

28.04.2021

Due to demise of the Worthy Chairman, the Tribunal is non-functional, therefore, case is adjourned to 12.08.2021 for the same as before.


Reader

12.08.2021

Counsel for the appellant present.

As this Tribunal has already passed an elaborate and consolidated judgment in the matter of Conveyance Allowance with direction to all the concerned Authorities to allow the benefit of the judgment not only to the appellants but to all those who did not file appeal in the similar matter. This appeal was pending when said judgment was passed but remained undisposed off having not been clubbed with the main appeal by the office. It is deemed appropriate to file this appeal for the time being without further proceedings and given an option to the appellant to apply to the concerned Authority for restoration of his Conveyance Allowance on the strength of judgment dated 12.07.2021 in Service Appeal No. 12889/2020 titled "Jalalud Din Vs. Government of Khyber Pakhtunkhwa through Chief Secretary, Peshawar and others". If he fails to get the relief accordingly, he would be at liberty to seek restoration of this appeal with cogent and material reasons that how he was refused the relief by the department on the basis of aforesaid judgment. File be consigned to the record room.


Chairman



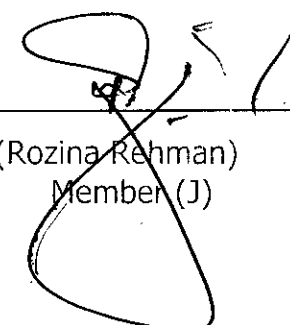
ANNOUNCED

12.08.2021

FORM OF ORDER SHEET

Court of _____

Execution Restoration Application No 179 /2020

| S.No. | Date of order proceedings | Order or other proceedings with signature of judge or Magistrate |
|------------|---------------------------|--|
| 1 | 2 | 3 |
| 1 | 22.12.2020 | <p>The Restoration Application submitted by Mr. Islām Ud Din through Mr. Munfat Ali Advocate may be entered in the relevant Register and put up to the Court for proper order please.</p> <p style="text-align: right;"> REGISTRAR</p> <p>2-</p> <p>This Restoration Application be put up before S Bench on <u>22/01/21</u>:</p> <p style="text-align: right;"> CHAIRMAN</p> |
| 22.01.2021 | | <p>Petitioner present in person.</p> <p>Instant application was submitted seeking restoration of main service appeal which was dismissed in default vide order dated 08.12.2020. The instant application being within time, is accepted. Original appeal stands restored. It be properly registered. To come up for further proceedings/preliminary hearing on 28.04.2021 before S.B.</p> <p style="text-align: right;"> (Rozina Rehman) Member (J)</p> |

22.04.2020

Due to COVID19, the case is adjourned to 23.07.2020 for the same as before.



Reader

23.07.2020

Appellant is absent. The legal fraternity is observing strike today therefore, no proceedings could be conducted. The case is adjourned to 06.10.2020. To come up for previous proceedings before S.B.



(MUHAMMAD JAMAL KHAN)
MEMBER

06.10.2020

Junior to counsel for the appellant present.

Learned senior counsel for the appellant is not in attendance today due to general strike on the call of Khyber Pakhtunkhwa Bar Council. The matter is adjourned to 08.12.2020 for hearing before S.B.



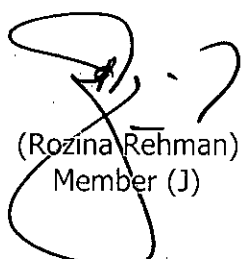
Chairman

08.12.2020

Nemo for appellant.

Case was called time and again but none appeared on behalf of appellant. Consequently the present appeal is hereby dismissed for non-prosecution. No order as to costs. File be consigned to the record room.

Announced.
08.12.2020



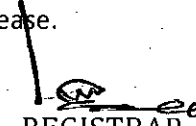



(Rozina Rehman)
Member (J)

Form- A

FORM OF ORDER SHEET

Court of _____

Case No.- 1971/2019

| S.No. | Date of order proceedings | Order or other proceedings with signature of judge |
|-------|---------------------------|--|
| 1 | 2 | 3 |
| 1- | 19/12/2019 | <p>The appeal of Mr. Islam-ud-Din presented today by Mr. Munfat Ali Yousafzai Advocate may be entered in the Institution Register and put up to the Worthy Chairman for proper order please.</p> <p> REGISTRAR 19/12/19</p> |
| 2- | 20/12/19 | <p>This case is entrusted to S. Bench for preliminary hearing to be put up there on <u>23/01/20</u></p> <p> CHAIRMAN</p> |
| | 23.01.2020 | <p>Nemo for appellant.</p> <p>Notices be issued to appellant/counsel for preliminary hearing on 09.03.2020 before S.B.</p> <p> Chairman</p> |
| | 09.03.2020 | <p>Appellant absent. Learned counsel for the appellant absent. Adjourn. To come up on 22.04.2020 before S.B. Appellant be put to notice for the date fixed.</p> <p> Member</p> |

