

BEFORE THE HONORABLE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR

Service Appeal No. 764 of 2022

Fakhtar-ud-DinAppellant

Versus

GOVERNMENT OF KHYBER PAKHTUNKHWA AND OTHERS
.....

Khyber Pakhtunkhwa
Service Tribunal

Case No. 3545

Dated 14/2/2023
Respondents

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(1)

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

APPEAL NO. 764/2022

Fakhtar-ud-Din, Agricultural Engineer

APPELLANT

VERSUS

1. Secretary, Government of Khyber Pakhtunkhwa Finance Department Peshawar.
2. Chief Secretary, Government of Khyber Pakhtunkhwa, Peshawar.
3. Secretary, Government of Khyber Pakhtunkhwa Agriculture Department, Peshawar.
4. Secretary, Government of Khyber Pakhtunkhwa, Establishment Department, Peshawar.

RESPONDENTS

PARA WISE COMMENTS ON BEHALF OF RESPONDENTS

Respectfully Shewith:-

PRELIMINARY OBJECTIONS

1. That the appellant has got no locus standi to file this appeal therefore the appeal is liable to rejection with cost.
2. That the appellant has no cause of action.
3. That the appeal is barred by law.
4. That the appeal is not maintainable in its present form as it is based on malafide intentions.
5. That the appellant is stopped by his own conduct, to bring the present appeal.
6. That the instant appeal is incorrect, due to misjoinder and non joinder of parties.
7. That the appellant had once contested similar nature case in WP No. 5877-P/2018 wherein COC No. 145-P/2021 was decided in favour of Government. Copy of judgment dated 21.10.2021 (**Annex-A**).

ON FACTS; -

1. Correct to the extent that the appellant is serving the department since 23rd April, 2014 as Agricultural Engineer in Agriculture Engineering Department.
2. Pertains to record.

3. The Engineers working in the Provincial Departments to whom the Technical Allowance has been allowed by the Government vide Notification No. FD (SO SR-II)8-7/2018-19 dated 19.10.2018 modified on 07.07.2021 (**Annex-B & C**) are properly appointed on technical posts as mentioned in their service rules requiring qualification in Bachelor of Science (B.Sc.) Engineering from a recognized University and also registered with Pakistan Engineering Council (PEC). They are practically involved in engineering works throughout their duty hours and beyond and perform duties at field level as well. The office timings for field formation are not fixed as it's as per the quantum of work and number of sites which they visit/inspect. These inspections/visits, sometime to the far-flung areas, consume time, energy and resources and requires application of technical / engineering skills. Moreover the perks & privileges of these field Engineers are meagre as compared to their duties. The engineers of other departments are not appointed on technical posts as per their service rules/qualifications requirements and are not involved practically in engineering works/construction supervision of infrastructure. It is further added that giving Technical Allowance to all engineers in the province irrespective of their nature of duties would open a flood gate for similar demands from variety of cadres of engineers working in different departments in the province and would entail extra ordinary burden on the provincial exchequer.
4. Incorrect. Cabinet decision was not applicable to all engineers of the Provincial Government across the board.
5. That in pursuance to decisions of Provincial Cabinet in the meetings held on 24.05.2018 and 15.10.2018 regarding approval/ authorization of Technical Allowance (@ rate of 1.5 times of the initial Basic Pay Scale) the Government of Khyber Pakhtunkhwa Finance Department (Regulation Wing) vide Notification dated 19.10.2018 sanctioned technical allowance to the Engineers holding Engineering qualification from the accredited engineering program of Higher Education Institution, (HEI) University duly recognized by Higher Education Commission (HEC) and registered with Pakistan Engineering Council (PEC) serving against the sanctioned posts in the C&W, Irrigation, Public Health Engineering, Local Government and Mines & Minerals Department.
As the appellant is not working in any of the department mentioned in the ibid Notification, therefore, the expectation of the appellant regarding grant of

Technical Allowance is out of place and he has not been deprived in any way ~~by the~~ Finance Department notification dated 19.10.2018 (**Annex-B**).

