

EP 46/2022

*Akmal Hussain Vs Grot*

19.01.2022

Petitioner in person and Mr. Noor Zaman Khattak, District Attorney for the respondents present.

Arguments heard. Vide our detailed order of today in Execution Petition No. 84/2020, titled "Muhammad Bashir Vs. the Chief Secretary, Government of Khyber Pakhtunkhwa Peshawar and others", this Petition stands disposed of as per Para-4 of the order. There is no order as to costs. File be consigned to the record room.



(AHMAD SULTAN TAREEN)  
Chairman

ANNOUNCED

19.01.2022

E.P. No. 46/2022

AKmal Hussain vs Govt

11.01.2022

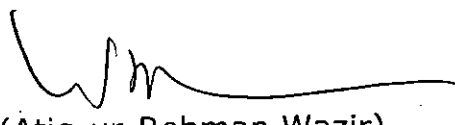
Nemo for the appellant. Mr. Asif Masood Ali Shah, Deputy District Attorney for the respondents present.

Reader of the Tribunal stated that he has been telephonically informed by the appellant that he would be unable to appear before the Tribunal today due to some domestic engagements and has requested that as similar nature Service Appeal bearing 1115/2016 has been treated as Execution Petition bearing No. 40/2022, which is fixed for 19.01.2022 before the S.B at Peshawar, therefore, the appeal in hand may also be fixed on the said date.

Upon this, case file of the concerned Execution Petition requisitioned and perused. Vide order dated 15.11.2021 passed in Service Appeal bearing No. 1115/2016, the said appeal which is identical in nature to the appeal in hand has been treated as Execution Petition. Accordingly, the matter agitated in the present service appeal being similar to the matter agitated in the Service Appeal bearing No. 1115/2016 (now Execution Petition No. 40/2022), therefore, the appeal in hand is converted into Execution Petition. Office is directed to delete its number from the Register of Appeals and register the same in the Register of Execution Petitions. File to come up alongwith Execution Petition No. 40/2022 as well as Execution Petition No. 84/2020 on 19.01.2022 before the S.B at Peshawar.

  
(Salah-ud-Din)  
Member (J)

  
Chaitman

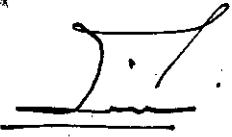
  
(Atiq-ur-Rehman Wazir)  
Member (E)

29.07.2021

Appellant alongwith counsel namely Mr. Muhammad Zubair Jadoon Advocate present. Mr. Asif Masood Ali Shah learned Deputy District Attorney for respondents present and requested for adjournment on the ground that as the brief of the appeal was provided to him very lately, therefore, he has not made preparation for arguments. Adjourned. Last Opportunity is given. To come up for arguments before the Larger Bench on 15.09.2021. Long date given due to summer vacations.



(Rozina Rehman)  
Member (J)



(Salah-ud-Din)  
Member (J)



(Atiq ur Rehman Wazir)  
Member (E)

15.09.2021

Clerk of counsel for the appellant present. Mr. Asif Masood Ali Shah, Deputy District Attorney for the respondents present.

Clerk of counsel for the appellant submitted an application for adjournment on the ground that learned counsel for the appellant is busy before the august Peshawar High Court, Peshawar and cannot attend the Tribunal today. Adjourned. To come up for arguments before the Larger Bench on 11.01.2022.



(ROZINA REHMAN)  
MEMBER (JUDICIAL)



(SALAH-UD-DIN)  
MEMBER (JUDICIAL)



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

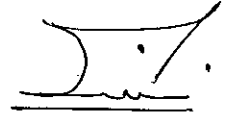
07.07.2021

None for the appellant present. Mr. Muhammad Adeel Butt,  
Additional Advocate General for the respondents present.

Notice for prosecution of the appeal be issued to appellant  
and to come up for arguments before the Larger Bench on  
15.07.2021.



(ROZINA REHMAN)  
MEMBER (JUDICIAL)



(SALAH-UD-DIN)  
MEMBER (JUDICIAL)

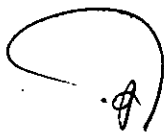


(ATIQ-UR-REHMAN WAZIR)  
MEMBER (EXECUTIVE)

15.07.2021

Nemo for the appellant present. Mr. Asif Masood Ali Shah,  
Deputy District Attorney for the respondents present.

Notice issued to the appellant not returned back, therefore,  
notice for prosecution of the instant appeal be issued to  
appellant and to come up for arguments before the Larger Bench  
on 29.07.2021.



(ROZINA REHMAN)  
MEMBER (JUDICIAL)



(SALAH-UD-DIN)  
MEMBER (JUDICIAL)



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

30.06.2021


Appellant in person present.

Mr. Asif Masood, Deputy District Attorney for respondents present.

The Worthy Chairman is on leave, therefore, the case is adjourned to 01.07.2021 for arguments before Larger Bench.

  
(Rozina Rehman)  
Member (Judicial)

  
(Salah Ud Din)  
Member (Judicial)

  
(Attiq Ur Rehman Wazir)  
Member(Executive)

01.07.2021

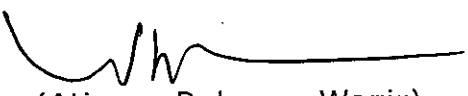
Nemo for the appellant. Mr. Asif Masood Ali Shah, Deputy District Attorney for the respondents present.

This appeal vide order dated 12.09.2019 was referred to the Larger Bench and was fixed before the Larger Bench at Principal Seat Peshawar on 14.11.2019, however, it appears from the next order sheet dated 14.11.2019 that the appeal was taken up by the Full Bench but the matter was adjourned again. The appeal was fixed before the Full Bench on various dates. As the order of reference of appeal to Larger Bench is still intact, therefore, this appeal be delisted from the cases to be heard by the Full Bench and the matter is adjourned for hearing by the Larger Bench on 07.07.2021.

  
(Salah-ud-Din)  
Member (J)

  
Chairman

  
(Rozina Rehman)  
Member (J)

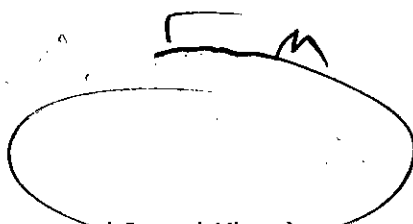
  
(Atiq-ur-Rehman Wazir)  
Member (E)

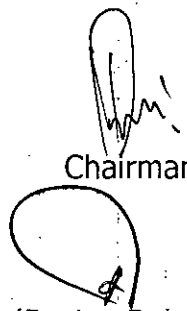
09.02.2021

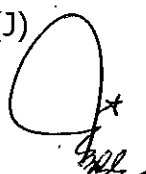
Nemo for the appellant Addl. AG for the respondents present.


On the last at least three occasions the appellant was unrepresented, however, neither any notice was required to be issued to him nor the appeal was dismissed for non-prosecution.

It is considered appropriate to require the issuance of notice to the appellant for 09.03.2021. Arguments shall be addressed by the parties on the date fixed.

  
(Muhammad Jamal Khan)  
Member(J)

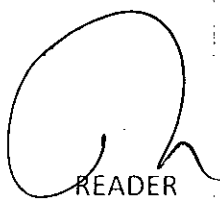
  
Chairman  
(Rozina Rehman)  
Member(J)

  
(Mian Muhammad)  
Member (E)

  
(Atiq-ur-Rehman Wazir)  
Member(E)

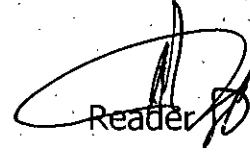
09.03.2021

Due to incomplete Bench, the case is adjourned to 30.06.2021 for the same.

  
READER

20.08.2020


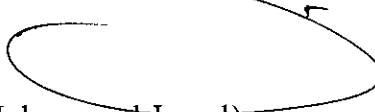
Due to summer vacation case to come up for the same on 10.11.2020 before Larger Bench.

  
Reader


09.11.2020


Nemo for the appellant present. Mr. Usman Ghani, District Attorney for respondents present.

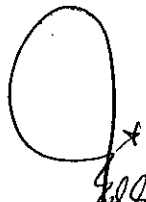
The Bar is observing general strike, therefore, the matter is adjourned to 09.02.2021 for hearing before the Larger Bench.

  
  
(Muhammad Jamal)  
Member (J)

  
Chairman

  
(Atiq-ur-Rehman)  
Member(E)


  
(Rozina Rehman)  
Member(J)


  
(Mian Muhammad)  
Member(E)

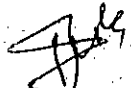
12.03.2020

Appellant in person and Mr. Ziaullah, DDA for the respondents present.

The Worthy Chairman is on leave, therefore, the bench is incomplete and the matter is adjourned to 11.06.2020 for arguments before the Larger Bench.

  
(M. Amin Khan Kundi)  
Member

  
(Muhammad Hamid Mughal)  
Member

  
(Hussain Shah)  
Member

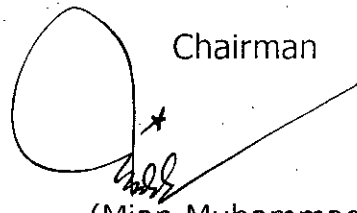
  
(Mian Muhammad)  
Member

11.06.2020

Nemo for the appellant and Mr. Kabirullah Khattak Addl. AG for the respondents present.

Due to incomplete Bench, the matter is adjourned to 20.08.2020 for arguments before the Larger Bench.

(M. Amin Khan Kundi)  
Member

  
Chairman  
(Mian Muhammad)  
Member



14.11.2019

Counsel for the appellant and Mr. Ziaullah, DDA alongwith M/S Zakiullah, Senior Auditor and Hajjad Shah, ADO for the respondents present.

Representative of respondents states that the cases involving similar proposition are pending before the Apex Court through CPLAs No. 5128 & 5130 of 2019 and are likely be decided in the month of December, 2019. He, therefore, requests for adjournment.

Adjourned to 13.01.2020 before the Larger Bench.

  
(M. Hamid Mughal)  
Member

  
Chairman

  
(Ahmad Hassan)  
Member

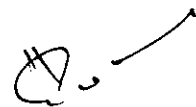
  
(M. Amin Khan Kundi)  
Member

  
(Hussain Shah)  
Member

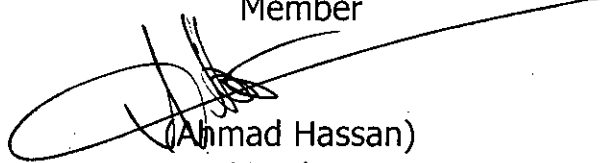
13.01.2020

Nemo for appellant. Mr. Ziaullah, Deputy District Attorney for the respondents present.

Due to general strike on the call of Khyber Pakhtunkhwa Bar Council, instant matter is adjourned to 12.03.2020 for arguments before Larger Bench.

  
(M. Hamid Mughal)  
Member

  
Chairman

  
(Ahmad Hassan)  
Member

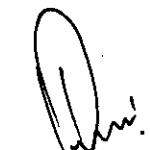
  
(M. Amin Khan Kundi)  
Member

  
(Hussain Shah)  
Member

Above all the issue of interpretation of notification dated 11.08.1991 and entitlement of the petition for grant of advance increments on higher qualification is of paramount importance in the appeals in hand. Correct appreciation/interpretation of the referred to above and proper form in whom jurisdiction is vested needs to be deliberated/decided.

In these circumstances this Tribunal is left with the only option to refer the matter to a larger bench for adjudication. This case alongwith connected appeals may be fixed for hearing before the Larger Bench at principal seat Peshawar on 14.11.2019.

  
Member

  
Chairman

12.09.2019

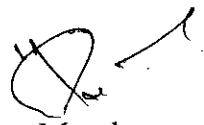
The instant case alongwith connected appeals was heard on 20.06.2019. After hearing the arguments of both the parties, the same was fixed for order on 19.08.2019 and further extended to 16.09.2016 vide order sheet dated 19.08.2019. We have thread-barely examined this case in the light of facts highlighted in the present service appeals and judgments rendered by the Hon'able Supreme Court of Pakistan and this Tribunal which were also presented during the course of arguments by both the parties. Appellants mainly relied on judgments of this Tribunal dated 12.05.2009 and judgments of august Supreme Court of Pakistan passed in CPLA no. 525 and 526 dated 19.07.2007 and 29.01.2008. Similarly vide judgment dated 14.12.2017 and 15.12.2018 passed in service appeal no. 263 and 1816/2011 the appeals were rejected on the ground of jurisdiction. On the other hand service appeal no. 312/15 dated 10.01.2018 was accepted by this Tribunal. In addition to this service appeal no. 1245/2014 decided on 10.10.2017 was dismissed on the strength of judgment of august Supreme Court of Pakistan in civil petition no. 1245/2011 decided on 08.09.2011. Furthermore, appeal no. 407/2012 was accepted vide judgment dated 16.04.2009. It has been observed that pro & contra judgments on the issue in hand were rendered by the Superior Courts and this Tribunal. Therefore, it was not possible to reach to a just logical conclusion in the matter.



