


EP 51/2022

M. Riaz Khan vs Govt

19.01.2022

Mr. Rashid Iqbal, Special Attorney for the petitioner 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

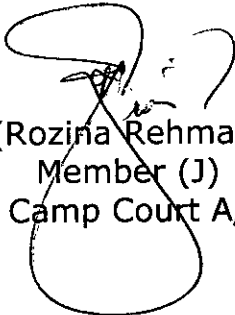
ANNOUNCED
19.01.2022

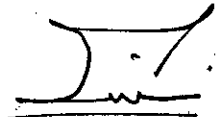
17.01.2022

Appellant alongwith his attorney namely Mr. Rashid Iqbal Khan present. Mr. Sohail Ahmed Zeb, Litigation Officer alongwith Mr. Kabirullah Khattak, Additional Advocate General for the respondents present.

Attorney for the appellant stated at the bar that similar nature Service Appeals have already been converted in Execution Petition, which are fixed on 19.01.2022 before the S.B at Peshawar, therefore, the appeal in hand may also be converted in Execution Petition.

The matter agitated in the present service appeal being similar to Appeal bearing No. 1115/2016 as well as Service Appeal bearing No. 1145/2016 and Service Appeal bearing No. 1156/2015 which have already been converted in Execution Petition and are fixed on 19.01.2022 before the S.B at Peshawar, therefore, the appeal in hand is also converted in 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 on 19.01.2022 before the S.B at Peshawar.


(Rozina Rehman)
Member (J)
Camp Court A/Abad


(Salah-ud-Din)
Member (J)
Camp Court A/Abad

17.06.2021

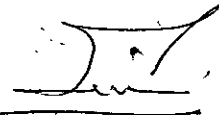
Due to COVID-19, tour to Abbottabad has been cancelled, therefore, case to come for the same as before on 11.10.2021.


Reader

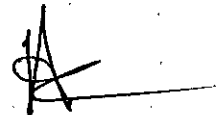
11.10.2021

Appellant in person present. Mr. Muhammad Adeel Butt, Additional Advocate General for the respondents present.

Lawyers are on strike therefore, arguments could not be heard. To come up for arguments before the D.B on 17.01.2022 at Camp Court Abbottabad.



(SALAH-UD-DIN)
MEMBER (JUDICIAL)
CAMP COURT ABBOTTABAD



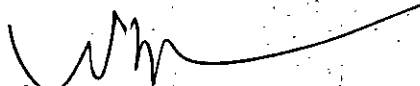
CHAIRMAN
CAMP COURT ABBOTTABAD

22.10.2020

Appellant present through representative.

Usman Ghani, learned District Attorney present.

Lawyers are on general strike, therefore, case is adjourned to 17.12.2020 for arguments before D.B at Camp Court, Abbottabad.



(Atiq ur Rehman Wazir)
Member (E)
Camp Court, A/Abad



(Rozina Rehman)
Member (J)
Camp Court, A/Abad

Due to COVID-19 case is
adjourned to 18-03-2021



Reader

18.03.2021

Appellant in person present.

Asif Masood Ali Shah learned Deputy District Attorney for respondents present.

Former made a request for adjournment. Adjourned. To come up for arguments on 17/6/2021 before D.B at Camp Court, Abbottabad.




(Atiq-Ur-Rehman Wazir)
Member (E)
Camp Court A/Abad



(Rozina Rehman)
Member (J)
Camp Court, A/Abad

Due to covid ,19 case to come up for the same on 16/4/20
at camp court abbottabad.



Reader

Due to summer vacation case to come up for the same on
22/10/20 at camp court abbottabad.


Reader


17.09.2019

Appellant in person and Mr. Muhammad Bilal Khan, Deputy District Attorney alongwith Mr. Muhammad Shamim, Section Officer on behalf of respondent No. 3 present. Written reply on behalf of respondents No. 1 & 2 already submitted. Written reply on behalf of respondent No. 3 not submitted. Representative of respondent No. 3 requested for further adjournment. Last chance is given to respondent No. 3 for filing of written reply. Case to come up for written reply/comments on behalf of respondents No. 3 on 24.10.2019 before S.B at Camp Court Abbottabad.


(Muhammad Amin Khan Kundi)
Member
Camp Court Abbottabad

24.10.2019


Counsel for the appellant present. Mr. Usman Ghani, District Attorney present. Mr. Muhammad Shamim, SO (Litigation) for respondent No. 3 present. Representative of respondent No. 3 relies on the written reply already furnished by respondents No. 1 & 2. To come up for rejoinder, if any and arguments on 19.12.2019 before D.B at camp court, Abbottabad.


