167. In order to nullify the judgment of the Court, unless basis for judgment in favour of a party is not removed, it could not affect the rights of a party in whose favour the es la à same was passed. The issue of effect of nullification of judgment hes already been discussed in the case of Mobashir Hassan reported in (PLD 2010 SC 265), Para-76 discusses the 1 1 1 effect of nullification of a judgment by means of a legislation. In the said case, the view formed is identical to the one in the case of <u>Indira Nehro</u> Gandhi V. Raj Narain (AIR 1975 SC 2299) and Fecto Belarus Tractor Ltd. V. Government of Pakistan through Finance Economic Affairs 8 I || and others (PLD 2005 SC 605) and it was observed that the legislature cannot nullify the effect of the judgment and there are certain limitations placed on its powers including the one i.e. by amending

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the law <u>with retrospective effect on</u> <u>the basis of which the order or</u> <u>judgment has been passed thereby</u> <u>removing basis of the decision.</u>" (Underlining are ours for emphasis)

14.

In the petitions in hand the Government

of Pakhtunkhwa by means of issuing notification dated 03.01.2009 had nullified the effect of notification dated 11.08.1991 and same notification dated 03.01.2009 had been declared null and void by this Court in judgment passed in WP No.3600/2010 dated 28.10.2010 and Honourable of Supreme Court in above referred CPLAs No.525 and 526 of 2007. So the petitioners were and are entitled for the benefits arising out of notification dated 11.08.1991 and the judgments passed by this Court, therefore, respondents were not legally authorized to deprive the petitioners from the beneficial effects of the aforesaid notification dated 11.08.1991 and aforesaid judgments through impugned ibid Act, IX of 2012 before first removing the cause that is entitlement and the aforesaid beneficial effects of judgments in the impugned notification dated 03.01.2009 and through the

impugned ibid Cessation of Advance Increments Act-IX of 2012.

Thus in view of above discussion, we are 15. of the firm view that by promulgating impugned piece of legislation and giving it retrospective effect is nothing but to destroy, annul and make the judgments of this Court as well as of Honourable Supreme Court as effectless, therefore, to the extent of Section 2 by giving it retrospective effect before 1.12.2001 is declared null and void so is hereby expunged and struck down from the aforesaid impugned Act IX of 2012. Hence, these petitions are allowed and the respondents are directed to provide them the benefits of two advance increments according to notification dated 11.08.1991 on attaining higher qualifications during service within the period of two months from the receipt of this judgment according to prescribed manner under the law then in field.

<u>Announced:</u> 08.06.2017

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Annex=I

Dated 10.12.2014

Office of the Accountant General

Khyber Pakhtunkhwa Peshawar Phone: 091 9211250-53

No. PFP/R.B.S.2011/DIK/2014-15/248 To,

The Accounts Officer, HAD Section.

Subject:

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STOPPAGE OF RECOVERY AS WELL AS ALLOWING ADVANCE INCREMENTS ON MA/MSC. $\rho - 2.59$ C

Please refer to your Memo No.HAD-24(76)Swat/Vol-X/2014-15 dated 16.1.2015 on the subject noted above.

2. As you are aware of the facts that appointment to the post of CT made through different-method_of_recruitment>(i) from PTC (Now PST) being FA/FSc/D.com and (ii) directly on the basis of FA/ FSc/D.com qualification in IBPS 09 Before 1.6.1991) those PST teachers whose appointment were made on the basis of Metric Plus existing professional qualification granted 02 and 03 advance increments on possessing or acquiring higher qualification i.e. FA,FSc/D com and BA/BSc/B.com respectively while in the case of CT whose appointment were made 03 advance increments on possessing or acquiring higher qualification granted 03 advance increments on possessing or acquiring higher qualification granted 03 advance increments on possessing or acquiring higher for the case of CT whose appointment advance increments on possessing or acquiring BA/BSc/B.com vide Finance professional qualification granted 03 advance increments on possessing or acquiring BA/BSc/B.com vide Finance professional qualification granted 03 advance increments on possessing or acquiring BA/BSc/B.com vide Finance professional qualification granted 03 advance increments on possessing or acquiring BA/BSc/B.com vide Finance professional fuel finance increments on possessing or acquiring BA/BSc/B.com vide Finance poster for the form of the form

3. After introduction of RBPS-1/6/1991, those PTC teachers who have passed FA/FSc/D.com in the Second Division were allowed BPS-09 and BPS-14-tothose CT teachers who have passed BA/BSc/B.com in the Second Division. In this way the CT teachers who joined the Education Deptt: in the capacity of PTC and later on appointed to the post of CT already drawn 05 advance increments on Dasis of FA/FSc/D.com plus BA/BSc.B.com and CT, teacher whose appointment made on the basis of FA/FSc/D.com achieved 03 advance increments (on basis of BA/BSc.B.com) in light of Finance Deptt: letter(dated 24.08.1983) therefore, those CT teachers who have already availed 05 increments (as PST) and 03 increments D:\My Document\CM & | Section\Complaint Seat\Pay Fixation\stoppage of recodec) are entitled only for one increment on possessing or acquiring Marker / M.com qualification as regards those employees whose appointment use made on the basis of BA/BSc.B.com in BPS-14 and not availed any advance informents are entitled only for 02 advance increments on MA in light of Finance (Deptt: letter No.(PRC)1-1/89 dated 07.08.1991.

4. As regards Arabic teacher whose appointed made on the basis of honor in Arabic and granted BPS-14 on BA/BSc.B.com Second Division are entitled for two advance increments on possessing or acquiring MA/MSc/M.com while those teacher whose appointment made on the basis of MA Arabic or Shahadatul Alamia from the recognized Madaris are not entitled for any advance increments on MA/ MSc/M.com but the Education Deptt: granted 04 advance increments to the CT and Arabic teacher on acquiring MA/MSc/M.com qualification which are over and above of the entitlement in light of the Finance Deptt: letter dated 11.8.1991 as well as judgment made by the honorable Supreme Court of Pakistan in Civil Petition No.1425 of 2011.(copy enclosed).

5. The subject issue referred to the Pay Fixation Party has been examined and reached to the conclusion that as per contents of Para 2 (2) of the <u>Khyber Pakhtunkhwa</u>, <u>Gessation Of Payment Of Arrears On Advance Increments</u> On Higher Education Qualification <u>Act 2012</u> clearly indicate that recovery of advance increments-paid-to-the Gove-employees on acquiring higher qualification in light of any order made, instruction issued decision, Judgment or orders of any courts or tribunal, including High Court or the Supreme Court, may not be recovered from the recipients Govt: employees as these were paid validly <u>The Pay</u> Fixation Party is of the view that the advance increments availed over and above their entitlement as explained in the preceding Paras has to be reduced & brought to the actual pay in light of Finance Deptt letter dated 15:12:2010.

6. It is requested that Finance Deptt: may also be advised to share the view of the Pay Fixation Party with the law Deptt: for their opinion and issue clear instruction so that the doors of litigation closed for ever.

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Annex=1



GOVERNMENT OF KHYBER PAKHTUNKHWA FINANCE DEPARTMENT (REGULATION WING)

NO. FD (SOSR-1) 2-123/2015 Dated Peshawar the: 01-09-2015

The Secretary to Govt. of Khyber Pakhtunkhwa, Law, Parliamentary Affairs & Human Rights Deptt, Peshawar.

Subject:

To:

APPEAL OF CT TEACHERS FOR STOPPING RECOVERIES BEING MADE ON ACCOUNT OF ADVANCE INCREMENTS GRANTED ON HIGHER EDUCATIONAL QUALIFICATION.

Dear Sir,

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I am directed to enclose herewith a self-explanatory application alongwith its enclosures received from certain teachers of Khyber Pakhtunkhwa as well as reply / comments of AG Office (communicated through their letter No.HAD-24(76)/Vol-X/Swat/2014-15/3391 dated 07-04-2015) thereon regarding the subject cited above and to state that sub-section (2) of section 2 of the Khyber Pakhtunkhwa Cessation of Payment of Arrears on advance-Increments on-Higher Educational Qualification Act, 2012, states "Any order made, instructions issued, decision, judgment or order o any Court or Tribunal including a High Court or the Supreme Court, implemented immediately before the commencement of this Act-shall be deemed to have been validly made, issued-and-implemented-by the date of commencement of this Act, and any amount already paid there-under on account of advance increments or arrears thereof shall be deemed to have been validly paid and shall not be recoverable from the recipient Government employees". As against this, the AG Office has opined with reference to the Pay Fixation Party that advance increments availed of over and above the entitlement are to be brought to the actual limit in light of Finance Department's letter dated 15-12-7 2010 (copy enclosed). The said two point of views are mutually contradictory.

In light of above, your valuable comments with regard to legal 2. position between the two opposing views is solicited; please.

SECTION OFFICER (SR-I)

(12) Letters in (Office Work Local D)

mount. 21/115

Annex = III



GOVERNMENT OF KHYBER PAKHTUNKHWA LAW. PARLIAMENTARY AFFAIRS & HUMAN RIGHTS DEPARTMENT NO. SO(OP*II)/LD/5-7/2012-VOL-II / 2/7 0 8 - 09

DATED: PESHAWAR THE 16 SEPT, 2015.

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

Subject:

То

APPEAL OF CT TEACHERS FOR STOPPING RECOVERIES BEING MADE ON ACCOUNT OF ADVANCE INCREMENTS GRANTED ON HIGHER EDUCATIONAL QUALIFICATION.

Dear Sir.

I am directed to refer to your Department's letter No. FD(SOSR-1)2-123/2015 dated 01.09.2015 on the subject noted above and to state that Section-2 (2) of Khyber Pakhtunkhwa Cessation of Payment of arrears on advance increments on Higher Educational Qualification Act, 2012 and views of Accountant General with regard to Finance Department letter No.FD(SR-1)/2-. 123/2010 dated 15-12-2010 are not mutually contradictory.

The savings given to the implemented instructions or orders in Section-2, 2) of the Act ibid is with regard to valid implementation till or before the commencement of the Act ibid Finance Department letter dated 15-12-2010 was with regard to the recovery of invalid implementation and such implementation was declared invalid vide para-iv.of.the said letter. Recovery was ordered to be effected from those teachers/_employees who have availed more advance increments over and above their entitlement on academic qualifications, of the commencement of the Act ibid therefore it cannot be said that legislature 7 attributed savings to invalid acts:

Hence, this Department is in league with the Pay Fixation Committee on the point that the advance increments availed over and above the entitlement has to be reduced and brought to the actual pay in light of Finance Department letter dated 15-12-2010 mentioned above.

Yours Faithfully,

Section Officer (Opinion-II)

Endst: of even No. & date.

A copy is forwarded to the PS to Secretary Law Department.

Secretary Finance Khyber Pathtunkhwa Diary No. Date...

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SR-1 19 Pate-18.9.

Section Officer (Opinion-II)

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1.



GOVERNMENT OF KHYBER PAKHTUNKHWA FINANCE DEPARTMENT (REGULATION WING)

NO. FD (SOSR-1) 2-123/2015 Dated Peshawar the: 21-09-2015

To: · 1 The Secretary to Govt. of Khyber Pakhtunkhwa, Elementary & Secondary Education Deptt: Peshawar. 2. The Accountant General, Khyber Pakhtunkhwa, Peshawar. APPEAL OF CT TEACHERS FOR STOPPING RECOVERIES Subject: -BEING MADE ON ACCOUNT OF ADVANCE INCREMENTS **GRANTED ON HIGHER EDUCATIONAL QUALIFICATION** Dear Sir. I am directed to refer to the subject noted above and to state that the matter has been examined in consultation with Law, Parliamentary Affairs & Human Rights Department. Copy of the advice of that Department contained in their letter No.SO (OP-II)/LD/5-7/2012-VOL-II/21708-09 dated 16th Sep, 2015 is sent herewith for further necessary action accordingly, please. Encl: (As above) SECTION OFFICER (SR-I) Copy for information is forwarded to the following Teachers with reference to their joint application addressed to the Chief Secretary Khyber Pakhtunkhwa:-

- 1. Mr. Hidayatullah, CT, Govt. Higher Secondary School, Mingora.
- 2. Mr. Muhammad Ghafoor, CT, GHSS, Sajban Swat.
- 3. Mr. Muhammad Nabi, SCT, GHSS, Sajban Swat.

SECTION OFFICER (SR-I)

(12) Letters in (Office Work Local D)

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mportent F1051 AMNEXUXE.No GOVERNMENT OF KHYBER PAKHTUNKHWA FINANCE DEPARTMENT (REGULATION WING) No. FD (SR-1) 2-123/2010 ... Dated Peshawar the: 15-12-2010 _/ he Accountant General, Khyber Pakhtunkhwa, Peshawar, Suppert: GRANT OF ADVANCE INCREMENTS ON THE BASIS OF ACQUIRING Dear Sic. I am directed to refer to your letter No.H-24(74)/Peshawar/VoHil/2009-10/68 dated 12/01/2010 on the subject noted above and to say that the matter has thoroughly been examined in consultation with concerned Departments during the meetings held on 10-08-2010, 14-10-2010, 18-10-2010, 15-11-2010, 29-11-2010 and 09-12-2010 towards the queries raised by your office, which are clarified as under-The Supreme Court of Pakistan in its Judgement dated 19-07-2007 vide para No.2 has observed in the following words:- / "It would be seen that the petitioners were placed in BPS-14 by reason of having acquired the qualification of BA / BSC, 2rd division which is the prescribed qualification for the post of Elementary School Teacher". In light of the said observations of the honourable Apex Court, the record of the concerned teacher was gone through, which revealed that the said teacher had 1994- CT. BPS = FA-FSC already availed the benefit of B-14 from B-9 which is the prescribed qualification for appointment as CT School Teacher. As such in the light of the Judgement of the Apex Court referred to above the said petitioner is entitled to get two increments on the basis of acquiring higher qualification of Master Degree. Those C.T teachers who are in BPS-8 and possessing higher qualification D) of MA/MSc but have not been placed in BPS-14, are entitled to 4 advance increments while those who have availed BPS-14 are entitled to 2 advance increments on MA/MSC. 7-8-193 Advance increments will be allowed from the date of obtaining higher Ū qualification or from the date of appointment which ever is later in term of para 5(ii) of Pay Revision Rules 1991, issued vide Finance Department's letter No.FD(PRC)1-1/89, dated 11th August, 1991. Those teachers who had secured their appointment or acquired higher iii) qualification after 01-12-2001 are not entitled for the facility of the advance increments on higher qualification in view of the Pay Revision Introduced vide Finance Department's letter No.FD(PRC)1-1/2001, dated Recovery may be made from those teachers/employees who have availed more advance increments over and above their entitlement on Ŵ) academic qualifications as prescribed in para-5(a,b,c &d) of Revision of Basic Scale 1991. Yours Faithfully, TKHURSHID AL AIN. Appeal NO 826/2016 Section Officer (SR-I) Date of motitution: 15 - 8 - 2016 Date of decision: 19 - 10 - 2016 Titled Muhammael saleem Abbassi et Teacher V/S The accountant general K-P-K Peshawer etc

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/No7F.1(1)=hnp1/83-7 Government of Pakistan -Finance=Division

Islamabad the Bill August, 1983

OFFICE MEMORANDUM

SUBJECTI-SCHEME OF BASIC PAY SCALES AND FRINGE BENEFITS OF CIVIL EMPLOYEES OF THE FEDERAL / GOVERNMENT (1983). /

The President has been pleased to sangion, with effect from hat July, 1983, a Scheme, as detailed below, of the Basic Pay Scales, Allowances and other Fringe Benefity, 1983, for the civil employees of the Federal Government, paid directly from the Civil Estimates or from the Defence Estimates.

PART 1: BASIC SCALES AND ALLIED MATTERS

2. <u>BASIC SCALES OF PAY:</u> The Basic Scales of Pay, 1983, as shown in the Schedule annexed to this Q.M. shall replace the existing Revised National Scales of Pay (R.N.P.S³). The Basic Scales shall not be regarded as "grades" and shall not be referred to as grades in official communications. Officials shall henceforth be appointed/promoted to posts and not in grades.

ANITIAL FIXATION OF PAY: (i) The initial pay of Ι. an existing employee, i.e. an employee who has been in Government agrvice since before the 1st of July, 1983, shall be fixed at the stage in the relevant Basic Pay Scale which is as many stages above the minimum as the stage occupied by him above the minimum of the existing Revised National Pay Scale, provided that where the pay so determined does not give the employer concerned a minimum advantage of 10% of his existing basic pay plus Dearness Allowance over and above the present engluments driven by him, his pay shall be fixed at the lowest stage in the Basic Scale that gives him that advantage; provided further that the maximum of the celevant Basic Scale shall not be exceeded in any case. In this fixation formula, "emoluments" would mean the sum of pay, Dearness Allowance and Local Compensatory Allowance, H any.

)mportant

Junior Instructors in Polytechnics who possess Technical Teachers Diploma shall be allowed Teaching Allowance @ Rg 100/- p.m.

Doctors who teach basic sciences in Medical Colloges shall be allowed a Teaching Allowance @ Rs 500/- p.m.

CHARGE ALLOWANCE: Charge Allowance to Principuls 12. of Colleges and Polytechnics shall be admissible at the following rates:-

a) Principals of Degree Colleges/

Colleges of Technology Rs 200<u>/</u><u>∓</u>p.m

Rs 100[- p.m.

b) Principals of Intermediate Colleges/Polytechnics

13. WARDEN ALLOWANCE: Teachers who are assigned the duty of Hostel Wardens in Colleges and Polytechnics shall be allowed a Warden Allowance of Rs 100/- p.m.

ADVANCE INCREMENTS TO SCHOOL TEACHERS ON ATTAINING HIGHER QUALIFICATIONS:

Primary, Middle and High School teachers who possess or acquire while in service higher qualifications shall be allowed

14 PRIMARY SCHOOL:

(i) A teacher who possesses or acquires EA/F, Se shall be allowed two advance increments.

y (ii) A teacher who (in addition to FA/F.Sc.) hiso Addition _ one additional acquires C.T. shall be allowed one additional advance increment.

(iii) A teacher who acquires a degree of BA/B.Sc.

shall be allowed three additional advance increments (M) BA/BSC = Three additional IL MIDDLE SCHOOL

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

III. IIIGII SCHOOL:

- A teacher who possesses or acquires Master's degree _ shall be allowed three advance increments. In case of a teacher who possesses or acquires Master's degree in Education (M.Ed) and also a Master's degree in

any academic subject shall be allowed six advance increments. Provided that a teacher who has already drawn increments for possessing higher educational qualification under the existing scales shall be allowed increments equal to shortfall in the number of increments, if any, between the increments obtained by him and the increments/ which have now been prescribed. /

=A/FSC = 2-advance Increment

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(ii) to FA/FSC/advance

ADVANCE INCREMENTS TO TECHNICAL AND PROFESSIONAL CATEGORIES ON POSSESSING/ACQUIRING HIGHER QUALIFICATIONS

15.

Doctors, Engineers, Educationists, Economists, Management Archauologists, Accountants, Scientists, Geologists, Meteorologists, Experis in Agriculture, Animal Husbandry and Forestry working in Universities, Colleges, Research institutions or technical departments shall be allowed advance increments on possessing/acquiring higher qualifications as under:-

- (i) In case a technical/professional employee of the above rategory possesses D.Sc., Ph.D. degroe from a foreign university, he shall be allowed six advance increments on entry into service in B-17.
- (ii) Those of the above categories of officers who possess
 MA/M.Sc./M.S. or equivalent from a foreign university or Ph.D. or M.Phil. from a university in Pakistan will receive four advance increments on induction in service in B-17.
- (iii) Those of the above categories of employees who while in service obtain a degree shall be allowed four advance increments in case of (i) above and two advance increments in case of (ii) above.

16. DESIGN ALLOWANCE: Engineers holding University degree in engineering and working full time in the Design Offices shall be allowed a Design Allowance at the following rates:

Engineers drawing pay in B-17 -- Rs 400/- p.m Engineers drawing pay in B-18 -- Rs 500/~ p.m. Engineers drawing pay in B-19 -- Rs 600/- p.m. Engineers drawing pay in B-20 -- Rs 700/- p.m.

17. <u>QUALIFICATION ALLOWANCE</u>: S.A.S. Accountants shall be allowed a Qualification Allowance of Rs 100/- p.m. on qualifying the S.A.S. or equivalent examination. This allowance shall continue... to be admissible as a separate entity even after their promotion to higher poster.

18. PERFORMANCE EVALUATION ALLOWANCE: Audit officers working in the Performance Evaluation Cell shall be allowed Performance Evaluation Allowance at the following rates:uel7 and B-18 are Rs 3007- p.m.

B-17 and B-18 Rs 3007- p.m. B-19 and B-20 -- Rs 4007- p.m.