6. As already explained vide above Paras.
7. Incorrect and hence denied. The said case is not related to the Government of Khyber Pakhtunkhwa as it pertains to Government of Punjab, which is not applicable here.
8. Incorrect and hence denied. As explained in Para-7 above.
9. As explained in Para-5 above of the facts,
10. No comments.
11. The Para is incorrect and denied as explained in Para-3 above of the facts.

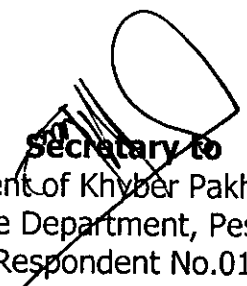
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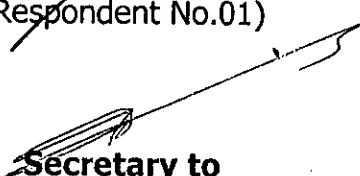
- a. The para is incorrect. As replied in Para-3 above of the facts.
- b. The Para is incorrect. As replied in Para-3 above of the facts.
- c. The Engineers working in the Provincial Departments to whom the Technical Allowance has been allowed by the Government vide Notification No. FD (SO SR-II) 8-7/2018-19 dated 19.10.2018 modified on 07.07.2021 are properly appointed on technical posts as mentioned in their service rules requiring qualification in Bachelor of Science (B.Sc.) Engineering from a recognized University and also registered with Pakistan Engineering Council (PEC). They are practically involved in engineering works throughout their duty hours and beyond and perform duties at field level as well. The office timings for field formation are not fixed as it's as per the quantum of work and number of sites which they visit/inspect. These inspections/visits, sometime to the far-flung areas, consume time, energy and resources and requires application of technical / engineering skills. Moreover the perks & privileges of these field Engineers are meagre as compared to their duties. The engineers of other departments are not appointed on technical posts as per their service rules/qualifications requirements and are not involved practically in engineering works/construction supervision of infrastructure. It is further added that giving Technical Allowance to all engineers in the province irrespective of their nature of duties would open a flood gate for similar demands from variety of cadres of engineers working in different departments in the province and would entail extra ordinary burden on the provincial exchequer.


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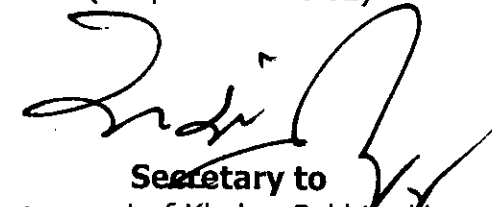
PRAYER:-

In view of the above, it is therefore, humbly prayed that the instant appeal may kindly be dismissed being devoid of merits please.


Secretary to
Government of Khyber Pakhtunkhwa;
Finance Department, Peshawar
(Respondent No.01)


Secretary to
Government of Khyber Pakhtunkhwa;
Agriculture Department, Peshawar
(Respondent No.03)


Chief Secretary,
Government of Khyber Pakhtunkhwa;
(Respondent No.02)


Secretary to
Government of Khyber Pakhtunkhwa;
Establishment Department, Peshawar
(Respondent No.04)

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1-942
Waseem
Annex - A
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BEFORE THE PESHAWAR HIGH COURT, PESHAWAR.

C.O.C. No. _____/2020
In Writ Petition No. 5877-P/2018



1. Mr. Zahid Rabbani S/O Ghulam Rabbani,
2. Mahmood Jan S/o Abdul Ghaffar Khan,
3. Muhammad Musa Khan S/o Sher Muhammad Khan,
4. Kalsoom Rehman D/o Abdul Rehman,
5. Fakhar-u-Din S/O Abdul Qayyum,
6. Mansoorullah Khan S/O Muhammad Ikram,
7. Nazeer Abbas S/o Abbas Ghualm,
8. Rafiullah Nabi S/o Nazir Muhammad,
9. Hazrat Nabi S/o Nazir Mohammad,
10. Nasim Javed S/o Niaz Mohammad,
11. Maria Javed D/O javed Iqbal,
12. Muhammad Usman S/o Din Mohammad,

All petitioners are Agricultural Engineers in Agricultural Engineering Wing of Agriculture Department, Government of Khyber Pakhtunkhwa.

