


Form- A  
FORM OF ORDER SHEET

Court of \_\_\_\_\_

Execution Petition No. 24/2023

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	12.01.2023	<p>The joint execution petition of Mr. Nihad Ali &amp; 9 others submitted today by Mr. Munfat Ali Yousafzai Advocate. It is fixed for implementation report before Single Bench at Peshawar on _____. Original file be requisitioned. AAG has noted the next date. The respondents be issued notices to submit compliance/implementation report on the date fixed.</p> <p>By the order of Chairman</p> <p> REGISTRAR</p>

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

Implementation Petition No. 24 /2023  
In  
Appeal No. 12889/2020

**NIHAD ALI & OTHERS VS EDUCATION DEPTT  
& OTHERS**

**INDEX**

S.NO.	DOCUMENTS	ANNEXURE	PAGE NO.
1-	Memo of petition	.....	1- <del>2</del> 3
2-	Affidavit	.....	B. 4
3-	Judgment	A	<del>4-11</del> 5-13
4-	Vakalat nama	.....	14

**PETITIONER/APPLICANT**

THROUGH: M. Zaman  
MIR ZAMAN SAFI  
&

M  
Munfat Ali Yousafzai  
Advocates High Court  
Peshawar  
Contact No 0344921367

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

NIHAD ALI & OTHERS

VS

EDUCATION DEPTT  
& OTHERS

Implementation Petition No. 24 /2022

In

Appeal No. 12889/2020

Khyber Pakhtunkhwa  
Service Tribunal

Case No. 2931

Dated 12/01/2023

- 1- Nihad Ali, SCT GHS Bazargi, District Swabi.
- 2- Saleh Said, SST, GHS Bazargi District Swabi.
- 3- Kausar Ali, SST, GHS Bazargi District Swabi.
- 4- Fazale Amin SST, GHS Bazargi District Swabi.
- 5- Munsif Ali Gohar SST, GHS Bazargi, District Swabi
- 6- Sabir Khan SPET, GHS Bazargi, District Swabi.
- 7- Hussain Ahmad STT, GHS Bazargi District Swabi.
- 8- Noor Ul Amin SCT, GHS Bazargi District Swabi.
- 9- Muhammad Iqbal TT, GMS, Batti District Swabi.
- 10- Sadiq Ali CT, GHS Bazargi, District Swabi

.....PETITIONERS

**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.
- 6- The District Account Officer, District Swabi.

..... RESPONDENTS

**IMPLEMENTATION PETITION FOR DIRECTING**  
**THE RESPONDENTS TO OBEY THE JUDGMENT OF**  
**THIS AUGUST TRIBUNAL DATED 12.07.2021 IN**  
**LETTER AND SPIRIT**

**Respectfully Sheweth:**

- 1- That the petitioner filed Service appeal bearing No. 12889/2020 alongwith other connected appeals against the illegal and unlawful deduction of conveyance allowance during the summer/winter vacations.
  
- 2- That the appeals mentioned above were finally heard by this august Tribunal on 12.07.2021 and were decided in favor of the petitioners vide judgment dated 12.07.2021 (*Judgment-in-rem*) with the view that ***“In light of the above discussion, the appeal in hand as well as clubbed appeals mentioned in the Appendix-A stands allowed and the respondents are directed not to deduct the conveyance allowance from the salaries of the appellants during the summer/winter vacations. The conveyance allowance if any, already deducted should be reimbursed to the appellants forthwith”***. Copy of the judgment is attached as annexure.....A.
  
- 3- That after obtaining attested copy of the judgment dated 12.07.2021 the petitioners and the other similar employees submitted the same before the respondents for implementation but till date the judgment of this Tribunal has not been implemented by the respondents in letter and spirit.
  
- 4- That the petitioner has no other remedy but to file this implementation petition.

It is therefore, most humbly prayed that on acceptance of this implementation petition the respondents may very kindly be directed to implement the judgment dated 12.07.2021 in letter and spirit, and return/pay all the deducted amount of conveyance allowance to the

employees. Any other remedy which this august Tribunal deems fit that may also be awarded in favor of the petitioner.

Dated: 10.01.2023.