19.08.2019

Appellant in person present. Mr. Bilal learned DDA alongwith Mr. M. Shamim, SO for respondents. The D.B which heard the instant service appeal at camp court Abbottabad is not available today, therefore, the case is adjourned ~~to~~ 16.09.2019 for order before D.B at Camp Court Abbottabad.

  
Member

  
Member  
Camp Court A/Abad

19.06.2019

Appellat in person and Mr. Muhammad Bilal, DDA alongwith Mr. Sohail Ahmad Zaib, Assistant and Sajid Superintendent for the respondents present.

Arguments partly heard. To come up for further arguments on 20.06.2019 before this D.B at camp court, Abbottabad.

  
Member


  
Chairman  
Camp court, A/Abad

20.06.2019

Appellant in person and Mr. Muhammad Bilal, DDA alongwith Shamim S.O and Sohail Ahmad Zeb, ADO for the respondents present.

*Learned Counsel for parties*  
~~Parties concluded their arguments~~ concluded their respective arguments. To come up for order on 19.08.2019 before this D.B at camp court, Abbottabad.

  
Member

  
Chairman  
Camp court, A/Abad


A  
Service Appeal No. 1145/2016

20.02.2019

Appellant in person present. M/S Malik Muhammad Haroon, District Account Officer and Sohail Ahmed Zeb, Assistant alongwith Mr. Muhammad Bilal Khan, Deputy District Attorney for the respondents present. Appellant requested for adjournment on the ground that his counsel is not available today. Adjourned to 17.04.2019 for arguments before D.B. at Camp Court Abbottabad.

  
(Ahmad Hassan)  
Member

Camp Court Abbottabad


  
(Muhammad Amin Khan Kundi)  
Member  
Camp Court Abbottabad

17.04.2019

Counsel for the appellant and Muhammad Bilal, DDA alongwith Sohail Ahmad Zaib, Asstt. for the respondents present.

Learned counsel for the appellant requests for adjournment as he could not prepare brief of instant matter due to over work before the Honourable High Court today. Adjourned to 19.06.2019 before the D.B at camp court, Abbottabad.

  
Member

  
Chairman  
Camp court, A/Abad

15.10.2018

Appellant Akmal Hussain in person present. Mr. Muhammad Irshad, SO (Litigation) alongwith Mr. Usman Ghani, District Attorney for the respondents present. Due to general strike of the Khyber Pakhtunkhwa Bar Council, counsel for the appellant is not in attendance. Adjourned. To come up for arguments on 18.12.2018 before the D.B at camp court, Abbottabad.

  
Member

  
Chairman  
Camp Court, A/Abad

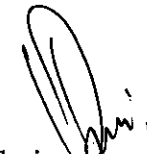
18.12.2018

Mr. Ansar Hayat Abbasi, Advocate submitted wakalat nama on behalf of the appellant. Mr. Usman Ghani, District Attorney alongwith Mr. Hajaj Shah, Litigation Officer for the respondents present.

Counsel for the appellant requests for adjournment on the ground that he has not prepared brief of the case.

Adjourned to 20.02.2019 for arguments before D.B at camp court A/Abad.

  
Member

  
Chairman  
Camp Court A/Abad

18.01.2018


Appellant in person and Mr. Usman Ghani, District Attorney alongwith Mr. Malik Haroon, ADO and Irshad Mohammad, SO for respondents present. Representative of respondents no. 1 and 2 relied on the reply already submitted by respondent no. 3 and 4.. To come up for rejoinder and arguments on 18.04.2018 before D.B at camp court A/Abad.



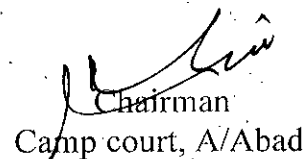
Member  
Camp court, A/Abad.

18.04.2018

Counsel for the appellant and Mr. Usman Ghani, District Attorney alongwith Muhammad Irshad, S.O for the respondents present. Rejoinder submitted. Counsel for the appellant seeks adjournment. To come up for arguments on 18.07.2018 before the D.B at camp court, Abbottabad.



Member



Chairman  
Camp court, A/Abad

18.07.2018

Appellant Akmal Hussain in person present. M/S Malik Muhammad Haroon, AAO, and Sohail Ahmad Zeb, Assistant on behalf of the respondents alongwith Mr. Usman Ghani, District Attorney present. Appellant submitted an application for adjournment. Granted. To come up for arguments on 15.10.2018 before the D.B at camp court, Abbottabad.



Member

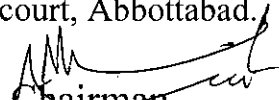


Chairman  
Camp Court, A/Abad



16.10.2017

Appellant in person and Mr. Muhammad Bilal, Deputy District Attorney for the respondents present. Written reply on behalf of respondents No. 3 and 4 already submitted. The learned DDA seeks adjournment on behalf of respondents No. 1 & 2. Last chance granted. To come up for written reply of respondents No. 1 & 2 on 18.12.2017 before S.B at camp court, Abbottabad.

  
Chairman

Camp court, Abbottabad.

18.12.2017


Appellant in person present. Mr. Kabirullah Khattak, Additional AG for the respondents also present. Written reply on behalf of respondents No. 3 & 4 already submitted. Representative of respondents No. 1 & 2 is not in attendance, therefore, notice be issued to respondents No. 1 & 2 with the direction to direct the representative to attend the court and submit written reply on the next date positively. Another last chance is granted to respondents No. 1 & 2 for filling for written reply. Adjourned. To come up for written reply/comments on behalf of respondents No. 1 & 2 on 18.01.2018 before S.B at Camp Court Abbottabad.



(Muhammad Amin Khan Kundi)  
Member (Judicial)  
Camp Court Abbottabad

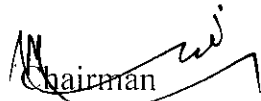
17.03.2017

Counsel for the appellant present and fresh Wakalatnama submitted. Mr. Saquib Shahzad, Assistant alongwith Mr. Muhammad Siddique, Sr.GP for the respondents present. Requested for adjournment. To come up for written reply/comments on 22.06.2017 at camp court, Abbottabad.

  
Chairman  
Camp court, A/Abad

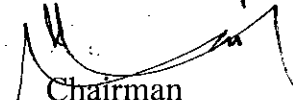
6. 22.06.2017

None present for the appellant. Mr. Muhammad Bilal. DDA alongwith Sohail Ahmad Zaib, Assistant for the respondents present. Learned DDA requested for adjournment. Adjourned. To come up for written reply/comments on 24.08.2017 at camp court, Abbottabad. Notice be issued to appellant for the date fixed.

  
Chairman  
Camp court, A/Abad

24.08.2017

Appellant in person present. Mr. Muhammad Bilal, Deputy District Attorney alongwith Muhammad Irshad, SO (Litigation) for the respondents present. Written reply on behalf of respondents No. 3 and 4 submitted. Remaining respondents requested for adjournment. Adjourned. To come up for written reply/comments on 16.10.2017 before the S.B. at camp court, Abbottabad.

  
Chairman  
Camp court, A/Abad

Appeal No. 1145/2016  
AKmal Hussain vs Govt

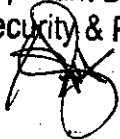
24.11.2016

Appellant argued that he was granted advance increment by this Tribunal vide judgment dated 12.05.2009 in service appeal No. 1276/2007. That the said increment was again withdrawn by the respondents vide impugned order dated 01.01.2016 where-against appellant preferred departmental appeal on 20.07.2016 which was not responded and hence the instant service appeal on 14.11.2016.

That the impugned orders are against facts and law and deduction of recovery from the appellant is liable to be set aside.

Points urged need consideration. Admit. Subject to deposit of security and process fee within 10 days, notices be issued to the respondents for written reply/comments for 20.1.2017 before S.B at camp court, Abbottabad. Notice of application for interim relief shall also be issued to the respondents. Till further orders no recovery be made from the salary of the appellant.

Appellant Deposited  
Security & Process Fee



20.1.2017

Counsel for the appellant and Mr. Muhammad Siddique Sr.GP alongwith Sohail Ahamd Zaib. Assistant and Malik Muhammad HJaron, AAO for the respondents. present. Requested for adjournment. To come up for written reply/comments on 17.03.2017 before S.B at camp court, Abbottabad.



Chairman

Camp Court, A/Abad



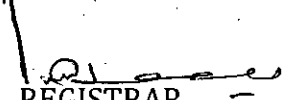

Chairman

Camp court, A/Abad

Form- A  
FORM OF ORDER SHEET

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

Case No. 1145/2016

S.No.	Date of order proceedings	Order or other proceedings with signature of judge or Magistrate
1	2	3
1	14/11/2016	<p>The appeal of Mr. Akmal Hussain received today by post, may be entered in the Institution Register and put up to the Worthy Chairman for proper order please.</p> <p> REGISTRAR</p>
2-	17-11-2016	<p>This case is entrusted to Touring S. Bench at A.Abad for preliminary hearing to be put up there on <u>24-11-2016</u></p> <p> CHAIRMAN</p>

**BEFORE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL  
PESHAWAR.**

Service Appeal No: 1145 of 2016

*Execution Petition no. 46/2022*

Akmal Hussain S/O Muhammad Akram, SST teacher, Government Centennial Model Secondary School (Boys) English Medium Abbottabad R/O link Road Narrian Cantt Near Jamia Masjid Ummer Farooq Narrian Cantt Abbottabad.

Appellant

**Versus**

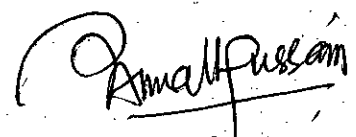
Accountant General Khyber Pakhtunkhwa Peshawar and 03 Other.

Respondents

**SERVICE APPEAL**

**INDEX**

S.No	DESC: OF DOCUMENTS	ANNEXURES	PAGE No
1	Memo; of Service Appeal	---	1 to 6
2	Copy of Judgment Dated 12/05/2009 passed by KPK Service Tribunal Peshawar	A	7 to 17
3	Copy of relevant pages of service book	B	18 to 22
4	Copy of departmental appeal	C	23 to 25
5	Copy of receipt of registered post	D	26



(Akmal Hussain)  
Appellant Inperson

Dated 10/11/2016

(1)

**BEFORE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL  
PESHAWAR.**

Service Appeal No: 1145 of 2016

*Execution Petition No. 46/2022*

Akmal Hussain S/O Muhammad Akram, SST teacher, Government Centennial Model Secondary School (Boys) English Medium Abbottabad R/O link Road Narrian Cantt Near Jamia Masjid Ummer Farooq Narrian Cantt Abbottabad.

*Appeal is converted into E.P  
vide order dt. 11-11-2022* Versus

Appellant

Khyber Pakhtunkhwa  
Service Tribunal

1 Accountant General Khyber Pakhtunkhwa Peshawar.

Diary No. 1184

2 District Comptroller of Accounts, Abbottabad.

Dated 14-11-2016

✓ 3 Government of Khyber Pakhtunkhwa through Secretary Finance Department Peshawar.

✓ 4 Government of Khyber Pakhtunkhwa through Secretary (Elementary & Secondary Education), Department Peshawar.

Respondents

**APPEAL** UNDER SECTION 4 OF KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT 1974, AGAINST THE IMPUGNED ACTION OF RESPONDENT NO 2, WHICH IS ALSO WITHOUT ISSUANCE/PASSING OF ANY OFFICIAL ORDER PASSED BY ANY COMPETANT AUTHORITY NOR GIVEN ANY NOTICE TO APPELLANT, IN RESPECT OF DEDUCTION/RECOVERY OF (01) ADVANCE INCREMENT OUT OF FOUR (04) ADVANCE INCREMENTS OF BA/BSc FROM THE SALERY OF THE APPELLANT WITH EFFECT FROM 01/01/2016, CAME IN TO THE KNOWLEDGE OF APPELLANT ON 20/07/2016, WHICH (INCREMENTS) WERE GRANTED IN PURSUANCE OF THE JUDGMENT DATED 12/05/2009 PRONOUNCED BY KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR IN APPELLANT'S INDIVIDUAL SERVICE APPEAL WHICH ATTAINED ITS FINALITY TOO. THE IMPUGNED DEDUCTION/RECOVERY IS UNCONSTITUTIONAL, CONTEMPT OF COURT, WITHOUT LAWFUL AUTHORITY, ARBITRARY, PERVERSE, DISCREMINATORY' AGAINST THE

Filed to-day

Registrar

14/11/16

PRINCIPAL OF NATURAL JUSTICE AND INEFFECTIVE UPON THE APPELLANT'S RIGHTS OF ADVANCE INCREMENTS, GRANTED BY COMPETENT COURT OF LAW AND FOR ACCEPTANCE OF DEPARTMENTAL APPEAL WHICH IS STILL PENDING WITH OUT RESPONSE.

