed to these teachers will be personal to them and the inter-seniority will remain intact.</p>
3	Arabic Teachers.	<p>All the present and future Arabic Teachers who possess the qualification of Trained/Fazil with B.A/B.Sc (2nd Division) and five years teaching experience of M.A Arabic or equivalent qualifications shall be placed in BPS-14 with 1/3rd in Selection grade BPS-15.</p> <p>All other teachers who do not possess higher</p>


Distt: Education Officer
(Male) Swabi

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ii. Name of the Post. _____
No. _____
2. _____

Benefits extended.

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All other teachers who do not possess higher qualification shall continue getting existing pay scale with Selection Grade accordingly.

However, the higher scale/grade allowed to these teachers will be personal to them and the inter-seniority will remain intact.

4. Secondary School Teachers.

All the present and future Secondary School Teachers with prescribed qualification under the Rules shall be placed in BPS-16 with 1/3rd in Selection Grade BPS-17.

The advance increments sanctioned by Finance Department vide Para 9 of its letter No. FD (SR-I) 1-67/82 dated 24-8-1983 will not be admissible on acquiring /possessing qualifications for which higher pay scales are being sanctioned through this notification.

SECRETARY TO GOVERNMENT OF North West Frontier Province Finance Department.

Endst. No. FD(PRC) 1-1/89. Dated Peshawar, the 7th August, 1991.

A copy is forwarded to the Accountant General, NWFP, Peshawar for information and necessary action.

(GHULAM DASTGIR AKHTAR)
Deputy Secretary (Regulation)
Finance Department.

Endst. No. FD(PRC) 1-1/89. Dated Peshawar, the 7th August, 1991.

A copy is forwarded to:-

1. All Administrative Secretaries to Govt. of NWFP.
2. All Commissioners of Division, N.W.F.P.
3. All Heads of Attached Departments NWFP
4. The Secretary to Governor, NWFP
5. The Registrar, Peshawar High Court, Peshawar.
6. The Secretary Public Service Commission, NWFP.
7. The Registrar Service Tribunal, NWFP.
8. All Dy. Commissioners/Political Agents/District and Session Judges in NWFP.

(GHULAM DASTGIR AKHTAR)
Deputy Secretary (Regulation)
Finance Department.

Distt. Education Officer
(Male) Swabi

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		<p>qualification shall continue getting existing pay scales with Selection Grade accordingly.</p> <p>However, the higher Scales/Grades allowed to these teachers will be personal to them and the inter-seniority will remain intact.</p>
4	Secondary School Teachers	All the present and future Secondary School Teachers with prescribed qualification under the Rules Shall be placed in BPS-16 with 1.3rd in Selection Grade BPS-17.

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Sd/-

SECRETARY TO GOVERNMENT OF
North West Frontier Province
Finance Department.

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North West Frontier Province
Finance Department.

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Dated Peshawar the 7th August, 1991.

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2. All Commissioners of Division, NWFP.
3. All Heads of Attached Departments, NWFP.
4. The Secretary to Governor, NWFP.
5. The Registrar, Peshawar High Court, Peshawar.
6. The Secretary, Public Service Commission, NWFP.
7. The Registrar, Service Tribunal, NWFP.
8. All Dy. Commissioners/Political Agents/District & Session Judges in NWFP.

Sd/-

(GHULAM DASTAGIR AKHTAR)
Deputy Secretary (Regulation)
Finance Department.


Distt: Education Officer
(Male) Swabi

GOVERNMENT OF NWFP
FINANCE DEPARTMENT

Annex-D

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NO. FD (PRC) 5-1/93

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GOVERNMENT OF N.W.F.P.,
FINANCE DEPARTMENT

Dated Peshawar, the 12th January, 95.

To
The Secretary to Government of
N.W.F.P., Education Department,
Peshawar.

Subject: MEETING ON THE DEMANDS OF ALL TEACHERS ASSOCIATION.

Sir,
I am directed to refer to your letter No. SO(S)7-3/94/
M. Ayub dated 10th January, 1995 and to convey the approval of the
following decisions taken in the meeting held on 5.1.1995 in the
Office of Secretary to Government of NWFP, Education Department :-

1. Pay Scales of P.T.Is.

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

2. Recoveries of two increments granted to
un-trained P.T.Cs.

It has been decided to suspend the recoveries
till further orders from the un-trained P.T.Cs
on account of fixation of their pay at Rs.1215/- P.M
with effect from 1.6.1991. The matter would be
finally decided by the Education Department, Finance
Department and Accountant General, NWFP jointly.

3. Recoveries from B.A CTs appointed against S.V posts
in B-14 in conversion of posts into CT posts.

The S.V cadre posts may be merged with C.T cadre
alongwith incumbent. The Education Department will
amend the respective Services Recruitment Rules and
also get the posts of S.Vs reflected as C.Ts in
the budget.

