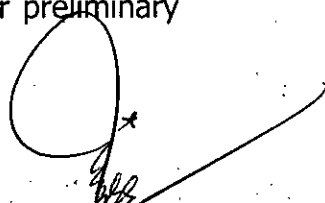


31.01.2022

Learned counsel for the appellant present.

Learned counsel for the appellant seeks adjournment to further prepare the brief. Adjourned. To come up for preliminary hearing on 31.03.2022 before S.B.


(Mian Muhammad)
Member(E)

31st March; 2022.

Counsel for the appellant present and heard.

Vide my detailed order of today in connected Service Appeal No. 7476/2021, titled "Miss Nazia Vs. Government of Khyber Pakhtunkhwa through Chief Secretary, Peshawar and others, this appeal is disposed of accordingly. Consign.

Pronounced in open court in Peshawar and given under my hand and seal of the Tribunal this 31st day of March, 2022.



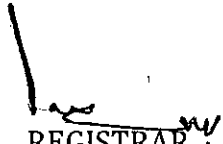
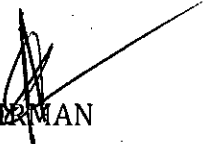
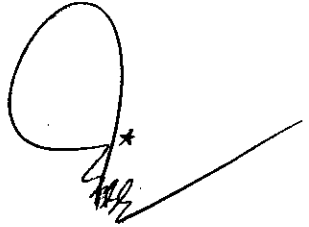

(KALIM ARSHAD KHAN)
CHAIRMAN,

Form- A

FORM OF ORDER SHEET

Court of _____

Case No. 7480 /2021

S.No:	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1-	29/09/2021	<p>The appeal of Miss. Salma Naheed presented today by Mr. Wisal Hayat Advocate may be entered in the Institution Register and put up to the Worthy Chairman for proper order please.</p> <p style="text-align: right;"> REGISTRAR</p>
2-		<p>This case is entrusted to S. Bench at Peshawar for preliminary hearing to be put up there on <u>26/11/21</u>.</p> <p style="text-align: right;"> CHAIRMAN</p>
	26.11.2021	<p>None for the appellant present.</p> <p>Notices be issued to the appellant and his counsel. To come up for preliminary hearing on 31.01.2022 before S.B.</p> <p style="text-align: right;"> (MIAN MUHAMMAD) MEMBER (E)</p>

BEFORE THE HONORABLE KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL PESHAWAR

S.A 7480 /2021

Miss. Salma Naheed (Appellant)

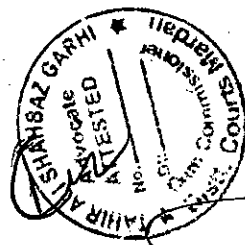
VERSUS

The Government of Khyber Pakhtunkhwa and Others (Respondents)

INDEX

S.No	Description	Annexure	Pages
1	Memorandum of Appeal		P1-6
2	Affidavit		P 7
3	Addresses of Parties		P 8
4	Application for condonation of delay		P 9-10
5	Copy of CNIC	"A"	P 11
6	Copy of the notification dated 20/12/2012 and its better copy	"B"	P12-13
7	Copy of the salary Slips	"C"	P14-15
8	Copy of the departmental appeal	"D"	P16-17
9	Judgment of The Peshawar High Court Peshawar	"E"	P18- 24
10	Copy of the Service Tribunal judgment	"F"	P 25-26
11	Other Documents		P 27-28
12	Wakalatnama		P 29

Dated: 07/09/2021



Appellant

Miss. Salma Naheed, through
Wisal Hayat Advocate High Court
Tahir Khan Advocate
at District Courts Mardan

WISAL HAYAT
Advocate High Court
Distt. Courts Mardan

BEFORE THE HONOURABLE KHYBER
PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

S, A 7480/2021

Khyber Pakhtunkhwa
Service Tribunal

Diary No 7666
Dated 29/9/2021

Miss. Salma Naheed W/o Mubarak Nasim D/o Said Muhammad R/o
Village Baghicha Dheri District Mardan, Senior Certified Teacher (BPS:
16) at Govt Girls High School Baghicha Dheri District Mardan,.