**PRAER:-**

ON ACCEPTANCE OF INSTANT SERVICE APPEAL, IMPUGNED ACTION IN RESPECT OF RECOVERY/DEDUCTION OF 01 ADVANCE INCREMENTS OUT OF 04 MAY PLEASE BE SET-ASIDE AND IN CASE AMOUNT REFUNDED/DEDUCTED FROM THE SALARY OF APPELLANT, MAY BE ORDERED THE REFUND OF SAME AND CONTINUE RECOVERY/DEDUCTION IF ANY MAY ALSO BE SUSPENDED TILL THE FINAL DISPOSAL OF TITLED SERVICE APPEAL AND MAY PLEASE BE IMPOSED HEAVY COST AGAINST THE RESPONSIBLE RESPONDENTS.

Respectfully Sheweth,

**FACTS**

- 1) That appellant is a school teacher, he is now working as SST teacher (BPS 16), he was granted 04 advance increments (instead of 03) of higher qualifications (B.A/B.Sc) over and above prescribed qualification of post held, on the basis of para 8 of the judgment dated 12/05/2009 announced by KPK Service Tribunal Peshawar, respondents did not file their appeal before Supreme Court against the order dated 12/05/2009 yet, and now it attained its finality. Copy of Judgment of Service Tribunal is annexed as **Annexure "A"**.
- 2) That appellant was being given/granted his salary with out any deduction/disturbance from the respondents upto 01/01/2016, the District Comptroller of Accounts Abbottabad (respondent no 02) with out any notice given to the appellant or without formal/official written order or any legal and factual reason,

deducted/recovered 01 advance increments of B.A/B.Sc with effect from 01/01/2016 and fixed his pay in BPS 16 as Rs 28435/-PM from 29470/-PM by deducting the legal and lawful pay, and now appellant is taking the pay with one less increment, but the same fact is came in to the knowledge of appellant on 20/07/2016, all is done with out any notice given to the Appellant. Copy of relevant pages of service book is annexed as Annexure "B".

- 3) That appellant challenged the illegal deduction/recovery of 01 advance increments out of 04 through his departmental appeal dated 20/07/2016 through registered post No 1476 from GPO Abbottabad to respondent no 1 which is still pending with out any response after passing the statutory period of 90 days, Copy of departmental appeal and receipt of registered post is annexed as Annexure "C" & "D". Hence this appeal inters - alia on the following ground, and appellant's appeal is within 120 days from the submission of his departmental appeal.

### Grounds

- a) That this Honourable Court/Tribunal has already been pleased to admit the same nature many service appeals the main appeal No is 1302 of 2014 titled Maroof Khan and 04 others Vs Govt etc.
- b) That appellant under the law, was entitled to 04 advance increments and the respondents (respondent No 01) was not at all have powers to deduct/recover the 01 advance increments out of 04 Increments, which were granted to the appellant by a competent Court of law (Service Tribunal) while all concerned respondents amongst others were not only arrayed as party in service appeal no 1276 of 2007 but they contested the case and they were not filed



(4)

their CPLA against the Judgment of Service Tribunal dated 12/05/2009 before Apex Court, yet thus it attained its finality.

- c) That if respondents have any objections/reservations on the Judgment of Service Tribunal in respect of number of increments, it was incumbent upon the respondents to have approached Supreme Court by filing Petition against the Judgment of Service Tribunal dated 12/05/2009 but they can not be changed the nature of Judgment as decided by Apex court **2011 PLC (C.S) 590**
- d) That the order dated 12/05/2009 passed by Service Tribunal was implemented by the respondents in letter and spirit and under the doctrine of locus Poenitentiae the respondents were not entitled to withdraw benefits, once it was implemented (**PLD 1991 Supreme Court 973**).
- e) That the appellant while contesting for his right of 04 advance increments before the Service Tribunal, never ever suppressed any fact from the Learned Tribunal and respondents.
- f) That before passing the Impugned action of respondents, no notice whatsoever, was given to the appellant and the appellant is contemned unheard.
- g) That judicial system will be ruined, if respondents would be left free to act upon against the Judgment of Learned Service Tribunal, thus respondent are bound not to change the spirit of the Judgment creating any kinds of self made illegal complications.

h) That action of respondents is apparent activity of serious contempt of the Judgment of Honourable Tribunal, and tried to reopen the same matters which are finally decided by the Supreme Court of Pakistan.

i) That the action of respondents is admittedly arbitrary capricious unjust and against all norms of justice and against Tribunal Judgment and order.

j) That the involved matters in the instant appeal is relating to pay and under the law limitation did not run in such matters

k) That it is an admitted fact that under question illegal Action fell in the matter of great public importance.

l) That appellant, is dragged into litigation, that his claim of Advance Increments have been solved completely; the conduct of the respondents is contemptuous and as such requires indulgence of this Honourable Court by awarding appropriate Cost to the respondents, as decided in the Judgment dated 12/05/2009 by Honourable Tribunal at Para 07.

It is, therefore, respectfully prayed that on acceptance of instant service appeal, impugned action in respect of recovery/deduction of 01 advance increments out of 04 may please be set-aside and in case amount refunded/deducted from the salary of appellant, may be ordered the refund of same and continue recovery/deduction if any may also be suspended till the final disposal of titled service appeal and may please be imposed heavy cost against the responsible respondents.

Any other relief for which the appellant is entitled, and the same is not asked/prayed specifically, may very kindly be granted in favour of the appellant.

*Akmal Hussain*

(Akmal Hussain)  
Appellant Inperson

Dated 10/11/2016

**AN INTERIM RELIEF** it is therefore prayed that deduction of advance increments of BA/Bsc: may also be suspended till the final disposal of titled service appeal

*Akmal Hussain*

(Akmal Hussain)  
Appellant Inperson

Dated 10/11/2016

Affidavit

I, Akmal Hussain S/O Muhammad Akram, SST teacher, Government Centennial Model Secondary School (Boys) English Medium Abbottabad R/O link Road Narrian Cantt Near Jamia Masjid Ummer Farooq Narrian Cantt Abbottabad, 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

*Akmal Hussain*

(Akmal Hussain)  
Appellant Inperson  
Deponent

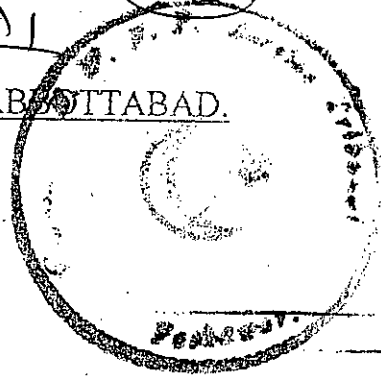
Dated 10/11/2016



Annexure A

7

BEFORE THE NWFP SERVICE TRIBUNAL, CAMP COURT ABBOTTABAD.



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.

Appellant in person present.

Arshad Alam, A.G.P.....For respondents.

MR. ABDUL JALIL.....MEMBER.  
MR. BISMILLAH SHAH.....MEMBER.

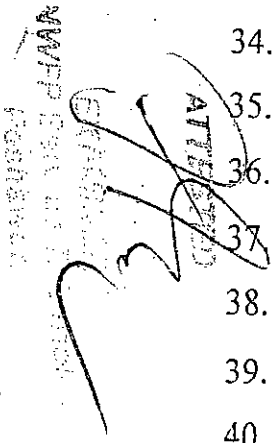
JUDGMENT.

ABDUL JALIL, MEMBER ; 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.

<u>Sr. No.</u>	<u>Appeal No.</u>	<u>Name of appellant.</u>
1.	1277/2007	Saidur Rahman,
2.	1278/2007	Munibur Rahman,
3.	1279/2007	Muhammad Siddique,
4.	01/2008	Maroof Khan
5.	02/2008	Amjed Hussain Awan

EXAMINED  
NWFP Service Tribunal  
Peshawar  
ATTESTED

- 6. 03/2008 Muhammad Sarwar Khan,
- 7. 04/2008 Syed Arif Hussain Shah,
- 8. 09/2008 Sultan Khan,
- 9. 10/2008 Shafqat Hussain,
- 10. 17/2008 Muhammad Sabir Hussain,
- 11. 18/2008 Tanveer Hussain Awan,
- 12. 19/2008 Shafqat Samdani,
- 13. 20/2008 Arshad Khan,
- 14. 21/2008 Shahid Iqbal,
- 15. 22/2008 Muhammad Saleem Raza,
- 16. 28/2008 Iftikhar Ahmad Shah,
- 17. 29/2008 Shah Zaman,
- 18. 30/2008 Muhammad Tahir,
- 19. 34/2008 Muhammad Younis,
- 20. 35/2008 Abdul Wadood,
- 21. 150/2008 Rizwana Kousar,
- 22. 266/2008 Mamoon-ur-Rasheed,
- 23. 267/2008 Haroon-ur-Rasheed,
- 24. 268/2008 Fazal-e-Qadir,
- 25. 327/2008 Dilawar Khan,
- 26. 338/2008 Abdul Wahab,
- 27. 440/2008 Liaqat Ali,
- 28. 502/2008 Ali Asghar,
- 29. 541/2008 Liaqat Ali,
- 30. 542/2008 Abdul Quddus,
- 31. 570/2008 Shahzad Ahmad,
- 32. 571/2008 Chan Zeb,
- 33. 572/2008 Abdul Hakeem,
- 34. 573/2008 Muhammad Siddique,
- 35. 574/2008 Sarfaraz
- 36. 575/2008 Muhammad Ajmal,
- 37. 576/2008 Gul Faraz,
- 38. 577/2008, Muhammad Yousaf,
- 39. 578/2008 Altaf Hussain,
- 40. 579/2008 Ahjaz Ahmad,
- 41. 580/2008 Muhammad Safdar,


  
 ATTORNEY AT LAW

- 42. 595/2008 Abdur Razzaq,
- 43. 596/2008 Abdur Razzaq,
- 44. 597/2008 Shaukat Ali Abbasi,
- 45. 598/2008 Abdul Hamid Lodhi,
- 46. 599/2008 Umar Khatab,
- 47. 680/2008 Abdul Majid
- 48. 681/2008 Muhammad Saleem,
- 49. 682/2008 Bashir Ahmad,
- 50. 714/2008 Mazhar Khan,
- 51. 715/2008 Muhammad Saeed,
- 52. 716/2008 Manzoor Ahmad,
- 53. 717/2008, Zulfiqar,
- 54. 718/2008 Sardar Irshad Ali,
- 55. 739/2008 Khursheed Ahmad,
- 56. 759/2008 Muhammad Daud Qureshi
- 57. 760/2008 Muhammad Fayaz Awan
- 58. 798/2008 Naheem Akhtar,
- 59. 812/2008 Muhammad Siddique,
- 60. 813/2008 Sajjad Ahmiad,
- 61. 814/2008 Abdul Hameed,
- 62. 815/2008 Raza Hussain Shah,
- 63. 816/2008 Shakeel Ahmad,
- 64. 817/2008 Muhammad Majid Mirza,
- 65. 819/2008 Rab Nawaz
- 66. 820/2008 Aftar,
- 67. 821/2008 Niaz Hussain,
- 68. 822/2008 Muhammad Iqbal,
- 69. 823/2008 Jamshed Khan,
- 70. 824/2008 Muhammad Shafi,
- 71. 825/2008 Muhammad Qasim,
- 72. 826/2008 Sajjad Ahimad,
- 73. 827/2008 Gul Siraj,
- 74. 828/2008 Muhammad Khursheed,
- 75. 829/2008 Mst. Zakia Sultana,
- 76. 853/2008 Mst. Shahnaz,
- 77. 854/2008 Mushtaq Hussain,

ATTACHED  
[Handwritten signature and scribbles]