19. SPECIAL RESEARCH ALLOWANCE: Field Officers on their appointment in research institutions for doing research work shall be allowed a Special Research Allowance @ 20% of their Basic Pay.

20. DEPUTATION ALLOWANCE: In lice of the existing fixed rates of Deputation Allowance, civil servants while on deputation

A copy of Finance Department, Government of NWFP circular letter No.FD(PRC)1-1/69, dated 11th August, 1991 addressed to all the Administrative Secretaries in NWFP end others.

Jotification NO FD(PRC)I (dated)

Subject: - REVISION OF EASIC FAY SCALES AND FRINCE BENEFITS OF CLVIL EMPLOYEES. (BPS-1-15)OF THE PROVINCIAL GOVERNMENT(1991). Sir,

I am directed to refer to the subject noted above and to say that the Governor, NWFP has been pleased to sanction Revision of the Basio Pay Soales for the Provincial Civil Servants(BPS-1-15) as detailed in the following paragraphs:-

BASIC PAY SCALES :-

The existing, modified and revised Pay soales are detailed in the annexure to this letter. The revised pay scales shall replace the Basik Pay Soales, 1987 and shall be effective from the Ist June

INITIAL FIXATION OF PAY.

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

ii) In the case of those employees whose pay is fixed in the revised scale at a stage which gives less than Rs.100/increase in pay of May,1991 a minimum increase of Rs.100/-in pay over May,1991 level, would be allowed and thercafter pay fixed at the corresponding stage equal to this pay or if there is no such stage at the next higher stage. The pay fixation formule has been illustrated through examples I,II & III in Appendix.

iii) The annual increment shall continue to be admissible subject to the existing conditions on the Ist of December each year

iv)The increases allowed since 1-7-1988, as detailed below shall cease to be admissible from 1-6-1991:-

a) Indexed pay sonctioned vide Finance Department circular No.FD(PRC)1-3/85 dated 4-8-1988.

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Adhoc increase of 5% of pay sanctioned vide circular ъ) No.FD(PRC)1-3/85,dated 13-1-1990.

- Adhoc increase of 10% sonctioned vide Finance Department circular c) No.FD(PRC)1-3/59 dated 21-7-1990.
- Dearness Allowance of Rs.200/-P.M. sanctioned vide Finance Department circular No.FD(PRC) 1-3/89, dated

16-1-199¹•

FIXATION OF PAY ON PROMOTION

1) In cases of promotion from a lower to higher post/scale before the introduction of these scale pay of the employee concerned in the revised scale may be fixed and so enhanced that it would not be less than the new that would have been admissible the pay that would have been admissible to him if his promotion to the higher post/scale had täken placed after the introduction of these scales.

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

GRANT OF ADVANCE INCREMENTS TO OFFICIALS FOR POSSESSING/ATTAINING HICHER EDUCATIONAL

i) From 1-6-1991 onwards advance inorgments shall be allowed without the condition of the Second Division to the officials in BPS-1-15 for possessing or ecquiring higher educational qualifications over and above prescribed qualifications in the relevant recruitment Rules to the extent given below; -

N i. '

Nil

No. of Advance increments for obtaining. A.F.SC. B.A/B.SC. Matric. F.

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Nil

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a)Where the prescribed qualification is Non-Matrio.

b) Where the prescribed qualification is Malric.

c) where the prescribed qualification is F. A × 1.

d)Where the prescribed qualification is B.A./

5-51. B.So

The advance increment already allowed in terms of Para-6(a) of Finance Department's lotter No.FD(PRC) 1-1/8? Vol-WILL dated 22-7-1987 would be doubled from 1-6-1991.

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Nil.

i) The advance increments shall be allowed at the time of recruitment or acquisition of higher qualification whichever is later. In cases where the employee is already at the maximum of the scale, he may be allowed the number of advance increments beyond the maximum of the scale as personal pay to be absorbed at the time of his moveover/promotion. Those employees who had acquired higher qualification in 3rd Division prior to 1-6-1991 and were not granted advance increments earlier would henceforth be allowed advance increments with effect from 1-6-1991.

MOVW-OVER.

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The concession of Move-over shall be available from 1=6-1991 onwards to those who are enjoing selection grade.

SPECIAL PAYS.

The existing Special Pay admissible to various categories of Bersonal Assistants in BPS-15 shall be r vised from 1-6-1991 as under:

NAME OF POST.	EXISTING RS PER MONTH.	 REVISED RS. PER MON 1H.	به و معدود به معدود م معدود به معدود به معد
P.A.to Minister.	100	150	
P.A.to Chief Secre Addl:Chief Secret: Secretaries/Addit:	ary/	400	
Secretaries.	. 75	120	

8. TEACHING ALLOWANCE.

The existing rate of teaching allowances, admissible to qualified teachers of High Schools who teach Science subjects of Physics, Chemistry, Biology and Mathematics and Junior Instructors in Poly-Yechnic shall be onhanced as under:--

a)For High School Science Fram 100/-P.M. Teachers. to Rs.200/-PM.

b)For Junior Instructurs From Rs.100/-1.M. in Paly-technic who to Rs.200/-P.M. possess Technical Teachers Diploma.

MEDICAL ALLOWANCE.

The existing rate of Medical Allowance of Rs.50/-P.M. admissible to the employees in BPS 1-15 shall be enhance to Bs.60/-P.M. Contd...4/-

وكالت نامه كورث فيسر بعدالت من مسترس مر منوع مل ملم مل الت ور عوان مالده کی بنام توریس کم کا دیشده مخاب: خالده بي بي (ا سال نوعيت مقدمه: باعث تحريراً نكر مقدمه مندرجه میں اپنی طرف سے داسے پیروی وجواب دہی کل کاروائی متعلقہ آں مقا محمد میں اپنی طرف سے داسے پیروی وجواب دہی کل کاروائی متعلقہ آں مقا کودکیل مقرر کرے اقرار کرتا ہوں کہ صاحب موصوف کو مقدمہ کی کل کا روائی کا کامل اختیار ہوگا نیز دکیل صاحب موصوف کو کرنے راضی نامہ وتقرر ثالث و فیصلہ برحلف ودینے اقبال دعو کی اور بصورت دیگر ڈگری کرانے اجراء وصولی چیک رو پیہ وعرضی دعویٰ کی تصدیق اور اس پر دستخط کرنے کا اختیار ہوگا اور بصورت ضرورت مقدمہ مذکور کی کل پاکسی جزوی کاردائی کے لئے کسی اور وکیل یا مختار صاحب قانونی کواپنے ہمراہ اپنی بجائے تقرر کا اختایر بھی ہوگا اور صاحب مقرر شدہ کوبھی وہی اور ویسے ہی اختیارات ہوں گے اور اس کا ساختہ پر داختہ مجھ کومنظور و قبول ہوگا۔ دوران مقدمہ جوخرچہ دہرجانہ التوائے مقدمہ کے سبب ہوگا اس کے مستحق وکیل صاحب ہوں گے۔ نیز بقایار قم وصول کرنے کا بھی اختیار ہوگا۔اگر کوئی پیشی مقام دورہ پر ہویا حد سے باہر ہوتو وکیل صاحب موصوف یابند ہوں گے کہ پیردی مقدمہ مذکورہ کریں اور اگر مختار مقرر کردہ میں کوئی جزو بقایا ہوتو وکیل صاحب موصوف مقدمہ کی پیردی کے یابند نہ ہوں گے۔ نیز درخواست بمراداستجارت ناکش بصیغہ مفلسی کے دائر کرنے اور اس کے بيردى كابهى صاحب موصوف كواختيار ہوگا۔ لہٰذا دکالت نام تح پر کردیا تا کہ سندر ہے۔ Atlestel. بمقام: Accepted

01.10.2018

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Counsel for the appellant Saraf Ali Present. Preliminary arguments heard. It was contended by learned counsel for the appellant that the appellant was serving in Revenue Department as Tehsildar. It was further contended that he was transferred from the post of Political Tehsildar, Dossali North Waziristan to the post of Political Tehsildar FR Bannu vide order dated 21.02.2018 but just after six months he has been again transferred from Tehsildar (CCB) FR Bannu and repatriated to his parent office vide impugned order dated 17.08.2018 before completing his normal tenure therefore, the impugned order is illegal and liable to be set-aside.

28

The contention raised by learned counsel for the appellant needs consideration. The appeal is admitted for regular hearing subject to deposit of security and process fee within 10 days, thereafter notice be issued to the respondents for written reply/comments for 16.10.2018 before S.B. Learned counsel for the appellant also submitted application for suspension of impugned order. In the meanwhile status-quo be maintained till the date fixed.

(Muhammad Amin Khan Kundi) Member

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after promulgation of Khyber Pakhtunkhwa Cessation of Payment of Arrears Advance Increments on Higher Qualification Act, 2012, their claim is maintainable.

8. To further support the case attention was invited to consultations by the 'finance department with relevant stakeholders including Accountant General Khyber Pakhtunkhwa and Law Department which confirmed the view point of finance department letter dated 15.12.2010. Finally through letter dated 12.09.2015 issued by the Finance Department it was ordered to recover extra advance increments/invalid implementation from those Teachers/Employees who availed more advance increments over an above their entitlement on academic qualification.

09. Parties are left to bear their own costs. File be consigned to the record room.

(AHMAD HASSAN) MEMBER Camp Court Abbottabad

(HAMID FAROOQ DURRANI) **CHAIRMAN**

options. ANNOUNCED (1) To accept the appeals, as per judget of this. 16.09.2019 Tribunel deted 16.4. 2019, 2) To reject appeals on the ground of Juridiction and appeals of this Tribuel 263/ 14.12.17 a To refer the matter to larger bench due (3) to conflicting judgets. 4. To remad the case to the responds decide their departed of theils

Service appeal No 1349/2014 Judgement. 22.4.2015

Before Service Tribunal KPK Peshawar

Service Appeal No 334

Bashir Ahmed S/O Abdul Haq SCT GHS Khushala Mansehra R/O K-3102 Kunj Kehal Tehsil & District Abbottabad

VERSUS

- 1. Govt of KPK through Secretary Finance Deptt: Peshawar
- 2. Accountant General KPK Peshawar
- 3. District Accounts Officer Mansehra
- 4. District Education Officer (Male) E & S Education Mansehra

5. Govt. of KPK through Secretary Elementary & Secondary Education Deptt: Peshawar

Respondents

6

Appellant

Appeal under section 4 of KPK Service Tribunal act 1974.

For fixation of pay with 4 advance increments of M.A in BPS-16.

These increments were awarded to appellant on 14-1-2010 entries were made in service book as per Judgment of Honourable KPK Service Tribunal in Service appeal No. 682 of 2008 dated 12-05-2009 on the basis of Judgment passed by Honourable Supreme Court of Pakistan in CPLA No. 525, 526 of 2007 & CRP No. 216 & 217 of 2007.

Letter No. FD (SR-1)2-123/2010 dated 15-12-2010 written by Respondent No. 01 to Respondent No. 02 for Recovery of two advance increments is absolutely illegal against the Judgment of Honourable Supreme Court of Pakistan passed in CPLA No. 525 & 526 of 2007 dated 19-07-2007.

This letter is against the settled law of Apex Court in Reported Judgment Pakistan International Air lines vs Aziz ur Rehman Chaudhry (2011 SCMR 219)

KPK Act 2012 Para 2(2) makes the said letter ineffective for the purpose of recovery of 2 advance increments from the appellant.

ac-submitted to-deg and files.

BEFORE THE HON'BLE SERVICE TRIBUNAL, PESHAWAR

C.M No. ____/2021

S.A No. 486/2015

Abida Bibi

Applicant

Versus

Government of KPK and others

Respondents

APPLICATION FOR CONVERSATION OF INSTANT APPEAL INTO IMPLEMENTATION PETITION IN THE LIGHT OF JUDGMENT /ORDER DATED 28/11/2019 PASSED BY SUPREME COURT OF PAKISTAN IN CP NO-5128-5130 OF 2017

Respectfully Sheweth,

- That the petitioner had filed a Service Appeal No. 268/2017 in this Hon'ble Tribunal and is fixed for today i.e. 09/02/2021.
- 2. That in the light of above mentioned Judgment / Order in which Supreme Court has held that the very grievance of the petitioner having been reddest by this Hon'ble

Before Service Tribunal KPK Peshawar

Service Appeal No______349...

Bashir Ahmed S/O Abdul Haq SCT GHS Khushala Mansehra R/O K-3102 Kunj Kehal Tehsil & District Abbottabad

VERSUS

- 1. Govt of KPK through Secretary Finance Deptt: Peshawar
- 2. Accountant General KPK Peshawar
- 3. District Accounts Officer Mansehra
- 4: District Education Officer (Male) E & S Education Mansehra
- 5. Govt. of KPK through Secretary Elementary & Secondary Education Deptt: Peshawar

Respondents

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Appellant

6. T. P. BEST

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Appellant in person and Mr.Javed Ahmad, Supdt: alongwith Mr.Muhammad Tahir Aurangzeb, G.P for respondents present. Written statement submitted by respondents No.2 & 3 wherein the demand of appellant is statedly met with. In view of the afore-stated situation, appellant submitted application for disposal of his appeal.

Since the claim of the appellant has been met with as stated in the written statement as such the appeal is dismissed as withdrawn. File be consigned to the record.

Account Al

ANNOUNCED 22.4.2015

22.4.2015



Before Service Tribunal KPK Peshawar

Service Appeal No

Bashir Ahmed S/O Abdul Haq SCT GHS Khushala Mansehra R/O K-3102 Kunj Kehal Tehsil & District Abbottabad

VERSUS

- 1. Govt of KPK through Secretary Finance Deptt: Peshawar
- 2. Accountant General KPK Peshawar
- 3. District Accounts Officer Mansehra
- 4. District Education Officer (Male) E & S Education Mansehra
- 5. Govt. of KPK through Secretary Elementary & Secondary Education Deptt: Peshawar

Respondents

16.

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These increments were awarded to appellant on 14-1-2010 entries were made in service book as per Judgment of Honourable KPK Service Tribunal in Service appeal No. 682 of 2008 dated 12-05-2009 on the basis of Judgment passed by Honourable Supreme Court of Pakistan in CPLA No. 525, 526 of 2007 & CRP No. 216 & 217 of 2007.

Letter No. FD (SR-1)2-123/2010 dated 15-12-2010 written by Respondent No. 01 to Respondent No. 02 for Recovery of two advance increments is absolutely illegal against the Judgment of Honourable Supreme Court of Pakistan passed in CPLA No. 525 & 526 of 2007 dated 19-07-2007.

First on Any

This letter is against the settled law of Apex Court in Reported Judgment Pakistan International Air lines vs Aziz ur Rehman Chaudhry (2011 SCMR 219)

KPK Act 2012 Para 2(2) makes the said letter ineffective for the purpose of recovery of 2 advance increments from the appellant.

ac-submitted to-**day** and filed.

PRAYER

On acceptance of INSTANT APPEAL the respondent be graciously directed to fix pay of appellant in BPS-16 with 4 advance increments of M.A which were awarded to him in BPS-15 on 14-01-2010.

Kindly the Letter No. FD(SR-1) 2-123/2013 dated 15-12-2010 be declared illegal and ineffective upon the rights of 4 advance increments of MA to the appellant.

Respectfully Sheweth

1.

FACTS

That Appellant was inducted in service as CT Teacher on 15-10-1985 and is working against SCT post, attained his higher qualification of M.A on 10-07-2000, over and above prescribed qualification of post held and Appellant due to his entitlement of 04 advance increments of his higher qualification of MA, filed Service Appeal No 682 of 2008, before Honourable Khyber Paktunkhwa Service Tribunal Peshawar, which was accepted on 12-05-2009 at Camp Court Abbottabad, whereupon respondents. did not approach to the Honourable Supreme Court of Pakistan to file their C.P.L.A against the said Judgment yet, and now it attained its finality. Copies of Service Appeal and relevant pages of Judgment dated 12-05-2009 are annexed as "Annexure A & B". That after completing necessary legal formalities, respondents on 14-01-2010 implemented the judgment of Honourable Khyber Pakhtunkhwa Service Tribunal Peshawar and granted 04 advance increments of MA with effect from 10-07-2000 to the Appellant. copy of implemented arrear bill and relevant pages of S/Book annexure C & D.

The Appellant on promotion from CT (BPS-15) to SCT (BPS-16) on 01/03/2013. Submitted the case of Fixation with 4 advance increments of MA to DAO Mansehra.

District Accounts Officer is denying and reluctant to do so and insists to recover 2 increments in fixation in BPS-16. The application for this purpose is still pending in D.A.O Mansehra, The appeal against it is submitted to Accountant General KPK Peshawar on 18-08-2014: copy annexed at E & F. The appellant was awarded 4 advance increments of MA on 14-01-2010 on the basis of Final Judgment of KPK Service Tribunal in service appeal No 682 of 2008 dated 12-05-2009.

The appellant was promoted from CT (BPS-15) to SCT (BPS-16) w.e.f 01-03-2013. Copy annexed as Annexure (G).

Respondents are reluctant to fix pay in BPS-16 keeping the 4 advance increments of MA intact with which Appellant is already drawing his pay in BPS-15.

GROUND

- (a) That the learned KPK Service Tribunal has power to implement its Judgment under KPK Service Tribunal Act 1974.
- (b) The Respondents are bound to the Judgment of KPK Service Tribunal in Service appeal No. 682 of 2008 dated 12-05-2009 in letter and spirit. Their denial is against the law, contrary, Capricious and against the judgment of the court.
- (c) Their act of denial is against the judgment of H/ Supreme Court of Pakistan in CPLA No. 525 & 526 of 2007.
- (d) Furthermore the respondents have restored the 4 advance increments of MA of more than 77 Teachers of Mansehra on different occasions under Letter No.
- (i) SO (B & A) 1-16/109/ Advance increments dt Peshawar 30-09-2013 (22 Teachers of Mansehra)
- (ii) SO (B & A) 1-16/109/ Advance increments dt Peshawar 17-06-2014 (27 Teachers of Mansehra)
- (iii) SO (B & A) 1-16/109/ Advance increments dt Peshawar 02-09-2014 (28 Teachers of Mansehra)

The pay of these teachers is fixed with 4 advance increment of MA and entries are made in their service books.

(e) The appellant has same case and being dealt with discrimination and injustice. Respondents be directed to fix the pay of appellant in BPS-16 keeping the 4 advance increments of MA intact i.e without deduction.

Bashir Ahmed

Appellant In person

Dated: 07/11/2014

5.

BEFORE THE KHYBER PAKHTUNKHWA, SERVICE T PESHAWAR.

APPEAL No:

APPELLANT:

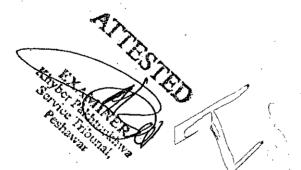
VERSUS:

REPLY FROM:

Respectfully Sheweth:

Para-L

Para-2 Para-3



1349 of 2014.



Mr. Bashir Ahmad

Government Pakhtunkhawa.

Khyber

the

Day

RESPONDENT No. 2 & 3.

FACTS:

No comments from answering Respondents. Correct.

of

Incorrect. (i) The Appellant submitted his Service Book for fixation/authentication of his inclusive of 4 advance increments on acquiring the qualification of MA before the Pay Fixation Cell of the office of Respondent No2. The Pay Fixation Cell did not agree with the claim of Appellant, at that time, and allowed 2 advance increments on said

qualification, apparently, in terms of Department letter dated Finance 15/12/2010 (exhibit), as against the 4 advance increments demanded by the Appellant.

(ii) This Respondent has, now, issued-Pay Slip to the Appellant (inclusive of 4 advance increments) in the light of honorable Supreme Court of Pakistan Judgment dated 19/07/2007, read with Peshawar High Court Judgment dated 22/11/2012 and Section 2(2) of the KPK Cessation of Payment of Arrears of Advance Increments, Act, 2012 (exht)

"provisionally" because a case for issuance of clarification on subject matter is lying with Finance Department. (Annexure A & B).

It is prayed that since the demand of Appellant stands met therefore, the instant Appeal may graciously be disposed off.

District Accounts Officer Mansehra

AFFIDAVIT

PRAY:

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Vetted

It is solemnly declared and affirmed that facts disclosed here above are correct to the best of my knowledge and based on official records and nothing has been concealed/manipulated.

District Accounts Officer Mansehra

Date of Presentation of Application Number of Wath Be Copying For Urgsat _____ Total _____ Name of Corriginal Date of Completion of Diver 27-7-27 er of Delivery of Com 22. 7. 24

Tribunal.(Copy of the Judgment/Order is attached as Annexure "A".

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3. That Hon'ble Tribunal can converted the instant appeal into implementation petition in the light of Judgment reported in 2017 SCMR page 56 b. (Copy of Judgment is attached in annexure "B").