..... 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 (E&SE) Department Khyber Pakhtunkhwa,
Peshawar.

Filed to-day

Registrar

..... 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 AND SUMMER
VACATIONS AND AGAINST NO ACTION TAKEN ON
THE DEPARTMENTAL APPEAL OF THE APPELLANT
WITHIN THE STATUTORY PERIOD OF NINETY DAYS.

Prayers:

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.

Respectfully Sheweth:

On Facts:

1. - That the Appellant is serving in the Elementary & Secondary Education Department as Senior Certified Teacher (BPS-16) quite efficiently and up to the entire satisfaction of their superiors.

(Copy of CNIC is attached as Annexure "A")

2. That the Conveyance allowance is admissible to all the Civil Servants and to this effect a notification no. FD (PRC) 01-1-2011 dated 14-07-2011 was issued. That later on vide revised

notification dated 20-12-2012 whereby the conveyance allowance for employees working in BPS1 to 15 were enhanced/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 attached as Annexure "B")**

3. That the appellant was receiving the Conveyance allowance 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. **(Copy of the salary slip attached as Annexure "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. **(Copy of the Departmental Appeal is attached as Annexure "D")**

5. That some of the colleagues of the appellant 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 direction to approach the proper forum i-e Service Tribunal. **(Copy of Judgment is attached as Annexure "E")**

6. That some of the 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 Judgment is attached as Annexure "F")

7. 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 among the others.

Grounds:

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

B) That the appellant have not been treated by the department in accordance with law and rules on the subject noted above and 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 dully conferred by the Constitution and is liable to be declared as null and void.

D) That according to government servants revised leave rules 1981, vacations are holidays and not leave of any kind, and therefore the

deduction of conveyance allowance in vacations is against the law and rules.

E) That there is clear difference between leave and vacation as leave as applied by the civil servant in light of 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.

F) That the Government Servant 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 four days leave in a calendar month 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 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 the appellant.

G) That the act of the respondents is illegal, unconstitutional and without any legal authority and not only discriminatory but also the result of malafide on the part of respondents.

H) That appellant has the vested right of equal treatment before law and the act of the respondents to deprive the appellant from the conveyance allowance is unconstitutional and clear violation of fundamental rights.

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 earnings of individuals including persons in the services of the federation, therefore, in the light of the said Article the appellant is fully entitled for the grant of conveyance allowance during vacations.

J) That the cause of action accrues to civil servant every month when he is paid salary deficiently, hence, limitation does not run in case of fixation of salary.

K) That the appellant 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

Dated: 09-08-2021

Appellant

Salma

WISAL HAYAT
Advocate High Court
Distt. Courts Mardan

Miss Salma Naheed, through,

Wisal Hayat Advocate High Court,

Tahir Khan Advocate

at Distt Courts Mardan



**BEFORE THE HONOURABLE KHYBER
PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR**

S,A -----/2021

Miss. Salma Naheed W/o Mubarak Nasim D/o Said Muhammad R/o
Village Baghicha Dheri District Mardan, Senior Certified Teacher (BPS:
16) at Govt Girls High School Baghicha Dheri District Mardan,

Versus

The Government of Khyber Pakhtunkhwa and others

Affidavit

*Miss. Salma Naheed W/o Mubarak Nasim D/o Said Muhammad R/o
Village Baghicha Dheri District Mardan, Senior Certified Teacher
(BPS: 16) at Govt Girls High School Baghicha Dheri District Mardan,*

do hereby solemnly affirm and declare that all the contents of the
accompanied appeal are true and correct to the best of my knowledge
and belief and nothing has been concealed or withheld from this Hon'ble
Tribunal.