- |      |           |                             |
|------|-----------|-----------------------------|
| 78.  | 899/2008  | Muhammad Hanif,             |
| 79.  | 906/2008  | Noor Elahi,                 |
| 80.  | 907/2008  | Muhammad Irshad,            |
| 81.  | 950/2008  | Abdul Haleem Lodhi,         |
| 82.  | 951/2008  | Jahangir Iqbal,             |
| 83.  | 952/2008  | Gul Hameed,                 |
| 84.  | 953/2008  | Muhammad Imran,             |
| 85.  | 954/2008  | Muhammad Ishtiaq,           |
| 86.  | 955/2008  | Muhammad Ashraf,            |
| 87.  | 956/2008, | Asif Ali,                   |
| 88.  | 957/2008  | Abdul Hamid,                |
| 89.  | 958/2008  | Muhammad Hanif,             |
| 90.  | 959/2008  | Muhammad Kabria Khan,       |
| 91.  | 960/2008  | Rashed Latif,               |
| 92.  | 961/2008  | Syed Amjad Hussain Shah,    |
| 93.  | 962/2008  | Muhammad Shoaib,            |
| 94.  | 963/2008  | Muhammad Bashir,            |
| 95.  | 964/2008  | Niaz Ahmad,                 |
| 96.  | 965/2008  | Syed Iftikhar Hussain Shah, |
| 97.  | 967/2008  | Muhammad Siddique,          |
| 98.  | 981/2008  | Mst. Robina Awan,           |
| 99.  | 982/2008  | Sadaqat Khan,               |
| 100. | 983/2008  | Mst. Tahseen Bibi,          |
| 101. | 984/2008  | Tariq Mahmood,              |
| 102. | 985/2008  | Mst. Saeeda Bano            |
| 103. | 1025/2008 | Miss Tanveer Akhtar,        |
| 104. | 1026/2008 | Mst. Imtiaz Kiani,          |
| 105. | 1027/2008 | Naveed Ahmad,               |
| 106. | 1032/2008 | Mst. Sajida Bibi,           |
| 107. | 1049/2008 | Banaras Khan,               |
| 108. | 1050/2008 | Javed Iabal,                |
| 109. | 1051/2008 | Muhammad Haroon,            |
| 110. | 1110/2008 | Raja Waheed Murad (Health)  |
| 111. | 1111/2008 | Aurangzeb Khan,             |
| 112. | 1112/2008 | Qazi Saeed-ur-Rahman,       |
| 113. | 1113/2008 | Muhammad Imtiaz,            |

- |      |           |                            |
|------|-----------|----------------------------|
| 114. | 1135/2008 | Muhammad Hamayun,          |
| 115. | 1136/2008 | Shahid Farooq              |
| 116. | 1137/2008 | Abdul Waheed,              |
| 117. | 1206/2008 | Naseem Akhtar,             |
| 118. | 1207/2008 | Syed Arshad Hussain Shah,  |
| 119. | 1208/2008 | Naveed,                    |
| 120. | 1209/2008 | Sadaqat Ali,               |
| 121. | 1234/2008 | Saeed Akhtar,              |
| 122. | 1235/2008 | Anwar-ul-Haq,              |
| 123. | 1236/2008 | Syed Husnain Ali Shah,     |
| 124. | 1242/2008 | Muhammad Niaz,             |
| 125. | 1243/2008 | Muhammad Anwar,            |
| 126. | 1268/2008 | Syed Sadaqat Hussain Shah, |
| 127. | 1274/2008 | Shah Jehan,                |
| 128. | 1355/2008 | Ahmad Farooq,              |
| 129. | 1356/2008 | Muhammad Younas,           |
| 130. | 1357/2008 | Muhammad Shafique,         |
| 131. | 1379/2008 | Tariq Mehmood,             |
| 132. | 1380/2008 | Muhammad Yousaf,           |
| 133. | 1381/2008 | Waqar Ahmad,               |
| 134. | 1382/2008 | Muhammad Azhar,            |
| 135. | 1383/2008 | Muhammad Aftaz Aziz,       |
| 136. | 1384/2008 | Muhammad Assad,            |
| 137. | 1385/2008 | Rashid Khan,               |
| 138. | 1386/2008 | Mirza Yasir Jamil Baig,    |
| 139. | 1387/2008 | Javed Ibrahim,             |
| 140. | 1388/2008 | Muhammad Nawaz,            |
| 141. | 1402/2008 | Fida Muhammad,             |
| 142. | 1403/2008 | Shah Faisal Khan,          |
| 143. | 1404/2008 | Nasir Bakhtiar Khan,       |
| 144. | 1405/2008 | Tahir Mahmood,             |
| 145. | 1406/2008 | Ajmal Nazir,               |
| 146. | 1407/2008 | Uzair Jadoon,              |
| 147. | 1425/2008 | Muhammad Adnan Khan,       |
| 148. | 1426/2008 | Zahoor Khan,               |
| 149. | 1427/2008 | Wajid Ali Shah,            |

NWFP  
 EXAMINERS  
 ATTESTED  
 SIGNATURE



- 150. 1428/2008 Mahmooob Ali,
- 151. 1429/2008 Bibi Rizwana,
- 152. 1430/2008 Kousar Shaheen,
- 153. 1441/2008 Amanullah,
- 154. 1442/2008 Gul Khitab Ahmad Turk,
- 155. 1443/2008 Muhammad Saeed,
- 156. 1444/2008 Muhammad Aslam,
- 157. 1445/2008 Mubashar Hassan,
- 158. 1446/2008 Wajid Khan,
- 159. 1452/2008 Bibi-Gul-E-Shahwar,
- 160. 1453/2008 Abdur Razzaq,
- 161. 1454/2008 Mehrban Khan,
- 162. 1455/2008 Ajaz Ahmad Khan,
- 163. 1456/2008 Shujjah Ali,
- 164. 1457/2008 Muhammad Nawaz,
- 165. 1458/2008 Gul Khitab,
- 166. 1459/2008 Mst. Isma Shaheen,
- 167. 1562/2008 Mazhar-UI-Haq,
- 168. 1563/2008 Muhammad Rafaqat,
- 169. 1599/2008 Qazi Masood-ur-Rahman,
- 170. 1600/2008 Shakeel Ahmad,
- 171. 1601/2008 Abid Shah,
- 172. 1602/2008 Ghulam Farooq,
- 173. 1603/2008 Abdur Rashid,
- 174. 1641/2008 Haider Zaman,
- 175. 1686/2008 Muhammad Rafique,
- 176. 1687/2008 Faqir-ud-Din,
- 177. 1688/2008 Azhar Ali Khan,
- 178. 1689/2008 Fida Muhammad,
- 179. 1690/2008 Zafar Iqbal,
- 180. 1691/2008 Muhammad Riaz,
- 181. 1697/2008, Sher Afzal,
- 182. 1998/2008 Shabir Ahmad,
- 183. 1699/2008 Ishtiaq Ahmad,
- 184. 1700/2008 Mst. Robina Shaheen,
- 185. 1701/2008 Mst. Nasim Akhtar,

EXAMINER  
 NWFP Service Training  
 Doshawari  
 ATTESTED  


13

186. 1702/2008 Muhammad Ajmal,  
187. 1703/2008 Muhammad Anwar Adil,  
188. 1704/2008 Syed Abbas Ali Shah,  
189. 1746/2008 Tanveer Ahmad,  
190. 1747/2008, Aurangzeb,  
191. 1748/2008 Rasheed Ahmad,  
192. 1749/2008 Muhammad Daud,  
193. 1750/2008 Sajjad Ahmad,  
194. 1751/2008 Ayyaz UR Rehman,  
195. 1752/2008 Syed Zakir Hussain Shah,  
196. 1753/2008 Abdul Rashid,  
197. 1754/2008 Rizwan Khan,  
198. 1755/2008 Hasrat Saeed,  
199. 1784/2004 Muhammad Saif ur Rehman,  
200. 1785/2008 Shah Ali Mardan,  
201. 1786/2008 Abdul Qayum Shah,  
202. 1822/2008 Nisar Ahmad Shakir,  
203. 13/2009 Khalid Khan,  
204. 18/2009 Saeed Alam,  
205. 31/2009 Muhammad Ashfaq,  
206. 32/2009 Sajawal Khan,  
207. 33/2009 Muzaffar Ali,  
208. 34/2008 Muhammad Zia-ul-Haque,  
209. 68/2009 Sagheer Ahmad,  
210. 77/2008 Samina Mir Alam,  
211. 78/2009 Tasleem Bibi,  
212. 79/2009 Farkhanda Sadiq,  
213. 138/2009 Abdus-Salam Khan,  
214. 139/2009 Hafiz Muhammad Iqbal Khan Qureshi,  
215. 140/2009 Hafeez Khan,  
216. 141/2009 Muhammad Abid,  
217. 142/2009 Abdul Ghafoor,  
218. 226/2009 Muhammad Ilyas,  
219. 227/2009 Muhammad Iqbal,  
220. 228/2009 Qadir Ahmad,

ATTESTED

EXAMINER

QWFP Services Tribunal  
Dachauwar

221.	229/2009	Nasir Ali,
222.	230/2009	Ali Nawaz,
223.	231/2009	Wajid Hussain,
224.	232/2009	Waheed Khan,
225.	233/2009	Muhammad Saleem,
226.	234/2009	Mujtaba Ahmad Hashmi,
227.	235/2009	Khalid Muhammad,
228.	246/2009	Abid Saeed Khan,
229.	237/2009	Imran Jalani,
230.	238/2009	Asif Awan,
231.	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,
237.	245/2009	Muhammad Ishaq,
238.	246/2009	Muhammad Pervez,
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
249.	418/2009	Abida Bibi
250.	419/2009	Azim Shah
251.	433/2009	Ghazala Bibi
252.	434/2009	Riaz Khan
253.	500/2009	Mumtaz Khan
254.	501/2009	Lal Afsar
255.	502/2009	Badri Zaman
256.	503/2009	Liaqat

ATTESTED  
 NWFP SERVICES TRIBUNAL  
 PESHAWAR

15

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

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.

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.

4. 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

WFP Service Tribunal  
 Examiner  
 Behawar

ATTESTED

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)."

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

*ATTESTED*  
*EXAMINER GENERAL*  
*NWFP Services Tribunal*

"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 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 jurisdiction. These review petitions being without any substance are accordingly dismissed."

While disposing of Cri. 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."*

6. In the above circumstances, and in view of the judgment in rhyme 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.

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.

8. 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.

ANNOUNCED.  
12.05.2009.

*[Signature]*  
(BISMILLAH SHAH)  
MEMBER.

*[Signature]*  
(ABDUL JALIL)  
MEMBER.

CAMP COURT ABBOTTABAD.

02/7/09  
24-00  
24-00  
13/7/09


*[Signature]*

# Annexure B, (18)

(For use in Police Department only).

Heirs,

① Passed S.S.C Annual Examination 1989 from B.S.E Peshwar under Roll No: 36263 securing 634 marks out of 850 and was placed in 1st division "A" grade the result was declared on 18-08-1989

  
 Divisional Educational Officer (Male)  
 Abbottabad

Verification Roll No.                      Dated

② Passed Intermediate science group examination was Annual 1991 under Roll No: 40521 securing 620 marks out of 1100 and was placed in 2nd division grade "C" from B.S.E Peshwar the result was declared on 13-09-1991  
 Left thumb-impression

⑤ Passed MA (Education) from U.E.R University of Punjab Lahore in session 1996-98 under Roll No 96-704 securing 77% (O.P.M) marks and was placed in 1st division Result declared on 4-6-99 and the degree was verified by the controller of Examination, University of Punjab vide letter No. 6/8/2004.

③ Passed BA English University Annual 1995 under Roll No: 71453 Marks Obtained 304 out of 550 in Second Division result declared date 24-4-96.

④ Passed P.T.E Examination from Allama Iqbal Open University Islamabad Under R. NO E6146503 in session 1996 obtained 67% Grade "B" result declared on 31-5-96

**VERIFICATIONS**

Certified that S.S.C certificate and intermediate certificate have been verified by B.S.E Peshwar vide letter No. 1340 & 3214 dated 15/5/04 and 17/5/04 respectively  
 Drill instructing

Other qualifications-

Certified that B.A degree has been verified by the controller of Examination University of Peshwar vide letter No. 2100 dated 12/5/2004

⑥ Passed MA Political Science Annual Exam. 2001 University of Peshwar Under Roll No. 25955 MARKS obtained 588 Second Division The Result Declared on 6-5-2002

Certified that MA (pol Science) certificate has been verified by the Controller University of Peshwar dated 27-6-03.