It is therefore, most humbly prayed that on acceptance of this instant Application the appeal may pleased be converted in to implementation petition and proceed the further.

Dated: 09/02/2021

Petitioner

Through

Muhammad Liaqat Advocate, High Court Abbottabad .

Anner_

SUPREME COURT OF PAKISTAN (Appellate Jurisdiction)

PRESENT:

Mr. Justice Gulzar Ahmed Mr. Justice Maqbool Baqar

2 C.Ps.No.5128-5130 of 2017

[Against the judgment dated 1910.2017, passed by the Khyber Pakhtunkhwa Service Tribung Camp Court, Abbottabad in Appeal No.826 of 2016]

Abdul Majid Muhammad Wajid Ali Sh	Bashir.		•	_	(in C.P.No.5128) (in CP No.5129) (in CP No.5130)
Accountant others.	General	KP	Versus Peshawar	රීය	Petitioner (s) (in all cases)
			•		Respondent(s)

For the Petitioner (s) (in all cases)

: Sardar Muhammad Ghazi, ASC

For the Respondent(s)

Date of Hearing 👘

: Mr. Muhammad Atif, Addl.A.G. KP Shahid Pervaiz Bhatti, District Controller of Accounts, Abbottabad Javed Khan, Addl.Secretary, Finance, KP

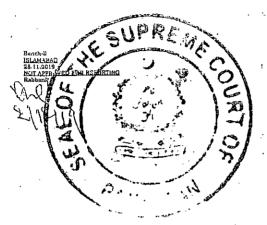
ORDER

: 28.11.2019

Gulzar Ahmed, J:- The grievance of the petitioners is that on attaining the Master's Degree, the petitioners were granted four increments and subsequently, the respondents have tried to reduce the four increments to two increments. The Tribunal in the impugned judgment has allowed the petitioners four increments, which judgment of the Tribunal has not been challenged by the respondents before this Court and thus, has attained finality, to the extent of the respondents. The very grievance of the petitioners having been redressed by the Tribunal and there being no further

ATTESTED

Senior Court Associate Supreme Court of Pakistan Islamabad claim by the petitioners' side, the petitions, thus, fail and are dismissed.



Sd/-J Sd/-JCertified to be True Copy Senior Court Associate Supreme Court of Pakistan Islamabad

19 241711 GR No: ... - Civit/Criminal 28-11 Date of Presentation:___ 600 No of Words:-No of Folios: -6 **Requisition Fee Rs:** 5-00 3.12 Copy Fee in: _ Court Fee Stamps:_ 8.72 Date of Completion of Copy... Date of delivery of Copy: _____ Compared by/Prepared by: Received by:

SUPREME COURT MONTHLY REVIEW

prosecution. In the case in hand the prosecution had produced two ever witnesses namely Muhammad Ilyas complainant (PW9) and Muhammad Arshad/(PW10) who were chance witnesses and they had failed to bring any cyldchec on the record establishing the stated reason for their presence close to the deceased at the relevant time. A very important factor in this case was that respondent No. 1 namely Muhammad Abid had also received two incised wounds on his body, including one on his chest which injury was going deep, but the prosecution had completely suppressed the said injuries sustained by respondent No. 1. During the trial respondent No. 1 had produced the relevant doctor as DW 1 who had confirmed medically examining respondent No. 1 for his above mentioned injuries within a matter of three hours of sustaining of such injuries. Suppression of such injuries on the body of respondent No. 1 had exposed the bona fide of the complainant party in narrating the incident in issue. The eye-witnesses produced by the prosecution had also seriously contradicted each other on many important aspects of the case. The motive/set up by the prosecution had not been established through any independent evidence and the crime-empties had been sent to the Forensic Science Laboratory after the arrest of respondents Nos. 1 and 2 and even after recovery of the weapons of offence from their custody. In these circumstances the High Court had concluded that the prosecution had failed to prove its case against respondents Nos.1 to 3 beyond reasonable doubt which conclusion has not been found by us to be open to any legitimate exception. This petition is, therefore, dismissed and leave to appeal is refused.

MWA/M-61/SC

Petition dismissed

2017 S C M R 56

[Supreme Court of Pakistan]

Present: Mushir Alam and Umar Ata Bandial, JJ

MUHAMMAD AKRAM----Petitioner

DCO, RAHIM YAR KHAN and others---Respondents Civil Petition No. 2411 of 2014, decided on 17th October, 2016.

(Against the order dated 28,10.2014 passed by Punjab Servic Tribunal, Lahore in Appeal No.3093 of 2014) 2017] Muhammad Akram v. DCO, Rahim Yar Khau (Mushir Alam, J)

(a) Administration of justice --



Annex B?

Courts were sanctuaries of justice, and in exercise of authority to do ex <u>debito</u> justitiae, they could remedy a wrong and suppress a mischief to which a litigant was entitled. [p. 59] A

(b) Constitution of Pakistan---

----Arts. 184(3) & 199---Constitutional jurisdiction of the Supreme Court/High Court to convert one type of proceedings into another---Scope No fetters or bar could be placed on the High Court or the Supreme Court to convert and treat one type of proceeding into another and proceed to decide the matter either itself, provided it had jurisdiction over the lis before it in exercise of another jurisdiction vested in the very court, or it may remit the lis to the competent authority/forum or court for decision on merits---Courts do follow the practice of treating and or converting appeal into revisions and vice versa and constitutional petition into appeal or revision and vice versa. [p. 60] B

(c) Punjab Employees Efficiency, Discipline and Accountability Act (XII of 2006)---

----S. 16---Dismissal from service---Appeal filed before wrong forum---Limitation---Scope---Employee instead of filing departmental appeal before appellate authority as provided under S. 16 of the Punjab Employees Efficiency, Discipline and Accountability Act, 2006, filed constitutional petition before the High Court---High Court sent the constitutional petition to the appellate authority and directed to treat the same as " departmental appeal" and "to decide the same on its own merits after hearing the petitioner"---Constitutional petition converted into departmental appeal, was dismissed on merits by the appellate authority, but at the same time it was observed that "that no departmental appeal under S. 16 of the Act, 2006 has ever been filed by the petitioner"---Appeal filed before the Service Tribunal was simply dismissed as barred by time---Legality---Time consumed pursuing remedy before a wrong forum in appropriate cases could always be condoned---Observation of the appellate authority that "that no departmental appeal under S. 16 of the Act, 2006 has ever been filed by the petitioner" in the facts and circumstances of the case was uncalled for and could not be approved---Apparently it was observation of the appellate authority, which influenced the Service Tribunal to dismiss the service appeal as barred by time---Once the constitutional petition, which was filed within the period of limitation as provided for the departmental appeal, was treated and remitted by the High Court as departmental appeal, Service Tribunal, had fallen in to error to dismiss

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SOLKBAR COMPLEMENT REPAIRS

(Mushir Alam, J)

the present petitioner within a period of one month from the date of production of attested copy of this order by the present petitioner."

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3. Consequently, the writ petition sent to the DCO, Rahimyarkhan, and the appellate authority, to "treat it as departmental appeal" and "to decide the same on its own merits after hearing the petitioner within a period of one month". The writ Petition converted into Departmental Appeal, was dismissed on merits, at the same time it was observed "that no departmental appeal under section 16 of PEEDA Act, 2006 has ever been filed by the Petitioner", vide order dated 5.9.2014, which order was maintained through impugned judgment dated 28.10.14 by the Punjab Service Tribunal (PST).

4. Learned counsel for the petitioner, admitted that indeed appeal is provided against the order of departmental authority in terms of section 16 of the PEEDA Act, 2006, however, he under mistaken belief filed Writ Petition within 30 days from the date of the impugned order of his dismissal from service. It was argued that he approached the wrong forum with promptitude and within the period of limitation, the Writ Petition, filed by him was ordered to be treated as departmental appeal and sent to the Appellate Authority, 'Which was not decided by the Appellate Authority and so also by the PST in accordance with law and he was non suited on technicalities.

⁵ Learned counsel for the respondents vehemently opposed the averments made by the learned counsel for the petitioner. According to nim, the departmental appeal was decided on merits as well as on the point of limitation as no appeal was filed before the competent authority/DCO concerned within 30 days from the date of his dismissal from service, which admittedly was not done, therefore the Appellate sothority had not Appeal before it. It was urged that no exception to the impugned order of the DCO Rahimyarkhan, as maintained by the PST could be taken.

6 Heard the arguments and perused the record. Departmental Appeal against the dismissal from service order is provided under ction 16 of the PEEDA, 2006 before the designated Appellate Authority, which in instant case admittedly is the DCO Rahimyarkhan. We have examined the impugned Order dated 5.9.2014, passed by the PPellate Authority on merits with an observation that no Appeal was filed under the PEEDA Act, 2006, as already noted in the narrative at ove Learned PST without adverting to merits of the case, dismissed the Appeal before it on the ground of limitation only.

⁷ The Courts are sanctuaries of justice, and in exercise of $|A|^{4}$ where the two sanctuaries of a sanctuaries of a sanctuaries of $|A|^{4}$

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the appeal before it on the ground of limitation alone, without adverting to the merits of the cuse as were attended by the appellation authority---Date of filing of the constitutional potition within time should have been reckoned as date of filing departmental appeal and ought to have been treated as departmental appeal for all practicupurposes as ordered by the High Court---Supreme Court directed thu uppeal before the Service Tribunal, shall be deemed to be pending and should be decided on merits after hearing all the parties concerned---Appeal was allowed accordingly. [pp. 60, 61] C, D & E

Shamsul Haq and others v. Mst. Ghoti and 8 others 1991 SCMR 1135; Muhammad Anis and others v. Abdul Haseeb and others PLD 1994 SC 539; Province of Sindh and another v. Muhammad Ilyas anothers 2016 SCMR 189 and Engineer Musharaf Shah v. Government c. Khyber Pakhtunkhwa and 2 others 2015 PLC (C.S.) 215 ref.

Muhammad Bashir Khan, Advocate Supreme Court to Petitioner

Raja Muhammad Arif, Additional A.-G. and Muhamm Akram, DDEO for Respondents.

Date of hearing: 17th October, 2016.

ORDER

MUSHIR ALAM, J. - Muhammad Akram Petitioner Ex-Junet Clerk in the office of the AEO (Women) Markaz Dagh-o-Bahar. Tehe Khanpur, District Rahimyarkhan was proceeded departmentally account of extravagant malpractice and prolonged absence from ow.e.f. 10.10.2013 and after due proceedings major penalty of dismass from service under section 4(h)(vi) of the Punjab Employees Efficient Discipline and Accountability Act, 2009 (PEEDA Act, 2006) imposed by the Competent Authority/DEO (Education) Rahimyark⁷ vide order dated 04 07,2014 w.e.f. 10,10,2013.

2. Petitioner instead of filing departmental appeal before appear authority as provided under section 16 of the PEEDA Act, , approached the learned High Court in Writ Petition No.54¹ 2014/BWP. The Petition was heard and on 16.07.2014 following " was passed.-

"As per request of the learned counsel for the petition" instant writ petition along with all its annexures be 3." respondent No. 1/District Coordination Officer, Rahimyar who shall treat it as departmental appeal of the $p^{r_{\rm c}}$ - "titioner and decide the same cn its own merits after ne

SUPREME COURT MONTHLY REVIEW

suppress a mischief to which a litigant is entitled. No fetters or bar could be placed on the High Court and or this court to convert and treat one type of proceeding into another type into another and proceed to decide the matter either itself provided it has jurisdiction over the *lis* before it in exercise of another jurisdiction vested in the very court or may remit the *lis* to the competent authority/forum or court for decision on merits. Courts have been treating and or converting appeal into revisions and vice versa and Constitution Petitions into appeal or revision and vice versa. Even time consumed pursuing remedy before a wrong forum in appropriate cases could always be condoned (see <u>Shamsul Haq and</u> <u>others v. Mst. Ghoti and 8 others</u> (1991 SCMR 1135).

8. In a case cited as Muhammad Anis and others v. Abdul Haseeb and others (PLD 1994 Supreme Court 539), eligibility for consideration of promotion; was successfully challenged in writ jurisdiction of the High Court. On appeal, this Court held that such question is amenable to the Jurisdiction of learned Service Tribunal, therefore, writ is not maintainable, impugned judgment passed by the learned Sindh High Court in exercise of writ jurisdiction was set aside. In Paragraph 16 of the judgment supra this court ordered to treat the Writ Petition, as Service Appeal pending before it which will be decided by the Service Tribunal, after notice to the parties concerned in accordance with law. In. similar circumstances in a judgment recently reported as Province of Sindh and another v. Muhammad Ilyas and others. (2016 SCMR 189) dismissal from service order was challenged before the learned Sindh High Court through Constitution Petition. The Constitutional Petition was treated by the High Court as service appeal and sent to the Service Tribunal; which was decided by the Service Tribunal on merit and this Court declined leave in the matter. Similar course was followed by the learned Division' Bench of Peshawar High Court in a case reported as Engineer Musharaf Shah v. Government of Khuber Pakhtunkhwa and 2 others (2015 PLC (C.S.) 215).

9. As noted above the DCO Rahimyarkhan, decided the Writ Petition No. 5412 of 2014 treating it as Departmental Appeal on merits as ordered by the Bahawalpur Bench of the Lahore High Court, but at the same time held "that no departmental appeal under section 16 cf PEEDA Act, 2006 has ever been filed by the Petitioner", which observation under given facts and circumstances was uncalled for Apparently it is last mentioned observation of the Departmental Appeal as barred by time. Once the Writ Petition, which was filed within the period of limitation as provided for the departmental appeal, was freated and remitted by the High Court as Departmental Appeal, that to when limitation by than had not ran out as noted above. Learned

SCMR

Faiz Jalani v. State (Asif Saeed Khan Khosa, J)

2017]

MWA/M-73/SC

[Vol.]:

PST, had fallen in to error to dismiss the Appeal before it on the ground of limitation alone, without adverting to the merits of the case as were attended by the *DCO Rahimyarkhan*. As noted above date of filing of the writ petition within time should have been reckoned as date of Departmental Appeal and ought to have been treated as Departmental Appeal for all practical purposes as ordered by the High Court.

10. The DCO Rahimyarkhan/Appellate Authority, as noted above decided the Departmental Appeal on merits, as regard observation made in the order dated 5.9.2014 by him "that no departmental appeal under section 16 of *PEEDA Act*, 2006 has ever been filed by the Petitioner" in view of above discussion, is not in accordance with law to such an extent it cannot be approved. We refrain from commenting on merits of the case, which was not adverted to by the PST, through impugned Decision dated 28.10.2014, which is set aside, Service Appeal No.3093 of 2014, shall be deemed to be pending and be decided on merits after hearing all the parties concerned as expeditiously as possible.

11. In view of the foregoing, Petition is converted into appeal and is allowed in terms setout above.

Appeal allowed.

2017 S C M R 61

[Supreme Court of Pakistan]

Present: Asif Saeed Khan Khosa, Manzoor Ahmad Malik and Sardar Tariq Masood, JJ

FAIZ JALANI alias IMRAN MAMA---Petitioner

versus

The STATE and others---Respondents

Criminal Petition No. 26-L of 2016, decided on 8th March, 2016.

(Against the order dated 7-12-2015 passed by the Lahore High Court Lahore in Criminal Miscellaneous No. 14747-B of 2015)

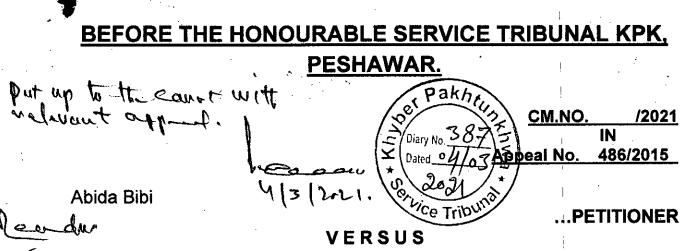
Criminal Procedure Code (V of 1898)---

^{--S.} 497(2)---Penal Code (XLV of 1860), Ss. 302 & 34---Qatl-i-amd, ^{common} intention—Bail, grant of---Further inquiry---Murder in issue ^{had} remained unwitnessed and although the name of accused had ^{figured} in the FIR yet his name had been mentioned therein not as a ^{culprit} but as a friend of the deceased----Only pieces of evidence being



P. N. E.M.

61



Government of KPK and others

Dated:

2021

THE TITLED APPEAL AND FIX FOR HEARING BEFORE BEFORE THIS HONOURABLE LARGER BENCH TRIBUNAL PESHAWAR.

Respectfully Sheweth,

- 1. That the titled appeal is pending disposal before this Honourable tribunal and fixed for 19.04.2021 Double Bench.
- That the above titled case was fixed for larger Bench.
- 3. That the inadvertently fixed for Double Bench.

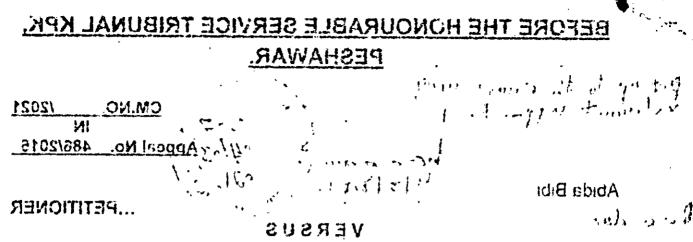
Through:

It is, therefore humbly prayed that on acceptance of the instant application. Appeal may please be fixed before larger bench on 09.03.2021.

PETITIONER

RESPONDENTS

(MUHAMMAD LIAQAT) Advocate High Court, Abbottabad



Government of KPK and others

..,RESPONDENTS

SERVICE APPEAL

APPLICATION FOR SOLICITING EARLY HEARING OF THE TITLED APPEAL AND FIX FOR HEARING BEFORE LARGER BENCH EEFORE THIS HONOURABLE TRIBUNAL PESHAWAR.

Respectfully Sheweth,

- 1. That the tilled appeal is pending disposal before this Honourable tribunal and fixed for 19.0#.2021 Double Bench.
 - 2 That the above tilled case was fixed for larger Bench.
 - 3. That the inadvertently fixed for Double Bench

It is, therefore humbly prayed that on acceptance of the instant application. Appeal may please be fixed before larger bench on 09.03.2021.

...PETITIONLR

Through:

Datod: 2021

(MÙRAMMAD LIAQAT) Advocate High Court, Abbottabad

BEFORE THE HON'BLE SERVICE TRIBUNAL, PESHAWAR

C.M No. ____/2021

S.A No. 486/2015

Abida Bibi

Applicant

Versus

Government of KPK and others

Respondents

APPLICATION FOR CONVERSATION OF INSTANT APPEAL INTO IMPLEMENTATION PETITION IN THE LIGHT OF JUDGMENT /ORDER DATED 28/11/2019 PASSED BY SUPREME COURT OF PAKISTAN IN CP NO-5128-5130 OF 2017

Respectfully Sheweth,

- 1. That the petitioner had filed a Service Appeal No. 268/2017 in this Hon'ble Tribunal and is fixed for today i.e. 09/02/2021.
- 2. That in the light of above mentioned Judgment / Order in which Supreme Court has held that the very grievance of the petitioner having been reddest by this Hon'ble

Service Tribunal KPK Peshawar

Service appeal No___

Abida Bibi D/O Muhammad Yousaf SAT GGHSS Dhamtaur Abbottabad. R/O H# K149 Banda Sapawan near Shell Pump Abbottabad.

Appellant

86 of 2015

Versus

Govt: of KPK through Secretary Finance

Deptt: Peshawar and 04 others

Appeal Index

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3	Relevant Pages of service book	А	6-17
4	Judgment on service appeal 418/2009	В	18-22
. 5 .	Judgment Supreme court of Pakistan CPLA 525,526/2007	C .	23-28
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Before Service Tribunal KPK Peshawar

Service Appeal No

of 2015

Abida Bibi D/O Muhammad Yousaf SAT GGHSS Dhamtaur Abbottabad R/O House No K-149 Banda Sapawn near Shell Pump Abbottabad.

Appellant

VERSUS

- 1. Go vt of KPK through Secretary Finance Deptt: Peshawar
- 2. Account ant General KPK Peshawar
- 3. District A ccounts Officer Abbottabad
- 4. District E ducation Officer (Female) E&S Education Abbottabad.
- 5. Go vt. of KPK trough Secretary Elementary & Secondary Education Deptt: Peshawar

Respondents

Benere Res L

Appeal under section 4 of KPK Service Tribunal act 1974.

For fixation of pay with 4 advance increments of M.A in BPS-16

These increments were awarded to appellant on 16-01-2010 entries were made in service book as per Judgment of Honourable KPK Service Tribunal in Service appeal No. 418 of 2009 dated 12-05-2009 on the basis of Judgment passed by Honourable Supreme Court of Pakistan in CPLA No. 525,526 of 2007 & CRP No. 216 & 217 of 2007.