ATTESTED
M. ALI KHAN ADVOCATE
Oath Commissioner Mardan
No. 1095 Date 20-8-21

Deponent
Salma
Miss. Salma Naheed

CNIC#16101-1070889-2

8

BEFORE THE HONOURABLE KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL PESHAWAR

S,A -----/2021

Miss. Salma Naheed

Versus

The Government of Khyber Pakhtunkhwa through Chief Secretary Khyber
Pakhtunkhwa and Others

Addresses of Parties

Appellant:

Miss. Salma Naheed W/o Mubarak Nasim D/o Said Muhammad, R/O Village
Baghicha Dheri District Mardan, Senior Certified Teacher (BPS16) at Govt Girls
High School Baghicha Dheri District Mardan

Respondents:

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 (E&SE) Department Khyber Pakhtunkhwa, Peshawar.

Appellant


Salma

Miss. Salma Naheed, through

Wisal Hayat Advocate High Court,

Tahir Khan Advocate at

Distt Courts Mardan


WISAL HAYAT
Advocate High Court
Distt. Courts Mardan



(2)

BEFORE THE HONOURABLE KHYBER
PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

S, A -----/2021

Miss. Salma Naheed D/o Said Muhammad

Versus

The Government of Khyber Pakhtunkhwa and others

Application for condonation of Delay

Respectfully Sheweth

1. That the petitioner is filling the accompanying appeal the contents of which may graciously be considered as integral part of the instant petition
2. That the delay in approaching this Hon'ble Tribunal was due to lockdown and COVID-19 pandemic country wide, which was not deliberate at all but accidental.
3. That cause of action accrues to civil servant every month when he is paid salary deficiently, hence, limitation does not run in case of fixation of salary.
4. That the law favors adjudication on merits and technicalities of any sort must always be ignored while reaching a just and fair disposal of any les.
5. That for proper disposal of the accompanying case on its merits, the condonation of delay is indispensable

that not only the Appellant has got a prima facie case and having balance of convenience in his favor, but would suffer irreparable loss, if the instant petition is not allowed.

(10)

it is therefore, most humbly prayed that on acceptance of the instant petition, the delay if any occurred in filing the accompanying appeal may very graciously be condoned and the accompanying appeal may very be graciously be decided on its merits.

Salma

Appellant

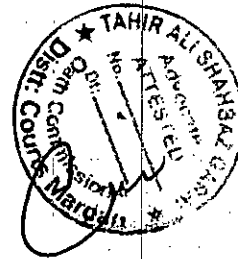
Miss. Salma Naheed, through

Wisal Hayat Advocate High Court,

Tahir Khan Advocate at
Distt Courts Mardan

Wisal Hayat

WISAL HAYAT
Advocate High Court
Distt. Courts Mardan



(11)

ANNA ee A??



حکومت پاکستان
قومی شناختی کارڈ
16101-1070889-2



نام: سلی نازید
جنس: عورت
شہر: کاناہہ، سہارک ٹیمپ
شناختی علاقہ: ٹکونی ٹیمن

تاریخ: 07/06/1970
مشورہ: جی آر ایف

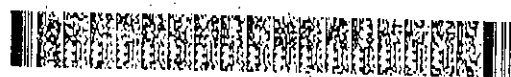


شناختی نمبر: 16101-1070889-2
نام: نازان سید
V8461L
موجودہ پتہ: بالیو، بالیو ڈیپو، ڈاکخانہ قاسم، تحصیل و ضلع مردان

12970891234

سنگل پتہ: ایسا

تاریخ: 19/11/2023
تاریخ اجراء: 19/11/2013
گندہ کارڈ کے پرقریبی لیٹر کس میں ڈال دیں



Wisal Hayat
WISAL HAYAT
Advocate High Court
Distt. Courts Mardā

(12)
BETTER COPY PAGE-5

GOVERNMENT OF KHYBER PAKHTUNKHWA
FINANCE DEPARTMENT
(REGULATION WING)

NO.FD/SO(SR-II)/52/2012
Dated Peshawar the: 20.12.2012

From

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

"Amek B"

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 of Khyber Pakhtunkhwa.
8. All Political Agents/District & Session Judge in Khyber Pakhtunkhwa.
9. The Registrar Peshawar High Court, Peshawar.
10. The Chairman Public Service Commission, Khyber Pakhtunkhwa.
11. The Chairman, Service 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 vehicle.