By Distt. Officer Edu (Male) Primary A. Abad

⑦ Passed C.T from R.D.E Peshwar Session 2002 under Roll No 1416 securing 738 marks out of 1200 and was placed in 1st division. It is to certify that the same was verified by Asst Director (E) vide letter NO 1173 dated 12/5/2004.

1. Name

2. Race

3. Residence

4. Father's

5. Date of nearly a

6. Exact h

7. Person

8. Left hand ion of (

Little Fin

Middle F

Thumb

9. Singnat

10. Signat Head of th Officer.

Pre

Note: The entries in this page should be removed or re-attested at least every five years and the signature to lines 9 and 10 should be dated.

1. Name **AKMAL HUSSAIN**

2. Race **KARRAL**

3. Residence **Village Namli Maisa P/o Maisa Kalan Distt Tehs Abbottabad**

4. Father's Name and residence **MOHAMMAD AKRAM (AS ABOVE)**

5. Date of birth by Christian eras nearly as can be ascertained **9th April Nineteen hundred and Seventy one (09-04-1971)**


6. Exact height by measurement **5-6"**

7. Personal marks for indentification **NIL**

8. Left hand thumb and Finger impression of (non-gazetted) officer.

Little Finger. 

Ring Finger 

Middle Finger. 

Fore Finger 

Thumb 

9. Singnature of Government servant. **Akmal Hussain 09/18/92**

10. Singnature and designation of the Head of the Office, or other Attesting Officer.

**Sub Divisional Educational Officer (Male) Abbottabad**

Prepared by: **Abdul Qadir**

**Re attested**  
**Head Master**  
**Govt. High School**  
**Khaira Gali Abbottabad**  
12/18/92

B.I.S.E. Peshawar  
out of 850  
result was  
C.M.  
1st  
(M.A.S.)

Annual 1991  
1100  
B.I.S.E. Peshawar

Date  
Examined  
and open  
with  
146503  
Tassia 67/0  
declared  
Sub-Div. Officer  
Abbottabad

critical  
2001  
was under  
is obtained  
result Declared

14th securing



1	2	3	4	5	6	7	8
Name of post	Whether substan- tive or officiating and whether permanent or temporary	If officiating, (i) substantive appointment, or (ii) whether for pension under Art. 371 C. S. R.	Pay in substantive post	Additional Pay for officiating	Other employment falling under the term 'Pay'	Date of appointment	Signature and attesting officer of the Government in accordance with clause 8 of Article 161
						12-12-58	<i>[Signature]</i>
						12-12-58	<i>[Signature]</i>
						12-12-58	<i>[Signature]</i>
						12-12-58	<i>[Signature]</i>
						12-12-58	<i>[Signature]</i>
						12-12-58	<i>[Signature]</i>
						12-12-58	<i>[Signature]</i>
						12-12-58	<i>[Signature]</i>
						12-12-58	<i>[Signature]</i>
						12-12-58	<i>[Signature]</i>
						12-12-58	<i>[Signature]</i>
						12-12-58	<i>[Signature]</i>
						12-12-58	<i>[Signature]</i>
						12-12-58	<i>[Signature]</i>
						12-12-58	<i>[Signature]</i>

38607  
38607  
38607

do  
do  
do

12-12-58

2570/146  
1-12-2001  
1-12-2001  
1-12-2001

1480/1/84  
1-12-58

TR N  
Pay F  
to 2

BY: No. 111/500  
1-12-58

1994

do  
do

3570/146  
RPS-9 (2410-145-6760)

do  
do

2381/2  
RPS-9 (2410-145-6760)

do  
do

12-12-58

*[Signature]*  
12-12-58

*[Signature]*  
12-12-58

*[Signature]*  
12-12-58

*[Signature]*  
12-12-58

*[Signature]*  
12-12-58

BR/10/11/2010  
 10/11/2010

Name of post	Whether substantive or officiating and whether permanent or temporary	If officiating, state (i) substantive appointment, or (ii) whether service counts for pension under Art. 371 C. S. R.	Pay in substantive post	Additional Pay for officiating	Other emolument falling under the term "Pay"	Date of appointment	Signature of the officer or other person in charge of the office of the Government servant
Scales Revised on 01-07-2008							
BPS-15 (5220-420-1780)							
CT GHS Khairagali Atd.	Off/Temp		Rs 8580/Pm			07/2008	[Signature]
CT GHS Khairagali Atd	Off/Temp		Rs 9000/Pm			01-12-2008	[Signature]
do	do		Rs 9420/Pm			12-2009	[Signature]
Emolument Revised							
Due to granted Annual Increments Raising pay to untraced Teachers side Govt of NWFP Finance Department NWFP Notice No - F.D (PRC) S-2/2009 dated 30-10-2009, in the light of Honorable Supreme Court judgment. From the date of their apptt.							
-X-							
CT. GHS Khairagali			Rs 10950-60-1995				
			1-8-1992	10950	30-11-1992		
			1-12-1992	10950	30-11-1993		
			1-12-1993	11550	31-5-1994		
			BPS No = 7 = Rs = 14850-51-2695				
do			1-6-1994	15610	30-11-1994		
			1-12-1994	16400	30-11-1995		
			1-12-1995	17200	30-11-1996		
			1-12-1996	18000	30-11-1996		
			BPS No = 9 = Rs = 18900-57-3260				
			Pay Rs = 18900 granted to the NWFP Govt. P.A. = 3850				
			31-12-1996	22840	30-11-1997		
do			1-12-1997	23870	30-11-1998		
			1-12-1998	25147	30-11-1999		
do			1-12-1999	25757	30-11-2000		
			1-12-2000	25757	30-11-2001		
			1-12-2001	26727	1-12-2001		
do			BPS No = 9 = Rs = 24100-55-2760				
			1-12-2001	40034	30-11-2002		
			1-12-2002	41150	30-11-2003		
			1-12-2003	44400	14-4-2004		

Head Master  
 G.H.S. Khairagali  
 Abbottabad

Head Master  
 G.H.S. Khairagali  
 Abbottabad


Head Master  
 G.H.S. Khairagali  
 Abbottabad

Head Master  
 G.H.S. Khairagali  
 Abbottabad

Head Master  
 G.H.S. Khairagali  
 Abbottabad

Head Master  
 G.H.S. Khairagali  
 Abbottabad

Head Master  
 G.H.S. Khairagali  
 Abbottabad

1 Name of post	2 Whether substantive or officiating and whether permanent or temporary	3 If officiating, state (i) substantive appointment, or (ii) whether service counts for pension under Art. 371 C.S.R.	4 Pay in substantive post	5 Additional Pay for officiating	6 Other emolument falling under the term "p"	7 Date of appointment	8 Signature of Government Servant
<p>Recovery Over Payment (One Increment) w. 27.01/5/2012                      to 31/12/2015 (44 months) 3 years 8 months</p>							
S.B.T. GHS Kichirajala	077/Temp		Rs. 18000/-			05 01/2012	
			Rs. 18800/-			12 01/2012	
			Rs. 19600/-			12 01/2013	
			Rs. 21200/-			12 01/2014	
			Rs. 27400/-			7 01/2015	
			Rs. 28435/-			12 01/2015	
							 Principal GHS Kichirajala

Signature and Designation of the head of the office or other attesting officer in attestation of columns 1 to 8

Annexure C

23

To,

The Accountant General  
Khyber Pakhtunkhwa Peshawar.

SUBJECT

DEPARTMENTAL APPEAL AGAINST THE DEDUCTION/ RECOVERY OF ONE (01) ADVANCE INCREMENTS FROM THE SALARY OF THE APPELLANT WITH EFFECT FROM 01/01/2016, AND THE SAME ACTION CAME IN TO THE KNOWLEDGE OF APPELLANT ON 20/07/2016, THESE FOUR ADVANCE INCREMENTS OF B.A/B.Sc INSTEAD OF THREE WERE GRANTED IN PURSUANCE OF PARA NO 08 OF THE JUDGMENT DATED 12/05/2009, PASSED IN APPEAL NO 1276/2007, TITLED MUAHAMMAD AKRAM, VERSUS DCO ABBOTTABAD & 06 OTHERS, PRONOUNCED BY KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR IN THE LIGHT OF JUDGMENT OF APEX COURT DATED 19/07/2007, BOTH JUDGMENTS HAD ATTAINED FINALITY, AND SAME IS IMPLEMENTED IN LETTER AND SPIRIT.

Sir,

The submissions of the appellant are as under;

- 1) That the appellant is a school teacher in Elementary and Secondary Education Department Abbottabad and was appointed on 01/08/1992, his regular service was started from 31/12/1996 and presently he was promoted on 09/03/2012 as SST and is working in the same capacity of SST teacher in BPS No 16.
- 2) That appellant was granted 04 Advance Increments instead of 03 Advance Increments of B.A/B.Sc in pursuance of para no 08 of the judgment dated 12/05/2009 pronounced by Khyber Pakhtunkhwa Service Tribunal Peshawar, the said judgment was not only attained its finality but later it was implemented letter and spirit, and since then appellant is being granted/taken his 04 Advance Increments of B.A/B.Sc regularly.

- 3) That in the last fiscal year appellant was allowed compensatory allowance in the budget 2015 and his pay was to be fixed/changed for said compensatory allowance under the prescribed rule of law.
- 4) That utmost surprisingly, the District Comptroller of Accounts Abbottabad with out any notice given to the appellant or without formal/official written order or any legal and factual reason, deducted/recovered 01 advance increments of B.A/B.Sc with effect from 01/01/2016 and fixed his pay in BPS 16 as Rs 28435/- PM from 29470/-PM, and appellant is taking the pay with one less increment, but the same fact came in to the knowledge of appellant on 29/07/2016.
- 5) That appellant despite of requests to DAO Abbottabad for restoration of pay according to law but in vain, in the meanwhile appellant has come to know that some teachers with the same case, challenged the illegality of impugned action taken by District Comptroller of Account Abbottabad in Constitutional Petition before Peshawar High Court, the same illegal matter is now on 18/06/2014 disposed off by the Supreme Court of Pakistan in CPLA No 640 of 2014 on the basis of Jurisdictional bar contained in Article 212 of the Constitution of Pakistan and under the such legal position and in pursuance of Order passed by Supreme Court, the cases of that teachers are now subjudice before K.P.K Service Tribunal Peshawar, instant departmental Appeal is being filed by the appellant under the same law as decided by Apex Court.
- 6) That in the above circumstances, when law point already decided by KPK Service Tribunal and Supreme Court of Pakistan and that is final too, and implemented letter and spirit, later on, it can not be changed/disturbed/reversed by specially those respondents

(25)

(District Comptroller of Account Abbottabad) who were party in the decided settled previous final litigation.

In the light of above mentioned very serious circumstances and Law, it is therefore, requested that on acceptance of this departmental appeal the impugned action deduction/recovery of 01 advance increments in respect of B.A/B.Sc taken by District Comptroller of Account Abbottabad with effect from 01/01/2016 be set-aside (cancelled) and all amount which is refunded or the amount is deducted from the salary of the appellant may be ordered the refund of same.

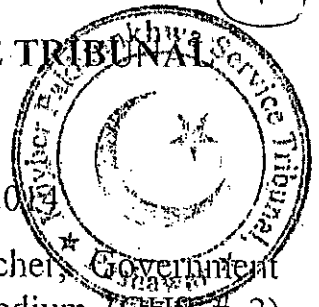
Dated 20/07/2016

*Akmal Hussain*  
20/7/2016

Akmal Hussain S/O Muhammad Akram, SST teacher, Government High School Khaira Gali Abbottabad, Personal Computer No 8764.

BEFORE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL  
PESHAWAR.

Service Appeal No: 1302 of 2014



Maroof Khan S/O Mir Zaman Khan Senior C.T teacher,  
Centennial Model Secondary School (Boys) English Medium (GHS # 2)  
Abbottabad R/O Village Mera Mandrochh (Nawan Shehr) P.O Nawan Shehr  
Tehsil & District Abbottabad.