PETITIONERS

VERSUS

1. Dr. Kazim Niaz, Chief Secretary, Government of Khyber Pakhtunkhwa, Civil Secretariat, Peshawar.

ATTESTED
EXAMINER
Peshawar High Court

COC145-2020 zahid-rabbani vs dr kazim full usb pg 16

Section Officer (Litigation)
Agriculture, Livestock & Coop. Department
Khyber Pakhtunkhwa Peshawar

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(16)

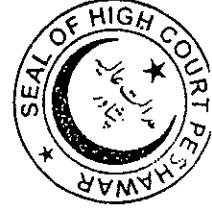
**JUDGMENT SHEET
IN THE PESHAWAR HIGH COURT,
PESHAWAR
JUDICIAL DEPARTMENT**

COC No.145-P/2020 in W.P.No.5877-
P/2018 (D)

Date of hearing: 12.10.2021

Mr. Muhammad Asif Yousafzai, Advocate for
the petitioners.

Mr. Muhammad Inayam Khan Yousafzai,
AAG for respondents.



JUDGMENT

LAL JAN KHATTAK, J.- Petitioners seek initiation of contempt of court proceedings against the respondents for their violation of the order of this court dated 12.02.2020 delivered in W.P.No.5321-P/2018 whereby they were directed to decide the petitioners' appeal in accordance with the relevant law.

2. Arguments heard and appended record gone through.

3. It reflects from the record that the respondent No.1 in compliance with the order of this court has passed an elaborate order on 29.07.2021, whereby it has held as under:-

And whereas, the matter was thereafter considered threadbare by Chief Secretary who also concurs with aforesaid observation, and now, in light of the above intelligible differentia exist amongst

Gain

ATTESTED

EXAMINER
Peshawar High Court

[Signature]

Section Officer (Litigation)
Agriculture, Livestock & Coop. Department
Khyber Pakhtunkhwa Peshawar

the engineers who are granted "Technical Allowance" and the petitioners, therefore, the petitioners being not entitled as per facts, Cabinet Decision, Policy and recommendations of the Committee on the subject, the prayer of the Engineers Cadre of the concerned department made in the above mentioned Writ Petition filed in the Peshawar High Court, Peshawar is regretted, being not worthy of consideration and against the spirit of the Cabinet Decision of the Provincial Government of Khyber Pakhtunkhwa on the subject.

4. In view of the order ibid no case for initiation of any contempt proceedings has been made out against the respondents. In case the petitioners are not in agreement with the decision rendered by the respondent No.1, as referred above, then they can challenge the same before the proper forum and not through any contempt of court proceedings.

5. For what has been discussed above, this petition being bereft of any merit is hereby dismissed.

Announced
12.10.2021

G. J. J.
JUDGE

S. J. J.
JUDGE

No. 10094
Date of Presentation of Application 13/10/2021
No of Pages 5-9
Copying fee _____
Total 20/-
Date of Preparation of Copy 21/10/2021
Date of Delivery of Copy 21/10/2021
Received By Maseer

21 OCT 2021

[Signature]
Section _____
Agriculture _____
Khyber Pakhtunkhwa

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**JUDGMENT SHEET
IN THE PESHAWAR HIGH COURT,
PESHAWAR
JUDICIAL DEPARTMENT**

COC No.448-P/2020 in
W.P.No.681-P/2018 (D)

Date of hearing: 12.10.2021

Nemo for the petitioners.

Mr. Muhammad Inam Khan Yousafzai, AAG
for respondents.

JUDGMENT


LAL JAN KHATTAK, J.- Petitioners seek initiation of contempt of court proceedings against the respondents for their violation of the order of this court dated 12.02.2020 delivered in W.P.No.5321-P/2018 whereby they were directed to decide the petitioners' appeal in accordance with the relevant law.

2. Arguments heard and appended record gone through.

3. It reflects from the record that the respondent No.1 in compliance with the order of this court has passed an elaborate order on 29.07.2021, whereby it has held as under:-

And whereas, the matter was thereafter considered threadbare by Chief Secretary who also concurs with aforesaid observation, and now, in light of the above

Yousafzai


Section Officer (Legal) 12345678
Agriculture Department
Khyber Pakhtunkhwa - Peshawar

intelligible differentia exist amongst the engineers who are granted "Technical Allowance" and the petitioners, therefore, the petitioners being not entitled as per facts, Cabinet Decision, Policy and recommendations of the Committee on the subject, the prayer of the Engineers Cadre of the concerned department made in the above mentioned Writ Petition filed in the Peshawar High Court, Peshawar is regretted, being not worthy of consideration and against the spirit of the Cabinet Decision of the Provincial Government of Khyber Pakhtunkhwa on the subject.