Your Faithfully

(Sahibzada Saeed Ahmad)
Secretary Finance

Endst No. FD/SO(SR-II)8-52/2012 Dated Peshawar the 20th December, 2012

ATTESTED


WISAL HAYAT
Advocate High Court
Distt. Courts Maru..n



(13)

GOVERNMENT OF KHYBER PAKHTUNKHWA
FINANCE DEPARTMENT
(REGULATION WING)

NO. FD/SC(SR-11)78-52/2012
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-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,

(Signature)
Mohib Uddin Saad Ahmad
Secretary Finance

Encl: NO. FD/SC(SR-11)78-52/2012

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

(Signature)
WISAL HAYAT
Advocate High Court
Distt. Courts Mardan

(Signature)
(IMMAZ AYUB)
Principal Secretary (Revenue)

ATTENTION

(14)
Dist. Govt. NWFP-Provincial
District Accounts Office Mardan
Monthly Salary Statement (February-2021)



Personal Information of Mrs SALMA NAHEED d/w/s of SAID MOHAMMAD

Personnel Number: 00131714

CNIC: 1610110708892

NTN: 0

Date of Birth: 07.06.1970

Entry into Govt. Service: 01.09.2004

Length of Service: 16 Years 06 Months 001 Days

Employment Category: Active Temporary

Designation: SENIOR CERTIFIED TEACHER

80003519-DISTRICT GOVERNMENT KHYBE

DDO Code: MR6126-H.MRS G.G.H.S BAGHICHA DHERI MARDAN

Payroll Section: 003

GPF Section: 001

Cash Center: 0

GPF A/C No: 131714

Interest Applied: Yes

GPF Balance:

513,627.00

Vendor Number: -

Pay and Allowances:

Pay scale: BPS For - 2017

Pay Scale Type: Civil

BPS: 16

Pay Stage: 16

Wage type		Amount	Wage type		Amount
0001	Basic Pay	43,230.00	1000	House Rent Allowance	2,727.00
1210	Convey Allowance 2005	5,000.00	1947	Medical Allow 15% (16-22)	1,451.00
2148	15% Adhoc Relief All-2013	775.00	2199	Adhoc Relief Allow @10%	607.00
2211	Adhoc Relief All 2016 10%	3,124.00	2224	Adhoc Relief All 2017 10%	4,323.00
2247	Adhoc Relief All 2018 10%	4,323.00	2264	Adhoc Relief All 2019 10%	4,323.00

Deductions - General

Wage type		Amount	Wage type		Amount
3016	GPF Subscription	-3,340.00	3501	Benevolent Fund	-800.00
3009	Income Tax	-745.00	3990	Emp.Edu. Fund KPE	-150.00
4004	R. Benefits & Death Comp:	-650.00			0.00

Deductions - Loans and Advances

Loan	Description	Principal amount	Deduction	Balance

Deductions - Income Tax

Payable: 11,435.75 Recovered till February-2021: 5,597.00 Exempted: 2838.83 Recoverable: 2,979.92

Gross Pay (Rs.): 69,883.00 Deductions: (Rs.): -5,685.00 Net Pay: (Rs.): 64,198.00

Payee Name: SALMA NAHEED

Account Number: PLS000000036571

Bank Details: ALLIED BANK LIMITED. 25061 BALA GARHI BALA GARHI.

Leaves:

Opening Balance:

Availed:

Earned:

Balance:

Permanent Address: VII.1. BAGHICHA DHERI TEHAND DISTT MARDAN

City: MARDAN

Domicile: NW - Khyber Pakhtunkhwa

Housing Status: No Official

Temp. Address:

City:

Email:

(130696/08/03,2021/14:22:29) 2) All amounts are in Pak Rupees 3) Errors & omissions excepted

WISAL HAYAT
Advocate High Court
Distt. Courts Mardan

(18)

