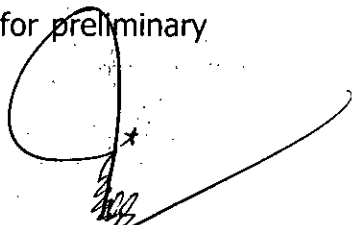


31.01.2022

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.- 7477 /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. Ismat Bano 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 7477/2021

Miss. Ismat Bano (Appellant)

VERSUS

The Government of Khyber Pakhtunkhwa and Others (Respondents)

INDEX

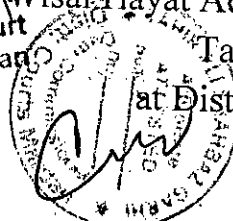
S.No	Description	Annexure	Pages
1	Memorandum of Appeal		P1-6
2	Affidavit		P 7
3	Addresses of Parties		P 8
4	Application for condonation of delay		P 9-10
5	Copy of CNIC	"A"	P 11
6	Copy of the notification dated 20/12/2012 and its better copy	"B"	P12-13
7	Copy of the salary Slips	"C"	P14-15
8	Copy of the 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. Ismat Bano, through

WISAL HAYAT, Advocate High Court
Advocate High Court
Distt. Courts Mardan
Tahir Khan Advocate
at District Courts Mardan



BEFORE THE HONOURABLE KHYBER
PAKHTUNKHWA SERVICE TRIBUNAL

PESHAWAR

S, A 7477/2021

Khyber Pakhtunkhwa
Service Tribunal

Diary No. 7663

Dated 29/9/2021

Miss. Ismat Bano D/o Ghulam Hussain, R/o Village & Post Office Baghicha Dheri District Mardan, Senior English Teacher (BPS16) 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.

..... Respondents

APPEAL UNDER SECTION 4 OF THE KHYBER
PAHTUNKHWA 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.

Filed to-day

Registrar

29/9/21

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 English 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 BPS 1 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.

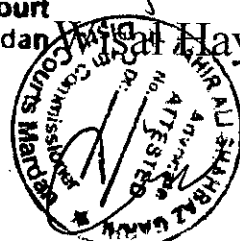
J) That the cause of action accrues to civil servant every month when he is paid salary deficiently, hence, limitation does not run in case of fixation of salary.


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: 10-08-2021


WISAL HAYAT
 Advocate High Court
 Distt. Courts Mardan



 **Appellant**
 Miss. Ismat Bano, 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. Ismat Bano

Versus

The Government of Khyber Pakhtunkhwa and others

Affidavit

Miss. Ismat Bano D/o Ghulam Hussain R/o Village & post office

Baghicha Dheri District Mardan, Senior English 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-1998 Date 30-8-21

Deponent

Ismat
Miss. Ismat Bano

CNIC#16101-6835084-2

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

S, A -----/2021

Miss. Ismat Bano

Versus

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

Addresses of Parties

Appellant:

Miss. Ismat Bano D/o Ghulam Hussain, R/o Village & Post Office Baghicha
Dheri District Mardan, Senior English 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


Ismat

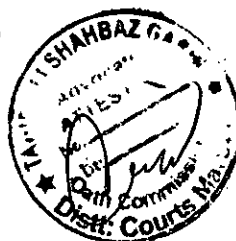
Miss. Ismat Bano through

Wisal Hayat Advocate High Court,

Tahir Khan Advocate at

Distt Courts Mardan


WISAL HAYAT
Advocate High Court
Distt. Courts Mardan



BEFORE THE HONOURABLE KHYBER
PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

S, A -----/2021

Miss. Ismat Bano D/o Ghulam Hussain

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.

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.

Wisal Hayat
WISAL HAYAT
Advocate High Court
Distt. Courts Mardan

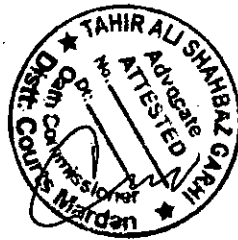
Ismat Appellant

Miss. Ismat Bano, through

Wisal Hayat Advocate High Court

Tahir Khan Advocate

at Distt Courts Mardan



(11)

Anna A 99



PAKISTAN National Identity Card



Name
Ismat Bano

Father Name
Ghulam Hussain

Gender | Country of Stay
F | Pakistan

Identity Number | Date of Birth
16101-6835084-2 | 01.04.1973

Date of Issue | Date of Expiry
28.06.2018 | 28.06.2028



Holder's Signature

16101-6835084-2

اسم: اسماعیل




16101-6835084-2

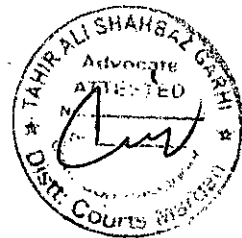
اسم: اسماعیل

Uzma K. Mehmood
Registrar General of Pakistan

101831004300
130-93-035772

گمشدہ کارڈ ملنے پر قریبی لیو ایکس میں ڈال دیں


WISAL HAYAT
Advocate High Court
Distt: Courts Mardan



BETTER COPY PAGE

GOVERNMENT OF KHYBER PAKHTUNKHWA
FINANCE DEPARTMENT
(REGULATION WING)

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

From

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

Annex "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.