4. Grant of graded pay to Arabic Teachers
with effect from 1.7.1983.

The graded pay in BPS-9 would be admissible to
Arabic Teachers with effect from 1.7.1983 onwards
irrespective of date of notification of Services
Recruitment Rules in 1987.

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Distt. Education Officer
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Distt. Education Officer
(Male) Swabi

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No.FD (PRC) 5-1/93
GOVERNMENT OF N.W.F.P,
FINANCE DEPARTMENT.
Dated Peshawar, the 12th, January, 95.

To.
The Secretary to Government of
N.W.F, Education Department,
Peshawar.

Subject:- MEETING ON THE DEMANDS OF ALL TEACHER ASSOCIATION.
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BPS-15 would be admissible with effect from 1.7.1983 to the
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physical education and working in the Government High/
Comprehensive High School as personal to them.

2. Recoveries of two increments granted to un-trained P.T.Cs


It has decided to suspend the recoveries till further orders from the
un-trained P.T.Cs on account of fixation of their pay at Rs.1215/-
P.M with effect from 1.6.1991. The matter would be finally
decided by the Education Department, Finance Department and
Accountant General, NWFP jointly.

3. Recoveries form B.A Cts appointed against S.V posts in B-14 in
conversion of posts into CT posts.

The S.V cadre posts may be merged with C.T cadre alongwith
incumbent. The Education Department will amend the respective
Services Recruitment Rules and also get the posts of S.Vs reflected
as C.Ts in the budget.

4. Grant of graded pay to Arabic Teachers with effect from 1.7.1983

The graded pay in BPS-9 would be admissible to Arabic Teachers
with effect from 1.7.1983 onwards irrespective of date of
notification of Services Recruitment Rules in 1987


Distt. Education Officer
(Male) Swabi

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5. Advance increments on possessing or acquiring qualifications of F.A/B.A in 3rd Division.

The advance increments sanctioned under the Finance Department's letter No. FD(SR-I)1-67/83, dated 24.8.1983 as clarified in the Finance Department's Notification No. FD(PRC)1-1/89, dated 7.8.1991 are not admissible to those who have been granted higher pay scales on the basis of higher specified qualifications in atleast 2nd Division. The advance increments in term of FD's letter dated 24.8.1983, referred to above are still admissible to those who could not get higher pay scales for not possessing/acquiring the specified higher qualifications in 2nd Division.

Your obedient servant

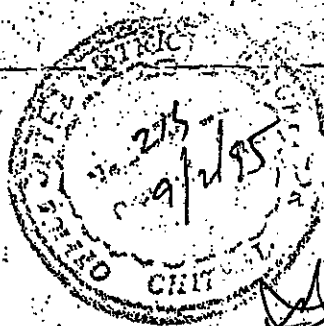
J. Jabbar
JL JABBAR
Section Officer (PRC)

Encls: NO. FD(PRC) 5-1/93, dated 12th January, 1995.

Copy for information and necessary action is forwarded to :-

1. The Accountant General, N.W.F.P.
2. All District/Agency Accounts Officers in NWFP.
3. All Additional Secretaries in the Finance Deptt.:
4. All Deputy Secretaries in the Finance Department.
5. All Section/Budget Officers in the Finance Deptt.:
6. The Section Officer(R-I), Services & General Admn. Department.

Mr. P. M. may be notified to the Secy. and copy to Secy. Govt. d.



J. Jabbar
JL JABBAR
Section Officer (PRC)

Distt: Education Officer
(Male) Swabi

Distt: Education Officer
(Male) Swabi

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Advance increments on possessing or acquiring qualifications of F.A/B.A in 3rd Division.

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Your obedient servant,
Signed
Section Officer (PRC)

Endst:No.FD (PRC) 5-1/93, dated 12th January, 1995.

Copy for information and necessary action is forwarded to:-
The Accountant General, N.W.F.P.

- 1.
2. All District/Agency Accounts Officers in NWFP.
3. All Additional Secretaries in the Finance Deptt:
4. All Deputy Secretaries in the Finance Department.
5. All Section/Budget Officers in the Finance Deptt:
6. The Section Officer (R-I) Service & General Admn: Department.


Distt. Education Officer
(R-I) Secy

Signed
Section Officer (PRC)

Annex EE 36 30
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IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

Present:

Mr. Justice Qazi Faez Isa
Mr. Justice Syed Mansoor Ali Shah

Civil Petition No.172-P & 173-P of 2013.