**Dist. Govt. NWFP-Provincial
District Accounts Office Mardan
Monthly Salary Statement (July-2019)**

Information of Mrs SALMA NAHEED d/w/s of SAID MOHAMMAD

Employee Number: 00131714

CNIC: 1610110708892

NTN: 0

Date of Birth: 07.06.1970

Entry into Govt. Service: 01.09.2004

Length of Service: 14 Years 11 Months

Employment Category: Active Temporary

Grade: SENIOR CERTIFIED TEACHER

80003519-DISTRICT GOVERNMENT KHYBE

Home Address: MR6126-H.MRS G.G.H.S BAGHICHA DHERI MARDAN

Office Section: 003

GPF Section: 001

Cash Center: 0

Employee No: 131714

Interest Applied: Yes

GPF Balance:

346,562.00

Roll Number:

Grants and Allowances:

Pay scale: BPS For - 2017

Pay Scale Type: Civil

BPS: 16

Pay Stage:

Sl. No.	Wage type	Amount	Sl. No.	Wage type	Amount
0001	Basic Pay	40,190.00	1000	House Rent Allowance	2,148.00
1947	Medical Allow: 15% (16-22)	1,451.00	2148	15% Adhoc Relief All-2013	607.00
1999	Adhoc Relief Allow @10%	607.00	2211	Adhoc Relief All 2016 10%	4,019.00
2247	Adhoc Relief All 2017 10%	4,019.00	2247	Adhoc Relief All 2018 10%	4,019.00
2247	Adhoc Relief All 2019 10%	4,019.00			

Deductions - General

Sl. No.	Wage type	Amount	Sl. No.	Wage type	Amount
3016	GPF Subscription: - Rs3340	-3,340.00	3501	Benevolent Fund	
3609	Income Tax	-328.00	3990	Emp. Edu. Fund KPK	
4072	R: Benefits & Death Comp:	-1,089.00			

Deductions - Loans and Advances

Loan	Description	Principal amount	Deduction	Balance
6505	GPF Loan Principal Instal	228,000.00	-19,000.00	19,000.00

Deductions - Income Tax

Payable: 6,558.55 Recovered till July-2019: 328.00 Exempted: 2623.32 Recoverable: 3,607.23

Gross Pay (Rs.): 60,931.00 Deductions: (Rs.): -24,707.00 Net Pay: (Rs.): 36,224.00

Payee Name: SALMA NAHEED

Account Number: PLS000000036571

Bank Details: ALLIED BANK LIMITED, 250611 BALA GARHI BALA GARHI.

Opening Balance: Aailed: Earned: Balance:

Permanent Address: VILL BAGHICHA DHERI TEHAND DISTT MARDAN

City: MARDAN

Domicile: NW - Khyber Pakhtunkhwa

Housing Status: No Official

Temp. Address:


Email:

(13079626.07.2019/12:38:28) 2) All amounts are in Pak Rupees 3) Errors & omissions excepted

WISAL HAYAT
Advocate High Court
Distt Courts Mardan

(16)

To,

Answer 

The Secretary Education,
Khyber Pakhtunkhwa,
Peshawar, Khyber Pakhtunkhwa.

Subject: Application for allowing/granting of the 'Conveyance Allowance' to the Applicant,
According to the reference order/Judgment/Appeal No, 4823/2020, title Mr. Muhammad Ismail
(CT BPS-15) Vs The Government of Khyber Pakhtunkhwa, Through Chief Secretary Khyber
Pakhtunkhwa Peshawar etc., Dated 11/06/2020 of the Honorable Service Tribunal Peshawar.

SIR,

My this application is with the reference to the above mentioned order/ judgment whereby
"Conveyance Allowance" is allowed in view of the said facts , I may also be allowed the said
benefits , Therefore , the applicant submits as under.