**Petitioners**

Nihad Ali, SCT GHS Bazargi *Nihad*

Saleh Said, SST, GHS Bazargi *Said*

Kausar Ali, SST, GHS Bazargi *Ali*

Fazale Amin SST, GHS Bazargi *Amin*

Munsif Ali Gohar SST, GHS Bazargi, *Munsif*

Sabir Khan SPET, GHS Bazargi *Sabir*

Hussain Ahmad STT, GHS Bazargi *Hussain*

Noor Ul Amin SCT, GHS Bazargi *Noor*

Muhammad Iqbal TT, GMS, Batti *M-Iqbal*

Sadiq Ali CT, GHS Bazargi *Sadiq*

**Through:**

*M-Z*  
**Mir Zaman Safi**

& *(M)*

**Munfat Ali Yousafzai,  
Advocates**

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

Implementation Petition No. \_\_\_\_\_/2022

In

Appeal No. 12889/2020

**NIHAD ALI & OTHERS VS EDUCATION DEPTT:  
& OTHERS**

**AFFIDAVIT**

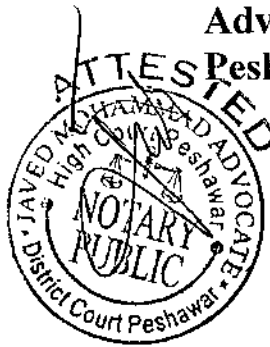
I **Mir Zaman Safi, Advocate** on behalf of the petitioner, do hereby solemnly affirm that the contents of this **implementation petition** are true and correct to the best of my knowledge and belief and nothing has been concealed from this Honorable Tribunal.

  
MIR ZAMAN SAFI

&

Munfat Ali   
Advocates High Court

Peshawar



(5) "A"-5

19

**BEFORE THE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL,**  
**PESHAWAR.**

Service Appeal No. 12889/2020

Date of Institution ... 27.10.2020

Date of Decision ... 12.07.2021

Jalalud Din, SCT (BPS-16),  
GHSS Asbahr, Dir Lower

... (Appellant)

**VERSUS**

Government of Khyber Pakhtunkhwa through Chief Secretary,  
Khyber Pakhtunkhwa, Peshawar and four others.

... (Respondents)

Mr. NOOR MUHAMMAD KHATTAK,  
Advocate

For appellant.

MR. JAVED ULLAH,  
Assistant Advocate General

For respondents.

MR. SALAH-UD-DIN  
MR. ATIQ-UR-REHMAN WAZIR

MEMBER (JUDICIAL)  
MEMBER (EXECUTIVE)

**JUDGMENT:**

SALAH-UD-DIN, MEMBER:- Through this single judgment, we intend to dispose of the instant Service Appeal as well as the clubbed appeals mentioned in appendix-A consisting of 141 sheets, appended with this judgment as its part, as all the appeals involve similar questions of law and facts.

2. The appellant has filed the instant Service Appeal under Section-4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974, against the impugned action of the respondents, making deduction of conveyance allowance from the salaries of the appellant during the summer/winter vacations and not responding

6



to the departmental appeal of the appellant within the statutory period of ninety days.

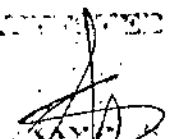
3. In order to have a clear picture of the matter in issue, the admitting note dated 18.06.2021 of the instant appeal is reproduced as below:-

"Counsel for the appellant present.

Due to influx of abnormally large number of service appeals by individual appellants against the same set of respondents, and including one and the same subject matter with common questions of fact and law; the Registrar of this Tribunal, vide order dated 27.05.2021 on a miscellaneous application, was required to prepare a chronological list of all the appeals obviously for the sake of their management in a way to make their disposal doable by a single judgment instead of hearing each and every appeal separately for disposal by separate orders. For merger of the order dated 27.05.2021, contents thereof are reproduced below:-

*Application for early hearing has been put up by the Reader with file. Counsel for the appellant present and heard.*

*Learned counsel for the appellant seeks early hearing of Appeals No. 13797/2020 and 38 others. It has been brought into the notice of this Bench that this appeal pertains to grievance of the appellant relating to grant of Conveyance Allowance and thousands of similar appeals are pending before this Tribunal at preliminary*