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR

APPEAL NO. 1971 /2019

Mr. **Islamud Din** SPST.....**APPELLANT**

VERSUS

The Government of Khyber Pakhtunkhwa through Chief Secretary,
and others.....**RESPONDENTS**

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| 6. | Judgment | E | 16-21 |
| 7. | Service Tribunal judgment | F | 22-23 |
| 8. | Vakalat nama | | |

APPELLANT

Islamudin

Mr. **Islamud Din**, SPST

THROUGH:

(M)

Munfat Ali Yousafzai

ADVOCATE

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR

APPEAL NO. 1971 /2019

Khyber Pakhtunkhwa
Service Tribunal

Diary No. 2063

Dated 19/12/2019

Mr. **Islamud Din**, SPST,
Govt. Primary School No. 1 Nowshera Cantt.

.....**APPELLANT**

VERSUS

- 1- Secretary Elementary & Secondary Education, Khyber Pakhtunkhwa, Peshawar.
- 2- The Secretary Finance Department, Khyber Pakhtunkhwa, Peshawar.
- 3- District Account Officer, District Nowshera.
- 4- The Accountant General, Khyber Pakhtunkhwa, Peshawar.
- 5- District Education Officer, District Nowshera.

.....**RESPONDENTS**

APPEAL UNDER SECTION-4 OF THE KHYBER
PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974 AGAINST
THE IMPUGNED ACTION OF THE RESPONDENTS BY
ILLEGALLY AND UNLAWFULLY DEDUCTING THE
CONVEYANCE ALLOWANCE OF THE APPELLANT DURING
WINTER & SUMMER VACATIONS AND AGAINST NO
ACTION TAKEN ON THE DEPARTMENTAL APPEAL OF THE
APPELLANT WITHIN THE STATUTORY PERIOD OF
NINETY DAYS.

19/12/19

PRAYER:

That on acceptance of this appeal the respondents may kindly be directed not to make deduction of conveyance allowance during vacations period (Summer & Winter Vacations) and make the payment of all outstanding amount of Conveyance allowance which have been deducted previously with all back benefits. Any other remedy which this august Tribunal deems fit that may also be awarded in favor of the appellant.

R/SHEWETH:

ON FACTS:

- 1- That the appellant is serving in the Govt. Primary School No. 1 Nowshera Cantt in Elementary and Secondary Education Department District Nowshera as SPST quite efficiently and up to the entire satisfaction of their superiors.
- 2- That the Conveyance Allowance is admissible to all the Civil Servants and to this effect a Notification No. FD (PRC)1-1/2011 dated 14.07.2011 was issued. That later on vide revised Notification dated 20.12.2012 whereby the conveyance allowance for employees working in BPS 1 to 15 were enhance/revised while employees from BPS- 16 to 19 have been treated under the previous Notification by not enhancing their conveyance allowance. Copy of the Notification dated 20.12.2012 are attached as annexure..... **A.**
- 3- That appellant was receiving the conveyance allowances as admissible under the law and rules but the respondents without any valid and justifiable reasons stopped/deducted the payment

of conveyance allowance under the wrong and illegal pretext that the same is not allowed for the leave period. Copies of the Salary Slips of working/serving month and vacations (deduction period) are attached as annexure.....**B & C.**

4- That appellant feeling aggrieved from the action of the respondents regarding deduction of conveyance allowance in vacations period/months filed Departmental appeal but no reply has been received so far. That feeling aggrieved the appellant along with his other colleagues filed Writ Petition No. 3162-P/2019 before the Peshawar High Court, Peshawar which was disposed of vide judgment dated 01.10.2019 with the directions to approach the proper forum i.e. Service Tribunal. Copies of the Departmental appeal & judgment is attached as annexure.....**D & E.**

5- That some of colleagues of the appellant approached to this august Tribunal in different service appeal which was allowed by this august Tribunal vide its judgment dated 11.11.2019. Copy of the judgment is attached as annexure.....**F.**

6- That where after the appellant waited for the statutory period of ninety days but no reply has been received from the respondents. That appellant feeling aggrieved and having no other remedy filed the instant service appeal on the following grounds amongst the others.