Member
Camp court, A/Abad

19.12.2019


Appellant in person and Mr. Ziaullah, Deputy District Attorney alongwith Mr. Shamim, Section Officer for the respondents present. Appellant requested for adjournment on the ground that his counsel is not available today due to general strike of Khyber Pakhtunkhwa Bar Council. Adjourned to 18.02.2020 for rejoinder, if any and arguments before D.B at Camp Court Abbottabad.

(Hussain Shah)
Member
Camp Court Abbottabad


(M. Amin Khan Kundi)
Member
Camp Court Abbottabad


23.05.2019

Appellant in person present. Mr. Sohail Akhtar, Assistant for respondent No. 3 alongwith Mr. Muhammd Bilal, Deputy District Attorney for the respondents present and requested for adjournment for filing of written reply. Representatives of respondents No. 1, 2 & 4 are absent therefore, notice be issued to respondents No. 1, 2 & 4 with the direction to direct the representatives to attend the court and submit written reply on the next date positively. Adjourned to 10.07.2019 for written reply/comments before S.B at Camp Court Abbottabad.


(Muhammad Amin Khan Kundi)
Member
Camp Court Abbottabad

10.07.2019

Appellant in person present. Mr. Muhammad Bilal, Deputy District Attorney alongwith M/S Yasir Iqbal, District Account Officer on behalf of respondents No. 1 & 2, Sajid, Superintendent on behalf of respondent No. 3 and Sohail Ahmad Zeb, Assistant on behalf of respondent No. 4 present. Representative of respondents No. 1 & 2 submitted written reply. Representative of respondent No. 4 relies on the written reply submitted by respondents No. 1 & 2 on behalf of respondent No. 4. Written reply on behalf of respondent No. 3 not submitted. Representative of respondent No. 3 requested for further adjournment. Case to come up for written reply/comments on behalf of respondent No. 3 on 17.09.2019 before S.B at Camp Court Abbottabad.


(Muhammad Amin Khan Kundi)
Member
Camp Court Abbottabad

13.11.2018

None for the appellant present. Due to retirement of the Hon'ble Chairman the Service Tribunal is incomplete. Tour to Camp Court Abbottabad has been cancelled. To come up for the same on 16.01.2019 at camp court Abbottabad.



Member

16.01.2019

Appellant in person present. Written reply not submitted. No one present on behalf of respondent department. Notice be issued to the respondents with direction to furnish written reply/comments. Adjourn. To come up for written reply/comments on 20.03.2019 before S.B at Camp Court Abbottabad.



Member

Camp Court Abbottabad

20.03.2019


Appellant in person present. Mr. Muhammad Bilal Khan, Deputy District Attorney alongwith Mr. Muhammad Sohail, Assistant for the respondents present. Written reply on behalf of respondents not submitted. Learned Deputy District Attorney requested for further adjournment. Last opportunity is granted. Adjourned to 23.05.2019 for written reply/comments before S.B at Camp Court Abbottabad.



(Muhammad Amin Khan Kundi)
Member
Camp Court Abbottabad

25.06.2018

Appellant Muhammad Riaz Khan in person present. Mr. Sohail Ahmad, Assistant alongwith Mr. Ziaullah, Deputy District Attorney for the respondents present. Representative of the respondents made a request for adjournment. Granted. To come up for written reply/comments on 18.07.2018 before S.B at camp court, Abbottabad.


Member

Camp court, A/Abad

18.07.2018

Appellant Muhammad Riaz Khan in person present. M/S Malik Muhammad Haroon, AAO, Irshad Muhammad, Section Officer (Litigation) and Sohail Ahmad Zeb, Assistant on behalf of the respondents alongwith Mr. Usman Ghani, District Attorney present. The above named representatives mad a request for adjournment. Granted. To come up for written reply/comments on 18.09.2018 before S.B. at camp court, Abbottabad.


Chairman

Camp Court, A/Abad

18.09.2018

Appellant in person present. Mr. Sohail Ahmad Zaib, Assistant for respondent No. 4 alongwith Mr. Usman Ghani, District Attorney for the respondents present. Written reply not submitted. Last chance is given. To come up for written reply/comments on 13.11.2018 before S.B at camp court, Abbottabad.