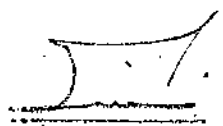
APPROVED  
  
Registrar  
Service Tribunal



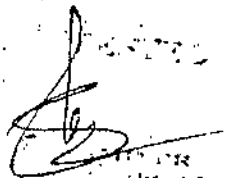
7



hearing stage. It would result in abuse of the process of Tribunal, if the similar appeals are separately heard despite being the similarity of claim in all the appeals. Therefore, it would be in the fitness of things to club all appeals with one the oldest in order of chronology in light of the time of institution. The Worthy Registrar of this Tribunal has been called and assigned the duty that list of all the appeals be prepared in chronological order and all the appeals be clubbed with the oldest one, and be submitted for preliminary hearing before this Bench on 18.06.2021, irrespective of the previous dates given on the diary. This application is disposed of accordingly.

The order dated 27.05.2021 as reproduced above has been placed on this file vide order dated 17.06.2021, as the appeal in this file is the oldest in chronological order from the date of institution. Rest of appeals enumerated/ described in the chronological list making part of this file, due to commonalty of the subject matter and questions of law and facts, are clubbed with the appeal at hand for disposal conjointly to prevent multiplicity of processes; when judgment passed in a single appeal will enable to settle the particular issue of conveyance allowance similarly in respect of the other appellants who have filed appeals individually because of procedural constraints.

Preliminary arguments have been heard. A brief history of Conveyance Allowance as

  
 Registrar  
 Tribunal

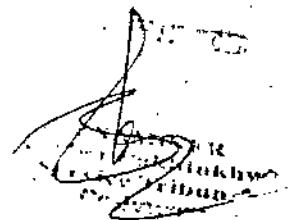
8

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submitted by learned counsel for the appellant has been placed on this file. The copy of judgment dated 11.11.2019 in Service Appeal No. 1452/2019 titled "Maqsad Hayat Versus the Government" has also been annexed with the said brief. According to which a Single Bench of this Tribunal disposed of the said appeal while relying on the judgment of the Hon'ble Peshawar High Court Peshawar in Writ Petition No. 3162-P/2019 with the direction for implementation of the said judgment by the respondents within shortest possible time. The course was also kept open for the appellant to seek remedy in accordance with law, in case his grievance is not redressed by the respondents within reasonable time. There is no cavil to the resolution of matter by judgment dated 11.11.2019 but the likelihood of multiplicity of proceedings cannot be ruled out unless a self-speaking judgment is passed by the Tribunal under due course of law to settle the matter once for all.

The proceedings for hearing will take-place in appeal in hand and shall be deemed to have been applied to clubbed appeals without repetition/replication.

During pendency of this appeal, if any fresh appeal is instituted involving similar questions of law and facts relating to the Conveyance Allowance against the same departmental authorities, office shall also club the same with this appeal.



Handwritten signature and stamp of the Tribunal.

9



*Points raised need consideration. The appeal, alongwith all clubbed appeals, is admitted to regular hearing. The appellant in this appeal is directed to deposit security and process fee within 10 days. Thereafter, notices of this appeal alongwith list of clubbed appeals be given to the respondents but their comments/written reply as filed in connection with appeal in hand shall be deemed to have been filed in all the clubbed appeals. There is no need of filing reply/comments individually in each and every clubbed appeal. Similarly, the appellants in all the clubbed appeals are exempted from the deposit of security and process fee. The respondents shall submit written reply/comments, as discussed above, in office within 10 days of the receipt of notices positively. If the written reply/comments are not submitted within the stipulated time, the office is directed to submit the file with a report of non-compliance. File to come up for arguments on 12.07.2021 before the D.B"*

4. Precise facts of the instant Service Appeal as well as the clubbed Service Appeals are that the appellants are employees of Education Department, who were receiving 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 for the period of summer as well as winter vacations on the ground that as the said vacations is leave period, therefore, the employees are not entitled to be paid conveyance allowance during the summer/winter vacations. After availing the remedy of departmental appeal, the appellants have approached

12/07/2021  
  
Service Tribunal  
Punjab

10



this Tribunal through filing of the appeals for redressal of their grievance.