GROUNDS:

- A- That the action and inaction of the respondents regarding deduction of conveyance allowance for vacations period/months is illegal, against the law, facts, norms of natural justice.
- B- That the appellant have not been treated by the respondent Department in accordance with law and rules on the subject noted above and as such the respondents violated Article 4 and 25 of the constitution of Islamic Republic of Pakistan 1973.
- C- That the action of the respondents is without any legal authority, discriminatory and in clear violation of fundamental rights duly conferred by the Constitution and is liable to be declared as null and void.
- D- That there is clear difference between leave and vacation as leave is applied by the Civil Servant in light Government Servant Revised Leave Rules, 1981 while the vacations are always announced by the Government, therefore under the law and Rules the appellant fully entitled for the grant of conveyance allowance during vacations period.
- E- That the Government Servants Revised Leave Rules, 1981 clearly explain that the civil servants who avail the vacations are allowed only one leave in a month whereas, the other civil servants may avail 04 days leave in a calendar months and the same are credited to his account and in this way he may avail 48 days earned leave with full pay, whereas the Government

servants to avail vacation such as appellant is allowed one day leave in a month and twelve (12) days in a year and earned leave for twelve days in a year are credited to his account and there is no question of deduction of conveyance allowance for vacation period, the respondents while making the deduction of conveyance allowance lost sight of this legal aspects and illegally and without any authority started the recovery and deduction of conveyance allowance from appellant.

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

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

H- That according to Government Servants Revised leave Rules, 1981 vacations are holidays and not leave of any kind, therefore, the deduction of conveyance allowance in vacations is against the law and rules.

I- That according to Article 38 (e) of the Constitution of Islamic Republic of Pakistan, 1973 the state is bound to reduce disparity in the income and earning of individuals including persons in the services of the federation, therefore in light of the said Article the appellant fully entitle for the grant of conveyance allowance during vacations.

J- That the petitioners seeks permission of this Honorable Court to raise any other grounds available at the time of arguments.

It is therefore, most humbly prayed that the appeal of the appellant may be accepted as prayed for.

APPELLANT

Islamud Din

Mr. **Islamud Din**, SPST

THROUGH:

(M)

Munfat Ali Yousafzai
ADVOCATE

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR

APPEAL NO. _____/2019

Mr. Islamud Din SPST.....APPELLANT

VERSUS

The Government of Khyber Pakhtunkhwa through Chief Secretary,
and others.....**RESPONDENTS**

APPLICATION FOR RESTRAINING THE
RESPONDENTS FROM RECOVERY AND ONWARD
DEDUCTION OF CONVEYANCE ALLOWANCE DURING
VACATION PERIOD

Respectfully Sheweth:

1. That the appellant filed above mentioned appeal along with this application before this August Service Tribunal in which no date has been fixed so far.
2. That appellant filed the above mentioned appeal against the impugned action of the respondent by illegally and unlawfully deducting the conveyance allowance during the winter and summer vacations.
3. That the impugned action of the respondents by deducting conveyance allowance during winter and summer vacation is utter violation of law and rules.

4. That all the three ingredients necessary for the stay in favour of the appellant.
5. That the grounds of main appeal also be considered as integral part of this application.

It is, therefore, most humbly prayed that on acceptance of this application, the respondents may kindly be restrained from recovery and onward deduction of conveyance allowance during vacations period till disposal of the above mentioned appeal.

APPELLANT

Islamud Din
Mr. **Islamud Din**, SPST

THROUGH:

M

Munfat Ali Yousafzai
ADVOCATE

10

GOVERNMENT OF KHYBER PAKHTUNKHWA
FINANCE DEPARTMENT
(REGULATION WING)

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

From

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

To:

1. All administrative Secretaries to Govt: of Khyber Pakhtunkhwa.
2. The Senior Member, Board of Revenue, Khyber Pakhtunkhwa.
3. The Secretary to Governor, Khyber Pakhtunkhwa.
4. The Secretary to Chief Minister, Khyber Pakhtunkhwa.
5. The Secretary, Provincial Assembly, Khyber Pakhtunkhwa.
6. All Heads of attached Departments in Khyber Pakhtunkhwa.
7. All District Coordination Officers of Khyber Pakhtunkhwa.
8. All Political Agents/District & Session Judge in Khyber Pakhtunkhwa.
9. The Registrar Peshawar High Court, Peshawar.
10. The Chairman Public Service Commission, Khyber Pakhtunkhwa.
11. The Chairman, Service Tribunal, Khyber Pakhtunkhwa.