Chairman

Camp court, A/Abad

23.02.2018

Appellant pro se argued the appeal preliminarily. He has challenged the order of deduction of two advance increments which he had been receiving due to higher qualification on the basis of the judgment of this Tribunal. That on promotion to BPS-17 he was denied the benefit of those two advance increments. That the department also ordered the recovery of certain amount of those two advance increments from 2012 on the ground that an Act in the name of Khyber Pakhtunkhwa Cessation of Payment of Arrears on Advance Increments on Higher Qualification Act, 2012 was promulgated. The appellant pressed into service a judgment of Peshawar High Court dated 08.06.2017 entitled "*Muhammad Iqbal and two others Vs. Government of Khyber Pakhtunkhwa and three others*" followed by judgment of this Tribunal.

The points raised need consideration. The appeal is admitted to regular hearing. The appellant is directed to deposit security and process fee within 10 days. Thereafter, notices be issued to the respondents. To come up for written reply/comments on 16.04.2018 before S.B at camp court, Abbottabad.

Appellant Deposited
Security & Process Fee

Chairman
Camp Court, A/Abad

16.04.2018

Appellant in person and Mr. Usman Ghani; District Attorney alongwith Malak Muhammad Haroon, AAO for the respondents present. Seeks adjournment. To come up for written reply/comments on 25.6.2018 before S.B at camp court, Abbottabad.

Chairman
Camp court, A/Abad

Member

FORM OF ORDERSHEET

Court of _____

Case No. 1314/2017

| S.No. | Date of order proceedings | Order or other proceedings with signature of judge |
|-------|---------------------------|--|
| 1 | 2 | 3 |
| 1 | 24/11/2017 | <p>The appeal of Mr. Muhammad Riaz Khan received today by post may be entered in the Institution Register and put up to Worthy Chairman for proper order please.</p> <p style="text-align: right;">REGISTRAR <i>[Signature]</i> 24/11/17</p> |
| 2- | 12-12-2017 | <p>This case is entrusted to Touring S. Bench at A.Abad for preliminary hearing to be put up there on <u>23.2.2018</u></p> <p style="text-align: right;">CHAIRMAN <i>[Signature]</i></p> |

**BEFORE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR.**

Service Appeal No: 1314 of 2017

Execution Petition No. 51/2022

Muhammad Riaz Khan S/O Muhammad Rafique, S.S.T G.H.S NO 01
Abbottabad, Now SST (Mathematics) GHSS Nagri Bala Abbottabad
R/O Village Nurdubba, P.O Nawan Shehr Tehsil & District Abbottabad.

Appellant

Versus

Accountant General Khyber Pakhtunkhwa Peshawar and 03 Other.


Respondents

SERVICE APPEAL

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| 3 | Copy of ACT NO IX of 2012 dated 15/05/2012. | B | 09 to 11 |
| 4 | Copy of departmental appeal/representation dated 16/12/2015 | C | 12 |
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Dated 21/11/2017


(Muhammad Riaz Khan)
Appellant in person

(1)

**BEFORE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR.**

Service Appeal No: 1314 of 2017

Execution Petition No. 51/2022

Muhammad Riaz Khan S/O Muhammad Rafique, S.S.T G.H.S NO 01
Abbottabad, Now SST (Mathematics) GHSS Nagri Bala Abbottabad
R/O Village Nurdubba, P.O Nawan Shehr Tehsil & District Abbottabad.

*Appeal is converted into
E.P vide order dt. 17-1-22* Versus

Appellant
Khyber Pakhtunkhwa
Service Tribunal

Diary No. 1354

Dated 24/11/2017

- 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, FOR ACCEPTANCE OF
DEPARTMENTAL APPEAL DATED 06/08/2017 SUBMITTED
UNDER THE DIRECTIONS OF THIS HONOURABLE TRIBUNAL
~~Filed to-day~~ DATED 21/07/2017 PASSED AT CAMP COURT ABBOTTABAD
~~Registrar~~ DEPARTMENTAL APPEAL FILED AGAINST THE IMPUGNED
24/11/17 FINAL ORDER (REVISED SALARY SLIP) DATED 29/12/2016
ISSUED BY RESPONDENT NO 1, WHEREBY DEDUCTED/
RECOVERED TWO ADVANCE INCREMENTS OUT OF FOUR
AND SHOWN Rs 142560/- R.O.P (RECOVERY OF
OVERPAYMENT) HAS BEEN MADE, THESE INCREMENTS
WERE GRANTED IN PURSUANCE OF THE ORDER OF THE
K.P.K SERVICE TRIBUNAL.