5. Comments on behalf of respondents submitted, which are placed on file.

6. Learned counsel for the appellant has contended that conveyance allowance is being paid by both provincial as well as central government to the civil servants, in order to accommodate them in their travel expenses incurred by them in travelling to and from the workplace; that the summer and winter vacations are not granted upon the request of the employees, rather they remain available for any call of duty, therefore, the respondents are wrong in considering the summer and winter vacations as kind of leave for deduction of conveyance allowance for the said period; that the civil servants of vacation departments are allowed only 01 leave in a month and thus earned leave for 12 days per year is credited to their account, while civil servants of other departments can avail 04 leave in a month, making 48 days earned leave as credited to their account, therefore, the respondents are required to consider the said aspect, while dealing with conveyance allowance of the appellants; that action of the respondents is in utter violation of Article-4 and Article-25 of the Constitution of Islamic Republic of Pakistan 1973; that conveyance allowance is part and parcel of salary/pay and the appellant is entitled to its payment, even during the period of summer/winter vacations. Reliance was placed on an unreported judgment of august Peshawar High Court, Peshawar in Writ Petition No. 3162-P/2019 titled "Akhtar Hussain and 607 others Versus Government of Khyber Pakhtunkhwa", order/judgment dated 11.11.2019 of Khyber Pakhtunkhwa Service Tribunal rendered in Service Appeal No. 1452/2019 titled "Maqсад Hayat Versus Government of Khyber Pakhtunkhwa", judgment of Federal Service Tribunal in

Khyber Pakhtunkhwa  
Service Tribunal

11



Appeal No. 1888(R) CS/2016, 2020 PLC (C.S) 741 [Supreme Court (AJ&K)] and 2020 PLC (C.S) 747.


7. Respective learned counsel for the appellants in the clubbed Service Appeals have adopted the arguments advanced by the learned counsel for the appellant in the instant appeal.

8. Conversely, learned Assistant Advocate General for the respondents has contended that the teaching staff remains on leave during the period of winter and summer vacations and do not perform any duty during the said period, therefore, they are not entitled to any conveyance allowance during the summer/winter vacations; that being employees of vocational department, the appellants cannot claim any conveyance allowance during the vacation period and in respect of conveyance allowance, they cannot be treated at par with civil servants of non vocational departments. Reliance was placed on 2020 SCMR 1689 and 2020 SCMR 98.

9. We have heard the arguments of learned counsel for the appellants as well as learned Assistant Advocate General for the respondents and have perused the record.

10. The controversy, which needs to be resolved, is with regard to the issue as to whether the appellants, who are employees of vacation department, are entitled to payment of conveyance allowance during the period of summer/winter vacation or not. In order to appreciate the matter in a proper legal way, it would be advantageous to reproduce Clause-(b) of FR-82 as below:-

*"(b) Vacation counts as duty but the period of total leave in rules-77, 81 (a) and 81 (b) should ordinarily be reduced by one month for each year of duty in which the government servant availed himself of the vacation. If a part only of the vacation has been taken in any year, the period to be*

  
Assistant Advocate General  
Services Tribunal

12



*deducted will be a fraction of a month equal to the proportion which the part of the vacation taken bears to the full period of the vacation".*

In light of Clause (b) of FR-82, it is crystal clear that vacation counts as duty. Even during vacation, the employees of Education Department remain on call for any duty assigned to them. Moreover, the summer vacations are not granted on demand or option of the employees of the Education Department, rather the period of their earned leave is curtailed by one month for each year. The respondents are wrong in considering the summer/winter vacations as kind of leave. The conveyance allowance is admissible to the government servants who are on duty and in view of clause (b) of FR-82, the summer/winter vacation period also count as duty, therefore, the respondents are not justified in depriving the employees of the Education Department from the receipt of conveyance allowance during summer/winter vacations. The deduction of conveyance allowance from the salaries of the appellants and other teaching staff during summer/winter vacations is in violation of their rights available to them under the Constitution of Islamic Republic of Pakistan 1973. Reliance is placed on 2020 PLC (C.S) 741. The judgment dated 17.10.2017 passed by Federal Service Tribunal in identical nature appeals bearing No. 289 to 298 (R) C.S/2015 has been upheld by august Supreme Court of Pakistan vide order dated 13.07.2018 passed in CPs No. 4957 to 4966 of 2017. Furthermore, this Tribunal has also granted such relief to other employees of Education Department in identical nature appeals.