Appellant

Versus

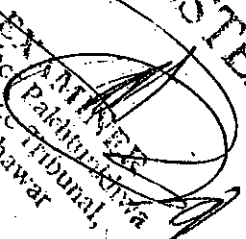
1346  
6-11-2014

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

Respondents

APPEAL UNDER SECTION 4 OF KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT 1974, AGAINST THE IMPUGNED ACTION OF RESPONDENT NO 2, WHICH IS ALSO WITHOUT ISSUANCE/PASSING OF ANY OFFICIAL ORDER PASSED BY ANY COMPETANT AUTHORITY NOR GIVEN ANY NOTICE TO APPELLANT, IN RESPECT OF DEDUCTION/RECOVERY OF TWO (02) ADVANCE INCREMENTS OUT OF FOUR (04) ADVANCE INCREMENTS FROM THE SALERY OF THE APPELLANT WITH EFFECT FROM 01/04/2013, WHICH (INCREMENTS) WERE GRANTED IN PURSUANCE OF THE JUDGMENT DATED 12/05/2009 PRONOUNCED BY KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR IN APPELLANT'S INDIVIDUAL SERVICE APPEAL WHICH ATTAINED ITS FINALITY TOO. THE IMPUGNED DEDUCTION/RECOVERY IS UNCONSTITUTIONAL, CONTEMPT OF COURT, WITHOUT LAWFUL AUTHORITY, ARBITRARY, PERVERSE, DISCREMINATORY' AGAINST THE PRINCIPAL OF NATURAL JUSTICE AND INEFFECTIVE UPON THE APPELLANT'S RIGHTS OF ADVANCE INCREMENTS,

6/11/14  
ATTESTED



GRANTED BY COMPETENT COURT OF LAW AND FOR ACCEPTANCE OF DEPARTMENTAL APPEAL WHICH IS STILL PENDING WITHOUT RESPONSE.

PRAER:-

ON ACCEPTANCE OF INSTANT SERVICE APPEAL, IMPUGNED ACTION IN RESPECT OF RECOVERY/DEDUCTION OF 02 ADVANCE INCREMENTS OUT OF 04. MAY PLEASE BE SET-ASIDE AND IN CASE AMOUNT REFUNDED/DEDUCTED FROM THE SALARY OF APPELLANT, MAY BE ORDERED THE REFUND OF SAME AND CONTINUE RECOVERY/DEDUCTION IF ANY MAY ALSO BE SUSPENDED TILL THE FINAL DISPOSAL OF TITLED SERVICE APPEAL AND MAY PLEASE BE IMPOSED HEAVY COST AGAINST THE RESPONSIBLE RESPONDENTS.

6

23.7.2015

Appellant in person, M/S Haroon Khan, AAO, Irshad Muhammad, S.O and Sohail Ahmad, Assistant for respondents alongwith Mr.Muhammad Bilal, G.P present. Requested for adjournment. To come up for written reply on 15.9.2015 before S.B at camp court A/Abad. Application for suspension of recovery/deduction of two advance increments out of 4 advance increments submitted, copy whereof supplied to respondents for reply of the said application as well on the said date. Till further orders no recovery be made from the salary of the appellant.

*LDV*  
*Chairman*  
*Camp Court A/Abad*

*Certified to be true copy*  
*Khyber Pakhtunkhwa*  
*Service Tribunal*

Date of Presentation of Application 23-7-2015  
 Number of Words 800  
 Copying Fee 6  
 Urgent ✓  
 Total 6  
 Name of Copyist [Signature]  
 Date of Completion of Copy 29-7-2015  
 Date of Delivery of Copy 29-7-2015



1145/16

سرور

کورٹ فیس

# وکالت نامہ

بعدالت سرورس ٹریڈنگ کمپنی پرائیویٹ لمیٹڈ

عنوان: اکمل حسین بنام گورنمنٹ پبلسٹی ٹریڈنگ کمپنی

منجانب: ایس ایچ ٹی

نوعیت مقدمہ:

باعث تحریر آنکے اکمل حسین 557

مقدمہ مندرجہ میں اپنی طرف سے واسطے پیروی و جواب دہی کل کاروائی متعلقہ آں مقام

بمدرائت سرخان تنوی ایڈووکیٹس پرائیویٹ لمیٹڈ

کو وکیل مقرر کر کے اقرار کرتا ہوں کہ صاحب موصوف کو مقدمہ کی کل کاروائی کا کامل اختیار ہوگا نیز وکیل صاحب موصوف کو کرنے راضی نامہ و تقرر حالت فیصلہ برحلف دینے اقبال دعویٰ اور بصورت دیگر ڈگری کرانے اجراء

وصولی چیک روپیہ و عرضی دعویٰ کی تصدیق اور اس پر دستخط کرنے کا اختیار ہوگا اور بصورت ضرورت مقدمہ مذکور کی کل یا کسی جزوی کاروائی کے لئے کسی اور وکیل یا مختار صاحب قانونی کو اپنے ہمراہ اپنی بجائے تقرر کا اختیار بھی ہوگا اور صاحب مقرر شدہ کو بھی وہی اور ویسے ہی اختیارات ہوں گے اور اس کا ساختہ پر داختم مجھ کو منظور و قبول ہوگا۔ دوران مقدمہ جو خرچہ و ہرجانہ التوائے مقدمہ کے سبب ہوگا اس کے مستحق وکیل صاحب ہوں گے۔

نیز بقایا رقم وصول کرنے کا بھی اختیار ہوگا۔ اگر کوئی پیشی مقام دورہ پر ہو یا جد سے باہر ہو تو وکیل صاحب موصوف پابند ہوں گے کہ پیروی مقدمہ مذکورہ کریں اور اگر مختار مقرر کردہ میں کوئی جزو بقایا ہو تو وکیل صاحب موصوف مقدمہ کی پیروی کے پابند نہ ہوں گے۔ نیز درخواست بمراد استجارت ناشر بصیغہ مفلسی کے دائر کرنے اور اس کی پیروی کا بھی صاحب موصوف کو اختیار ہوگا۔

لہذا وکالت نامہ تحریر کر دیا تاکہ سند رہے۔

المرقوم: 17/3/2017

Accepted  
M. Asad Khan  
Adv

المرقوم

ایڈووکیٹ سرخان تنوی

Accepted  
M. Asad Khan  
Adv

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

S.A.# 1145/2016.

Akmal Hussain, SST(G) GCMSS(Boys) Abbottabad ..... **Appellant.**

**VERSUS**

Secretary E&SE, Govt: of Khyber Pakhtunkhwa & others..... **Respondents.**

**PARAWISE COMMENTS FOR & ON BEHALF OF THE RESPONDENT.**

Respectfully Sheweth,

The Respondents submit as under:-

**Preliminary Objections**

1. The appellant has got no cause of action/locus standi.
2. The instant appeal is badly time barred.
3. The appellant has concealed the material facts from this Hon'able Tribuna, in the instant service appeal.
4. The instant service appeal is against the relevant provision of law.
5. The appellant has not come to this Hon'albe Tribunal with clean hands.
6. That the instant appeal is liable to be dismissed for mis-joinder & non joinder of necessary parties to the present appeal.
7. That the appellant is estopped by his own conduct to file the instant appeal.
8. That the withdrawal of 4-advance increments from the appellant vide order 01-01-2016 is within legal sphere.
9. That the instant Appeal is barred by law.
10. That this Hon'able Tribunal has got no jurisdiction to entertain the instant case.
11. That the grant of advance increments on higher qualification has been discontinued through an Act called Act No. IX of 2012 Passed by Khyber Pakhtunkhwa, Prov. Assembly, reference to Section-2 of the said Ordinance

**FACTS.**

1. That Para-1 is incorrect & denied on the grounds that the Provincial Assembly Govt: of Khyber Pakhtunkhwa, vide an Act NO. IX of 2012 has ceased payments of arrears on advance increments on higher qualification that notwithstanding anything contained in any decision / judgment and order of any Tribunal or Court including High Court or Supreme Court of Pakistan for the purpose of any claim for payments of any arrears on account of advance increments on higher qualification sanctioned in pursuance of any order, letter, office memoranda, Notification, instructions & other instruments deemed to non existing, ceased or revoke and no further claim what so ever on the basis of these instruments shall be entertained & all cases in respect of such claim pending in any Court/Tribunal including High Court & Supreme Court shall be stand abated. The said Act is still in field, hence the act of the Respondent is within legal parameter & is liable to be maintained in the interest of justice. Copy of the Act

2. That Para-2 is incorrect & denied on the grounds that the appellant has been allowed 4-advance increments on BA/B.Sc & the same were withdrawn vide order dated 01-01-2016 to the tune of Rs.28435/- Per month passed by the Respondent No.2 in view of the above mentioned ordinance of March, 2012.
3. That para-3 is also incorrect & misleading on the grounds that no Departmental Appeal against the impugned order dated 01-01-2016 has been filed by the appellant. Hence the appeal of the appellant is liable to be dismissed on the following grounds inter alia:-

### Grounds

- A. That ground-a, is incorrect & denied. The impugned Notification dated 01-01-2016 is legal & is liable to be maintained in favour of the Respondents. Because the grant of advance increments on higher qualification has been ceased through an ~~ACT-NO IX of~~ 2012 by the Govt: of Khyber Pakhtunkhwa. ~~Copy of the said is Annex-B~~
- B. Incorrect & denied. Illegal & without criteria/policy/Notification are always liable to be struck-down in the interest of justice & the same has been done through ~~ACT-NO IX of~~ 2012 by the Provincial Govt: and a copy whereof is attached as Annexure-A.
- C. Incorrect and denied. The appellant has been treated as per law, rules & policy, ~~Ordinance of~~ Mrach 2012 by the Respondent Department, hence the plea of the appellant is liable to be rejected.
- D. Incorrect & denied. Detailed reply has already been give in the foregoing paras. Hence needs no further comments.
- E. Incorrect & denied. The act of the Respondent with regard to the impugned Notificaiton dated 01-01-2016 is within legal parameter. Hence the same is liable to be maintained in favour of the Respondent.
- F. Incorrect & denied. The appellant is not entitled for the grant of advance increments in view of the above made submissions in the foregoing paras. However, it is further submitted that bringing amendments in criteria by the Respondent Department in the light of the requirement/demands have allowed by the Superior Court of Law. Hence the pleae of the appellant is liable to be dismissed in favour of the replying Respondents in the interest of justice.
- G. Incorrect & denied. The act of the Respondents is in accordance with the said ~~ACT~~ of the Govt;.
- H. Incorrect & denied. Detailed reply has been given in above Para.
- I. Incorrect & denied. The act of the Respondent is in accordance with the said ~~ACT~~ of the Govt.
- J. Incorrect & Denied. The case of the appellant is badly time barred & is liable to be dismissed in favour of the Respondents.
- K. Incorrect & denied. The act of the Respondent is in accordance with the said ~~ACT~~ of the Govt:.

- L. Incorrect & denied. The cited judgment dated 12-05-2009 of this Hon'able Tribunal is prior to the ~~Act No IX of~~ 2012 with reference to Section-2, hence the pleas of the appellant is baseless & liable to be dismissed with the submission that the Respondents further seek leave of this Tribunal to submit additional record & case law at the time of arguments.

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

  
Secretary  
Elementary & Secondary Education Department.



EXTRAORDINARY  
GOVERNMENT



REGISTERED NO. PIII  
Annexure "A"  
GAZETTE

**KHYBER PAKHTUNKHWA**

Published by Authority

PESHAWAR, TUESDAY, 15TH MAY, 2012.

PROVINCIAL ASSEMBLY SECRETARIAT  
KHYBER PAKHTUNKHWA

**NOTIFICATION**

Dated Peshawar, the 15th May, 2012.

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

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

(KHYBER 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;

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;

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:-

1. Short title, application and commencement.— (1) This Act may be called the Khyber 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 into force at once and shall be deemed to have taken effect on and from 1<sup>st</sup> day of December, 2001.

2. Cessation of payment of arrears on advance increments on higher educational qualification.—(1) Notwithstanding anything contained in any decision, judgment and order of any Tribunal or Court including High Court or Supreme Court of Pakistan; for the purpose of any claim for payment of arrears on account of advance increments on higher educational qualification sanctioned in pursuance of any order, letter, office memoranda, notification, instructions and other instruments issued before 1.12.2001, such orders, letters, office memoranda, notifications, instructions and other instruments shall be deemed to be non-existent, ceased or revoked and no further claim whatsoever on the basis of these instruments shall be entertained and all cases in respect of such claims pending in any Court or Tribunal including High Court and Supreme Court of Pakistan shall stand abated.

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

(7) (X)

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

4. Repeal.— The Khyber Pakhtunkhwa 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  
PROVINCIAL ASSEMBLY OF KHYBER  
PAKHTUNKHWA

(AMANULLAH)  
Secretary  
Provincial Assembly of Khyber Pakhtunkhwa

Printed and published by the Manager,  
Staty. & Ptg. Deptt., Khyber Pakhtunkhwa, Peshawar

tunal

at  
ge  
ar

hi,  
HS  
&

C.T  
,e &

acher  
R/O:

oners

inance

Health

ntary &

awar.

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

Service Appeal No.1145/2016  
Akmal Hussain, SST Teacher,  
Govt: Centennial Model Secondary School(Boys) English Medium,  
Abbottabad.