4. In view of the order *ibid* no case for initiation of any contempt proceedings has been made out against the respondents. In case the petitioners are not in agreement with the decision rendered by the respondent No.1, as referred above, then they can challenge the same before the proper forum and not through any contempt of court proceedings.

5. For what has been discussed above, this petition, being bereft of any merit, is hereby dismissed.

Announced
12.10.2021

Jain
JUDGE

Man
JUDGE

[Signature]
Section Officer (Technical)
Agriculture & Livestock & Coop. Department
Khyber Pakhtunkhwa Peshawar.



Government of Khyber Pakhtunkhwa
Finance Department
(Regulation Wing)

Annex-B
10

Dated Peshawar the 19th October, 2018

NOTIFICATION

No FD (SO-SR-II) 8-7/2018-19: The Government of Khyber-Pakhtunkhwa has been pleased to sanction Technical Allowance as per the following rates to Engineers holding Engineering qualification from the accredited engineering programme of Higher Education Institutions (HEI) / Universities duly recognized by Higher Education Commission (HEC) and registered with Pakistan Engineering Council (PEC), serving against the sanctioned posts in the C&W, Irrigation, Public Health Engineering and Local Government Departments, Govt. of Khyber-Pakhtunkhwa with effect from 1st November 2018 :-

S.#	Pay Scales	Initial Basic Pay of Pay Scales 2017	Rate of Technical Allowance Per Month (@ 1.5 initial Basic Pays as per Pay Scales 2017)
i.	Engineers in BS - 20	Rs 69,090/-	Rs 1,03,635/-
ii.	Engineers in BS - 19	Rs 59,210/-	Rs 88,815/-
iii.	Engineers in BS - 18	Rs 38,350/-	Rs 57,525/-
iv.	Engineers in BS - 17	Rs 30,370/-	Rs 45,550/-

2. The above allowance will be admissible subject to the following conditions:-
- It will not be counted towards pension or gratuity.
 - It will not be admissible in any kind of leave as well as posting against OSD and leave reserve posts.
 - The Engineers in receipt of such allowances other than regular allowances as classified under major object A012-1/A012-2 shall be entitled to one of the allowances, whichever is more beneficial.
 - It will not be admissible to deputationists.

Secretary to Government
of Khyber Pakhtunkhwa
Finance Department

Ends: No & Date Even

- The Accountant General, Khyber Pakhtunkhwa, Peshawar
- The Additional Chief Secretary P&D Department
- The Principal Secretary to Chief Minister, Khyber-Pakhtunkhwa
- All the Administrative Secretaries to Govt of Khyber-Pakhtunkhwa
- All the Divisional Commissioners in Khyber-Pakhtunkhwa
- All The Deputy Commissioners in Khyber-Pakhtunkhwa
- All the District Accounts Officers in Khyber-Pakhtunkhwa
- Director, FMIU, Finance Department
- PSO to Chief Secretary, Khyber-Pakhtunkhwa, Peshawar
- All Budget Officer, Finance Department
- PS to Secretary Finance Department
- PS to Special Secretary Finance Department
- Assistant Director (HR Data Base) Finance Department
- PA to Additional Secretary (Regulation) Finance Department
- PA to Deputy Secretary (Regulation-II), Finance Department

(Naeem Talibssam)
Section Officer (SR-II)

19/10/18

ATTESTED

Section Officer (Litigation)
Agriculture, Stock & Cattle Department
Khyber Pakhtunkhwa Peshawar

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7-7-21



GOVERNMENT OF KHYBER PAKHTUNKHWA
FINANCE DEPARTMENT
(REGULATION WING)