Letter NO. FD (SR-1)2-123/2010 written by Respondent No. 01 to Respondent No. 02 for Recovery of two advance increments is absolutely illegal against the Judgment of Honourable Supreme Court of Pakistan passed in CPLA No. 525&526 of 2007 dated 19-07-2007.

This letter is against the settled law of Apex court in Reported Judgment Pakistan International Air lines vs Aziz ur Rehman Chaudhry (2011 SCMR 219)

KPK Act 2012 Para 2(2) makes the said letter ineffective for the purpose of recovery of 2 advance increments from the appellant.



PRAYER

On acceptance of INSTANT APPEAL the respondents be graciously directed to fix pay of appellant in BPS-16 with 4 advance increments of M.A which were awarded to her in BPS-15 on 16-01-2010.

Kindly the letter No. FD (SR-1) 2- 123/2013 dated 15-12-2010 be declared illegal and ineffective upon the rights of 4 advance increments of M.A to the appellant.

. Respectfully Sheweth

FACTS

- 1. That Appellant was inducted in service as AT Teacher on 09-11-1994 and is working as against SAT post, attained her higher qualification of M.A on 17-06-2001, over and above prescribed qualification of post held. Appellant due to her entitlement of 04 advance increments of her higher qualification of M.A, filed service Appeal No 418 of 2009, before Honourable Khyber Pakhtunkhwa Service Tribunal Peshawar, which was accepted on 12-05-2009 at Camp Cout Abbottabad, whereupon respondents did not approach to the Honourable Supreme Court of Pakistan to file the C.P.L.A against the said Judgment yet, and now it attained its finality. Copies of Service Appeal and relevant pages of Judgment dated12-05-2009 are annexed as "Annexure A&B".
- 2. That after completing necessary legal formalities, respondents on 16-01-2010 implemented the judgment of Honourable Khyber Pakhtunkhwa Service Tribunal Peshawar and granted 04 advance increments of M.A with effect from 17-06-2001 to the Appellant.
- The Appellant on promotion from AT (BPS-15) to SAT (BPS-16) on 01-03-2013. Submitted the case of Fixation with 4 advance increments of M.A to DAO Abbottabad.

District Accounts Officer is denying and reluctant to do so and insists to recover 2 increments in fixation in BPS-16. The application for this purpose is still pending in D.A.O Abbottabad; the appeal against it is submitted to Accountant General KPK Peshawar on 24-12-2014.

4. The appellant was awarded 4 advance increments of M.A on 16-01-2010 on the basis of Final Judgment of KPK Service Tribunal in service appeal No 418/2009. 5. The appellan t was promoted from AT (BPS-15) to SAT (BPS-16) w.e.f 01-03-2013. Copy annexed as Annexure. (G).

GROUND

- a) That the learned KPK Service Tribunal has power to implement its Judgment under KPK Service Tribunal Act 1974.
- b) The Respondents are bound to the Judgment of KPK Service Tribunal in Service appeal No. 418 of 2009 dated 12-05-2009 in letter and spirit. Their denial is against the law, contrary, Capricious and against the judgment of the court.
- c) Their act of denial is against the judgment of H/Supreme Court of Pakistan in CPLA No. 525 and 526 of 2007.
- d) Furthermore the Secretary Education KPK has restored the 4 advance increments of M.A of more than 77 Teachers of Mansehra on different occasions under Letter No.
- So (B&A) 1-16/109/Advance increments dated Peshawar 30-09-2013 (22 Teachers of Mansehra).
- 2. So (B&A) 1-16/109/Advance increments dated Peshawar 17-06-2014 (27 Teachers of Mansehra)
- 3. So (B&A) 1-16/109/Advance increments dated Peshawar 02-09-2014
 (28 Teachers of Mansehra)

The pay of these teachers is fixed with 4 advance increments of M.A and entries are made in their service books.

e) The appellant has same case and is being dealt with discrimination and injustice. Respondents be directed to fix the pay of appellant in BPS-16 Keeping the 4 advance increments of M.A intact i.e. without deduction.

* A

Abida Bibi Appellant In Person

Dated 19-04-2015

Before service Tribunal KPK Peshawar

Service Appeal No <u>617</u> of 2015 Abida Bibi D/O Muhammad Yousaf SAT GGHSS Dhamtaur Abbottabad Resident of House No. K-149 Banda Sapawn near Shell Pump Abbottabad.

Appellant

AFFIDAVIT

I Abida Bibi D/O Muhammad Yousaf SAT GGHSS Dhamtaur. Resident of House No. K-149 Banda Sapawn near shell Pump Abbottabad do hereby affirm on oath that the contents of the instant appeal are correct & true according to my best knowledge and belief. Nothing has been suppressed from this Honourable Court.

This instant appeal is the first appeal of its nature and no such appeal is pending before any court.

Abida Bibi Appellant Person

Dated: 19-04-2015

Cerlificate P-5 Service

Continued That Ms: Abida bibi is serving in Education department Since. 09 11 1884. At present She is according at "AT" past. She is permanapt Gout Service Her CNIG NO 13101-4199579-0

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mexur BEFORE THE NWFP SERVIC AP COURT No 418/2009 Appeal No. 1276/2007 Date of institution - 27.12.2007 Date of decision - 12.05.2009 Muhammad Akram, S/O Sikandar Khan, C.T. Teacher, Government High School, Kuthwal, Abbottabad......(Appellant) VERSUS 1. District Coordination Officer, Abbottabad. 2. Executive District officer (S &L) Abbottabad. 3. District Accounts Officer, Abbottabad. 4. Director (S&L) Department, Peshawar. 5. Secretary to Government of NWFP (S&L) Department Peshawar. 6. Accountant General NWFP Peshawar. 7. Secretary to Government of NWFP Finance Department, Peshawar, Atlested Appellant in person present. Arshad Alam, A.G.P.....For respondents. MR. ABDUL JALILMEMBER. MR. BISMILLAH SHAH......MEMBER.

JUDGMENT.

<u>ABDUL JALIL</u>, <u>MEMBER</u>: This judgment/order will dispose of this Service Appeal No. 1276 of 2007, by Muhammad Akram and the following Service Appeals. The reason is that the broad facts and the legal issues in all the below mentioned appeals are the same, and need consolidated judgment and joint disposal.

 Sr. No.
 Appeal No.

 1.
 1277/2007

 2.
 1278/2007

 3.
 1279/2007

 4.
 01/2008

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 02/2005

Name of appellant. Saidur Rahman, Munibur Rahman, Muhammad Siddique, Maroof Khan Amjad Hussain Awan



<u>.</u>		· , · ·	8 A - 17
	221.	229/2009	V
	222.	230/2009	Nasir Ali,
. · ,	223.	-	Ali Nawaz,
	· 224.	231/2009	Wajid Hussain,
	224.	232/2009	Waheed Khan,
	223.	233/2009	Muhammad Saleem,
	223.	234/2009	Mujtaba Ahmad Hashmi,
	228.	235/2009	Khalid Muhammad,
	228.	246/2009	Abid Saeed Khan,
		237/2009	Imran Jalani,
	230. 231.	238/2009	Asif Awan,
	•	239/2009	Aurangzeb
÷	232.	240/2009	Khalid Mahmood,
	233.	241/2009	Muhammad Naeem,
	234.	242/2009	Khurshid Qamar,
	235.	243/2009	Nawazish Hussain
	236.	244/2009	Syed Zafar Ali Shah, Muihammad Ishaq, Muhammad Pervez, Addes de
<i>.</i>	237.	245/2009	Muihammad Ishaq,
	238.	246/2009	Muhammad Pervez, AN
	239.	247/2009	Masroor Hussain
	240.	248/2009	Muhammad Sadique
	241.	249/2009	Muhammad Younas
· •	242.	250/2009	Muhammad Imtiaz
	243.	251/2009	Maqbool Shah
	244.	252/2009	Moazzam Khan
· ·	245.	414/2009	Tahir Usman
	246.	415/2009	Mir Muhammad
	247.	416/2009	Naheem Kausar
· ·	248.	246/2009	Khalida Bibi
4	249.	418/2009	Abida Bibi
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1 L	251.	433/2009	
T.	252.	434/2009	Ghazala Bibi Riaz Khan Munutaz Khan
ž /	253.	500/2009	Mumtaz Khan
	254.	501/2009	Lal Afsar
	255.	502/2009	Badri Zaman
	256.	503/2009	Liaqat

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-257.	504/2009	Muhammad Shamraiz
258.	505/2009	Ali Bahadur
259.	506/2009	Muhammad Haroon
260.	523/2009	Naureena Maqsood
261.	: 524/2009	Yasmeen Akhtar
262.	525/2009	Shabana Nazir
263.	681/2009	Nighat Bibi
264.	682/2009	Waseem Sultan
265.	683/2009	Bibi Hajra
266.	684/2009	Abdul Razaq
267.	685/2009	Fatiha Gul
	ы.	

2. The appellant of Service Appeal No. 1276 of 2007, contended that he was appointed as untrained P.E.T. Teacher in Education Department on 27.6.1990. The appellant being C.T trained, was adjusted against the C.T post on 06.05.1996 on regular basis. He acquired higher qualification of M.A on 25.08.1999. The appellant was entitled to advance increments in the light of the Finance Department notification dated 11.8.1991. The same was not given to him. Some of the teachers came to this Tribunal whose Service Appeals were dismissed in Service Appeal No. 498 of 2006 decided on 24.4.2007. The August Supreme Court of Pakistan, while deciding C.P.L.A No. 525 of 2007 and CPLA No. 526 of 2007 decided that all the teachers were entitled to the advance increments like all other civil servants. On the request of the appellant, the same benefit was not given to him. Hence, he filed the present Service Appeal. As already mentioned, the broad facts and the legal issues in all other appeals are almost on the same lines.

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3. The respondents contested the appeal and contended that either the appellants had not submitted applications or their applications were time-barred. And there was no judgment in favour of the appellants.

We heard the arguments and perused the record.

The judgment in CPLA Nos. 525 of 2007 and 526 of 2007 is as under:-

"3. Learned Additional Advocate General attempted to argue that in view of the higher scale granted to Elementary School Teachers in

pursuance of the circular letter dated 07.8.1991, which was personal to them, the petitioners would not be entitled to the incentive of advance increments contemplated by circular letter dated 11.8.1991 but he is unable to cite any principle of law or authority for placing this interpretation. We find that, while circular letter dated 7.8.1991 exclusively deals with the scales of pay of school teachers in different categories, circular letter dated 11.8.1991, provides for the revision of basic pay scales and grant of annual increments and advance increments for all Provincial civil servants in NWFP without any exception. Since the teachers or the employees in Education Department have never been expressly or impliedly excluded from the operation of the circular letter, view taken by the Tribunal being erroneous cannot be sustained at law. In fact, it suffers from clear misconception of law and misconstruction of the circular letter (supra)."

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While disposing of the C.R.P No. 216 and 217 of 2007 in C.P Nos. 525 and 526 cf 2007, the August Supreme Court of Pakistan held:-

"The learned Add! Advocate General has contended that this Court while interpreting the circulars in question has taken a view contrary to the correct legal position, according to which private respondents were not entitled to the benefit of advance increments. We are afraid, the learned Add! A.G instead of pointing out any mistake of law and fact in the judgment made an attempt to re-open the case on merits. The scale of review is, very limited and the points already considered in the judgment under review cannot be allowed to be re-agitated in review periodiction. These review petitions being without any substance are accordingly dismissed."

While disposing of Crl. O.P. No. 66 & 67 of 2007, it was held by the August Supreme Court of Pakistan:-

"The learned Addl. A.G. has given an undertaking for implementation of the judgment of this Court within a period of two weeks and in view thereof, this criminal original is disposed of with the direction that the judgment should be implemented in letter and spirit within two weeks under intimation to the Registrar of this Court.

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In the above circumstances, and in view of the judgment in thyme by the August Supreme Court of Pakistan, and keeping in view the provisions of Article 189 of the Constitution of Islamic Republic of Pakistan, we have no other alternative but to declare that all the appellants, after ascertainment that they are the persons similarly placed with the appellants who had previously litigated and in whose favour the judgment mentioned above was given by the August Supreme Court of Pakistan, are entitled to the same benefits as have been given to the appellants of the judgments quoted above. The appeals of such similarly placed persons, after such ascertainment, stands accepted without costs. Each party will bear the cost of the litigation.

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(BISMILLAH SHAH)

MEMBER:

7. The official respondents in the above mentioned appeals as well as the other concerned officers/officials in the province are directed to follow the above quoted judgments in their true letter and spirit and without compelling the respective right holders to enter into litigation with the respective official respondents, otherwise the costs of their litigation shall be recovered from the pay and pension as well as person and property of the defaulting concerned officer, though after fixation of responsibility on them as a result of proper enquiry.

The remaining similarly placed persons may submit applications/ representations to their concerned authorities directly, who shall have to decide their cases as above within'a reasonable time.

(ABDUL JALIL)

MEMBER. CAMP COURT ABBOTTABAD.

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In the Supreme Court of Pakistan (Appellate Jurisdiction)

Present:

Mr. Justice Rana Bhagwandas, ACJ Mr. Justice Sardar Muhammad Raza Khan

Attested

C.P.L.A. No.525 of 2007 In appeal from judgment of NWFP Service Tribunal, Peshaw dated 24.4.2007 paised in Service Appeal No.498 of 2006) (On noncal fr

Rashid Iqbal Khan

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Petitioner Versus District Coordination Officer, Abbottabad & others Respondents Petitioner: Rashid Iqbal Khan, in person

For the respondents: Sardar Shaukat Hayat Khan, Additional Advocate General, NWFP

> C.P.L.A No.526 of 2007 'On anneal G judgment of NWFP Service Tribunal, Peshawa ed 24.4.2007 passed in Service Appeal No.499 of 2006)

Muhammad Haroon Qureshi

Petitioner Versus District Coordination Officer, Abbottabad & others Petitioner: Muhammad Haroon Qureshi, in person Respondents For the respondents: Sardar Shaukat Hayat Khan, Ateste Additional Advocate General, NWFP

Date of hearing:

19.7.2007

Judgment

Rana Bhagwaudas, ACJ - Sole grievance of the petitioners ATTESTED before the NWFP Service Tribunal (hereinafter referred to as the Tribunal) appears to be that after induction in BPS-14 as Elementary School Teachers, Sunonariadene preme court of Petilster in terms of NWFP Government Circular dated 7.8.1991 they are entitled to four advance increments in terms of NWFP Government circular letter

No.FD(PRC)1-1/89 dated 11.8.1991 on acquiring higher qualification MA/MSc. They have been non-suited by the Tribunal vide judgment dated \mathfrak{g} : C.P.L.A Nos. 525 & 526 of 2007

24.4.2007 on the premise that they had been placed in higher grade i.e. BPS-14 on acquiring BA/BSc Second Division in terms of Finance Division citcular letter No.FD(PRC)1-1/89 dated 7.8.1991, therefore, the provisions of circular letter dated 11.8.1991 issued by the Finance Department would not be applicable to teachers. Tribunal has expressed the view that this circular would be applicable only to ministerial staff, as such, the petitioners were not entitled to the relief claimed by them. Petitioners being aggrieved seek leave to appeal.

We have heard the petitioners, who argued their case in person whereas learned Additional Advocate General, NWFP has appeared on Court notice issued to the respondents. With the assistance of learned Additional Advocate General, we have examined both the circulars, which do not exclude the teachers in the Education Department from the benefits accruing out of circular letter dated 11.3.1991, as on its plain reading it applies to all civil servants in BPS 1 to 15 serving under the Provincial Government. Para 5 of the said circular provides mechanism for grant of advance increments to officials for possessing/attaining higher educational qualification. Para 5, clause (c) caters for the grant of four advance increments on attaining MA/MSc where prescribed qualification is FA/FSc. It would be seen that the petitioners were placed in BS-14 by reason of having acquired the qualification of BA/BSc, Second Division which is the prescribed qualification for the post of Elementary School Teacher. It is not the case of respondent-Government that the petitioners have already drawn advance increments on acquiring higher qualification of MA/MSc.

3. Learned Additional Advocate General attempted to argue that in view of the higher scale granted to Elementary School Teachers in pursuance of the circular letter dated 7.8.1991, which was personal to them, the

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ene Court of Paklosa ASLASSABAD

C.P.L.A Nos. 525 & 526 of 2007

petitioners would not be entitled to the incentive of advance increments contemplated by circular letter dated 11.8.1991 but he is unable to cite any principle of law or authority for placing this interpretation. We find that, while oircular letter dated 7.8.1991 exclusively deals with the scales of pay of school teachers in different categories, circular letter dated 11.8.1991 provides for the revision of basic pay scales and grant of annual increments and advance increments for all Provincial civil servants in NWFP without any exception. Since the teachers or the employees in Education Department have never been expressly or impliedly excluded from the operation of the circular letter, view taken by the Tribunal being erroneous cannot be sustained at law. In fact, it suffers from clear misconception of law and misconstruction of the circular letter (supra).

For the aforesaid facts, circumstances and reasons, we are of the considered view that the Tribunal committed a serious error of law, therefore, the impugned judgment is liable to be set aside. Consequently, we convert these petitions into appeals and, on acceptance, declare that the petitioners would be entitled to four advance increments with effect from the date of SUPRE

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Superintendant Supremo Court of Pakistan SLAMADAD 1 the sted

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Present: MR. JUSTICE MUHAMMAD NAWAZ ABBASI MR: JUSTICE MUHAMMAD QAINI JAN IGHAN MR: JUSTICE MOHAMMAD MOOSA K. LEGHARI

C.R.P. NOs. 216 & 217/2007 in C.P. NOs. 525 & 526/2007 (On review from the judgment dated 19.7.2007 parsed in C.A. Nos. 1504 & 1505/2007)

Secretary to Govi. of N.W.E.P. Finance Department, PeshawarPelilioner (in both cas

Reshid Iqbal Khan und others Mulanmad Haroon Qureshi and others .. Respondents (in C.R.P. No. 216/07) ... Respondents (In C.R.P. No. 217/07)

CILLO. P. NOr. 66 & 67/2007 IN C.A. NOs. 1504 & 1505/2007

Reshid Iqbal Khan Muhammud Haroon Qureshi

....Pelitioner (in Crl.O.P. No. 66/07)Politioner (in Cil.O.P. No. 67/07)

Attested

Versus District Coordination Officer, Abboliabad and officers

Versus

For the Petitioner (in C.R.P. Not. 216 & 217/07) For the Petitioners (in Cri.O.P. 66 & 67/07)

For the Respondents (In C.ILP. Nov. 216 & 217/07)

For the Respondents-(in Crl.O.P. 66 & 67/07)

Date of hearing

N.R. * Sardar Shaukat Huyat, Add. A.G. N.W.F.P

29.1.2008

... Respondents (in both cas

Sardar Shaukat Hayat, Addl A.G. N.W.F.F

ORDER

·. .

In Person ΄.

MUHAMMAD NAWAZ ABBASI, J .- The learned Addi. Advocate General has contended that this Court while interpreting the circulars in guestion has taken a view contrary to the correct legal position according to which private respondents were not cultified to the benefit of advance increments. We are alfoid, the loamed Addl.A.G. instead of pointing out any mistake of law and fact in the judgment made an attempt to re-open the case on ments. The scope of LA PROTES

Gupenhaunsem upresse Court of Paulitan ICI AL ALLA ÷.

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review is very limited and the points already considered in the judgment under review cannot be allowed to be re-agilated in review jurisdiction. These review petitions being without any substance are accordingly dismissed.

Crl.O.P. Nos. 66 & 67/2007

The learned Addl.A.G. has given an undertaking for implementation of the judgment of this Court within a period of two weeks and in view thereof, this criminal original is disposed of with the direction that the judgment should be implemented in letter and spirit within two weeks under intimation to the Registrar of this Court.

563/08

Odti plahansonal Nave Alolasi, J nar- Michannoval Qains Jan Klow J ing Michannonal Massa Le Leghon;

A Pr.

13-02-2008 25-02-2008

Pashie , gave

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Attested

Attested

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Islamabad 29.1.2008 Ljaz Gomya) و کر

allestad Lindard 20-2-2009,

The Accountant General **KPK Peshawar**

Annexure D, Appeal K A/G

Subject:

Fixation of Pay with 04 Advance Increments of MA as per KPK services Tribunal Judgment dated 15-12-2009/H/Supreme court of Pakistan Judgment in CPLA No 525/2007 and 526/2007 dated 19-07-2007.