(on appeal from the judgment of KPK Service Tribunal, Peshawar dated 06.02.2013, passed in Appeals No. 523 & 524 of 2010)

Manzoor Ahmad (in C.P. 172-P/2013)
Yasmeen Akhtar (in C.P. 173-P/2013)

....Petitioners

Versus

The Secretary Education, Government of KPK, etc. (in both cases)

...Respondents

Petitioners: In person (in both cases)

For the respondents: Mr. Mujahid Ali Khan, Addl. A.G. KPK

Date of hearing: 07.12.2018

JUDGMENT

Syed Mansoor Ali Shah, J. - The facts of the case are that petitioners in both the petitions were appointed as Primary School Teachers ("PST"). Manzoor Ahmad, petitioner in Civil Petition No.172-P/2013 ("Petitioner No.1"), however, retired from service on 01.02.2016, while Yasmeen Akhtar, petitioner in Civil Petition No.173-P/2013 ("Petitioner No.2") is still in service.

ATTESTED

[Signature]
Assistant Registrar
Supreme Court of Pakistan
Peshawar.

[Signature]
Distt. Education Officer
(Malek Dera)

These petitions pertain to their claim regarding advance increments on the basis of acquiring higher educational qualification while in service. Petitioner No.1 was given five advance increments under Notification dated 24.08.1983 while petitioner No.2 was given three advance increments under the same Notification plus a move-over to BPS-09. Petitioners claim that as per subsequent Notification dated 11.08.1991 issued by the Finance Department, Government of KPK, petitioner No.1 ought to have been given 12 advance increments for obtaining higher educational qualification of F.A, B.A and M.A, while petitioner No.2 be given six advance increments, as per the same Notification for obtaining the qualification of F.A and B.A. It is submitted


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that the petitioners were appointed as PSTs when the qualification for the said post was matriculation.

3. Arguing the case for himself and for petitioner No.2, Mr. Manzoor Ahmad submitted that they were initially granted *advance increments* vide Notification dated 24.08.1983, however, subsequently through the Notification dated 11.08.1991, the number of *advance increments* were increased, inasmuch as, it was also granted for obtaining higher educational qualification of M.A. He submits that the said notification is applicable to PSTs and placed reliance on an unreported judgment of this Court dated 09.07.2007, passed in Civil Petition No.525/2007, as well as, the subsequent notification issued in the light of the said judgment i.e. Notification dated 13.05.2009, issued by the Elementary and Secondary Education Department, Government of KPK. The above cited judgment extends the benefit of

Notification dated 11.08.1991 to teachers.

ATTESTED

Assistant Registrar,
Supreme Court of Pakistan
Peshawar.

Learned Additional Advocate General, KPK representing the Government, submits that the case of the petitioners is governed by Notification dated 24.08.1983, issued by the Finance Department, Government of KPK and as per clause 9 of the said notification, petitioner No.1 is entitled to five advance increments for obtaining F.A. and B.A., whereas, petitioner No.2 is entitled to three advance increments as she has already been granted the benefit of move-over to higher pay scale as per Notification dated 07.08.1991, issued by the Finance Department, Government of KPK. Learned law officer has placed reliance on an unreported judgment of this Court dated 08.9.2011, passed in Civil Petition No.1425/2011, which discusses the mode of calculation of *advance increment* granted for higher educational qualification. In this case, it was held that *advance increment* can only be granted for the highest educational qualification obtained, as *advance increments* for the degrees leading up to the final degree stand merged into *advance increment* prescribed for the highest qualification. In other words, *advance increments* for obtaining F.A (two advance increments) and B.A (four advance increments including two


Distt. Education Officer
(Muz. & Sec. Edu.)

advance increments granted for F.A) stand merged into *advance increments* granted for obtaining M.A (six advance increments), therefore, providing two *advance increment* for each higher educational qualification.

5. He further submits that at this stage the claim of the petitioners cannot be entertained in the light of section 2 of the Khyber Pakhtunkhwa Cessation of Payment of Arrears on Advance Increments on Higher Educational Qualification Act, 2012 ("Act of 2012"), by virtue of which the instant petitions cannot proceed and stand abated. He placed reliance on an unreported judgment of this Court dated 29.8.2013, passed in Civil Petition No.360/2013.

6. We have heard the parties at some length and have gone through the record of the case. While the argument of the petitioners might have some merit with regard to grant of one advance increment in the case of petitioner No.1 and four advance increments in case of petitioner No.2 in the light of Notification dated 11.08.1991, read with the unreported judgments of this Court dated 09.7.2007, passed in Civil Petition No.525/2007 and dated 08.9.2011 passed in Civil Petition No.1425/2011. However, before going into the merits of the case, we need to first examine the justiciability of the claims in the light of Act of 2012. The preamble of Act of 2012 provides as under:-

"The Khyber Pakhtunkhwa Cessation of Payment of Arrears on Advance Increments on Higher Educational Qualification Bill 2012 having been passed by the Provincial Assembly of Khyber Pakhtunkhwa on 8th May, 2012 and assented to by the Governor of the Khyber Pakhtunkhwa on 11th May, 2012 is hereby published as an Act of the Provincial Legislature of the Khyber Pakhtunkhwa.