Dated Peshawar thro: 07-07-2021

NOTIFICATION

No. FD(SOSR-II)2-5/2021-22/Tech Allow: In partial modification of this Department notification No. FD(SO SR-II) 8-7/2018-19, dated 10-10-2018, the Government of Khyber Pakhtunkhwa has been pleased to accord sanction to Technical Allowance as per the following rates to the Engineers holding Engineering qualification from the accredited engineering programme of Higher Education Institutions (HEI) / Universities duly recognized by Higher Education Commission (HEC) and registered with Pakistan Engineering Council (PEC), serving against positions that are required to be filled by engineers for C&W, Irrigation, Public Health Engineering, Local Government & Mines & Mineral Development Departments with effect from 01.07.2021:

S.No.	Pay Scale	Initial Basic Pay of Pay Scales 2017	Rate of Technical Allowance per Month @ 1.5 Initial Basic pay Scales 2017.
1	Engineers in BPS 20	Rs. 80,090/-	Rs. 103,635/-
2	Engineers in BPS 19	Rs. 50,210/-	Rs. 88,015/-
3	Engineers in BPS 18	Rs. 38,350/-	Rs. 67,525/-
4	Engineers in BPS 17	Rs. 30,370/-	Rs. 45,550/-

2. The above allowance will be admissible subject to the following conditions:

- It will be subject to Income Tax.
- It will not be counted towards pension and gratuity.
- It will not be admissible in any kind of leave (except casual leave) as well as posting against OSD and Leave Reserve Posts.
- Those engineers who are posted against other posts and are in receipt of cadre allowance other than regular allowances shall only be entitled to one of the allowances, whichever is more beneficial.

3. All Autonomous/Semi-Autonomous/Medical Teaching Institutions/Other Institutions and Authorities under Provincial Government shall adopt this notification within their respective organizations with the approval of concerned Competent Forum subject to availability of their resources.

Secretary to Govt. of Khyber Pakhtunkhwa
Finance Department

Ends: No. & Date: even.

A copy of the above is forwarded for information & necessary action to the:-

- The Accountant General, Khyber Pakhtunkhwa.
- The Principal Secretary to Chief Minister, Khyber Pakhtunkhwa.
- The Principal Secretary to Governor, Khyber Pakhtunkhwa.
- All Administrative Secretaries to government of Khyber Pakhtunkhwa.
- All the Divisional Commissioners in Khyber Pakhtunkhwa.
- All Deputy Commissioners in Khyber Pakhtunkhwa.
- All the District Accounts Officers in Khyber Pakhtunkhwa.
- The Director-FMIU, Finance Deptt. with the request to upload the same on FD's Website.
- PSO to Chief Secretary, Khyber Pakhtunkhwa.
- All Section Officers/Budget Officers in Finance Deptt. Khyber Pakhtunkhwa.
- The Manager, Government printing Press, Peshawar.
- The Private Secretary to Secretary, Finance Deptt. Khyber Pakhtunkhwa.
- PA to Special Secretary, Finance Department, Khyber Pakhtunkhwa.
- PA to Addl. Secretaries/Deputy Secretaries in Finance Deptt. Peshawar.
- Master File.

(Muhammad Ilyas Khattak)
Section Officer (SR: II)

ATTESTED

Page 1 of 1

Section Officer (Litigation)

BEFORE THE HONORABLE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR

Service Appeals No. 761-795 of 2022

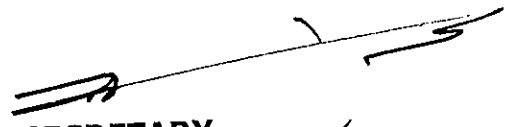
Mansoor Ullah and 11 othersAppellants


Versus

GOVERNMENT OF KHYBER PAKHTUNKHWA AND OTHERS
.....Respondents

AUTHORITY LETTER

I, hereby authorize Mr. Ikram Muhammad, Section Officer (Litigation) BPS-17, Agriculture Department, Khyber Pakhtunkhwa to file Joint Para Wise comments as well as pursue the cases in the Khyber Pakhtunkhwa Service Tribunal, Peshawar till decision of the cases.


SECRETARY
Government of Khyber Pakhtunkhwa,
Agriculture Department
Respondent No.3
SECRETARY
Govt. of Khyber Pakhtunkhwa
Agriculture Department


Section Officer (Litigation)
Agriculture Department
Khyber Pakhtunkhwa Peshawar