R/Sir,

The submissions of the appellant are as under:

- 1. Appellant is SAT (Senior Arabic Teacher in GGHS Dhamtaur Abbottabad.
- 2. Appellant was awarded 04 advance increments of MA as per decision of KPK service Tribunal Peshawar Dated 15-12-2009.
- 3. Decision of the court was implemented on 16-01-2010 while the appellant was in BPS15.
- 4. Appellant was promoted in BPS 16 w.e.f 01-03-2013.
- 5. The district Controller Accounts Abbottabad has deducted 02 Advance increments out of 04 advance increments of MA.
- 6. These increments were awarded by KPK service Tribunal Peshawar in service appeal no 1276/2007 in the light of Judgment of Apex court in CPLA No 525/2007 and 526/2007.
- 7. Recently in a similar case, these 04 advance increments of MA are restored to 28 teachers of Mansehra District under letter No SO(B&A)1-16/09 Advance increments dated Peshawar, the 02-09-2014 (Copy attached)

In the light of above facts district Controller of Accounts Abbottabad kindly be directed to fix the pay of appellant in BPS 16 with 04 Advance increments of MA already awarded in BPS-15. Attested

Thanks

Yours faithfully Abido Bis-Abida Bibi D/O Muhammad Yousaf S.A.T GGHS Dhamtaur Abbottabad.

Dated: 23-12-2014

Annenum





Decisin

Decision on apped Office of the Accountant General Khyber Pakhtunkhwa Peshawar Phone: 091 9211250-53

No.HAD-24(76)/Vol-X /Swat/2014-15/ 33/8-21 Dated:07.04.2015

То

The Section Officer (R-I), Finance Department, Peshawar.

Subject:

APPEAL OF TEACHER REGARDING STOPPAGE OF RECOVERY ON ACCOUNT OF ADVANCE INCREMENT 13 ON THE BASIS OF MA/MSC

Kindly refer to your office letter No. FD(SOSR-I/2-1213/2014 dated 23.12.2015 and letter dated 19.1.2015.

The teacher have admitted that no increments are allowed 2.on the basis of MA qualification, but no recovery on account of irregular payment be made however, this office is still waiting for proper orders of Finance Department.

Attested

ACCOUNTS OFFICER (HAD)

ACCOUNTS OFFICER (HAD)

Copy for information to:-

D/Fey Doentacin HAD Section/appleal award.doo

- ₂1. Khalida Bibi D/O Muhammad Yousaf SCT GGHSS Malik pura Abbottabad.
 - Abida Bibi D/O Muhammad Yousaf SAT GGHSS Dhamtaur 2. Abbottabad.
 - З. All DAOs/AAOs in Khyber Pakhtunkhwa.

EXTRAORDINARY

GOVERNMENT



REGISTERED NO. P.III GAZETTE

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Attested

KHYBER PAKHTUNKHWA

Published by Authority

PESHAWAR, TUESDAY, 15TH MAY, 2012.

PROVINCIAL ASSEMBLY SECRETARIAT KHYBER PAKHTUNKHWA

NOTIFICATION Dated Peshawar, the 15th May, 2012.

PA/Khyber Pakhtunkhwa/Bills/2012/20711.-The Khyber Pakhtunkhwa No. Cessation of Payment of Arrears on Advance Increments on Higher Educational Qualification Bill, 2012 having been passed by the Provincial Assembly of Khyber Pakhtunkhwa on 8th May, 2012 and assented to by the Governor of the Khyber Pakhtühkhwa on 11th May, 2012 is hereby published as an Act of the Provincial Legislature of the Khyber Pakhtunkhwa.

THE KHYBER PAKHTUNKHWA CESSATION OF PAYMENT OF ARREARS ON ADVANCE INCREMENTS ON HIGHER EDUCATIONAL QUALIFICATION ACT, 2012.

(KHYBEB PAKHTUNKHWA ACT NO. IX OF 2012)

(first published after having received the assent of the Governor of the Khyber Pakhtunkhwa in the Gazette of the Khyber Pakhtunkhwa (Extraordinary), dated the 15th May, 2012).

AN ACT

to cease the payment of arrears accrued on account of advance increments on higher educational qualification.

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

893

R PAKHTUNKHWA GOVERNMENT GAZETTE, EXTRAORDINARY, 15th MAY, 2012.

AND WHEREAS the Provincial Government vide Notification No. (PRC/1-1/2001, dated 27.10.2001, had already discontinued the scheme of advance increments on higher educational qualification;

P-46

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

It is hereby enacted as follows:-

- B

.A

Short title, application and commencement.--- (1) This Act may be called the Khyber Palditunkhwa Cessation of Payment of Arrears on Advance Increments on Higher Educational Qualification Act, 2012.

It shall apply to all the employees of the Provincial Government, who were entitled to received advance increments on higher educational qualification.

It shall come into force at once and shall be deemed to have taken

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

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

3. Removal of difficulties.— If any difficult arises, in giving effect to the payvisions of this Act, the Provincial Government may make such orders as it may deem just and equitable.

KHYBER PAKHTUNKHWÅ

GOVERNMENT GAZETTE, EXTRAORDINARY, 15th MAY, 2012. 895

4. Repeal.- The Khyber Palditunkhwa Cessation of Payment of Arrears on Advance Increments on Higher Educational Qualification Ordinance, 2012 (Khyber Pakhtunkhwa Ordinance NO. I of 2012), is hereby repealed.

BY ORDER OF MR. SPEAKER

32

PROVINCIAL ASSEMBLY OF KHYBER PAKHTUNKHWA

(AMANULLAH) Secretary Provincial Assembly of Khyber Pakhtunkhwa

Attester

Attested

Printed and published by the Manager, Staty. & Pig. Depti., Khyber Pakhtunkhwa, Poshawar No. <u>SO(B&A)1-16/09/Advance Increment,</u> Dated Peshawar, the 30/09/2013

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PL

Annex The Accountant General, i. Khyber Pakhtunkhwar Peshawar. Attention CM&I Section.

ii. The District Accounts Officer, Manshera.

Subject: 1

CESSATION OF PAYMENT OF ARREARS ON ADVANCE INCREMENTS ACT 2012 CONTEMPT OF COURT.

1 am directed to refer to your letter No. Litigation/H.C/WP-No.171/07/Mohammad Saddique/832 dated 02.05.2013 on the subject cited above and to state that the documents of the following teachers in District Manshera were examined and found as per remarks against each as under;

5.11	Name/Designation	Name of				
		1	Qualification -	D/O	Remarks	7 ⁻ -
		Schoot	1	Declaration		}
	Zulfigar Ahmad (Ex-Ci)			of MA Result		
		GHSS Baffa	MA(Urdu)	17.09.1998	MA Degree is genuine	
	Ghulam Khan CT	· GHSS Balla	MA(Urdu)	26.09.2001		•
	Mr, M Miskeen CT	GHS Bajna	MA (Islamiyat)	25.09,1995	MA Degree is genuine	
	Mr. Iflikhar Ahmad CT	GHS Bajna	MA (Islamiyat)	26.06.2000	MA Degree is genuine	
	Mr. Umer Faroog CT	GHS Dajna	MA Pashio	·	MA Degree is genuine	
•	Mr. M. Naseem CT	GHS Bajna	MA (Islamiyat)	05.06.2000	MA Degree is genuine	
7	.Mr. Mustajab Khan CT	GHS Bajna		26.06.2000	MA Degree is genuine	
5	Mr. Munir Hussain CT	GHS Bajna	MA (Islamiyal)	08.10.1998	MA Degree is genuine	
,	Mr. Altaf Qadir CT		MA (Islamiyat)	26.06.2000	MA Degree is genuine	
0		GHS Bharyol	MA (Islaniyat)	22.12.1996	MA Degree is genuine	
	Mr. Sajjad Hussain CT	GHS Dadar	MA (Islamiyat)	26.06.2000	MA Degree is genuine	- .
1	Mr. M. Riaz CT	GHSS Baffa	MA(Urdu)	02.10.1996		
2	Mr. Mazhar Hussain CT	GHSS Baffa	MA (Islamiyat)	· · · · · · · · · · · · · · · · · · ·	• MA Degree is genuine	
3	Mr. M. Hanif PET	GHSS Galgali		17.06.2001	MA Degree is genuine	
4	Mr. Sajid Mchmood PET		MA (Unlu)	06.07.2001	MA Degree is genuine	
•	The sign menhood rel	GHSS, No. I	MA(Urdu)	17.09:1995	MA Degree is genuine	
		Manshera				,
5	Mr. Sajjad Muhammad	GHSS Baffa	MA(History &	19.03.2000	MA Degree is genuine	/
	l cr		Pak, Studies)		interesting statute	100
6	Mr. Yar Muhammad Khan	GUSS Baffa	MA (Islamiyat)		· ·.	aster
	cr		ture (issumiyat)	02.10,1994	MA Degree is genuine	Alton
7	Mr. M. Saced SST	Lauss Leans			· · ·	pro- up.
·		GUSS IGHa	MATICANX X ²	that page -	MATES a pomine	· AX
<u>,</u>	Ma M. Luka		Pak, Studies)	1		Altested
	Mr. M. Ishtiaq	ADO(Circle) Oghi	MA(Urdu)	23.10.1996	MA Degree is genuine	-
)	Mr. Syed Alamgir Shah	GHS Timbry	.MA(Urdu)	15.10.1998	MA Degree is genuine	
	CT	· · ·	· · ·		and the second formation	
,	R. Abdul Qayyum CT	GHS Trangri Bala	MA	13.09.1999	MA Degree is genuine	
		instead of Nagri Bala	(Islao)iyat)		way peptee is genuine	
-	Mr. M. Ashraf CT	GHS Sum Instead of				
			МА	15.09,1997	MA Degree is genuine	
	MAN IN COMMAND	Suhiq	(Islamiyat)			
4	Ma Rafaqat Naveed CT	GHSS Baffa	MA(Edu)	31.07.1997	MA Degree is genuine	

In light of the prochedings and perusal of relevant record, all the above teachers have not obtained advance increments through fraud, misrepresentation or any forged documents.

The Khyber Pakhtunkhwa Cessation of Payment of Arrears on As per Advance Increments on Higher Educational Qualification ACT-2012, para-2 (2) which is reproduced as under;

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

Therefore, it is requested that no recovery should be made as per the above Khyber Pakhtunkhwa Cessation of payment of Arrears on Advance Increments on Higher Educational Qualification ACT-2012, and may be followed in letter and spirit please.

Enel: As above.

Attested

Yours faithfully,

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(NOOR ALAM KHAN WAZIR) SECTION OFFICER (BUDGET)

SECTION OFFICER (BUDGE?

Endst. Of even Number & Date.

- Copy of the above is forwarded to:-
- The Director E&SE Khyber Pakhtunkhwa Peshawar.
- The DEO (M/F) Manshera.
- 3. PS to Additional Secretary E&SE Department Khyber Pakhtunkhwa Peshawar.

KHYBER PAKHYUNKHWA GOVERNMEN FINANCE DEPARTMENT (REGULATION WING)

P-35 Impagne Letter

No. FD (SR-1) 2-123/2010 Dated Peshawar the: 15-12-2010

The Accountant General, Khyber Pakhtunkhwa, Peshawar.

Sublect:

GRANT OF ADVANCE INCREMENTS ON THE BASIS OF ACQUIRING HIGHER QUALIFICATION.

Dear Sir.

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I am directed to refer to your letter No.H-24(74)/Peshawar/Vol-III/2009-10/68 dated 12/01/2010 on the subject noted above and to say that the matter has thoroughly been examined in consultation with concerned Departments during the meetings held on 10-08-2010, 14-10-2010, 18-10-2010, 15-11-2010, 29-11-2010 and 09-12-2010 towards the queries raised by your office, which are clarified as under-

The Supreme Court of Pakistan in its Judgement dated 19-07-2007 vide para No.2 has observed in the following words:-

"It would be seen that the petitioners were placed in BPS-14 by reason of having acquired the qualification of BA / BSc, 2nd division which is the prescribed qualification for the post of Elementary School Teacher".

In light of the said observations of the honourable Apex Court, the record of the concerned teacher was gone through, which revealed that the said teacher had already availed the benefit of B-14 from B-9 which is the prescribed qualification for appointment as CT School Teacher. As such in the light of the Judgement of the Apex Court referred to above the said petitioner is entitled to get two increments on the basis of acquiring higher qualification of Master Degree.

Those C.T teachers who are in BPS-9 and possessing higher qualification of MA/MSc but have not been placed in BPS-14, are entitled to 4 advance increments while those who have availed BPS-14 are entitled to 2 advance increments on MA/MSc.

attester

Advance increments will be allowed from the date of obtaining higher qualification or from the date of appointment which ever is later in term of para 5(ii) of Pay Revision Rules 1991, issued vide Finance Department's letter No.FO(PRC)1-1/89, dated 11th August, 1991.

Those teachers who had secured their appointment or acquired higher qualification after 01-12-2001 are not entitled for the facility of the advance increments on higher qualification in view of the Pay Revision introduced vide Finance Department's letter No.FD(PRC)1-1/2001, dated October 27, 2001.

Recovery may be made from those teachers/employees who have availed more advance increments over and above their entitlement on academic qualifications as prescribed in para-5(a,b,c &d) of Revision of Basic Scale 1991.

Yours Faithfully

(KHURSHID ALAM) Section Officer (SR-I)

GOVERNMENT OF KHYBER PAKHTUNKHWA FINANCE DEPARTMENT (REGULATION WING)

No. FD (SR-1) 2-123/2010 Dated Peshawar the: 15-12-2010

MARXYNE,

The Accountant General Khyber Pakhtunkhwa, Peshawar.

Subject

To

Better (

GRANT OF ADVANCE INCREMENTS ON THE BASIS OF ACQUIRING HIGHER QUALIFICATION.

Dear Sir,

1 am directed to refer to your letter No H-24(74)/Peshawar/Vol-III/2009-10/68 dated 20/01/2010 on the subject noted above and to say that the matter has thoroughly been examined in consultation with concerned Departments during the meetings held on 10-08-2010, 14-10-2010, 18-10-2010, 15-11-2010, 29-11-2010 and 09-12-2010 towards the queries raised by your office, which are clarified as under;-

The Supreme Court of Pakistan in its Judgment dated 19-07-2007 vide para No.2 has observed in the following words

> "It would be seen that the petitioners were placed in BPS-14 by reason of having acquired the qualification of BA/BSc 2nd division which is the prescribed qualification for the post of Elementary School Teacher"

In light of the said observations of the Honourable Apex court, the record of the 3 concerned teacher was gone through, which revealed that the said teacher had already availed the benefit of B-14 from B-9 which is the prescribed qualification for appointment as CT school teacher. As such in the light of the judgment of Apex Court referred to above the said petitioner is entitled to get two increments on the basis of acquiring higher qualification of Master Degree.

i)

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Attested

Attested Those C.T teachers, who are in BPS-9 and possessing higher qualification of MA/MSc but have not placed in BPS-14, are entitled to 4 advance increments while those who have availed BPS-14 are entitled to 2 advance increments on MA/MSc.

- Advance increments will be allowed from the date of obtaining higher qualification or from the date of appointment which ever is later in term of para 5(ii) of Pay Revision Rules 1991, issued vide Finance Department's letter No. FD(PRC)1-1/89, dated 11th August, 1991.
- Those teachers who had secured their appointment or acquired higher qualification after 01-12-2001 are not entitled for the facility of the advance increments on higher qualification in view of the Pay Revision introduced vide, Finance Department's letter No. FD(PRC)1-1/2001, dated October, 27, 2001.

Recovery may be made from those teachers/employees who have availed more advance increments over and above their entitlement on academic qualifications as prescribed in Para-(a, b, c, & d) of Revision of Basic Scale 1991.

Yours Faithfully

Sd---(KHURSHID AL'AM) Section Officer (SR-1)

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SUPKEME COULT IN the motorcycle duly registered as 5730-LXG allegedly taken away by them after the commission of crime and would be moving around in the

27. In view of above discussion no evidentiary value can be attached 'same city. to the alleged recoveries.

Above are the reasons in support of our short order dated 1-11-2010 whereby we have ordered that "the appeal is allowed, the conviction and sentence of the appellants are set aside; they are acquitted D of the charge framed against them and shall be released forthwith, if not Appeal allowed. required in any other case."

M.H./A-114/SC:

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2011 S C M R 218

versus

[Supreme Court of Pakistan] Present: Anwar Zaheer Jamall, Khilji Arif Hussain and Rehmat Hussain Jafferi, J. ZAFAR-Petitioner

MUHAMMAD ABAD and others-Respondents Cr. P.L.A. No. 75-K and Criminal Bail Application No. 203 of 2009,. decided on 2nd December, 2009.

Criminal Procedure Code (V of 1898)------S. 497---Constitution of Pakistan, Art. 185(3)---Supreme Court Rules, 1980, O.XXXIII, R.6-Bail granting order-Petition for leave to appeal to Supreme Court against such order-Said petition had been filed 22 days ofter the prescribed period of limitation-Counsel for the petitioner had no plausible explanation to offer in that regard-Even in the application for condonation of delay filed under Q.XXXIII, R.6 of Supreme Court Rules, 1980, no plausible or sufficient cause had been disclosed by the petitioner for not approaching the Supreme Court within time---Petition was dismissed

being barred by limitation. [p. 219] A Ghulam Qadir Jatoi, Advocate-on-Record for Petitioner.

Nemo for Respondents.

JUDGMENT

ANWAR ZAHEER JAMALI, J .-- Aggrieved by bail granting order dated 5-6-2009, passed by learned Single Judge in Chambers of the High Court of Sindh, Bench at Sukkur, in Criminal Bail Application No.203 of 2009, this criminal petition has been preferred by the complainant in Crime No. 46 of 2008, Police Station Faiz Gunj, District Khairpur, to impugn the legality of the said order:

2. Making reference to the relevant facts of the case and contents of the F.I.R., submission of Mr. Ghulam Qadir, Jatoi learned A.O.R. is that bail granting order is not based on proper appreciation of relevant facts of the case. He, however, did not dispute that it is a case of two counter versions, as per the facts stated in the first F.I.R lodged by one Muhammad Ramzan and the other lodged by present petitioner, narrating two different stories of the same occurrence.

When confronted with the question of limitation, the criminal petition having been filed 22 days after the prescribed period of limitation for filing such petition against the impugned order, learned counsel has no plausible explanation to offer in this regard. Even in the application for condonation of delay moved under Order XXXIII, Rule 6 of the Supreme Court Rules, 1980, which is accompanied with this criminal petition, no plausible or sufficient cause has been disclosed by the petitioner for not approaching this Court within time.

This being the position, this criminal petition is dismissed being barred by limitation.

H.B.T./Z-5/SC

Petition dismissed.

2011 S C M R 219

[Supreme Court of Pakistan]

Present: Iftikhar Muhammad Chaudhry, CI, Ch. Ijaz Ahmad and Ghulam Rabbanl, JJ-PAKISTAN INTERNATIONAL AIRLINES CORPORATION-Appellant

AZIZ-UR-REHMAN CHAUDHRY and others-Respondents Civil Appeal No. 235-K of 2009, decided on 8th April, 2010.

organizations without dragging the employees into further litigation."

We inquired from the learned counsel for the appellant that in view of the above para whether the appellant is not bound to implement the judgment in letter and spirit instead of dragging the respondent in further litigation, he could not answer satisfactorily except repeating the arguments noted above.

In view of the ratio in the case of Muhammad Idress (ibid) we are of the opinion that instant appeal has no merit and under the circumstances the High Court had rightly granted relief to the respondent for implementation of the judgment. Thus, the appeal is dismissed and the appellant is directed to implement the judgment of the Federal Service Tribunal dated 26th June, 2006 in letter and spirit within a period of 15 days after receipt hereof and send compliance report to the Registrar for our perusal in Chambers. Copy of the same shall also be handed over to the respondent for information.

H.B.T./P-5/SC

Appeal dismissed.

2011 S C M R 222 [Supreme Court of Pakistan] Present: Nasir-ul-Mulk and Khilji Arif Hussain, JJ

JAMILA KHATOON and others-Appellants

AISH MUHAMMAD and others-Respondents. Appeal No. 1854 of 2005, decided on 11th November, 2010. Hi (On appeal from the judgment dated 26-10-2005 of the Lahore vrt, Labore, passed in C.R.No. 855 of 2004).

Spe elief Act (I of 1877)-

mutatives for declaration of title-Limitation-Knowledge of fayout -Plaintiffs assalled mutation of land in question in basis of ints, which was alleged to have been attested on the by two Contements and decrees in favour of plaintiffs, passed revisional were set aside by High Court in exercise of by two C cuncellation Validity-Plaintiffs filed suit on 20-9-1989 for of land in question in favour of defendants on 17-12-1956redecessor-in-interest expired . sometime. In

(Khilji Arn russau, J.)