...Appellant

**VERSUS**

1. Accountant General, Khyber Pakhtunkhwa, Peshawar.
2. District Comptroller of Accounts, Abbottabad.
3. Government of Khyber Pakhtunkhwa through Secretary,  
Finance Department, Peshawar.
4. Government of Khyber Pakhtunkhwa through Secretary  
(Elementary & Secondary Education Department), Peshawar. ...Respondents

**PARAWISE COMMENTS ON BEHALF OF RESPONDENT NO.03**

*Respectfully Sheweth*

**Preliminary Objections:**

- a) That the appellant has no cause of action.
- b) That the appellant has no locus standi.
- c) That the appeal in hand having no merits is not maintainable.
- d) That appeal is time barred.
- e) This Honourable Tribunal lacks jurisdiction to entertain the appeal.
- f) That the appeal is bad for mis-joinder and non-joinder of necessary parties.
- g) That under the cessation of advance increment on higher educational qualification Act No.IX of 2012, claim of the Appellant stood abated.

**Facts:**

- 1) Relates to Service/Court record, hence need not comments.
- 2) Incorrect. It came into the knowledge of Respondents that some teachers have availed invalid extra Advance Increments over & above their entitlement. Hence the issue was 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 Department vide Finance Department letter No.FD(SOSR-I)2-123/2015 dated 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**).
- 3) Do not relate to Respondent No.3.

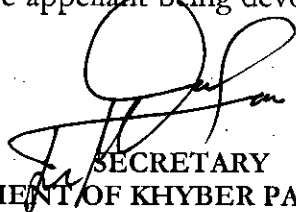
**Cont'd Next Page-(2)**



**Grounds:**

- a) Incorrect: All the same nature appeals including Appeal No.1302/14 titled Maroof Khan & 04 others versus Government of Khyber Pakhtunkhwa are still pending/under adjudication before this Honourable Tribunal, in which next date of Hearing has been fixed on 18.09.2017.
- b) Incorrect. In light of Finance Department letter dated 15.12.2010; Respondent No.2 has rightly deducted/recovered 02 advance increments out of 04 erroneously allowed to the appellant as he has availed the benefit of BPS-14 on qualification of BA/BSc.
- c) Needs no comments by Respondent No.3, being related to courts record.
- d) Incorrect: As explained vide Para-02 of "Facts".
- e) Incorrect: As explained in preceding Paras.
- f) Incorrect: As explained vide Para-02 of "Facts".
- g) Incorrect: Action taken by Respondent No.3 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.
- h) Incorrect: As explained in preceding paras. Respondent No.3 can even not think of contempt of any court.
- i) Incorrect: Action taken by Respondent No.3 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.
- j) Incorrect: Appeal of the appellant is time barred.
- k) Incorrect: Action taken by the Respondents is legal.
- l) Incorrect. Action taken by Respondent No.3 is in accordance with the Judgement of august Supreme Court of Pakistan.

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

  
SECRETARY  
GOVERNMENT OF KHYBER PAKHTUNKHWA,  
FINANCE DEPARTMENT  
(RESPONDENT NO.3)



Office of the  
**Accountant General**

Khyber Pakhtunkhwa Peshawar  
Phone: 091 9211250-53

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

Dated 10.12.2014

To,

The Accounts Officer,  
HAD Section.

Subject: **STOPPAGE OF RECOVERY AS WELL AS ALLOWING ADVANCE INCREMENTS ON MA/MSC.** P-239c

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/BA/Com 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 in 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 basis 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 BA/BSc.B.com) in light of Finance Deptt: letter dated 24.08.1983 therefore, the CT teachers who have already availed 05 increments (as PST) and 03 increments

are entitled only for one increment on possessing or acquiring ~~MA/MSc~~/M.com qualification as regards those employees whose appointment were made on the basis of BA/BSc.B.com in BPS-14 and not availed any advance increments 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 ~~Khyber Pakhtunkhwa, Cessation Of Payment Of Arrears On Advance Increments On Higher Education Qualification Act 2012~~ clearly indicate that recovery of advance increments paid to the Govt: 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 Fixation Party with the law Deptt: for their opinion and issue clear instruction so that the doors of litigation closed for ever.

  
ACCOUNTS OFFICER (PFP)



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:

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 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 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". 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 15-12-2010 (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.

*ofc*  
  
SECTION OFFICER (SR-I)

*Correct  
2/9/15*



GOVERNMENT OF KHYBER PAKHTUNKHWA  
LAW, PARLIAMENTARY AFFAIRS &  
HUMAN RIGHTS DEPARTMENT

No. SO(OP-II)/LD/5-7/2012-VOL-II  
DATED: PESHAWAR THE 16 SEPT. 2015.

Annex = III

21708-09

To

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.

Secretary Finance  
Khyber Pakhtunkhwa

Diary No. 15519

Date. 16.9.15

APR 15

Section Officer (Opinion-II)

Annex - IV



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.

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 16<sup>th</sup> 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)

2-1  
20-9-15  
63

**BEFORE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL  
PESHAWAR.**

Service Appeal No: 1145 of 2016

Akmal Hussain S/O Muhammad Akram, SST teacher, Government Centennial Model Secondary School (Boys) English Medium Abbottabad R/O link Road Narrian Cantt Near Jamia Masjid Ummer Farooq Narrian Cantt Abbottabad.

Appellant

**Versus**

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

Respondents

**REJOINDER (REPLICATION) ON THE COMMENTS  
(REPLY) OF THE RESPONDENTS NO 3 & 4.**

Respectfully Sheweth,

That two sets of coments/replies have submitted before this Honourable Tribunal, one is from respondents No 3 and the other is from respondent no 4, factually and legally all points/issues are same therefore for the sake of bravery and to avoid confusion, Appellant submits the following joint rejoinder.

**ON PRELIMINARY OBJECTIONS**

- 1-3) That appellant has good cause of action to file instant appeal before this Honourable Court, it is not time bared but filed well in time, there is no limitation against Pay matters, and cause of action arises every month when the appellant receives his pay slip, it is legally and factually maintainable, and according to law, the impugned Act would itself treated as final order, Moreover the instant service appeal is filed, in pu suance of the para 8 of the judgment dated 12/05/2009 announced by KPK Service Tribunal

Peshawar, respondents did not file their appeal before Supreme Court against the order dated 12/05/2009 yet.

- 4-6) That appellant filed his appeal according to law, for his valuable rights, which was snatched illegally by the respondents and it is fundamental & constitutional right of appellant to file instant appeal, appellant did not conceal any fact from this Honourable Tribunal and came to this Honourable Tribunal with clean hands and appellant has got good locus standi to challenge the impugned action, and there is no question of misjoinder and nonjoinder of necessary parties, all the necessary parties are already included in the panel of respondents and no one is left in this regard.
- 7-8) That there is no estoppels, as service appeal is filed under fundamental & constitutional right of appellant, the action of 01/01/2016 is illegal and with out lawful authority and it is not an order in the meaning of law and has no legal footing, and basic judgment dated 12/05/2009 announced by KPK Service Tribunal Peshawar is also attained its finality, and binding upon respondents and never challenged by respondents before Apex Court.
- 9-11) That the rights of advance increments was given/decided in para 08 by this Honourable Tribunal in its judgment dated 12/05/2009 and respondents were arrayed as party and they appeared, filed comments, and fully contested the same, and legally appellant's case is not implementation of same judgment, Moreover, the so-called Act No IX of 2012 is now declared unlawful & illegal by the Peshawar High Court, and thus the Act is no more in the field.

#### **ON FACTUAL OBJECTIONS**

- 1) That respondents in their reply in Para no 1 of the service appeal, it is legal facts that letters/circulars mentioned in their reply, were issued by the authority, against the letter & spirit of the Judgment



dated 12/05/2009 and these letters/circulars are clearly contempt of Court. Furthermore the Act No IX of 2012 is now declared null and void by the Peshawar High Court and it is not existing in the field hence plea of respondents is against law, and they deliberately concealed the real factual position of the case.

- 2) That as explained in above para no 1, Furthermore, there is no official order of deduction of 4<sup>th</sup> increment of BA/BSc against PTC post, the said action of deduction dated 01/01/2016 is against the existing judgment dated 12/05/2009, which is binding upon respondents and attained its finality and never challenged by respondents before proper forum.
- 3) That respondents did not narrate the factual position of the case in their reply, but they did not point out any law, or gave anything that how appellant can be restricted from his legal right on the subject/judgment dated 12/05/2009 passed by this Honourable Tribunal ?. and under which law, deduction of 4<sup>th</sup> advance increment is possible ?. Appellant seeks the leave of this Honourable Tribunal to request additional grounds according to situation at the time of arguments.

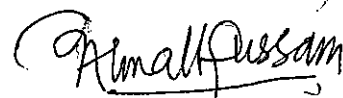
## **ON GROUNDS**

- a-c) That the reply of the respondents are totally incorrect and ambiguous, also not relevant to the points raised in the appeal, appellant reiterated the position taken in Para a-c of his appeal, In addition to this, the judgment passed by this Honourable Tribunal in Service Appeal No 1302/2014 is related to the 04 advance increments of MA/MSc against CT post, while appellant's case is related to the 04 advance increments of BA/BSc against PTC post, and the same judgment is called in question before apex court and is pending.

d-h) That the case of appellant is very much clear, the Act No IX of 2012 is now no more in the field and null & void by the Peshawar High Court in Writ Petition, and it is directly based on Supreme Court Judgment and comments of the respondents are totally incorrect, also not relevant to the points raised in appeal, and it is admitted facts that reply of respondents is totally wrong and claim of appellant cannot be denied by the respondents in the presence of Supreme Court Judgment on the subject dated 19/07/2007 as referred above, thus the position taken in Para (d-h) in appeal by appellant is reiterated.

It is humbly prayed that impugned action in respect of recovery/deduction of 01 advance increments out of 04 may please be set-aside and in case amount refunded/deducted from the salary of appellant, may be ordered the refund of same and continue recovery/deduction if any may also be suspended till the final disposal of titled service appeal and may please be imposed heavy cost against the responsible respondents.

Any other relief for which the appellant is entitled, and the same is not asked/prayed specifically, may very kindly be granted in favour of the appellant.



(Akmal Hussain)  
Appellant Inperson

Dated 25/03/2018

### Verification

It is verified that contents of instant rejoinder is correct and true according to my best knowledge and belief and nothing has been suppressed from this Honourable Tribunal.



(Akmal Hussain)  
Appellant Inperson

Dated 25/03/2018

حکومت جا۔ وہ میں کہوں کہ سوال کا جواب اور اس کا جواب

طا علی

مہارت اور سے اس کے ساتھ کہ اس کے ساتھ بیعتہ بیمار رہا ہے  
اور کل سارا دن اللہ کے نام سے اور اہتمام حصول  
ڈیوٹی و ترقی حلف منقوہ پورڈ آفس اسٹاٹ آباد  
میں گزارا گیا

میں کس person کے ذریعے لیا  
جا۔ سے اس کے ساتھ کہ تیری نہ ہوگی  
وہ سے کس adjourn کیا گیا  
میں توار اس میں

اکمل حسن  
Small Hussain  
18/7/16

G.H.S.S تیروٹ  
1145/16

# وکالت نامہ

کورٹ فیس

بعدالت خیر منجھو خواہ اس کے لئے ایجنڈہ لکھا گیا ہے کہ یہ ایک ایسی ایب

عنوان: اکمل حسن بنام قذوفت لکھا گیا ہے  
منجانب: ایسٹرنٹ

نوعیت مقدمہ: اس میں اپیل نمبر 1145/16

## باعث تحریر آنکہ

مقدمہ مندرجہ میں اپنی طرف سے واسطے پیروی و جملہ دہی کل کاروائی متعلقہ آئل مقام  
ایب ایب: علف صیات عبدی ایب و لکھ / علیہ السلام اللہ لکھ

کو وکیل مقرر کر کے اقرار کرتا ہوں کہ صاحب موصوف کو مقدمہ کی کل کاروائی کا کامل اختیار ہوگا نیز وکیل  
صاحب موصوف کو کرنے راضی نامہ و تقرر ثالث و فیصلہ برحلف و دینے اقبال دعویٰ اور بصورت دیگر ڈگری

کرانے اجراء وصولی چیک روپیہ و عرضی دعویٰ کی تصدیق اور اس پر دستخط کرنے کا اختیار ہوگا اور بصورت  
ضرورت مقدمہ مذکور کی کل یا کسی جزوی کاروائی کے لئے کسی اور وکیل یا مختار صاحب قانونی کو اپنے ہمراہ اپنی