PREYER

ON ACCEPTANCE OF INSTANT SERVICE APPEAL,
DEPARTMENTAL APPEAL DATED 06/08/2017 MAY PLEASE

BE ACCEPTAED AND IMPUGNED FINAL ORDER (REVISED SALARY SLIP) DATED 29/12/2016 ISSUED BY RESPONDENT NO 2, MAY PLEASE BE SET ASIDE AND RESPONDENTS MAY PLEASE BE DIRECTED TO RESTORE 02 ADVANCE INCREMENTS OF MA/MSc OUT OF 04 AND CONTINUE RECOVERY/DEDUCTION IF ANY, MAY ALSO BE SUSPENDED TILL THE FINAL DISPOSAL OF TITLED SERVICE APPEAL AND IN CASE AMOUNT REFUNDED/DEDUCTED FROM THE SALARY OF APPELLANT MAY BE ORDERED THE REFUND OF SAME AND MAY PLEASE BE IMPOSED HEAVY COST AGAINST THE RESPONDENTS.

Respectfully Sheweth,

FACTS

- 1) That Appellant, in pursuance of the judgment/order dated 27/10/2008 got 04 advance Increments of MA/MSc, which was implemented in letter and spirit by the respondents and gave him 04 advance increments of MA/Msc, since then appellant is taking 04 advance increments of MA/Msc with effect from 01/09/2010 with out any disturbance. Copy of order/judgment of KPK service Tribunal is annexed as "**Annexure "A"**".
- 2) That in the meanwhile an ACT NO IX of 2012 dated 15/05/2012 passed by Khyber Pakhtunkhwa Provincial Assembly Peshawar, titled "The Khyber Pakhtunkhwa Cessation of Payment of Arrears on Advance Increments on Higher Educational Qualification" was issued/promulgated and its sub section 2 of section 2 is clear and in the favour of appellant. Copy of Act is annexed as **Annexure "B"**.
- 3) That appellant after up-gradation of his post in BPS No 17, submitted his application to respondent No 1 for issuance of salary slip for the month of December 2015. Copy of application/representation is annexed as **Annexure "C"**.

- 4) That when respondent no 2 did not issue salary slip and fix/revise the pay in BPS# 17, appellant filed his writ petition before Peshawar High Court Abbottabad Bench which was decided on maintainability point and appellant was directed to approach Service Tribunal. Copy of High Court Order is annexed as **Annexure "D"**

- 5) That appellant filed his service appeal which was decided/dismissed on 22/09/2016 being premature, as representation (**Annexure "C"**) of appellant was still pending, This Honourable Tribunal passed following observation,

"The appellant may however agitate his grievances in the prescribed manners when any order adversely affecting his interest is passed"

Copy of Order dated 22/09/2016 is annexed as **Annexure "E"**

- 6) That respondent No 2 decided his representation dated 16/12/2015 and issued revised salary slip to the appellant on 29/12/2016 whereby appellant's pay Rs 33120/-PM instead of 36230/-PM is fixed with effect from 02/12/2015 by deducting two advance increments out of four of MA/MSc and also shown Rs 142500/- as recovery of payment. Copy of Final order/salary slip dated 29/12/2017 is annexed as **Annexure F.**

- 7) That Appellant filed service appeal against the said salary slip but this Honourable Tribunal directed the appellant on 21/07/2017 at Camp Court Abbottabad to file departmental appeal against the final order dated 29/12/2016, upon such directions appellant filed departmental appeal on 06/08/2017 which is still pending within the statutory period of 90 days, Hence this appeal inters – alia on the following ground, Copies of Tribunal Order dated 21/07/2017 and departmental appeal is annexed as **Annexure G & H.**


GROUNDS

- a) That impugned salary slip issued by respondent No 2 is against law, and deduction of 02 advance increments out of 04 is illegal contempt of Court, while under the law, the appellant was/is entitled of 04 advance increments and respondents are not at all entitled to withdraw the benefit extended to the appellant by a competent Courts of law, i.e. Service Tribunal & Supreme Court of Pakistan.
- b) That the order dated 27/10/2008 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 a benefit once it was implemented (**PLD 1991 Supreme Court 973**).
- c) That the appellant while contesting for his right of 04 advance increments before Service Tribunal, never ever suppressed any fact from the respondents.
- d) 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 to obey the Judgment in its letter and spirit with out creating any kinds of self made illegal complications.
- e) That respondents (respondent No 02) was not at all have powers to deduct/recover the 02 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 but they contested the case and they were not filed their CPLA against the Judgment of Service Tribunal dated 27/10/2008 before Apex Court, yet thus it attained its finality.
- f) That the deduction of two advance increments through salary slip is with jurisdiction, illegal and against law, it is also fact that ACT NO IX of 2012 dated 15/05/2012 passed by Khyber Pakhtunkhwa Provincial Assembly Peshawar, titled "The Khyber Pakhtunkhwa Cessation of Payment of Arrears on Advance Increments on Higher Educational Qualification" was issued/promulgated and its sub section 2 of section 2 is clear and in the favour of appellant.