- That the applicant namely Miss. Salma Naheed D/o Said Muhammad is a civil servant and presently serving as a Senior Certified Teacher (BPS16) at Govt. Girls high School Baghicha Dheri Mardan.
- That the applicant is serving in education department since 01/09/2004 till to date of service is in her credit.
- That in view of the order judgment /appeal of "Honorable Service Tribunal Peshawar". Dated 11/06/2020, where the Conveyance Allowance has been allowed to Mr. Muhammad Ismail, (CT BPS-15) petitioner. (Copy of which is annexed).
- That under article 4, 25 & 27 of the Constitution of Pakistan 1973, the applicant being a civil servant, is also entitled for the same/equal treatment, and 'Conveyance Allowance may be allowed to the applicant as according to the order / judgment of the august Supreme Court of Pakistan (2009 SCMR 1) in which it has been explained in detail, " If a Tribunal or the Supreme Court decides a point of law relating to the terms and conditions of a civil servant who litigated, and there were other civil servants, who may not have taken any legal proceedings, in such a case, dictates

of justice and rule of good governance demand that the benefit of the said decision be extended to other civil servants also, who may, not be parties to that litigation, instead of compelling them to approach the Tribunal or any other legal forum. All citizens are equal before law and entitled to equal protection of law as per Art.25 of the Constitution.”

- That the Honorable Apex Supreme Court of Pakistan has vide its judgments 2009 SCMR1 and PLD 2010 SC 878, allowed equal treatment. (Copies of which annexed herewith)

Prayers

In view of the above facts and circumstances, it is most graciously prayed/requested that the applicant may be allowed 'Conveyance Allowance' in the light of the Order/Judgment/Appeal of the 'Honorable Service Tribunal Peshawar' and oblige.



Submitted by

Miss. Salma Naheed D/o Said Muhammad

CNIC# 16101-1070889-2

Dated

20/12/2020



WISAL HAYAT
Advocate High Court
Distt. Courts Mardan

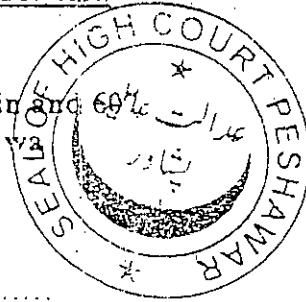
(18)

Annex E

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

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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.

Footnote

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- 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

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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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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

Conclusion

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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 annua 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.

Conclusion
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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Peshawar High Court

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Advocate High Court
Distt. Courts Mardan

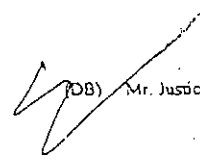
5. Besides, certain other petitions filed by the Teachers /employees of the same department serving from other corners of the province which were decided by Abbottabad Bench of this Court, wherein it was held that the conveyance allowance being part of pay fall in terms and conditions of civil servant 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
"Zarhad"

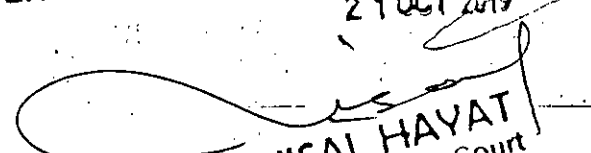

JUDGE

JUDGE


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

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CERTIFIED TO BE TRUE COPY
EXAMINER
Peshawar High Court, Peshawar
Authorized Under Article 87 of
The Constitution of Pakistan Order 1004
21 OCT 2019

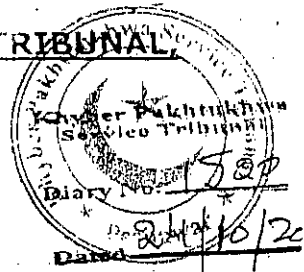

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Advocate High Court
Distt. Courts Mardan

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"Amma F"

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

APPEAL NO. 1452 /2019



Mr. Maqsd Hayat, SCT (BPS-16),
GHS Masho Gagar, Peshawar.....**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 (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 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.

Filed to-day
Registrar
24/10/19

R/SHEWETH:

ATTESTATION FACTS:

- 1- That the appellant is serving in the elementary and secondary education department as Certified Teacher (BPS-15) quite efficiency and up to the entire satisfaction of the 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 20.02.2012 whereby the conveyance allowance for employees

Filed to-day
Registrar
24/10/19

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Appeal No. 1452/2019 (26)
Masood Hayat vs Govt

11.11.2019

Counsel for the appellant present.