Whereas advance increments have been granted to certain Provincial Government employees on the basis of acquiring or possessing higher educational qualification over and above the prescribed educational qualification from time to time;

And whereas the Provincial Government vide Notification No.(PRC)-1/2001, dated 27-10-2001, had already discontinued the scheme of advance increments on higher educational qualification;

And whereas due to financial constraints, it is not possible for Provincial Government to pay the claimed and unclaimed arrears accrued from the said increments;

ATTESTED

[Signature]
Assistant Registrar

Supreme Court of Pakistan

[Signature]

Distt. Education Officer
(Male) Swabi

4


It is hereby enacted as follows:--" (emphasis supplied)

While section-2 reads as under:-

"2. Cessation of payment of arrears on advance increments on higher educational qualification.--(1) Notwithstanding anything contained in any decision, judgment and order of any Tribunal or court including High Court or Supreme Court of Pakistan, for the purpose of any claim for payment of arrears on account of advance increments on higher educational qualification sanctioned in pursuance of any order, letter, office memoranda, notification, instructions and other instruments issued before 1-12-2001, such orders, letters, office memoranda, notifications, instructions and other instruments shall be deemed to be non-existent, ceased or revoked and no further claim whatsoever on the basis of these instruments shall be entertained and all cases in respect of such claims pending in any court or Tribunal including High Court and Supreme Court of Pakistan shall stand abated.


(2) Any order made, instruction issued, decision, judgment or order of any court or Tribunal including a High Court or the Supreme Court, implemented immediately before the commencement of this Act, shall be deemed to have been validly made, issued and implemented by the date of commencement of this Act, and any amount already paid there-under on account of advance increments or arrears thereof shall be deemed to have been validly paid and shall not be recoverable from the recipient Government employees."

ATTESTED


Assistant Registrar
Supreme Court of Pakistan
Peshawar.

7. Plain reading of the above provisions show that the claim of advance increments on obtaining higher educational qualification was discontinued by the Provincial Government on 27.10.2001. Section-2 of the Act of 2012 provides that claim for payment of arrears of advance increments shall be deemed non-existent and no further claim whatsoever on the basis of these instruments shall be entertained and all cases in respect of such claims pending in any Court or Tribunal including High Court and Supreme Court shall stand abated. Sub-section 2 provides that any amount of advance increment or arrears thereof already paid before the commencement of the Act of 2012 shall be deemed to have been validly paid and shall not be recoverable from the recipient government employees.

8. The scope of Act of 2012 is that after the promulgation of the Act i.e. w.e.f. 11.05.2012, no government employee can claim arrears on account of advance increments for higher educational qualification and advance


District Education Officer
(Peshawar)

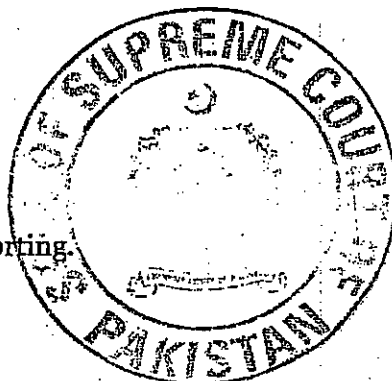
increments and arrears already paid shall not be recoverable from the recipient government employee. "Arrears" includes payment of a debt or the discharge of an obligation¹. In this case, claim of the petitioners for advance increment under Notification dated 11.8.1991 is an outstanding arrear. Reference to the deeming commencement date under section-1(3) of the Act is simply to identify the cutoff date for the purposes of tabulating arrears as mentioned in section-2, which, if outstanding on 11.5.2012, will not be payable and no claim relating to the same can be entertained.

9. In the instant case petitioners are seeking arrears on the basis of Notification dated 11.08.1991 and in the light of section-2 of the Act of 2012, their claim cannot be entertained and is not justiciable. Reliance is placed on unreported judgment of this Court dated 29.08.2013 passed in Civil Petition No.360/2013. The petitioners have not challenged the vires of the Act, therefore, these petitions stand abated under Act of 2012, as a result leave to appeal is declined and these petitions are dismissed.

Sd/- Qazi Faez Isa, J.
Sd/- Syed Mansoor Ali Shah,

Peshawar,
07th December, 2018.
Not approved for reporting.
Sadaqat

14/2/18



Distt. Education Officer
(Male) Swabi

Certified to be true copy

Assistant Registrar
Supreme Court of Pakistan
Peshawar.

¹ Black's Law Dictionary 9th Edition, page-124.