38

L 38

year, 1951, and since year, 1951 till year, 1989, when the suit was filed, there was nothing on the record to show as to what steps were taken by plaintiffs for the purpose of protecting their interest, in respect of land in question-No averment was made as to how and when disputed mutation first came to the knowledge of plaintiffs except making a vague averment without any particular as to when and how plaintiffs came to know about the mutation of land in question in favour of defendants and what steps were taken by them to protect their interest nor any particular had been given if land in question was allotted to them and what they did to take possession of the same and why they kept quiet for a period of 28 years - Plaintiffs not only failed to prove that defendants had committed fraud in mutation of land in question in their favour in year, 1956 and that the suit filed by plaintiffs was in time-Mutation was effected on 17-12-1956 whereas suit for cancellation was filed in 20-9-1989, and the same was hopelessly barred by time-High Court had rightly dismissed the suit filed by plaintiffs-Appeal was dismissed. [pp. 225, 226] A, B & C

Gul Zarin Kiyani, Senior Advocate Supreme Court and M.S. Khattak, Advocate-on-Record for Appellants.

Dr. A. Basit, Senior Advocate Supreme Court for Respondents Date of hearing: 11th November, 2010. JUDGMENT

KHILJI ARIF HUSSAIN, J .- This appeal under Article 185(2)(d)(e) of the Constitution of the Islamic Republic of Pakistan, 1973, has been filed against the judgment and decree dated 26-10-2005 whereby learned Single Judge in Chambers of the Lahore High Court, Labora has accepted the Civil Revision No.855 of 2004 filed by the respondents and set aside the judgments and decrees passed by the two Courts below dismissing the suit filed by the appellants,

Brief facts of the case necessary for the decision of the listed appeal are that the appellants/plaintiffs filed a suit for declaration with consequential relief of possession alleging therein that their predecessorin-interest, namely, Alim-ud-Din son of Rehmat All Khan, who on migration from India to Pakistan filed his claim Form No.7978 for allotment of land in lieu of the land owned by him in India, whereupon he was allotted land measuring 65 kanals and 12 marias in Kamoke, Tehsil and District Gujranwala. The said Alim-ud-Din, predecessor-ininterest of the appellants/plaintiffs died on 5-4-1951. The appellants/ plaintiffs approached for the first time on 3-9-1984 and filed a review petition whereby they called in question the mutation dated 17-12-1956 attested in favour of the respondents alleging therein that the respondent

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Annexus

BEFORE NWFP SERVICE TRIBUNAL PESHAWAR

Soive - 246

 $L_{11}S/2009$ Service Appeal No: of 2009

Abida Bibi D/O Muhammad Yousaf, A.T teacher, Government Girls Middle School Banda Sahib Khan, Abbottabad. R/O: H.No K-149, Banda Sappan, Near Shell Pump, Havelian Road, Tehsil & District, Abbottabad.

Appellant

Versus

Executive District Officer (Schools & Literacy), Abbottabad, and 05 others.

Respondents

SERVICE APPEAL

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7	Copy of Representation Dated 19/01/2009	G	18
8	Copy of Impugned order dated 11/02/2009	н	19

(Abida Bibi)

Appellant in person

BEFORE NWFP SERVICE TRIBUNAL PESHAWAR. No. 146

418/2009

Service Appeal No: of 2009

Abida Bibi D/O Muhammad Yousaf, A.T teacher, Government Girls Middle School Banda Sahib Khan, Abbottabad. R/O: H.No K-149, Banda Sappan, Near Shell Pump, Havelian Road, Tehsil & District, Abbottabad.

Appellant

Versus

1 Executive District Officer (Elementary & Secondary Education), Abbottabad.

District Coordination Officer, Abbottabad 2

3 District Accounts Officer, Abbottabad Abbottabad.

Δ. Director of (Elementary & Secondary Education) N.W.F.P Peshawar.

- 5 Secretary to Govt of N.W.F.P (Elementary & Secondary Education) Deptt; Peshawar.
- Secretary to Govt of N.W.F.P), Finance Department: Peshawar. 6

Respondents

Attested

Appeal under Section 4 of NWFP Service Tribunal Act 1974, against the impugned Order dated 11/02/2009, issued by respondent no 01 under Endst: No 3607-10, whereby appellant's representation dated 19/01/2009, For grant of 04 Four advance increments of M.A w. e. f. 17/06/2001, against A.T post, with all back benefits on the basis of Para 5(i)(c) of the Notification No FD (PRC) 1-1 /89 dated 11-08-1991 issued by Respondent No 06 (Finance Department N.W.F.P. Peshawar) and in pursuance of Judgments/Law passed by Supreme Court of Pakistan, was refused/dismissed.

PRAYER

It is respectfully prayed before this Honourable Tribunal that the instant appeal may graciously be accepted, impugned order dated 11/02/2009, issued by respondent No 01 issued under Endst: No 3607-10, may be set aside and the appellant may be granted 04 advance increments of MA w.e.f. 17/06/2001, with all back benefits

Respectfully Sheweth, FACTS

1)

That appellant was appointed on 09/11/1994, as an A.T teacher in Education Department as a trained teacher, Appellant already passed her Shahadatul Alamia Examination (professional Islamic course of A.T post) before her service, thus her regular Service was also started from the date of her appointment against A.T post (09/11/1994). Now a days appellant is working as A.T teacher, at GGMS Banda Sahib Khan, District Abbottabad: A Certificate in this respect issued by concerned authority is annexed as <u>Annexure A.</u>

- 2) That appellant fulfilled the requirements mentioned at para no 03 of the Notification dated 07/08/1991, and was placed in BPS No 14 against A.T post w.
 e. f. 09/11/1994 (date of appointment against A.T post), on the basis of Notification No FD(PRC)1-1/89 dated 07/08/1991, issued by Finance Department, N.W.F.P, Peshawar. Copy of said Notification No FD (PRC) 1-1/89 dated 07/08/1991 is <u>Annexure B</u>.
- 3) That appellant during her Service against A.T post, passed her M.A examination on 17/06/2001, and was entitled for Four (04) Advance Increments with effect from 17/06/2001 (date of passing M.A examination) in pursuance of Para 5 (i) (c) of the Notification No FD(PRC)1-1/89 dated 11/08/1991, issued by Finance Department, N.W.F.P, Peshawar, but these (04) advance increments has not given to the appellant by the respondents in their office routine, until now. Copy of said Notification No FD (PRC) 1-1/89 is Annexure C.
- 4) That appellant being teacher in Education Department was/is a member of Civil Employees (BPS-1-15) of the Provincial Government of N.W.F.P and was/is entitled advance increments in pursuance of Notification 11/08/1991 referred above, whose Para # 5, Clause (c) caters for the grant of Four Advance Increments M.A/M.Sc against A.T post because Prescribed Qualification of the said post was/is also Shahadatul Alamia, So appellant was/is entitled the same and Respondents did not give her Constitutional rights.
- 5) That now, In the Meanwhile, Honourable Supreme Court Of Pakistan has also decided the same matters in CPLA No 525,526 of 2007 on 19/07/2007, and ultimately declared that teachers (appellant) in Education Department are also Entitled for their Advanced Increments given in Para 5 (1) of Notification No FD(PRC)1-1/89 Dated 11/08/1991 without any change/exception. Copy of Supreme Court judgment is annexed as <u>Annexure D.</u>

attested

6) That Honourable Supreme Court of Pakistan has been pleased to dismiss the Civil Review Petitions No 216 & 217 of 2007, filed by Finance Department, N.W.F.P, Peshawar, on 29/01/2008, which were filed against the judgment, dated 19/07/2007, passed in C.P.L.A No 525 & 526 of 2007, and now the matters of Advance Increments attained its finality and there is no way before the respondents to withhold/deny the rights of appellant. Copy of Supreme Court judgment passed in C.R.P No 216 & 217 of 2007 is annexed as **Annexure E**.

- 7) That the petitioner of C.P.L.A. No 525 of 2007 (Mr: Rashid Iqbal Khan CT, GMS Tarhana, Abbottabad) has now been received his 04 Advance Increments of M.A/M.Sc with effect from its qualifying date, i.e. 15/09/1997, through an order issued on 26/02/2008, by the Education Department, in compliance of the Judgments of Honourable Supreme Court of Pakistan, dated 19/07/2007 & 29/01/2008, passed in CPLA No 525/2007 & CRP No 216/2007. Copy of Order dated 26/02/2008, of 04 Advance Increments of MA/MSc is annexed as Annexure F.
- 8) That when the above Judgments of the Supreme Court dated 19/07/2007 & 29/01/2008, and above order of Education Department dated 26/02/2008 (Annexure F) came into the notice of appellant, in the light of the same, She submitted his departmental representation to respondent no 1 on 19/01/2009, which was refused/dismissed by the respondent no 01, on 11/02/2009 and final/dismissal order(Impugned Order) was issued under Endst No 3607-10. Copy of representation is annexed as <u>Annexure G</u>, and Impugned order is annexed as <u>Annexure H</u>, Hence this appeal inters alia on the following ground, and appellant's appeal is within 30 days from the refusal/dismissal of his departmental representation.

<u>Grounds</u>

a)

That the impugned order dated 11/02/2009, passed by respondent no 01 on appellant's representation dated 19/01/2009 is arbitrary, unjust, and against all the norms of justice and equity. Hence liable to set aside.

- b) That the impugned order dated 11/02/2009, is against law, facts of the case, also against letter and spirit of the Judgments of Honourable Supreme Court of Pakistan dated 19/07/2007 passed in CPLA No 525,526 of 2007 and also dated 29/01/2008 in Civil Review Petition No 216 & 217 of 2007.
- c). That the Policy contained in Notification/Circular dated 11/08/1991 at its Para 5 was/is passed by N.W.F.P Provincial Assembly in their Budget Session 1991-92 and then Hon, le Governor approved the same and Finance Department issued the said Circular after completing the legal requirements.

Attested

3

That all the Respondents neither have power nor any jurisdiction to change, withheld/deny the Government Policy contained in Circular/Notification dated 11/08/1991 and cannot apply according to their own wishes and whims against the said policy.

d)

g).

h).

i).

- e) That the action of respondents in refusing the grant of advance increments to the appellant on the basis of Circular dared 11/08/1991, violated the Article 25,189 190 of the Constitution, as petitioner of CPLA (Mr: Rashid Iqbal Khan) has got his same relief of 04 advance increments of MA/MSc.
- f). That the said Circular (Annexure C) was/is issued for Civil Provincial Employees of N.W.F.P (BPS-1-15) and appellant being teacher(Education Department) falls under the same and fully entitled for the relief of Advanced Increments along with back benefits as claimed by him.
 - That the case of appellant is the same nature in pursuance of Para 5 (i) of Notification, which was decided by Supreme Court of Pakistan on 19/07/2007 passed in CPLA No 525,526 of 2007 (Annexure D).
 - That there is now no dispute available in the case of appellant as Honorable Supreme Court of Pakistan has decided all the disputed matters involved in the instant appeal on 19/07/2007.
 - That appellant's service appeal is maintainable and appellant's post is/was A.T and prescribed qualification of the A.T post was/is Shahadatul Alamia, appellant is now working in BPS # 15 against A.T post and Instant Case falls under Para 5(1)(c) of the Circular dated 11/08/1991(Annexure C)

It is therefore respectfully prayed that while setting aside impugned order dated 11/02/2009 approved/issued by respondent no 01, and appellant's appeal may kindly be accepted and 04 advance increments of M.A against C.T post w.e.f. 17/06/2001, along with all back benefits may graciously be granted to the appellant in the interest of justice.

(Abida Bibi) Appellant in person

Attested

<u>Affidavit</u>

I do here by affirm on oath that contents of instant appeal is correct and true according to my best knowledge and belief and nothing has been suppressed from this Honourable Tribunal and this instant appeal is first appeal & same nature of any other appeal is not pending before Honourable Tribunal



(Abida Bibi)

DEPONENT

Government Girls Middle School Banda Sahib Khan, Abbottabad.

CERTIFICATE

Certified That Miss Abida Bibi D/O Muhammad Yousaf, A.T teacher, Government Girls Middle School Banda Sahib Khan, Abbottabad. R/O: H.No K-149, Banda Sappan, Near Shell Pump, Havelian Road, Tehsil & District, Abbottabad, is a permanent School teacher in this School/Institution. Her date of Ist appointment is 09/11/1994 against A.T post, as a trained teacher. She passed her A.T Islamic Professional Examination before her Service and being A.T she was placed in BPS No 14 on 09/11/1994 (date of her appointment). She passed her M.A examination against AT post on 17/06/2001. At present she is working against A.T post in BPS No 15.

Allested

HEAD MISTRESS Govern:nent Giris Middle School Banda Sahib Khan, Abbottabad. S,NO Name of the post Benefits Extended

> All other teachers who do possess Higher qualification shall continue getting existing pay scale with Selection Grade accordingly .

However, the Higher Scale/Grade allowed to these will be personal to them and the inter-se- seniority will remain intact.

Secondary school teachers.

4.

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

The advance increments sanctioned by Finance Department vide para -9 of its matter No: FD(SR-1) 1-67/82 dated: 24.08.1983 will not be admissible on acquiring / possessing qualifications for which higher pay scales are being sanctioned through this notification.

sd

SECRETARY TO GOVERNMENT OF NORTH WEST FRONTIER PROVIDE FINANE DEPARTMENT.

75

Endst No: FD(PRC) 1-1/89

Dated Peshawar the 7th August, 1991.

A copy is forwarded to the accountant General, N.W.F.P Peshawar for Information and necessary action.

så/

(GHULAM DASTGIR ABHTAR) Deputy Secretary(Regulation) Finanace Department.

Dated Poshawar the 7th August, 1991

Endst No: FD(PRC) 1-1/89

A copy is forwarded to :-

All Administrative Secretaries to Govt of N.W.F.P. 1:

All Commissioners of Divisions in N.W.F.P 2.

3. All District Accounts Officers,

All the District Eductions Officer 5:

Secretary to the Govt of N.W.F.P

Registrar Peshawar High Court. 6. 7.

Registrar Service Tribunal N.W.F.P

All Deputy Commissioners/Political Agents / District and 8. session Judges in N.W.F.P

> sd/ х х х (GHULAM DASTGIR AKHTAR) Deputy Secretary (Regulation) Finance Department.

A Tlested

A copy of Finance Department, Government of NWFP, circular letter No.FD(PRC)1-1/39, dated 11th August, 1991 addressed to all the Administrative Secretaries in NWFP and others.

Subject:- REVISION OF BASIC PAY SCALES AND FRINGE BENEFITS OF CIVIL EMPLOYEES (BPS-1-15)OF THE PROVINCIAL GOVERNMENT(1991). Str.

I am directed to refer to the subject noted above and to say that the Governor, NWFP has been pleased to sanction Revision of the Basio Pay Soales for the Provincial Civil Servants(BPS-1-15) as detailed in the following paragraphs:-

BASIC PAY SCALES:-

27

3.

.....

The existing, modified and revised Pay scales are detailed in the annexure to this letter. The revised pay scales shall replace the Basik Pay Scales, 1987 and shall be effective from the Ist June 1991.

INITIAL FIXATION OF PAY.

1) The initial pay of the existing employees who have been in Government Service since before the Ist June, 1991, shall first be fixed in the modified scale at the stage having the same pay or if there is no such stage at the next higher stage. Thereafter the pay shall be fixed in the Revised Fay Scale "on point to point basis" 1.e. at the stage in the relevant revised basic pay scale which is as many stages above the stage occupied by him above the minimum of the modified basic scale.

ii) In the case of those employees whose pay is fixed in the revised scale at a stage which gives less than Rs.100/increase in pay of May,1991 à minimum increase of Rs.100/-in pay over May,1991 level, would be allowed and thereafter pay fixed at the corresponding stage equal to this pay or if there is no such stage at the next higher, stage. The pay, fixation formula has been illustrated through examples I,II & III in Appendix.

Attested

iii) The annual increment shall continue to be admissible subject to the existing conditions on the 1st of December each year.

iv)The increases allowed since 1-7+1988, as detailed below shall cease to be admissible from 1-5-1991:-

a)Indexed pay sonctioned vide Hipance Department circular No.FD(PRC)1-3/85 dated 4-8-1958.

Contd. ... 2/

Attested

- b) Adhoc increase of 5% of pay sanctioned vide circular No.FD(PRC)1-3/85,dated 13-1-1990.
- .c) Adhoc increase of 10% sanctioned vide Finance Department circular No:FD(PRC)1-3/89 dated 21-7-1990.
- d) Dearness Allowance of Rs.200/-P.W. sanctioned vide Finance Department circular No.FD(PRC)1-3/89,dated 15-1-1991.

- FIXATION OF PAY ON PROMOTION.

- i) In cases of promotion from a lower to higher post/scale before the introduction of these scale pay of the employee concerned in the revised scale may be fixed and so enhanced that it would not be less than the pay that would have been admissible to him if his promotion to the higher post/scale had taken placed after the introduction of these scales.
- ii)Government employees who are allowed selection grade shall be granted one premature increment from 1-6-1991 as is allowed in the case of promotion.
- GRANT OF ADVANCE INCREMENTS TO OFFICIALS FOR POSSESSING/ATTAINING HICHER EDUCATIONAL QUALIFICATION.
 - 1) From 1-6-1991 onwards advance increments shall be allowed without the condition of the Second Division to the officials in BPS-1-15 for possessing or ecquiring higher educational qualifications over and above prescribed qualifications in the relevant a recruitment Rules to the extent given below:-

D	No.of <u>Matri</u> c	Advan Advan	ce inc /F.Sc.	rements f B.A/B.Sc	or obtaining. • <u>M.A./M.S></u>
a)Where the prescribed gualification in Non-Matric.	2		4	6	8
b) Where the prescribed qualification is Matric.	Nil.		2	· 4.	
c)where the prescribed qualification is F.A/ F.Sc.	Nil.	; ,]	111.	2	4
d)Where the prescribed qualification 15 B.A./ B.Sc.	Nji.	l.	lil.	Nil,	2

The advance increment already allowed in terms of Para-6(a) of Finance Department's lotter No.FD(PRC) 1-1/87 Vol-XIII,dated 22-7-1987 would be doubled from 1-6-1991. ii) The advance increments shall be allowed at the time of recruitment or acquisition of higher qualification whichever is later. In cases where the employee is already at the maximum of the scale, he may be allowed the number of advance increments beyond the miximum of the scale as personal pay to be absorbed at the time of his moveover/promotion. Those employees who had acquired higher qualification in 3rd Division prior to 1-6-1991 and were not granted advance increments carlier would henceforth be allowed advance increments with effect from 1-6-1991.

6. MOVIN OVER.

The concession of Move-over shall be available from 1-6-1991 onwards to those who are enjoing selection grade.

7. <u>SPECIAL PAYS.</u>

The existing Special Pay admissible to various categories of Personal Assistants in BPS-15 shall be r vised from 1-6-1991 as under:-

The second state of the se	مترجر ومغارد والالتحريب الرعود والمراجع والارد		
NAME OF POST. EXI PER	STING RS. MONTH.	REVISED RS. PER MON 1H.	N
P.A.to Minister.	100	.150	100
P.A.to Chief Secretary Addl:Chief Secretary/ Secretaries/Additional	•		thestart
Secretaries.	75	120	ANA

8. TEACHING ALLOWANCE.

The existing rate of teaching allowances admissible to qualified teachers of High Schools who teach Science subjects of Physics, Chemistry, Biology end Mathematics and Junior Instructors in Poly-Yechnic shall be onhanced as under:-

> a)For High School Science Teachers.

From 100/-P.M. to Rs.200/-PM.

-b)For Junior Instructars in Paly-technic who possess Technical Teachers Diploma.

From Rs. 100/-1.M. to Rs. 200/-P.M.

9. MEDICAL ALLOWANCE.

The existing rate of Medical Allowance of Rs.50/-P.M. admissible to the employees in BPS 1-15 shall be enhance to Rs.60/-P.M. Contd...4/-

a) MESSIN /DIET ALLOWANCE.

.) The existing rate of messing/diet allowance for Nursing Cadre(below BPS-16 shall be enhanced from Rs.300/- to Rs.500/-.

b) UNIFORM ALLOWANCE.

The existing rate of uniform allowance for Nursing Cadre(below BPS-16)shall be enhanced from Rs.125/- P.M. to Rs.150/-P.M.

C)NIGHT DUTY ALLOWANCE.

The Night Duty Allowance shall be admissible as under:-

 i)For Assistants/Clerks. ...Rs.8/-per night.
 ii)For Staff Car Drivers/ Despatch Riders. ...Rs.4/-per night.
 iii) For Naib Qasid. ...Rs.3/50 per night.

d)WASHING GRANT/ALLOWANCE ADMISSIBLE TO LIVERIED STAFF.

The exi. ing rates of Washing Grant/ Allowance shall be enhanced from Rs.25/-per month to Rs.30/-per month.