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

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

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

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

File be consigned to the record.

Chairman

Notified to be true copy
EXAMINER
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

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ANNOUNCED

11.11.2019

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Advocate High Court
Distt. Courts Mardan

(27)

No. 892

RGL46343267

For Insurance notices see reverse.
Stamps affixed except in case of
uninsured letters of not more than
the initial weight prescribed in the
Post Office Guide or on which no
acknowledgement is due.

Received a registered*
addressed to

S. K. Singh

Date *1/20/72*

*Write here "letter", "postcard", "packet" or "parcel"
Initials of Receiving Officer with the word "insured" before it when necessary.

If insured.

Insured for Rs. (in figures) *1000/-* (in words) *one thousand*

Insurance fee Rs. *12* Ps. *12* (in words) *twelve*

Name and address of sender *S. K. Singh*

Weight *24* Kilo *107* Grams

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Advocate High Court
Distt. Courts *T. N.*

(28)
Track Summary

Delivered

Article Id: rgl46343267



Summary

Article ID rgl46343267

Booking office Peshawar

Delivery office Peshawar GPO

ARTICLE TRACK DETAIL

December 22, 2020

8:05 AM Peshawar

Received at Peshawar DMO

9:54 AM Peshawar

Dispatch from DMO Peshawar to delivery office
Peshawar GPO

11:15 AM Peshawar GPO

Sent out for delivery

1:04 PM Peshawar GPO

Delivered at delivery office Peshawar GPO to
ADDRESSEE


WISAL HAYAT
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بعدالت جناب حسین خیر محسن گواہ کوس شریعت

کورٹ فیس

مورخہ: 2024ء منجانب ریسٹرنٹ

مقدمہ: مس سلمے ناسیر بنام: ڈی گورنمنٹ آف پاکستان

دعویٰ: (ریسٹرنٹ)

جرم:

باعث تحریر آنکہ

مقدمہ مندرجہ عنوان بالا میں اپنی طرف سے واسطے بیروی وجواب دہی وکل کاروائی کے لئے وصول صاحب موصوف کو مقدمہ کی کل کاروائی کا کامل اختیار ہوگا۔ نیز وکیل صاحب کو راضی نامہ و تقریر ثالث و فیصلہ پر حلف دینے جواب دہی اور اقبال دعویٰ اور بصورت ڈگری کرانے اجراء اور وصولی چیک روپیہ اور عرضی دعویٰ اور درخواست ہر قسم کی تصدیق زر اس پر دستخط کرنے کا اختیار ہوگا۔ نیز بصورت عدم بیروی یا ڈگری یک طرفہ یا اپیل کی برآمد ہوگی اور منسوخی دائر کرنے کی اپیل گرانے و نظر ثانی و بیروی کرنے کا اختیار ہوگا اور بصورت ضرورت مذکور کے عمل یا جزوی کاروائی کے واسطے اور وکیل یا مختار قانونی کو اپنی ہمراہ یا اپنی بجائے تقریر کا اختیار ہوگا اور صاحب مقرر شدہ کو بھی جملہ مذکورہ بالا اختیارات حاصل ہونگے اور اس کا ساختہ برداشتہ منظور و قبول ہوگا اور دوران مقدمہ میں جو خرچہ و ہرجانہ التوائے مقدمہ کے سبب سے ہوگا اسکے مستحق وکیل صاحب ہونگے۔ نیز بقایا خرچہ کی وصولی کرتے وقت کا بھی اختیار ہوگا اگر کوئی تاریخ پیشی مقام دورہ پر ہو یا حد سے باہر ہو تو وکیل صاحب پابند ہونگے کی بیروی مقدمہ مذکور لہذا وکالت نامہ لکھ دیا تاکہ سند رہے۔

المرقوم _____ ماہ _____ 2024ء

بد گواہ شہ _____

کے لئے منظور ہے۔

بمقام:

WISAL HAYAT
Advocate High Court
Distt. Courts Mard..n