Subject: **REVISION IN THE RATE OF CONVEYANCE ALLOWANCE FOR THE CIVIL EMPLOYEES OF THE KHYBER PAKHTUNKHWA, PROVINCIAL GOVERNMENT BPS-1-19**

Dear Sir,

The Government of Khyber Pakhtunkhwa has been pleased to enhance/revise the rate of Conveyance Allowance admissible to all the Provincial Civil Servants Govt: of Khyber Pakhtunkhwa (working in BPS-1 to BPS-15) w.e.f from 1st September, 2012 at the following rates. However, the conveyance allowance for employees in BPS-16 to BPS-19 will remain unchanged.

| S.No. | BPS | Existing Rate (PM) | Revised Rate (PM) |
|-------|-------|--------------------|-------------------|
| 1. | 1-4 | Rs. 1,500/- | Rs. 1,700/- |
| 2. | 5-10 | Rs. 1,500/- | Rs. 1,840/- |
| 3. | 11-15 | Rs. 2,000/- | Rs. 2,720/- |
| 4. | 16-19 | Rs. 5,000/- | Rs. 5,000/- |

2. Conveyance Allowance at the above rates per month shall be admissible to those BPS-17, 18 and 19 officers who have not been sanctioned official vehicle.

Your Faithfully

(Sahibzada Saeed Ahmad)
Secretary Finance

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

ATTESTED
MC



A-18

GOVERNMENT OF KHYBER PAKHTUNKHWA
FINANCE DEPARTMENT
(REGULATION WING)

NO. FD/SO(SR-II)/8-52/2012
Dated Peshawar the: 20-12-2012

From:

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

To:

1. All Administrative Secretaries to Govt. of Khyber Pakhtunkhwa.
2. The Senior Member, Board of Revenue, Khyber Pakhtunkhwa.
3. The Secretary to Governor Khyber Pakhtunkhwa
4. The Secretary to Chief Minister, Khyber Pakhtunkhwa.
5. The Secretary, Provincial Assembly, Khyber Pakhtunkhwa
6. All Heads of Attached Departments in Khyber Pakhtunkhwa
7. All District Coordination Officers in Khyber Pakhtunkhwa.
8. All Political Agents / District & Sessions Judges in Khyber Pakhtunkhwa
9. The Registrar, Peshawar High Court, Peshawar
10. The Chairman, Public Service Commission, Khyber Pakhtunkhwa.
11. The Chairman, Services Tribunal, Khyber Pakhtunkhwa.

Subject:

REVISION IN THE RATE OF CONVEYANCE ALLOWANCE FOR THE CIVIL EMPLOYEES OF THE KHYBER PAKHTUNKHWA, PROVINCIAL GOVERNMENT BPS 1-19

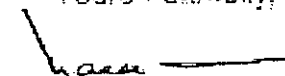
Dear Sir,

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2. Conveyance Allowance at the above rates per month shall be admissible to those BPS-17, 18 and 19 officers who have not been sanctioned official vehicles.

Yours Faithfully,

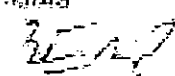

(Sahibzada Saad Ahmad)
Secretary Finance

Enclure NO. FD/SO(SR-II)/8-52/2012

Dated Peshawar the 20th December, 2012

A Copy is forwarded for information to the:-

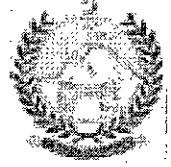
1. Accountant General, Khyber Pakhtunkhwa, Peshawar
2. Secretaries to Government of Punjab, Sindh & Balochistan, Finance Department
3. All Autonomous / Semi Autonomous Bodies in Khyber Pakhtunkhwa


(INTIAZ AYUB)
Additional Secretary (Reg.)

Dist. Govt. NWFP-Provincial
District Accounts Office Nowshera
Monthly Salary Statement (March-2017)

B

B-13



Personal Information of Mr ISLAMUD DIN d/w/s of

Personnel Number: 00135801 CNIC: 99991528285 NTN:
Date of Birth: 10.10.1961 Entry into Govt. Service: 16.09.1981 Length of Service: 35 Years 06 Months 017 Days

Employment Category: Active Permanent

Designation: PRIMARY SCHOOL TEACHER 80003682-DISTRICT GOVERNMENT KHYBE
DDQ Code: NR6010-DY: DISTT OFFICER (M) NSR
Payroll Section: 001 GPF Section: 001 Cash Center: 11
GPF A/C No: EDU 028550 Interest Applied: Yes GPF Balance: 83,614.00
Vendor Number: -

Pay and Allowances: Pay scale: BPS For - 2016 Pay Scale Type: Civil BPS: 14 Pay Stage: 22

| Wage type | | Amount | Wage type | | Amount |
|-----------|---------------------------|-----------|-----------|---------------------------|----------|
| 0001 | Basic Pay | 34,280.00 | 1000 | House Rent Allowance | 1,476.00 |
| 1210 | Convey Allowance 2005 | 2,856.00 | 1300 | Medical Allowance | 1,500.00 |
| 1948 | Adhoc Allowance 2010@ 50% | 5,433.00 | 2148 | 15% Adhoc Relief All-2013 | 975.00 |
| 2199 | Adhoc Relief Allow @10% | 673.00 | 2211 | Adhoc Relief All 2016-10% | 3,428.00 |