بجائے تقرر کا اختیار بھی ہوگا اور صاحب مقرر شدہ کو بھی وہی اور ویسے ہی اختیارات ہوں گے اور اس کا  
ساختہ پرداختہ مجھ کو منظور و قبول ہوگا۔ دوران مقدمہ جو خرچہ و ہر جانہ التوائے مقدمہ کے سبب ہوگا اس کے

مستحق وکیل صاحب ہوں گے۔ نیز بقایا رقم وصول کرنے کا بھی اختیار ہوگا۔ اگر کوئی پیشی مقام دورہ پر ہو یا  
حد سے باہر ہو تو وکیل صاحب موصوف پابند ہوں گے کہ پیروی مقدمہ مذکورہ کریں اور اگر مختار مقرر کردہ میں

کوئی جز و بقایا ہو تو وکیل صاحب موصوف مقدمہ کی پیروی کے پابند نہ ہوں گے۔ نیز درخواست بمراد  
استجارت ناش بصیغہ مفلسی کے دائر کرنے اور اس کی پیروی کا بھی صاحب موصوف کو اختیار ہوگا۔

لہذا وکالت نامہ تحریر کر دیا تاکہ سند رہے۔

18/12/2018

المقوم  
Accepted

بمقام: ایب ایب  
Accepted

**In the Supreme Court of Pakistan**  
(Appellate Jurisdiction)

**Present:**

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

C.A. No. 1503 of 2007

**C.P.L.A No.590 of 2007**

(On appeal from judgment of NWFP Service Tribunal, Peshawar  
dated 24.4.2007 passed in Service Appeal No. 498 of 2006)

833

Shahid Iqbal

Petitioner

Versus

District Coordination Officer, Abbottabad & others

Respondents

Petitioner:

Shahid Iqbal, in person

For the respondents:

Sardar Shaukat Hayat Khan,  
Additional Advocate General, NWFP

Date of hearing:

19.7.2007

**Judgment**

**Rana Bhagwandas, ACJ** – Grievance of the petitioner before the NWFP Service Tribunal (hereinafter referred to as the Tribunal) appears to be that he was Primary School Teacher BPS-7 with effect from 24.10.1994 with prescribed qualification as Matriculation. Being Graduate in Arts, he prayed for award of four advance increments in terms of Finance Department circular letter No.FD(PRC)-1/89 dated 11.8.1991 instead of three allowed to him by the respondents.

2. Learned Members of the Tribunal vide judgment dated 24.4.2007 non-suited the petitioner on the premise that provisions of Finance Department circular letter No.FD(PRC)1-1/89 dated 11.8.1991

**ATTESTED**

Superintendent  
Supreme Court of Pakistan  
ISLAMABAD

would not be applicable to his case, as it was confined to ministerial staff. Petitioner, therefore, seeks leave to appeal.

3. We have examined the circular letter No.FD(PRC)-1/89 dated 7.8.1991 and circular letter dated 11.8.1991 (ibid), which clearly manifest that former exclusively deals with the grant of basic pay scales for placement of various categories of school teachers, the latter relates to basic pay scales and award of annual as well as advance increments governing cases of all Provincial civil servants working in NWFP. Language employed in the latter circular, in our considered opinion, does not exclude the employees in teaching cadre of Education department expressly or by intendment.

4. Indeed, we have already taken this view while deciding C.P.L.A. Nos.525 & 526 of 2007 vide separate judgment today. In view of para 5(b) of circular letter dated 11.8.1991 (ibid), petitioner being a qualified trained Primary School Teacher possessing higher qualification of B.A would be entitled to the award of four advance increments, as this circular was in fact applicable to his case when he entered in to service in 1994.

5. We do not agree with the submission of learned Law Officer when he refers to a copy of circular letter No.FD(SR-V)2-123/98 dated 22.3.1999, prescribing three advance increments for Primary School Teachers on attaining higher qualification of BA/BSc, as it would not apply retrospectively. In our considered view, case of the petitioner would be fully governed by circular letter dated 11.8.1991 (ibid). To our

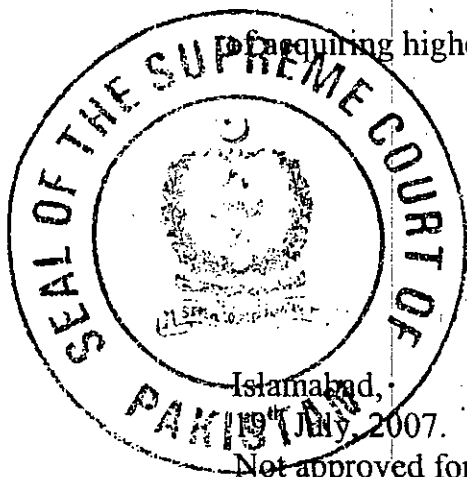
**ATTESTED**

Supervisor  
Supreme Court of Pakistan  
ISLAMABAD

mind, judgment of the Tribunal clearly suffers from misconception of law and misconstruction of legal instruments whereby it has caused grave miscarriage of justice.

6. Petitioner also contended that he had prayed for his up-gradation from BPS-7 to BPS-9, which was denied to him for the reason that he had passed his FA in third division whereas the prescribed qualification was FA/FSc in Second Division with C.T. We are not persuaded to the view that the petitioner has been discriminated in the matter of placement in BPS-7, which he had voluntarily accepted without any protest or demur. Doctrine of equal protection of law and equal treatment before law would hardly be attracted as the Provincial Government would be competent to prescribe higher qualification or higher standard of proficiency for the award of a particular scale to an employee, which cannot be declared to be discriminatory in nature.

7. For the aforesaid facts, circumstances and reasons, we set aside impugned judgment of the Tribunal and convert this petition into appeal, on acceptance whereof, we declare that the petitioner would be entitled to award of four advance increments with effect from the date of acquiring higher qualification of BA/BSc. -



*Cell. Rana Bhagwanrao, A/S  
Cell. Sardar Muhammad Raza, A/S*

Certified to be True Copy

*[Signature]*  
29/4/13

Superintendent  
Supreme Court of Pakistan  
ISLAMABAD

①

**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



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


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 .

105/19  
Annex 2

**SUPREME COURT OF PAKISTAN**  
(Appellate Jurisdiction)

**PRESENT:**

Mr. Justice Gulzar Ahmed  
Mr. Justice Maqbool Baqar

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

[Against the judgment dated 19.10.2017, passed by the Khyber Pakhtunkhwa Service Tribunal, Camp Court, Abbottabad in Appeal No.826 of 2016]

**Abdul Majid.** (in C.P.No.5128)  
**Muhammad Bashir.** (in CP No.5129)  
**Wajid Ali Shah.** (in CP No.5130)  
...Petitioner (s)

**Versus**

**Accountant General KP Peshawar & others.** (in all cases)  
...Respondent(s)

For the Petitioner (s) (in all cases) : Sardar Muhammad Ghazi, ASC

For the Respondent(s) : Mr. Muhammad Atif, Addl.A.G. KP  
Shahid Pervaiz Bhatti, District  
Controller of Accounts, Abbottabad  
Javed Khan, Addl.Secretary,  
Finance, KP

Date of Hearing : 28.11.2019

**ORDER**

**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

11/12/14

AA

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

**Appeal No. 1145/2016**

**Akmal Hussain .....Appellant**

**VERSUS**

**Accountant General Khyber Pakhtunkhwa & Others.....Respondents**

**PARA WISE COMMENTS ON BEHALF OF RESPONDENTS NOS. 1 & 2**

**INDEX**

<b>Sr.No</b>	<b>Description</b>	<b>Page Nos</b>	<b>Annexures</b>
1	Comments alongwith affidavit	1 to 5	
2	Copy of letter No. PFP/R.B.S.2011/DIK/2014-15/248 dated 10-12-2014	6-7	"A"
3	Copy of letter No. FD(SOSR-I)2-123/2015 dated 01-09-2015	8	"B"
4	Copy of letter No.SO(OP-II)/LD/5-7/2012-Vol-II/21708-09 dated 16-09-2015	89	"C"
5	Copy of letter dated 21-09-2015	10	"D"

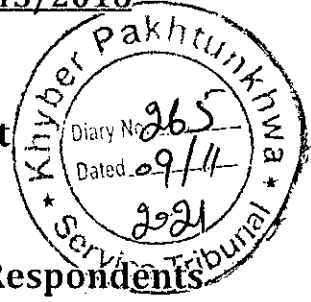
**BEFORE THE HONORABLE KHYBER PAKHTUNKHWA SERVICE  
TRIBUNAL PESHAWAR CAMP COURT ABBOTTABAD.**

**Appeal No. 1145/2016**

**Akmal Hussain .....Appellant**

**VERSUS**

**Accountant General Khyber Pakhtunkhwa & Others.....Respondents**



**PARA WISE COMMENTS ON BEHALF OF RESPONDENTS NOS. 1 & 2**

**Respectfully Sheweth:-**

**Comments on behalf of respondents are submitted as under:-**

**PRELIMINARY OBJECTION:-**

1. That the appellant has no cause of action/locus standi 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.
9. 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 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.

11. 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.
12. 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:-**

1. That Para No. 1, of the instant appeal relates to service record of the appellant and court record. That the 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. In reply to Para No. 2, of the instant appeal it is submitted that factual position of the case is that respondent No. 3 issued, letter dated 15-12-2010 containing direction that recovery may be made from those teachers/employees who have availed extra advance increments over and above their entitlement on academic qualification. Accordingly respondent No. 2 has rightly deducted/recovered 01 advance increments allowed to the appellant erroneously/invalidly.
3. That Para No. 3, of the service appeal is subject to proof.

**Grounds:**

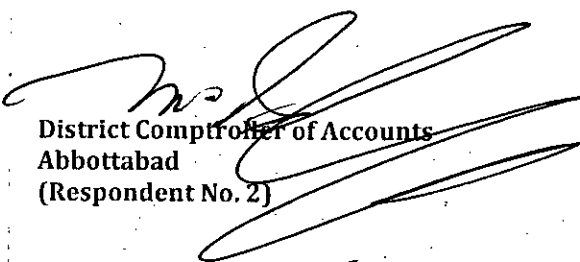
- a. That ground a, of the instant appeal as composed is incorrect hence, denied. Furthermore, the judgment of Honorable Tribunal has lost its efficacy for the purpose of implementation by clear Intendment through sections 1 & 2 of Khyber Pakhtunkhwa cessation of payment arrears on advance increments on higher education qualification Act No. IX of 2012.
- b. That ground b, of the instant appeal as composed is incorrect hence, denied. The issue of availing extra advance increments over & above the entitlement was 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 Department vide Finance Department letter No. FD(SOSR-I)2-123/2015 dated 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 21-09-2015 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 (**Annexure-IV**).


- c. In reply to ground c, of the instant service appeal it is submitted that the 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.
- d. That ground d, as composed is incorrect hence, denied as per sections 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.
- e. That ground e, as composed is incorrect hence, denied. Comprehensive reply has already been given in preceding paras.
- f. That ground f, as composed is incorrect hence, denied.
- g. That ground g, as composed is incorrect hence, denied. Action taken by answering respondents is not against the judgment of any Court/Service Tribunal, but as per Judgment of August Supreme Court of Pakistan and in the interest of justice & public exchequer.
- h. That ground h, as composed is incorrect hence, denied.
- i. That ground i, as composed is incorrect hence, denied. Detailed reply has already been given in preceding paras.
- j. That ground j, as composed is incorrect hence, denied.
- k. That ground k, as composed is incorrect hence, denied.
- l. That ground l, as composed is incorrect hence, denied as the 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.

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.



District Comptroller of Accounts  
Abbottabad  
(Respondent No. 2)



Accountant General Khyber Pakhtunkhwa  
Peshawar  
(Respondent No. 1)

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

Appeal No. 1145/2016

**Akmal Hussain .....Appellant**

**VERSUS**

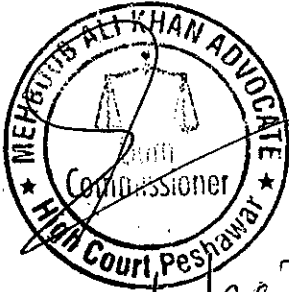
**Accountant General Khyber Pakhtunkhwa & Others.....Respondents**

**PARA WISE COMMENTS ON BEHALF OF RESPONDENTS NOS. 1 & 2**


**AFFIDAVIT**

I, Sardar Muhammad Saleem, District Accounts Officer 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.

**ATTESTED**



69/11/2021

  
DEPONENT  