> e)CONVEYANCE CHARCES FOR LATE SITTING AFTER OFFICE HOURS.

The exis ing rates of Conveyance Charges admissible to employees in BPS 1 to 16(Non-Gazetted) shall be enhanced as under:-

Res ted

i) ON WORKING DAYS.

For officials in BPS 1-2.

For officials in BPS 3-15 B-16(Non-Gazetted).

(ii) ON CLOSED HOLIDAYS)

For officials in BPS 1-2:

For officials in BPS 3-15 B-16(Non Gazetted). From Rs.3.50 per day Works.4.50 per day to Rs.5.50 per day

From Rs.4.50 per day to Rs.5.50 per day.

From Rs.7.00 per day to Rs.8.00 per day.

Your obedient servant

Sd/-(GHULAM DASTAGIR AKHT DEPUTY SECRETARY(REG:) FINANCE DEPARTMENT.

10.

In the Supreme Court of Pakistan . (Appellate Jurisdiction)

Prosent: Mr Justice Rana Bhagwandas, ACJ Mr. Justice Sardar Muhammad Raza Khan

C.P.L.A No.525 of 2007 On appeal from judgment of NWFP Service Tribunal, Peshaw dated 24.4.2007 passed in Service Appeal No.498 of 2006)

Rashid lqbal Khan

Petitioner Versus District Coordination Officer, Abbottabad & others Respondents Petitioner:

For the respondents:

Rashid Iqbal Khan, in person

Sardar Shaukat Hayat Khan, Additional Advocate General, NWFP

C.I'.L.A No.526 of 2007 (On appeal from judgment of NWFP Service Tribunal, Peshawar dated 24.4.2007 passed in Service Appeal No.499 of 2006)

Muhammad Haroon Qureshi

Petitioner Versus District Coordination Officer, Abbottabad & others Respondents Attes ted Petitioner: Muhammad Haroon Qureshi, in person For the respondents: Sardar Shaukat Hayat Khan, Additional Advocate General, NWFP

Date of hearing:

19.7.2007

Judgment

E Br ATT Sunariation

Rana Bhagwandas, ACJ - Sole grievance of the petitioners before the NWFP Service Tribunal (hereinafter referred to as the Tribunal) appears to be that after induction in BPS-14 as Elementary School Teachers,

in terms of NWFP Government Circular dated 7.8.1991 they are entitled to mo.eouri of Pakiokan SLAMADAD

four advance increments in terms of NWFP Government circular letter No.FD(PRC)1-1/89 dated [1.8.1991 on acquiring higher qualification MA/MSc. They have been non-suited by the Tribunal vide judgment dated

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C.P.L.A Nos. 525 & 526 of 2007

24.4.2007 on the premise that they had been placed in higher grade i.e. BPS-14 on acquiring BA/BSc Second Division in terms of Finance Division circular letter No.FD(PRC)1-1/89 dated 7.8.1991, therefore, the provisions of circular letter dated 11.8.1991 issued by the Finance Department would not be applicable to teachers. Tribunal has expressed the view that this circular would be applicable only to ministerial staff, as such, the petitioners were not entitled to the relief claimed by them. Petitioners being aggrieved seek leave to appeal.

2. We have heard the petitioners, who argued their case in person whereas learned Additional Advocate General, NWFP has appeared on Court notice issued to the respondents. With the assistance of learned Additional Advocate General, we have examined both the circulars, which do not exclude the teachers in the Education Department from the benefits accruing out of circular letter dated 11.8.1991, as on its plain reading it applies to all civil servants in BPS 1 to 15 serving under the Provincial Government. Para 5 of the said circular provides mechanism for grant of advance increments to officials for possessing/attaining higher educational qualification. Para 5, clause (c) caters for the grant of four advance increments on attaining MA/MSc where prescribed qualification is FA/FSc. It would be seen that the petitioners were placed in BS-14 by reason of having acquired the qualification of BA/BSc, Second Division which is the prescribed qualification for the post of Elementary School Teacher. It is not the case of respondent-Government that the petitioners have already drawn advance increments on acquiring higher qualification of MA/MSc.

3. Learned Additional Advocate General attempted to argue that in view of the higher scale granted to Elementary School Teachers in pursuance of the circular letter dated 7.8.1991, which was personal to them, the

Sundanthinian ang Coun of Pakloss ASLANABAD allested

C.P.L.A Nos. 525 & 526 of 2007

petitioners would not be entitled to the incentive of advance increments contemplated by circular letter dated 11.8.1991 but he is unable to cite any principle of law or authority for placing this interpretation. We find that, while circular letter dated 7.8.1991 exclusively deals with the scales of pay of school teachers in different categories, circular letter dated 11.8.1991 provides for the revision of basic pay scales and grant of annual increments and advance increments for all Provincial civil servants in NWFP without any exception. Since the teachers or the employees in Education Department have never been expressly or impliedly excluded from the operation of the circular letter, view taken by the Tribunal being erroneous cannot be sustained at law. In fact, it suffers from clear misconception of law and misconstruction of the circular letter (supra).

For the aforesaid facts, circumstances and reasons, we are of the 3. considered view that the Tribunal committed a serious error of law, therefore, the impugned judgment is liable to be set aside. Consequently, we convert these petitions into appeals and, on acceptance, declare that the petitioners would be entitled to four advance increments with effect from the date of SUPREA ualifying MA/MSc exam.

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Gate of Proceeds No. of Westa: Bo. City in: Islamabadiegetenen Pee 19th July, 2007: en int

Not approved for reporting.

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Superintendent

Certified to be true copy

Attestel

Supramé Court of Publistan ISLAMADAD

IN THE SUPREME COURT OF PAKISTAN (REVIEW/ORIGINAL JURISDICTION)

<u>Present:</u> MR. JUSTICE MUHAMMAD NAWAZ ABBASI MR. JUSTICE MUHAMMAD QAIM JAN ICHAN MR. JUSTICE MOHAMMAD MOOSA K. LEGHARI

C.R.P. NOs. 216 & 217/2007 in C.P. NOs. 525 & 526/2007 (On review from the judgment dated 19.7.2007 passed in C.A. Nos. 1504 & 1505/2007)

Secretary to Govt. of N.W.F.P. Finance Department, Peshawar

Versus

Roshid Iqbal Khan and others Muhammad Horoon Qureshi and others

... Respondents (in C.R.P. No. 216/07) ... Respondents (in C.R.P. No. 217/07)

....Potitioner (in both cases)

CRI.Q.P. NOS. 66 & 67/2007 IN C.A. NOS. 1504 & 1505/2007

Rashid Iqbal Khan Muhammad Haroon Qureshi

....Pelitioner (in Crl.O.P. No. 66/07)Pelitioner (in Crl.O.P. No. 67/07)

Versus

District Coordination Officer, Abbottabad and others

... Respondents (in both cases)

In Person

For the Pelitioner : (in C.R.P. Nos. 216 & 217/07)

For the Petitioners (in Cri.O.P. 66 & 67/07)

For the Respondents (in C.R.P. Nos. 215 & 217/07)

For the Respondents (in Crl.O.P. 66 & 67/07)

Date of hearing

Allestel

N.R. -

Sardar Shaukal Hayat, Addl.A.G. N.W.F.P

Sardar Shaukat Hayat, Addl.A.G. N.W.F.P

29.1.2008

<u>ORDER</u>

<u>MUHAMMAD</u> NAWAZ ABBASI, J:- The learned Addl. Advocate General has contended that this Court while interpreting the circulars in question has taken a view contrary to the correct legal position according to which private respondents were not entitled to the benefit of advance increments. We are afraid, the learned Addl.A.G. instead of pointing out any mistake of law and fact

in the judgment made an attempt to re-open the case on ments. The scope of

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review is very limited and the points already considered in the judgment under review cannot be allowed to be re-agitated in review jurisdiction. These review petitions being without any substance are accordingly dismissed.

Crl.O.P. Nos. 66 & 67/2007

The learned Addl.A.G. has given an undertaking for implementation of the judgment of this Court within a period of two weeks and in view thereof, this criminal original is disposed of with the direction that the judgment should be implemented in letter and spirit within two weeks under intimation to the Registrar of this Court.

> Call. Muhammal Naval Aldasi, Jorg- Muhammad Bains Jan Iclan, org- Mohammad Massa LC. Lester

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13/02 hr.

Attested

Islamabad 29.1.2008 (Ejaz Goraya) 4 12/1/20

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13-02-2008

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<u>ORDER</u>

In pursuance of the Judgment dated 19.07.2007, passed in CPLA No 525 & 526 of 2007, and Judgment dated 29.01.2008, passed in Criminal Original Petition No 66 & 67 of 2007, also passed in C.R.P No 216 & 217 of 2007, Pronounced by the Honourable Supreme Court of Pakistan, and on the basis of Para 5 (I)(c) of the Notification No FD(PRC)1-1/89 dated 11.08.1991, Sanction is hereby accorded to grant of 04 Advance Increments in respect of the following teachers on passing M.A/MSc Examination and relevant dates noted against their names.

S.No Name/Father Name & School

Date of passing (M.A/MSc)/Grant of 4 Adv: Incr.

 Rashid Iqbal Khan S/O Shamraiz Khan C.T., GMS Tarhana, Abbottabad.

- 15-09-1997
- 2) Muhammad Haroon Qureshi S/O Masood
 ur Rehman(ExC.T,GMS,Tarhana)
 Subject Specialist, GHSS Bahali, Manselva.

Note 1) Necessary Entries to this effect should be made in their Service book/office record.
 2) Arrears due to the Appointment should be drawn and disbursed to them.

(Syed Bashir Hussain Shah) Executive District Officer (Schools & Literacy) ABBOTTABAD.

550-62

Endst:No / C.T Male/Advance Incr: Estt: Branch A.Abad, Dated Copy forwarded for information and n/action to the

- 1) Registrar Supreme Court Of Pakistan, ISLAMABAD, with reference to Order dated 29.01.2008, passed by Supreme Court in Cr: Org: Ptn No 66 & 67 of 2007.
- 2) Advocate General N.W.F.P, Peshawar.
- 3) Secretary to Govt: of NWFP, Finance Department, Peshawar.
- 4) Secretary to Govt: of NWFP, (School & Literacy) Department Peshawar.
- 5) Director, (School & Literacy) Department Peshawar.
- 6) District Coordination Officer Abbottabad w/r to his letter No 2032-2033 dated 19.02.2008.
- 7) District Accounts Officer Abbottabad.
- 8) Accountant General N.W.F.P, Peshawar.
- 9) District Officer (S & L) Male Abbottabad with the direction to implement the judgment after verification of documents.
- 10) Head Master, GMS Tarhana, Abbottabad.
- 11) Budget & Accounts Officer Local Office.
- 12) Concerned Teacher Rashid Iqbal Khan & Muhammad Haroon Qureshi.
- 13) Office Order file

Attes ted

Executive District Officer (Schools & Literacy) ABBOTTABAD. To,

Sir,

REPRESENTATION FOR SANCTION/GRANT OF FOUR (4) ADVANCE INCREMENTS OF M.A. w. e. f. <u>17/06/2001</u> (date of passing M.A) against A.T post WITH ALL BACK BENEFITS UNDER THE PARA 5 (I) (c) OF NOTIFICATION NO FD (PRC)1-1/89 DATED 11-08-91, ISSUED BY THE GOVT OF N.W.F.P, FINANCE DEPARTMENT, PESHAWAR & THE JUDGMENTS OF HONOURABLE SUPREME COURT OF PAKISTAN DATED 19-07-2007, 29-01-2008 PASSED IN C.P No 525 OF 2007, and CRP No 216 of 2007.

The submissions of the applicant are as under;

- That applicant was appointed in Education Department on 09/11/1994 against AT post as a trained teacher, she passed her Islamic professional Course before her Service, thus her regular service was also been started from the date of her taking over charge against AT post and was placed in BPS No 14 from the date of her appointment (09/11/1994), now she is working against A.T post in BPS No 15.
- That applicant during her service, passed her MA Examination on 26/06/2000, and is/was entitled for 04 advance increments w.e.f. 17/06/2001 against A.T post, but these increments were not given to the applicant until now, in pursuance of Para 5 (1) (c) of the Notification NO, FD(PRC)1-1/89 dated 11-08-1991, issued by the Govt of NWFP, Finance Department, Peshawar.
- 3) That there is now no dispute available in the case of appellant as Honourable Supreme Court of Pakistan has decided all the disputed matters involved in the instant application on 19/07/2007 in CPLA No 525 of 2007 and on 29/01/2008 by deciding Civil Review Petition No 216 of 2007, and petitioner of said cases (Mr Rashid Iqbal Khan C.T teacher) has also got his advance increments along with his arrears and now is taking his increments regularly.
- 4) That applicant's application is maintainable and applicant's post is A.T and prescribed qualification of her A.T post is Islamic professional Course equal to F.A/FSc, Instant Case falls under Para 5(1) (c) of the Circular dated 11/08/1991, and applicant was/is entitled of 04 increments of MA w.e.f. 17/06/2001

Attested

In the light of above mentioned notification and Law, it is therefore, requested that Four (04) advance increments of MA w.e.f due date, i.e. 17/06/2001, along with all back benefits, may kindly be sanctioned/granted to the applicant.

Dated 19/01/2003

Abida Bibi D/O Muhammad Yousaf, A.T teacher, Government Girls Middle School Banda Sahib Khan, Abbottabad. R/O: H.No K-149, Banda Sappan, Near Shell Pump, Havelian Road, Tehsil & District, Abbottabad.

<u>157</u>_2009 Dated

P-57

- Khailda Bibi d/o Muhammad Yousaf CF GGMS Mohamdah Abbottabad
- 2 Abida Bibi d/o Muhammad Yousaf AT GGMS Banda Sabib Khan Abboitabad
- 3 Ghazala Bibi d/o Muhammad Yaqub, CT GGMS Naroja Abbottabad

ottested

4 Rubina Shaheen d/o Qalandar Khan (Ex- PTC) CT GGMS Bagnoter Abbottabad

SUBJECT:- REPRESENTATION FOR SANCTION/GRANT OF FOUR (4) ADVANCE INCREMENTS OF MA AGAINST CT & AT POST AND FOUR (4) ADVANCE INCREMENT OF B.A AGAINST PTC POST WITH ALL BACK BENEFITS, UNDER THE PARA 5 (1) (B) & (C) OF NOTIFICATION NO FD (PRC) 1-1/89 DATED 11.08.91, ISSUED BY THE GOVT OF NWEP FINANCE DEPARTMENT. PESHAWAR & THE JUDGMENTS OF HONOURABLE SUPREME COURT OF PAKISTAN DATED 19.07.2007, 29.01.2008 PASSED IN C.P.NO 525 526 & 590 OF 2007 CRP.NO, 216 OF 2007

Mento:-

To,

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Your appeals/applications for above said Advance Increment on higher qualification cannot be considered by this Department as the Increments allowed by the Honourable Court will be allowed to those who appealed before the said forum as and when I aw Department allowed accordingly.

> Executive District Officer (Ele: & Sec: Edu:) Abbottabad

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR.

Service Appeal No.486/2015 Abida Bibi (AT), Abbottabad.

VERSUS

Appellant

- 1. Government of Khyber Pakhtunkhwa through Secretary, Finance Department, Peshawar.
- 2. Accountant General, Khyber Pakhtunkhwa, Peshawar.
- 3. District Comptroller of Accounts, Abbottabad.
- 4. District Education Officer(Female), E&S Education, Abbottabad.
- 5. Government of Khyber Pakhtunkhwa through Secretary (Elementary & Secondary Education Department), Peshawar.

Respondents

PARAWISE COMMENTS ON BEHALF OF RESPONDENT NO.01

Respectfully Sheweth

Preliminary Objections:

- i) That the appellant has no cause of action.
- ii) That the appellant has no locus standi.
- iii) That the appeal in hand having no merits is not maintainable.
- iv) That appeal is time barred.
- v) This Honourable Tribunal lacks jurisdiction to entertain the appeal.
- vi) That the appeal is bad for mis-joinder and non-joinder of necessary parties.
- vii) That under the cessation of advance increment on higher educational qualification Act No.IX of 2012, claim of the Appellant stood abated.

Facts:

afore ST IPC

- 1. Relates to Service record of the appellant and Court record, hence need not comments.
- 2. Subject to Proof.
- 3. Incorrect: Finance Department issued letter dated15.12.2010, containing directions that recovery may be made from those teachers/employees who have availed extra advance increments invalidly over and above their entitlement on academic qualification. This issue of availing extra advance increments over & above the entitlement was also agitated and examined thoroughly by the Accountant General Office (Pay Fixation Party) vide letter No.PFP/ R.B.S.2011/DIK/2014-15/248 dated 10.12.2014(Annex-I). The position emerged therein was also shared with Law No.FD(SOSR-I)2-123/2015 Finance Department letter dated Department vide 01.09.2015(Annex-II) with the request for their views on legal position of the case. Thereafter, Law Department vide letter No.SO(OP-II)/LD/5-7/2012-Vol-II/21708-09 dated 16.09.2015 (Annex-III) has confirmed that Finance Department letter dated 15.12.2010 with regard to the recovery of extra advance increments/invalid implementation is correct and such implementation was declared invalid. Hence recovery was ordered to be effected from those teachers/employees who have availed more advance increments over and above their entitlement on academic qualification (Annex-IV).
- 4. Subject to proof. However, it is clarified that Finance Department issued letter dated 15.12.2010 containing directions that recovery may be made from those teachers/employees who have availed extra advance increments invalidly over & above their entitlement on academic qualification. Accordingly Respondent No.03 has rightly deducted/recovered 02 advance increments out of 04, erroneously allowed to any teacher/appellant.
- 5. Need no comments by Respondent No.01.

Cont'd Next Page-(2)

Grounds:

Before ST IPC

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- (a) Needs no comments by Respondent No.1.
- (b) Incorrect: Action taken by Respondent No.01 is not against the judgement of any Court/Service Tribunal but as per judgement of august Supreme Court of Pakistan and in the interest of justice & public exchequer.

Page-(2)

- (c) Incorrect: As explained in preceding Paras. Respondent No.01 can even not think of contempt of any court.
- (d) Do not relates to Respondent No.01.
- (e) Incorrect: Action taken by Respondent No.01 is in accordance with the judgement of august Supreme Court of Pakistan. Further appellant has not been subjected to discrimination/injustice by the respondent No.01.

It is therefore, humbly prayed that appeal of the appellant being devoid of merit may be dismissed.

10lld CRETARY

GOVERNMENT OF KHYBER PAKHTUNKHWA,

AFFIDAVIT

I, Irshad Muhammad, Section Officer(Litigation-II) do hereby solemnly affirm and declare that the contents of accompanying Parawise Comments are true and correct to the best of my knowledge and belief and that nothing has been concealed from this Honorable Tribunal.

DEPOR

Govt. of Khyber of Pakhtunkhwa FINANCE DEPARTMENT

Office of the Accountant General

Khyber Pakhtunkhwa Peshawar Phone: 091 9211250-53

No. PFP/R.B.S.2011/DIK/2014-15/248 To. Dated 10.12.2014

The Accounts Officer, HAD Section.

Subject: STOPPAGE OF RECOVERY AS WELL AS ALLOWING ADVANCE

Please refer to your Memo No.HAD-24(76)Swat/Vol-X/2014-15 dated 16.1.2015 on the subject noted above.

2. As you are aware of the facts that appointment to the post of CT made through different method of recruitment (i) from PTC (Now PST) being FA/FSc/D.com and (ii) directly on the basis of FA/FSc/D.com qualification in BPS-09. Before 1.6.1991 those PST teachers whose appointment were made on the basis of Metric Plus existing professional qualification granted 02 and 03 advance increments on possessing or acquiring higher qualification i.e. FA,FSc/D for and BA/BSc/B.com respectively while in the case of CT whose appointment were made on basis of FA plus prescribed professional qualification granted 03 advance increments on possessing or acquiring BA/BSc/B.com vide Finance Deptt: letter No.FD(SR-I)1-67/82 dated 24.8.1983.