It is, therefore, humbly prayed that on acceptance of instant service appeal, departmental appeal dated 06/08/2017 may please be accepted and impugned final order (revised salary slip) dated 29/12/2016 issued by respondent no 2, may please be set aside and respondents may please be directed to restore 02 advance increments of MA/MSc out of 04 and continue recovery/deduction if any, may also be suspended till the final disposal of titled service appeal and in case amount refunded/deducted from the salary of appellant may be ordered the refund of same and may please be imposed heavy cost against the 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.

Dated 21/11/2017


(Muhammad Riaz Khan)
Appellant in person

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

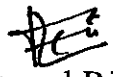
Dated 21/11/2017

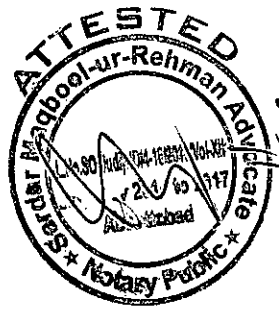

(Muhammad Riaz Khan)
Appellant in person

Affidavit

I, Muhammad Riaz Khan S/O Muhammad Rafique, S.S.T G.H.S NO 01 Abbottabad, Now SST (Mathematics) GHSS Nagri Bala Abbottabad R/O Village Nurdubba, P.O Nawan Shehr Tehsil & District 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

Dated 21/11/2017


(Muhammad Riaz Khan)
Appellant in person
DEPONENT



Annexure A

BEFORE NWFP SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 138 of 2007

Muhammad Riaz Khan S/O Muhammad Rafique, (Ex CT teacher)
Now, SET, GHS NO 1, Abbottabad R/o village Nurdubba, P.O. ~~Abbottabad~~
Tehsil & District Abbottabad.

Appellant

W. W. P. Peshawar
Service Tribunal

Disty No. 15/16

Dated: 12-12-07

Versus

- 1) District Coordination Officer, Abbottabad
- 2) Executive District Officer (schools & Literacy) Abbottabad.
- 3) District Accounts Officer, Abbottabad.
- 4) Director of (schools & Literacy) NWFP Peshawar.
- 5) Secretary to Govt of NWFP (schools & Literacy) department Peshawar.
- 6) Accountant General, NWFP Peshawar
- 7) Secretary to Govt of NWFP, Finance Department, Peshawar

Respondents

Appeal under Section 4 of NWFP Service Tribunal Act 1974 for grant of four advance increments of MSc with all back benefits with effect from 24-09-1998 under Para 5(i) (C) of the notification No FD(PRC) 1-1 /89 dated 11-08-1991 issued by Respondent No 7 and on the basis of Judgment dated 19/07/2007 passed by Supreme Court of Pakistan in CPLA Nos 525,526, of 2007 against the single judgment of NWFP service Tribunal Peshawar dated 24/04/2007 passed in service appeal Nos 498,499 and 544 of 2006. (Appellant's formal appeal no 544, of 2007).

Respectfully Sheweth,

FACTS

- 1) That appellant appointed as a trained CT Teacher on 30/07/1995 and being BSc 2nd division was placed in BPS No. 14 on the basis of notification dated 07/08/1991 issued by respondent no.7. Copy of said notification is Annexure A.

ATTESTED
EXAMINER
NWFP Service Tribunal
Peshawar

Filed to-day

M. A. Khan
12/12/07

Attested
K. S.

Attested
K. S.