11. In light of the above discussion, the appeal in hand as well as clubbed appeals mentioned in the appendix-A stands allowed and the respondents are directed not to deduct the conveyance allowance from the salaries of the appellants during summer/winter vacations. The conveyance allowance if any,

13



already deducted should be reimbursed to the appellants forthwith. The instant judgment shall be considered as judgment *in rem*, therefore, the respondents should pay the said allowance to all similarly placed employees of the Education Department so as to avoid the discrimination under Article-4 & 25 of the Constitution of Islamic Republic of Pakistan as well as unnecessary litigation. Attested copy of this judgment be placed on files of all the clubbed appeals mentioned in appendix-A. Parties are left to bear their own costs. This file as well as files of clubbed Service Appeals mentioned in appendix-A be consigned to the record room.

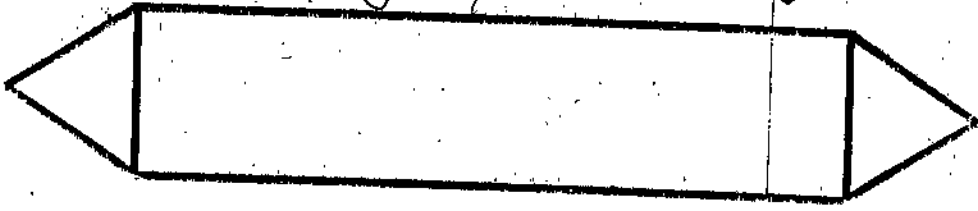
ANNOUNCED  
12.07.2021

(SALAH-UD-DIN)  
MEMBER (JUDICIAL)

(ATIQ-UR-REHMAN WAZIR)  
MEMBER (EXECUTIVE)

Handwritten notes and dates: 28/5/22, 23/5/22, 23/5/22, 23/5/22, 23/5/22

بعدالت



لہذا دس وعدہ 2ء منجانب  
بنام

بنام  
محکمات و علوم

باعث تحریر آنکہ

مورخہ

مقدمہ

دعویٰ

جرم

مقدمہ مندرجہ عنوان بالا میں اپنی طرف سے واسطے پیروی و جواب دہی وکل کاروائی متعلقہ

کیلئے منصفہ ملکی کو

آن مقام میں

مقرر کر کے اقرار کیا جاتا ہے۔ کہ صاحب موصوف کو مقدمہ کی کل کاروائی کا کامل اختیار ہوگا۔ نیز  
دکیل صاحب کو راضی نامہ کرنے قی تقرر ثالث و فیصلہ پر حلف دیئے جواب دہی اور اقبال دعویٰ اور  
بصورت ڈگری کرنے اجراء اور وصولی چیک و روپیہ ارضی دعویٰ اور درخواست ہر قسم کی تصدیق  
زرائیں پر دستخط کرانے کا اختیار ہوگا۔ نیز صورت عدم پیروی یا ڈگری یکطرفہ یا اپیل کی برآمدگی  
اور منسوخی نیز دائر کرنے اپیل نگرانی و نظر ثانی و پیروی کرنے کا محتاج ہوگا۔ از بصورت ضرورت  
مقدمہ مذکور کے کل یا جزوی کاروائی کے واسطے اور وکیل یا مختار قانونی کو اپنے ہمراہ یا اپنے بجائے  
تقرر کا اختیار ہوگا۔ اور صاحب مقرر شدہ کو بھی وہی جملہ مذکور با اختیارات حاصل ہوں گے  
اور اس کا ساختہ پر داختم منظور و قبول ہوگا دوران مقدمہ میں جو خرچہ ہر جانہ التوائے مقدمہ ہوں گے  
سب سے وہوگا۔ کوئی تاریخ پیشی مقام دورہ پر ہو یا حد سے باہر ہو تو وکیل صاحب پابند ہوں گے۔  
کہ پیروی مذکور کریں۔ لہذا وکالت نامہ لکھ دیا کہ سندر ہے۔

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المرقوم

واہ العبد

د گ

العبد



Sind

سندھ

Ali

گوند علی

Arin

فضل اسین

Munif

منیف علی پور

S. Khan

س م خان

Hassan

حسن الہ

Mud

نوالہ سید

M. Iqbal

ایم اقبال

Sadiq

سادیق علی