3. After introduction of RBPS-1/6/1991, those PTC teachers who have passed FA/FSc/D.com in the Second Division were allowed BPS-09 and BPS-14 to those CT teachers who have passed BA/BSc/B.com in the Second Division. In this way the CT teachers who joined the Education Deptt: in the capacity of PTC and later on appointed to the post of CT already drawn 05 advance increments on Dasis of FA/FSC/D.com plus BA/BSc.B.com and CT, teacher whose appointment made on the basis of FA/FSc/D.com achieved 03 advance increments (on basis of BA/BSc.B.com) in light of Finance Deptt: letter dated 24.08.1983 therefore, ithose CT teachers who have already availed 05 increments (as PST) and 03 increments D'My Decument(CM & Section)Complaint Seat/Pay Fixation\stoppage of reco.doc) are crititled only for one increment on possessing or acquiring MARK/M.com qualification as regards those employees whose appointment where made on the basis of BA/BSc B com in BPS-14 and not availed any advance informents are entitled only for 02 advance increments on MA in light of Finance (Deptt: letter No (PRC)1-1/89 dated 07.08.1991)

4. As regards Arabic teacher whose appointed made on the basis of honor in Arabic and granted BPS-14 on BA/BSc.B.com Second Division are entitled for two advance increments on possessing or acquiring MA/MSc/Micom while those teacher whose appointment made on the basis of MA Arabic or Shahadatul Alamia from the recognized Madaris are not entitled for any advance increments on MA/ MSc/M.com but the Education Deptt: granted 04 advance increments to the CT and Arabic teacher on acquiring MA/MSc/M.com qualification which are over and above of the entitlement in light of the Finance Deptt: letter dated 11.8.1991 as well as judgment made by the honorable Supreme Court of Pakistan in Civil Petition No.1425 of 2011.(copy enclosed).

5. The subject issue referred to the Pay Fixation Party has been examined and reached to the conclusion that as per contents of Para 2 (2) of the <u>Khyber Pakhtunkhwa, Cessation Of Payment Of Arrears Qn</u> Advance Increments On Higher Education Qualification Act 2012 clearly indicate that recovery of advance increments paid to the Gover employees on acquiring higher qualification in light of any order made, instruction issued decision, Judgment or orders of any courts or tribunal, including High Court or the Supreme Court, may not be recovered from the recipients Govt: employees as these were paid validly. The Pay Fixation Party is of the view that the advance increments availed over and above their entitlement as explained-in-the preceding-Paras-has to be reduced & brought to the actual pay in light of Finance Deptt: letter dated 15.12.2010.

6. It is requested that Finance Deptt: may also be advised to share the view of the Pay Fination Party with the law Deptt: for their opinion and issue clear instruction so that the doors of litigation closed for ever.

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GOVERNMENT OF KHYBER PAKHTUNKHWA FINANCE DEPARTMENT (REGULATION WING)

NO. FD (SOSR-1) 2-123/2015 Dated Peshawar the: 01-09-2015

To:

The Secretary to Govt. of Khyber Pakhtunkhwa, Law, Parliamentary Affairs & Human Rights Deptt, **Peshawar.**

Subject: -

Dear Sir, I

APPEAL OF CT TEACHERS FOR STOPPING RECOVERIES BEING MADE ON ACCOUNT OF ADVANCE INCREMENTS GRANTED ON HIGHER EDUCATIONAL QUALIFICATION.

I am directed to enclose herewith a self-explanatory application/ alongwith its enclosures received from certain teachers of Khyber Pakhtunkhwa as well as reply / comments of AG Office (communicated through their letter No.HAD-24(76)/Vol-X/Swat/2014-15/3391 dated 07-04-2015) thereon regarding the subject cited above and to state that sub-section (2) of section 2 of the Khyber Pakhtunkhwa Cessation of Payment of Arrears on advance Increments on Higher Educational Qualification Act, 2012, states "Any order made, instructions issued, decision, judgment or order o any Court or Tribunal including a High Court or the Supreme Court, implemented immediately before the commencement of this Act-shall be deemed to have been validly made, issued and implemented by the date of commencement of this Act, and any amount already paid there-under on account of advance increments or arrears thereof shall be deemed to have been validly paid and shall not be recoverable from the recipient Government employees". As against the AG Office has opined with reference to the Pay Fixation Party that advance increments availed of over and above the entitlement are to be brought to the actual limit in light of Finance Department's letter dated 15-12, 2010 (copy enclosed). The said two point of views are mutually contradictory.

2. In light of above, your valuable comments with regard to legal position between the two opposing views is solicited; please.

SECTION OFFICER (SRIT mount. 219/15

(12) Letters in (Diffice Work Local D)



GOVERNMENT OF KHYBER PAKHTUNKHWA LAW. PARLAMENTARY AFFAIRS & HUMAN RIGHTS DEPARTMENT

NO. 50(0P-11)/LD/5-7/2012-VOL-11 / 217 0 8 - 09 Dated Peshawar the 1/2 Sept. 2015.

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

Subject:

APPEAL OF CT TEACHERS FOR STOPPING RECOVERIES BEING MADE ON ACCOUNT OF ADVANCE INCREMENTS GRANTED ON HIGHER EDUCATIONAL QUALIFICATION.

Dear Sir,

I am directed to refer to your Department's letter No. FD(SOSR-1)2-123/2015 dated 01.09.2015 on the subject noted above and to state that Section-2 (2) of Khyber Pakhtunkhwa Cessation of Payment of arrears on advance increments on Higher Educational Qualification Act, 2012 and views of Accountant General with regard to Finance Department letter No.FD(SR-1)/2-123/2010 dated 15-12-2010 are not mutually contradictory.

The savings given to the implemented instructions or orders in Section-2(2) of the Act ibid is with regard to valid implementation till or before the commencement of the Act ibid. Finance Department letter dated 15-12-2010 was with regard to the recovery of invalid implementation and such implementation was declared invalid vide para-iv of the said letter. Recovery was ordered to be effected from those teachers/ employees who have availed more advance increments over and above their entitlement on academic qualifications, of the commencement of the Act ibid, therefore it cannot be said that legislature, attributed savings to invalid acts.

Hence, this Department is in league with the Pay Fixation Committee on the point that the advance increments availed over and above the entitlement has to be reduced and brought to the actual pay in light of Finance Department letter dated 15-12-2010 mentioned above.

Yours Faithfully,

Section Officer (Opinion-II)

Endst: of even No. & date.

A copy is forwarded to the PS to Secretary Law Department.

SR-1-17 Pate-18.9.

Section Officer (Opinion 11)

Annex I



GOVERNMENT OF KHYBER-PAKHTUNKHWA

(REGULATION WING)

NO, FD (SOSR-1) 2-123/2015 Dated Peshawar the: 21-09-2015

TION OFFICER (SR-I)

TION OFFICER (SRII)

To:

The Secretary to Govt. of Khyber Pakhtunkhwa, Elementary & Secondary Education Deptt: <u>Peshawar.</u>

The Accountant General, Khyber Pakhtunkhwa, Peshawar.

Subject:

APPEAL OF CT TEACHERS FOR STOPPING RECOVERIES BEING MADE ON ACCOUNT OF ADVANCE INCREMENTS GRANTED ON HIGHER EDUCATIONAL QUALIFICATION

Dear Sir

I am directed to refer to the subject noted above and to state that the matter has been examined in consultation with Law. Parliamentary Affairs & Human Rights Department. Copy of the advice of that Department contained in their letter No.SO (OP-II)/LD/5-7/2012-VOL-II/21708-09 dated 16th Sep. 2015, is sent herewith for further necessary action accordingly, please.

Enct: (As above)

Copy for information is forwarded to the following Teachers with reference to their joint application addressed to the Chief Secretary Khyber Pakhtunkhwa:

1 Mr. Hidayatullah, CT, Govt. Higher Secondary School, Mingora.

Mr. Muhammad Ghafoor, CT, GHSS, Sajban Swat.

3 Mr. Muhammad Nabi, SCT, GHSS, Sajban Swat.

(12) Letters in (Öffice Work Local D)

BEFORE THE HONORABLE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR CAMP COURT ABBOTTABAD.

Appeal No. 486/2015

Abida Bibi.....Appellant

VERSUS

Govt: of Khyber Pakhtunkhwa & Others......Respondents

Para wise Comments on behalf of Respondents No. 4 & 5.

Description	Page Nos	Annexures
Comments alongwith affidavit.	1 to 3	
Copy of judgment.	4 to 6	"A"
	Comments alongwith affidavit.	Comments alongwith affidavit. 1 to 3

<u>Index</u>

(F) Dis

Abbottabad (Respondent No. 4)

BEFORE THE HONORABLE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR CAMP COURT ABBOTTABAD.

<u>Appeal No. 486/2015</u>

Abida Bibi......Appellant

VERSUS

Govt: of Khyber Pakhtunkhwa & Others......Respondents

Para wise Comments on behalf of Respondents No. 4 & 5.

Respectfully Sheweth:-

Comments on behalf of respondents are submitted as under:-

PRELIMINARY OBJECTION:-

- 1. That the appellant has no cause of action to file the instant appeal.
- 2. That the appeal of the appellant is time barred. Hence liable to be dismissed.
- 3. That the instant appeal is not maintainable as there is no final order.
- 4. That the appellant has filed the present appeal to pressurize the respondents.
- 5. That the appellant has not come to this Honorable tribunal with clean hands.
- 6. That the appellant is estopped to sue due to his own conduct.
- 7. That the instant appeal is not maintainable due to non-joinder and mis-joinder of necessary parties.
- 8. That this Honorable Tribunal hasn't got jurisdiction to entertain the present petition/ appeal as this Honorable Tribunal is not a Constitutional Court, hence this appeal is liable to be dismissed.
- That the vires of Act were challenged in the appeal, the Act was promulgated in the best public interest & the advance increments were not settled to be paid at the time of joining of service.
- 10. That the legislator has authority to legislate as they have mandate to do so by a recognize process and services law do not provides the provision of judicial review, hence appeal is not tenable.
- 11. That the appellant is at liberty to join service after due process of law equivalent to his qualification & the Government is not bound to pay advance increment.

Factual objections:-

- In reply to Para No.1of the appeal it is submitted that judgment of honorable tribunal has lost its efficacy for the purpose of implementation by clear intendment through sections 1 & 2 of Khyber Pakhtunkhwa cessation of payment arrears on advance increments on higher education qualification Act No. IX of 2012.
- 2. That para No.2 of the appeal is subject to prove.
- 3. That para No. 3 of the instant appeal does not relate to answering respondents.
- 4. In reply to para No. 4, it is submitted that due to the promulgation of Khyber Pakhtunkhwa cessation of payment arrears on advance increments on higher education qualification Act No. IX of 2012, superseded the judgment of the service tribunal.
- 5. That para No.5 relates to record.

<u>Grounds:</u>

- a. That ground a. as composed is incorrect hence, denied. Furthermore, it is submitted that judgment of Honorable tribunal has lost its efficacy for the purpose of implementation by clear intendment through sections 1 & 2 of Khyber Pakhtunkhwa cessation of payment arrears on advance increments on higher education qualification Act No. IX of 2012.
- b. Complete reply has already been contended in the preceding paras.
- c. Ground c as composed is incorrect as one Mr.Muhammad Haroon had filed Civil Petition No 360 of 2013' before the August Supreme Court of Pakistan against the order dated 30/01/2013, passed by this Honorable tribunal and the same was dismissed on 29/08/2013. Copy of the said judgment is annexed as Annexure "A".
- d. That ground d is subject to prove. No comments.
- e. That ground e is incorrect hence denied. The act of the respondents is in accordance with law

Under the circumstances, it is humbly prayed that the instant appeal is meritless against the law and facts, hence liable to be dismissed without further proceeding.

Abbottabad. (Respondent No. 4)

Secretary (E&SE) Khyber Pakhtunkhwa Peshawar. (Respondent No.5)

BEFORE THE HONORABLE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR CAMP COURT ABBOTTABAD.

Appeal No. 486/2015

Abida BibiAppellant

VERSUS

Govt: of Khyber Pakhtunkhwa & Others......Respondents

AFFIDAVIT

I, District Education Officer (Female) Abbottabad, do hereby affirm and declare that contents of forgoing comments are correct and true according to the best of my knowledge and belief and nothing has been suppressed from this Honorable Court.

In the Supreme Court of Pakistan

(Appellate Jurisoliction)

Present:

Mr. Justice Anwar Zaheer Jamali Mr. Justice Khill: Arif Hussain

Mr. Justice IJaz Ahmed Chaudhry

Civil Petition No.350 of 2013. (on appeal from Judgment of KRV Service Tribunal, Peshawar dated 30.1:2013, passed in -Implementation Petition No.49/2012)

Muhammad Haroon Versus

Executive District Officer, Elementary & Secondary Education Dept. Harlpur, etc.

For official respondents: Mr. Naveed Axnuar, Nave, Boundary, Harlpur, Mr. Saeed-ur-Rehman, ADO (Edu.), Harlpur,

Date of hearing: 29.8,2013

JUDGMENT

Anwar Zaheer Jamali, J.- By this petition under Article 212(3) of the Constitution of Islamic Republic of Pakistan, 1973, leave to appeal is sought by Relationer Mohammad Haroon against the order dated 30.1.2013, pessed by the Relationer Pakhtunkhwa Service Tribunal, Peshawar (in short "the Tribuna!"), whereby and the Pakhtunkhwa Service Tribunal, Peshawar (in short "the Tribuna!"), whereby is Infelementation application No.49/2012, in service Appeal No.506/2009, was dismissed in view of sections-1.& 2 of Khyber Pakhtunkhwa Cessation of Payment of Amater Pakhtunkhwa Act No.1X of 2012).

We have heard the arguments of petitioner. He has placed reliance for the earlier judgment of the Tribunal dated 12.5.2009, whereby he was held for the benefit of advance increments on the basis of higher qualification. Instituted for the benefit of advance increments on the basis of higher qualification. Hereitable purpose, he has also placed reliance upon the judgment of this Court,

As against it, learned Additional Advocate General KPK, Mr. Navead As against it, learned Additional Advocate General KPK, Mr. Navead As against it, learned Additional Advocate General KPK, Mr. Navead As against it, learned Additional Advocate General KPK, Mr. Navead ATTESTED

> Supron Court Pakiston ISLAMABAD

fonexure

"Petitioner

<u>C.P-360-0730F3</u>

through implementation application No.49/2012 filed before the Tribunal, cannot be allowed to the petitioner in view of the clear language of section-1 of Khyber Pakhtunkhwa Act No.IX of 2012, which has made its section-2 applicable with retrospective effect from 01.12.2001 and, thus, made the said judgment unimplementable.

 ~ 7

4. We have considered the above noted submissions made before us by the petitioner and the learned Addi. A.G KPK and seen that indeed as per judgment of the Tribunal dated 12.5.2009, the petitioner was held entitled for the benefit of advance increments on the basis of his higher qualification, but such judgment has lost its efficacy for the purpose of implementation by clear intendment through sections 1 and 2 of Khyber Pakhtunkhwa Act No.IX of 2012, which read as under:-

*1. Short title, application and commencement. ~ (1) This Act may be called the Khybder Pakhtunkhwa Cessation of Payment of Arrears on Advance increments on Higher Educational Qualification Act, 2012.

(2) It shall apply to all the employees of the Provincial Government, who were entitled to received advance: increments on higher educational qualification.
 (3) It shall-come faite force at once and shall be doemed to have taken affect on and from 1th day of December, 2001.

2. Cessation of payment of arrears on advance ingrements on higher educational qualification - (1) Notwithstanding anything contained in any degision judgment and order of any Tribunal or Court including High Court or Supreme Court of Pakistan, for the purpose of any claim for payment of arrears on account of advance increments on higher educational qualification sanctidned in pursuance of any order, letter, office memoranda, notification, instructions and other natruments. Issued before 1.12:2001, such orders, letters, office memoranda, notification, instructions and other instruments shall be deamed to be nonfexistent, ceased or revoked and no further claim whatsoever on the basis of these instruments shall be entertained and all cases in respect of such claims pending in any Court or Tribunal including High Court and Supreme Court of Pakistan shall stand-abated.

(2): Any order made; Instruction issued, decision, judgment or order of any Goint or Tsibunal Induding a High Gourt or the Supreme Court, implemented intrinedistely before the commencement of this Act, shall be deemed to have been which made, issued and implemented by the date of commencement of this Act, and any amount already paid there-under on account of advance increments or arreads thereof shall be deemed to have been veildly paid and shall not be recoverable from the recipient Government employees."

akistos

BEAMAHAN

CP-360 002013; i, A bare reading of the above sections from Khyber Pakhtunkhwa Act 5. No.IX of 2012 makes it crystal clear that whatever benefit the petitioner was claiming through the judgment dated 12.5.2009, has been nullified by the legislature through clear intendment in unequivocal terms, while vires of the said Act have not been challenged before any forum. 1.1This being the position, leave to appeal is refused and this petition is 6. SUSP REM THE Sd/- Anwar Zaheer Jamali, J. Sd/- Khilji Arif Hussain,J Sd/- Ijaz Ahmed Chaudhry SEAL OF Cartified of be Trus Copy -15: Nю PAIR NU COUNO 0565 Civil/Criminal CIPTE. N. ds alle Fee Re: St Spil. CS 1. ... -6 ŤĊ 24 c ĝ と引き込 14.

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s.No__37 DBA number C No. وكال NOIR AHHE Abbotts Name of Advocate بعدالت مرمس مرمي موم کر کنيما وم 40000 ا بیلاند اب بر _ نوعیت مقدمہ مسروکس ا باعث تحريراً نكبه مقدمه مندرجه بالاعنوان میں اپن طرف سے دارسطے بیروی وجوابد ہی برائے بیش یا تصفیہ مقدمہ بمقام مرم معیک مرم مرم وسک ر ارتر ور کر لأقبرا2 م دار فطو خار بر و سال کوحب ذیل شرائط پرد کیل مقرر کیا ہے کہ میں ہر پیشی پرخود یابذ ربعہ مختار خاص رد بر دعدالک حاضر ہوتار ہوں گاآدر بر دفت پکارے جانے مقدمہ دکیل صاحب موصوف کواطلاع دے کر حاضرعدالت کر دل گا۔اگر پیشی پرمظہر حاضر نہ ہوااور مقدمہ میری غیر حاضری کی دجہ ے کی طور پر میرے خلاف ہو گیا تو صاحب موصوف اس کے کی طور پر ذمہ دار نہ ہوں گے نیز وکیل صاحب موصوف صدر مقام کچ ہری کے علاوہ کمی جگہ یا کچہری کےاوقات سے پہلے یا پیچھے یابروز تعطیل پیردی کرنے کے ذمہ دارنہ ہوں گےاور مقدمہ کچہری کے علاوہ کمی اور جگہ ساعت ہونے پر ما بروز تعطیل یا کچہری کے اوقات کے آگے پیچیے پیش ہونے پر مظہر کوکوئی نقصان پہنچ تو اس کے ذمہ داریا اس کے داسطے کس معادضہ کے اداکرنے یا مختلفہ کے داپس کرنے کے بھی صاحب موصوف ذمہ دار نہ ہو نگے۔ مجھ کوکل ساختہ پر داختہ صاحب موصوف مش کردہ ذات منظور دمقبول ہوگا اور صاحب موصوف کو عرض دعویٰ یا جواب دعویٰ اور درخواست اجرائے ڈگری دنظر ثانی اپیل نگرانی و ہرشم درخواست پرد سخط دنصد بق کرنے کابھی اختیار ہوگا ادر کسی تھم یا ڈگری کرانے ادر ہر تم کا روپیہ دصول کرنے اور رسید دینے اور داخل کرنے ادر ہوتم کے بیان دینے اور اس پر ثالثی دراضی نامہ و فیصلہ بر صلف کرنے اقبال دعویٰ دینے کا بھی اختیار ہوگا اور بصورت جانے بیر دنجات از کچهری صدرا پیل وبرآ مدگی مقدمه یامنسوخی ڈگری یکطرفه درخواست تحکم امتناع یا قرتی یا گرفتاری قبل از گرفتاری دا جرائے ڈگری بھی صاحب موصوف کو بشرطادا ئیگی علیجد ہ محتانہ بیردی کا اختیار ہوگا۔ادربصورت ضردرت صاحب موصوف کو یہ بھی اختیار ہوگا کہ مقدمہ مذکوریا اس کے سمی جز دکی کاردائی کے یابصورت اپیل کمی دوسرے دکیل کواینے بجائے یااینے ہمراہ مقرر کریں ادرا پنے وکیل کوبھی ہرا مرمیں د ہی اور دیسے اختیارات حاصل ہوئے جیسے صاحب موصوف کو حاصل ہیں اور دوران مقد مہ جو کچھ ہر جاندالتوا پڑے گا وہ صاحب موصوف کاحق ہوگا۔اگردکیل صاحب موصوف کو پوری فیس تاریخ پیشی سے پہلے ادانہ کروں کا توصاحب موصوف کو پوراا ختیار ہوگا کہ وہ مقدمہ کی پیروی ند کریں اور الی صورت میں میر اکوئی مطالبہ کی شم کا صاحب موصوف کے برخلاف نہیں ہوگا۔ لہذاد کالت نامہ کھودیا ہے کہ سندر ہے۔ 21 9 20/6 مُضمون دکالت نامہ سن کیا ہے اور اچھی طرح سمجھ کیا ہے اور متطور بے ノレ receipted by us