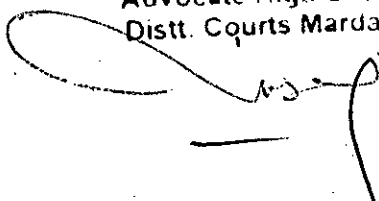
Your Faithfully

(Sahibzada Saeed Ahmad)
Secretary Finance

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

ATTESTED

WISAL HAYAT
Advocate High Court
Distt. Courts Mardan





GOVERNMENT OF KHYBER PAKHTUNKHWA
FINANCE DEPARTMENT
(REGULATION WING)

NO. FD/SG(SR-1178-52/2012
Dated Peshawar the: 26-12-2012

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,

(Shahbaz Saad Ahmad)
Secretary Finance

Encls: NO. FD/SO/SR-1178-52/2012

Dated Peshawar the 20th December, 2012

A Copy is forwarded for information to the:-

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

WISAL HAYAT
Advocate High Court
Distt. Courts Mardan

(IMTAZ AYUB)

Additional Secretary (Reg)

ATTESTE

(14)

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



ANNA:
"CC"

Personal Information of Miss ISMAT BANO d/w/s of GHULAM HUSSAIN

Personnel Number: 00130401 CNIC: 1610168350842 NTN: 0
Date of Birth: 01.04.1973 Entry into Govt. Service: 10.03.1998 Length of Service: 22 Years 11 Months 020 Days

Employment Category: Vocational Temporary

Designation: Senior English 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: EDUMR012265 Interest Applied: Yes **GPF Balance: 557,164.00**

Vendor Number: -

Pay and Allowances: Pay scale: BPS For - 2017 Pay Scale Type: Civil BPS: 16 Pay Stage: 14

Wage type		Amount	Wage type		Amount
0001	Basic Pay	40,190.00	1000	House Rent Allowance	2,727.00
1210	Convey Allowance 2005	5,000.00	1947	Medical Allow 15% (16-22)	1,406.00
2148	15% Adhoc Relief All-2013	775.00	2199	Adhoc Relief Allow @10%	551.00
2211	Adhoc Relief All 2016 10%	2,868.00	2224	Adhoc Relief All 2017 10%	4,019.00
2247	Adhoc Relief All 2018 10%	4,019.00	2264	Adhoc Relief All 2019 10%	4,019.00

Deductions - General

Wage type		Amount	Wage type		Amount
3016	GPF Subscription	-3,340.00	3501	Benevolent Fund	-800.00
3609	Income Tax	-584.00	3990	Emp. Edu. Fund KPK	-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: 8,850.35 Recovered till February-2021: 4,302.00 Exempted: 2212.51 Recoverable: 2,335.84

Gross Pay (Rs.): 65,574.00 Deductions: (Rs.): -5,524.00 Net Pay: (Rs.): 60,050.00

Payee Name: ISMAT BANO

Account Number: PLS000000006438

Bank Details: HABIB BANK LIMITED, 220289 SHAHBAZ GARHI SHAHBAZ GARHI, MARDAN

Leaves: Opening Balance: Aailed: Earned: Balance:

Permanent Address: VILL. AND PO BAGHICHA DHERI

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

(15)

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



Personal Information of Miss ISMAT BANO d/w/s of GHULAM HUSSAIN

Personnel Number: 00130401 CNIC: 1610168350842 NTN: 0
Date of Birth: 01.04.1973 Entry into Govt. Service: 10.03.1998 Length of Service: 21 Years 04 Months 023 Days

Employment Category: Vocational Temporary

Designation: Senior English 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: EDUMR012265 Interest Applied: Yes GPF Balance: 386,493.00

Vendor Number: -

Pay and Allowances: Pay scale: BPS For - 2017 Pay Scale Type: Civil BPS: 16 Pay Stage: 12

Wage type		Amount	Wage type		Amount
0001	Basic Pay	37,150.00	1000	House Rent Allowance	2,727.00
1947	Medical Allow 15% (16-22)	1,406.00	2148	15% Adhoc Relief All-2013	775.00
2199	Adhoc Relief Allow @10%	551.00	2211	Adhoc Relief All 2016 10%	2,868.00
2224	Adhoc Relief All 2017 10%	3,715.00	2247	Adhoc Relief All 2018 10%	3,715.00
2264	Adhoc Relief All 2019 10%	3,715.00			0.00