Deductions - General

| Wage type | | Amount | Wage type | | Amount |
|-----------|---------------------------|-----------|-----------|-------------------|---------|
| 3014 | GPF Subscription - Rs2194 | -2,194.00 | 3501 | Benevolent Fund | -600.00 |
| 3609 | Income Tax | -368.00 | 3990 | Emp.Edu. Fund KPK | -125.00 |
| 4004 | R. Benefits & Death Comp: | -600.00 | | | 0.00 |

Deductions - Loans and Advances

| Loan | Description | Principal amount | Deduction | Balance |
|------|---------------------------|------------------|-----------|-----------|
| 6505 | GPF Loan Principal Instal | 100,000.00 | -5,000.00 | 75,000.00 |

Deductions - Income Tax

Payable: 6,817.45 Recovered till March-2017: 2,987.00 Exempted: 2726.87 Recoverable: 1,103.58

Gross Pay (Rs.): 50,621.00 Deductions: (Rs.): -8,887.00 Net Pay: (Rs.): 41,734.00

Payee Name: ISLAMUD DIN
Account Number: PLS000000268875
Bank Details: HABIB BANK LIMITED, 220222 CANTT BRANCH, NOWSHERA. CANTT BRANCH, NOWSHERA., NOWSHERA

Leaves: Opening Balance: Aailed: Earned: Balance:

Permanent Address: RI KATI KHEL
City: NOWSHERA Domicile: NW - Khyber Pakhtunkhwa Housing Status: No Official
Temp. Address:
City: Email: islamuddinnsr1@gmail.com

ATTESTED

Dist. Govt. NWFP-Provincial
District Accounts Officer Nowshera
Monthly Salary Statement (July-2019)

E-14

Personal Information of Mr ISLAMUDDIN d/o/s of

Personnel Number: 00138001

CNIC: 99901528285

SN: _____

Date of Birth: 10/10/1961

Entry into Govt. Service: 16/07/1981

Length of Service: 37 Years 10 Months 02 Days

Employment Category: Active Permanent

Description: PRIMARY SCHOOL TEACHER

0001062-DISTRICT GOVERNMENT CIVIL

HR Code: SR0410-DY DIST. OFFICER (M) NSR

Payroll Section: 060

GPF Section: 001

Cash Center: 11

GPF A/C No. EDU 028550

Interest Applied: Yes

GPF Balance: 125,662.00

Vendor Number: -

Pay and Allowances:

Pay scale: HPS For - 2017

Pay Scale Type: Civil WPS: 14

Pay Stage: 24

| Wage Type | Amount | Wage Type | Amount |
|--------------------------------|-----------|--------------------------------|----------|
| 1000 Home Pay | 43,260.00 | 1000 Home Rent Allowance | 2,215.00 |
| 1300 Medical Allowance | 1,500.00 | 2148 15% Adhoc Relief All-2013 | 975.00 |
| 2100 Adhoc Relief Allow. 10% | 673.00 | 2211 Adhoc Relief All 2016 10% | 1,428.00 |
| 2221 Adhoc Relief All 2017 10% | 4,326.00 | 2247 Adhoc Relief All 2018 10% | 4,326.00 |
| 2264 Adhoc Relief All 2019 10% | 4,326.00 | | 0.00 |

Deductions - General

| Wage Type | Amount | Wage Type | Amount |
|--------------------------------|----------|--------------------------------|----------|
| 7053 GPF Subscription - Rs2020 | 2,620.00 | 1501 General Fund | 600.00 |
| 6401 Income Tax | 434.00 | 7900 Emp. Inv. Fund KPE | 125.00 |
| 1004 IR Benefits & Death Conty | 1,052.00 | 5011 Adh. Conveyance Allowance | 2,856.00 |

Deductions - Loans and Advances

| Loan | Description | Principal amount | Deduction | Balance |
|------|---------------------------|------------------|-----------|-------------|
| 0505 | GPF Loan Principal Instal | 180,000.00 | 5,000.00 | 1,15,000.00 |

Deductions - Income Tax

Payable: 5,873.95 Recovered till July-2019: 434.00 Exempted 15-03-25 Recoverable: 4,886.70

Gross Pay (Rs.): 65,028.00 Deductions: (Rs.): -12,697.00 Net Pay: (Rs.): 52,331.00

Payee Name: ISLAMUDDIN

Account Number: PLS080000268875

Bank Details: HAMB BANK LIMITED 220222 CANTT BRANCH, NOWSHERA, CANTT BRANCH, NOWSHERA, NOWSHERA

Leaves: Opening Balance Availed Earned Balance

Permanent Address: REKATI KHIL

City: NOWSHERA

District: NW - Khyber Pakhtunkhwa

Housing Status: No Official

Temp. Address:

City:

Postal:

Atiqah
(M)

D-14 (8)

To,

**The Secretary (E&SE) Department,
Khyber Pakhtunkhwa,
Peshawar.**

**Subject: DEPARTMENTAL APPEAL AGAINST THE IMPUGNED
ACTION OF THE CONCERNED AUTHORITY BY
ILLEGALLY AND UNLAWFULLY DEDUCTING THE
CONVEYANCE ALLOWANCE DURING WINTER AND
SUMMER VACATION**

Respected Sir,

With due respect, It is stated that I am the employee of your goodself Department and is serving as SST (BPS-16) quite efficiency and upto the entire satisfaction of the superiors. It is stated for kind information that Conveyance Allowance is admissible to all the civil servants and to this effect a Notification No. FD(PRC) 1-1/2011 dated 14.07.2011 was issued. Later on, vide revised Notification dated 20.12.2012 whereby the conveyance allowance for employees working in BPS 1 to 15 were enhance/revised while employees from BPS-16 to 19 have been treated under the previous Notification by not enhancing their conveyance allowance. Respected Sir, I was receiving the conveyance allowance as admissible under the law and rules but he concerned authority without any valid and justifiable reasons stopped/deducted the payment of conveyance allowance under the wrong and illegal pretext that the same is not allowed for the leave

D-15 ~~2/11~~

period. One of the employee of Education Department in Islamabad filed service appeal No. 1888 (R) CS/2016 before the Federal Service Tribunal, Islamabad regarding conveyance allowance which was accepted by the Honorable Service Tribunal vide its judgment dated 03.12.2018. That I also the similar employee of Education Department and under the principle of consistency, I am also entitled for the same treatment meted out in the above mentioned service appeal but the concerned authority is not willing to issue/grant the same conveyance allowance which is granting to other employees (Copy attached). I am feeling aggrieved from the action of the concerned authority regarding deduction of conveyance allowance in vacations period/months preferred this Departmental appeal before your good self.

It is, therefore, most humbly prayed that on acceptance of this Departmental appeal, the concerned authority may very kindly be directed the conveyance allowance may not be deducted from my monthly salary during the winder & summer vacations.

Dated: 02.09.2019

APPELLANT

Islamudin
Mr. **Islamud Din**, SPST

Govt. Primary School No. 1
Nowshera Cantt.

Judgment Sheet

IN THE PESHAWAR HIGH COURT, PESHAWAR,
JUDICIAL DEPARTMENT.

Writ Petition No. 3162-P/2019 Akhtar Hussain and 69 others vs. Govt of Khyber Pakhtunkhwa

JUDGMENT

Date of hearing.....01.10.2019.....

Petitioner(s) by Mr. Noor Mohammad Khattak, Advocate.

Mr. Mujahid Ali Khan, AAG, for respondents.

ROOH-UL-AMIN KHAN, J:- Through this common judgment we, proposed to decided the instant as well as the connected writ petitions as all having involved common question of law and facts, the particulars of which are given below.

- i. WP No. 3162-P/2019 titled Akhtar Hussain etc..vs.:Government of Khyber Pakhtunkhwa through Chief Secretary, Peshawar and 4 others.
- ii. WP No. 3064-P/2019 titled Habeeb Ullah etc...Vs.. Government of Khyber Pakhtunkhwa through Chief Secretary, Peshawar and 7 others.
- iii. WP No. 3084-P/2019 titled Sikandar Khan etc...Vs.. Government of Khyber Pakhtunkhwa through Chief Secretary, Peshawar and 4 others.
- iv. WP No. 3178-P/2019 titled Abdur Rehman etc...Vs.. Government of Khyber Pakhtunkhwa through Chief Secretary, Peshawar and 4 others.

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- v. WP No. 3233-P/2019 titled Amjid Ali etc...Vs..
Government of Khyber Pakhtunkhwa through Chief
Secretary, Peshawar and 4 others.
- vi. WP No. 3283-P/2019 titled Gul Saeed etc...Vs..
Government of Khyber Pakhtunkhwa through Chief
Secretary, Peshawar and 4 others.
- vii. WP No. 3287-P/2019 titled Syed Israr Shah etc...Vs..
Government of Khyber Pakhtunkhwa through Chief
Secretary, Peshawar and 7 others.
- viii. WP No. 3288-P/2019 titled Firdous Khan etc...Vs..
Government of Khyber Pakhtunkhwa through Chief
Secretary, Peshawar and 4 others.
- ix. WP No. 3353-P/2019 titled Hafiz Inam Ur Rehman
etc...Vs.. Government of Khyber Pakhtunkhwa
through Chief Secretary, Peshawar and 6 others.
- x. WP No. 3366-P/2019 titled Jehanzeb Khan etc...Vs..
Government of Khyber Pakhtunkhwa through Chief
Secretary, Peshawar and 4 others.
- xi. WP No. 3390-P/2019 titled Haji Rehman etc...Vs..
Government of Khyber Pakhtunkhwa through Chief
Secretary, Peshawar and 2 others.
- xii. WP No. 3520-P/2019 titled Mohammad Khalid
etc...Vs.. Government of Khyber Pakhtunkhwa
through Chief Secretary, Peshawar and 4 others.

ATTESTED

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- xiii. WP No. 3567-P/2019 titled Husnur Rehman etc...Vs.. Government of Khyber Pakhtunkhwa through Chief Secretary, Peshawar and 3 others.
- xiv. WP No. 3667-P/2019 titled Maqsad Hayat etc...Vs.. Government of Khyber Pakhtunkhwa through Chief Secretary, Peshawar and 4 others.
- xv. WP No. 3939-P/2019 titled Syed Khurshid Shah etc...Vs.. Government of Khyber Pakhtunkhwa through Chief Secretary, Peshawar and 5 others.
- xvi. WP No. 4072-P/2019 titled Subhan Ullah etc...Vs.. Government of Khyber Pakhtunkhwa through Chief Secretary, Peshawar and 6 others.
- xvii. WP No. 4758-P/2019 titled Sohrab Hayat etc...Vs.. Government of Khyber Pakhtunkhwa through Chief Secretary, Peshawar and 4 others.

2. As per averments of the writ petition, the petitioners are serving in the Elementary & Secondary Education Department on their respective posts. On 14.7.2011 the Government of Khyber Pakhtunkhwa enhanced the conveyance allowance to all the Civil Servants i.e. from BPS-1 to 15, including the petitioners, which was subsequently revised vide another notification dated 20.12.2012 and was further enhanced. But the respondents without any valid and justifiable reasons stopped / deducted the payment of conveyance

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allowance under the wrong and illegal pretext that the same is not allowed for the leave period.

3. In essence, the grievance the petitioners is that they were receiving the conveyance allowance under the notifications mentioned above, which was stopped without any justifiable reason.

4. Since the matter pertain to grant of conveyance allowance which is part and parcel of pay. Similar controversy came before this Court in Writ Petition No. 3509-P/2014 titled (Hafiz Mohammad Ilyas etc..vs..Government of Khyber Pakhtunkhwa), wherein the pay and salary were defined in the following manner.

“7. To resolve the controversy as to whether payment of allowances to a civil servant falls in chapter-2 of Khyber Pakhtunkhwa Civil Servants Act, 1973 i.e. terms and conditions of service, it is necessary to reproduce the definition of “pay” provided in section 2(e) of the Khyber Pakhtunkhwa Civil Servants Act, 1973 which reads as under:

“ 2. (e)—“Pay” means the amount drawn monthly by a civil servant as pay, and includes special pay, personal pay and any other emoluments declared by the prescribed authority to be paid.” (emphasis provided).

The word “emolument” used in the above quoted definition clause of the Civil Servants Act, 1973, according to its dictionary meaning, denotes wages and benefits received as compensation for

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holding an office or having employment. The word emolument is basically derived from the Latin word emolumentum. It originally meant "the sum paid to a miller for grinding a customer wheat". Today, the term exists mostly as a bit of archaic legalese, but it might be within the route of expression i.e. "grinding out a living". From the above it is manifest that emoluments are essentially the benefits that one gets from the working of being employed. **Emolument** is the profit from employment and is compensation in return of services, hence the emoluments are part and parcel of pay. Section 17 being part of chapter-2 i.e. terms and conditions of service of a civil servant provides that, a civil servant appointed to a post shall be entitled, in accordance with rules, to the pay sanctioned for the post. Likewise, Rule 9(21) of (FR/SR) provide, the definition of pay which means the amount drawn monthly by a government servant as ;

- (i) the pay, other than special pay or pay granted in view of his personal qualification, which has been sanctioned for the post held by him substantively or in an officiating capacity, or to which he is entitled by reason of his position in a cadre, and
- (ii) overseas pay, technical pay, special pay and personal pay and
- (iii) any other emoluments which may be specially classed as pay by the governor general.

The legislature in its wisdom has wisely used the word "pay" instead of salary in definition clause and section 17 of Khyber Pakhtunkhwa Civil Servants Act, 1973. The word 'pay' connotes

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

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

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

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

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5. Besides, certain other petitions filed by the Teachers /employees of the same department serving from other corners of the province which were decided by Abbottabad Bench of this Court, wherein it was held that the conveyance allowance being part of pay fall in terms and conditions of civil servant and it can adequately be claimed through an appeal by adopting the prescribed procedure under the Khyber Pakhtunkhwa Civil Servants Act, 1974.