Deductions - General

Wage type		Amount	Wage type		Amount
3016	GPF Subscription - Rs3340	-3,340.00	3501	Benevolent Fund	-800.00
3609	Income Tax	-189.00	3990	Emp.Edu. Fund KPK	-150.00
4004	R. Benefits & Death Comp	-1,089.00	5011	Adj Conveyance Allowance	-4,059.00

Deductions - Loans and Advances

Loan	Description	Principal amount	Deduction	Balance

Deductions - Income Tax

Payable: 3,770.20 Recovered till July-2019: 189.00 Exempted: 1507.59 Recoverable: 2,073.61

Gross Pay (Rs.): 56,622.00 Deductions: (Rs.): +9,627.00 Net Pay: (Rs.): 46,995.00

Payee Name: ISMAT BANO

Account Number: PLS000000006438

Bank Details: HABIB BANK LIMITED, 220289 SHAHBAZ GARHI SHAHBAZ GARHI MARDAN

Leaves: Opening Balance: Availed: Earned: Balance:

Permanent Address: VILL AND PO BAGHICHA DHERI

City: MARDAN

Domicile: NW - Khyber Pakhtunkhwa

Housing Status: No Official

Temp. Address:

City:

Email:

(130696/26.07.2019/12:38:28) 2) All amounts are in Pak Rupees 3) Errors & omissions excepted

WISAL HAYAT
Advocate High Court
Distt. Courts Mardan

(16)

Annex ee D 99

To,

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. Ismat Bano D/o Ghulam Hussain is a civil servant, and presently serving as a Senior English Teacher (BPS16) at Govt. Girls high School Baghicha Dheri Mardan .
- That the applicant is serving in education department since 10/03/1998 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 articles 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

Ismat

Miss. IsmatBano D/o Ghulam Hussain

CNIC# 16101-6835084-2

1 Dated

20/12/2020

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Advocate High Court
Distt. Courts Mardan

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Advocate High Court
Distt. Courts Mardan

Annex E (18)

Judgment Sheet

IN THE PESHAWAR HIGH COURT, PESHAWAR.
JUDICIAL DEPARTMENT.

Writ Petition No. 3162-P/2019 Akhtar Hussain and 60 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.

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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.

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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 Maqsd 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

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

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

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

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

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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
Jarhad

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

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Authorized Under Article 57 of
The Constitution of Pakistan Order 1998
21 OCT 2019

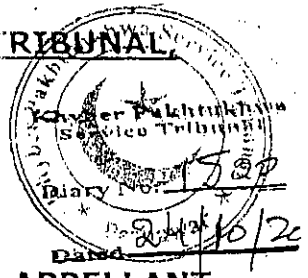
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"Amma F"

**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:

ATTENTION 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

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Registrar
24/10/19

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Appeal No. 1452/2019
Masood Hayat vs Govt

(26)

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

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11.11.2019

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Advocate High Court
Distt. Courts Maroon

verified to be true copy
EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

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No. 890

For RGL46343265

Rs. Ps.

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 & registered*
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Date Stamp

Initials of Receiving Officer

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

Insured for Rs. (in figures)

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If insured.

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Track Summary

Delivered

Article Id: rgl46343265



Summary

Article ID	rgl46343265
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
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بعدالت صاحب صبر میں صبر بچھو نخواستہ اس کی پیروی سے

کورٹ فیس

2021ء منجانب ریسٹرنٹ

مورخہ: مس عیبت خانو بنام: لورینٹ آف کک و مین

دعویٰ: ریسٹرنٹ

جرم:

باعث تحریر آنکے

مقدمہ مندرجہ عنوان بالا میں اپنی طرف سے واسطے پیروی و جواب دہی وکل کاروائی متعلقہ آن مقام کے لئے وصول شدہ طالع نامہ کے لئے مقرر کر کے اقرار کیا جاتا ہے کہ صاحب موصوف کو مقدمہ کی کل کاروائی کا کامل اختیار ہوگا۔ نیز وکیل صاحب کو راضی نامہ و تقرر 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 پیروی یا ڈگری یک طرفہ یا اپیل کی برآمد ہوگی اور منسوخی دائر کرنے کی اپیل نگرانی و نظر ثانی و پیروی 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 تقرر کا اختیار ہوگا اور صاحب مقرر شدہ کو بھی جملہ مذکورہ بالا اختیارات حاصل ہونگے اور اس کا ساختہ برداختہ منظور و قبول ہوگا اور دوران مقدمہ میں جو خرچہ دہر جانہ 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 پیروی مقدمہ مذکور لہذا وکالت نامہ لکھ دیا تاکہ سندر ہے۔

المرقوم _____ ماہ _____ 2021ء

بد گواہ شدہ الع بد

کے لئے منظور ہے۔

شور

بمقام:

WISAL HAYAT
Advocate High Court
Distt. Courts Mardan