6. For the reasons given hereinabove, the petitioners are civil servants and their claim falls in terms and conditions of service enumerated in Chapter-2 of the Khyber Pakhtunkhwa Civil Servants Act, 1973, wherein the jurisdiction of this Court is expressly barred by Article 212 of the Constitution of Islamic Republic of Pakistan, 1973. Resultantly, this and the connected writ petition mentioned above stand dismissed being not maintainable. However, the petitioners are liberty to approach the proper forum, if so desire.

Announced on;
1st of October, 2019.
"Jashad"

[Signature]
 JUDGE

[Signature]
 JUDGE

ANNEXED

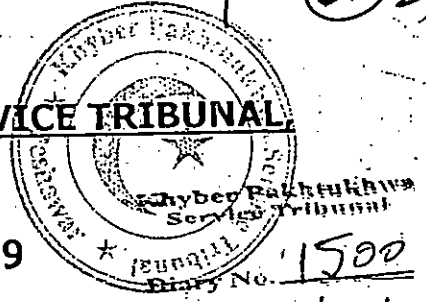
[Signature]
 (DB) Mr. Justice Rooh Ul Amin Khan & Mr. Justice Mohammad Nazam Anwar

CERTIFIED TO BE TRUE COPY
 EXAMINER
 Peshawar High Court, Peshawar
 Authorized Under Article 8.7 of
 The Genuine Signature Order 1998

21 OCT 2019

F-23

**BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR**



APPEAL NO. 1452 /2019

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

APPELLANT

VERSUS

- 1- The Government of Khyber Pakhtunkhwa through Chief Secretary, Khyber Pakhtunkhwa, Peshawar.
- 2- The Secretary (E&SE) Department, Khyber Pakhtunkhwa, Peshawar.
- 3- The Secretary Finance Department, Khyber Pakhtunkhwa, Peshawar.
- 4- The Accountant General, Khyber Pakhtunkhwa, Peshawar.
- 5- The Director (E&SE) Department, Khyber Pakhtunkhwa, Peshawar.

RESPONDENTS

APPEAL UNDER SECTION-4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974 AGAINST THE IMPUGNED ACTION OF THE RESPONDENTS BY ILLEGALLY AND UNLAWFULLY DEDUCTING THE CONVEYANCE ALLOWANCE OF THE APPELLANT DURING WINTER & SUMMER VACATIONS AND AGAINST NO ACTION TAKEN ON THE DEPARTMENTAL APPEAL OF APPELLANT WITHIN THE STATUTORY PERIOD OF NINETY DAYS.

PRAYER:

That on acceptance of this appeal the respondents may kindly be directed not to make deduction of conveyance allowance during vacations period (Summer & Winter Vacations) and make the payment of all outstanding amount of Conveyance allowance which have been deducted previously with all back benefits. Any other remedy which this august Tribunal deems fit that may also be awarded in favor of the appellant.

Filed to-day
Registrar
24/10/19

ATTESTED

R/SHEWETH:
ON FACTS:

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal

- 1- That the appellant is serving in the elementary and secondary education department as Certified Teacher (BPS-15) quite efficiency and up to the entire satisfaction of the superiors.
- 2- That the Conveyance Allowance is admissible to all the civil servants and to this effect a Notification No. FD (PRC) 1-1/2011 dated 14.07.2011 was issued. That later on vide revised Notification dated 20.12.2012 whereby the conveyance allowance for employees

Registered to-day
Registrar
24/10/19

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Appeal No. 1452/2019
Marbad Hayat vs Govt

17

11.11.2019

Counsel for the appellant present.

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

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

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

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

File be consigned to the record.

ATTESTED

Chairman

ANNOUNCED

11.11.2019

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al,

Certified to be true copy

Peshawar

VAKALATNAMA

OF 2019

Islamudin

(APPELLANT)
(PLAINTIFF)
(PETITIONER)

VERSUS

Education Department

(RESPONDENT)
(DEFENDANT)

I/we Islamudin

Do hereby appoint and constitute **MUNFAT ALI, Advocate, Peshawar** to appear, plead, act, compromise, withdraw or refer to arbitration for me/us as my/our Counsel/Advocate in the above noted matter, without any liability for his default and with the authority to engage/appoint any other Advocate Counsel on my/our cost. I/we authorize the said Advocate to deposit, withdraw and receive on my/our behalf all sums and amounts payable or deposited on my/our account in the above noted matter.

Dated. 19 / 12 / 2019

Islamudin
CLIENT(S)

ACCEPTED
MUNFAT ALI
ADVOCATE
16202-3021334-3
BC-14-4634

OFFICE:

Room No.32, 5th floor,
Bilour Plaza, Peshawar Cantt:
Mobile No. **0344-9213367**