Attested
K. S.

| No. or proceedings | Date of Order or Proceedings | Order or other proceedings with Signature of Judge or Magistrate and that of parties or counsel where necessary |
|--------------------|------------------------------|--|
| 1 | 2 | 1238/07 3 |
| 8 | 27.10.2008 | <p>Appellant in person and Ghulam Mustafa, A.G.P alongwith Khan Afsar, A.D.O for the respondents present. Arguments heard and record perused.</p> <p>This appeal was earlier disposed of by the Tribunal vide its order dated 27.12.2007 with the direction to the respondents to dispose of the departmental appeal of the appellant in the light of the judgment of the August Supreme Court of Pakistan, but the respondents failed to dispose of the same, hence the petitioner/appellant filed an execution petition on 28.4.08. Vide order sheet No.5 dated 28.6.08, the original appeal of the appellant was restored on the ground that the respondents have not yet disposed of the case of the petitioner/appellant.</p> <p>The main contention of the appellant in the instant case is that since his two co-appellants, who went in appeal to the August Supreme Court of Pakistan against the judgment of this Tribunal dated 24.4.07 passed in Service Appeals No. 498 and 499 of 2006, were declared entitled to four advance increments on passing M.A Exam: by the apex Court of the country vide judgment dated 19.07.2007 passed in C.P.L.As No. 525 and 526 of 2007, therefore, on the strength of the said judgment and on the basis of equity of treatment, the present appellant having possessed the same qualification of M.A is also entitled to the same relief which has been meted out to his colleagues/co-appellants. In support of his contention, the appellant relies on the following authorities:-</p> <ol style="list-style-type: none"> 1. 1996 SCMR 1185 2. PLJ 2005 SC 826 <p>The plea taken by the respondents in their written reply is that the appellant did not approach the August Supreme Court of Pakistan, therefore, he is not entitled to the relief claimed by him.</p> <p>In the above cited authorities, the Supreme Court has held as under:</p> <p>"When Tribunal or Court decides a point of law relating to the terms of service of a civil servant which covers not only case of the civil servants who</p> |

Attested
[Signature]

Attested
[Signature]

ATTESTED
 [Signature]
 EXAMINER
 SERVICE TRIBUNAL
 NWFP
 PESHAWAR

litigated, but also of other civil servants, who may have not taken any legal proceedings, the dictates of justice and rule of good governance demand that the benefit of such judgment by Service Tribunal/Supreme Court be extended to other civil servants who may not be parties to the litigation instead of compelling them to approach the Service Tribunal or any other legal forum."

In the light of the above, the Tribunal is left with no alternative but to declare the present appellant entitled to four advance increments from the date of qualifying M.A examination. The appeal is accepted to the above extent. Parties are however, left to bear their own costs. File be consigned to the record.

ANNOUNCED

27.10.2008

(MUHAMMAD HUMAYUN)
MEMBER

(NOOR-U-HASAN)
MEMBER

CAMP COURT A/ABAD

Seal of the Camp Court, Abad
Seal of the Camp Court, Abad

| | | |
|----------------------------|---------|---------|
| Number of pages | 1200 | 7/11/08 |
| Printing fee | 8-00 | |
| Original | 2-00 | |
| Total | 10-00 | |
| Date of completion of copy | 7/11/08 | |
| Date of delivery of copy | 7/11/08 | |

Attested
[Signature]

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[Signature]

Annexure B

9

EXTRAORDINARY
GOVERNMENT



REGISTERED NO. PIII
GAZETTE

- Annex - A

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;

10

PROVINCIAL GOVERNMENT OF PAKHTUNKHWA GOVERNMENT GAZETTE, EXTRAORDINARY, 15th MAY, 2012.

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

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:-

Amended
Dec 2
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 1st day of December, 2001.

Amended
Dec 2
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.

11

198

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

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. 1 of 2012), is hereby repealed.

Attested
[Signature]

BY ORDER OF MR. SPEAKER
PROVINCIAL ASSEMBLY OF KHYBER
PAKHTUNKHWA

(AMANULLAH)
Secretary
Provincial Assembly of Khyber Pakhtunkhwa

Attested
[Signature]

Annexure C

12

To
The District Comptroller of Accounts
Abbottabad.

Through
The Principal (D.D.O)
Government High School
(Boys) No 1 Abbottabad.

Subject
APPLICATION FOR ISSUANCE OF SALARY SLIP IN BPS NO 17
W.E.F. 02/12/2015 ON THE BASIS OF NOTIFICATION NO.
SO(PE)E&SED/2-6/DPC/Promotion of SSTs (Personal)/2014 ISSUED
BY GOVT. OF K.P.K E/S EDUCATION DEPARTMENT
PESHAWAR DATED 16/11/2015

Sir

It is stated that applicant is requesting for issuance of his salary slip w.e.f
02/12/2015 in BPS No 17 on the basis of above Notification. The pay
fixation position/chart is given below for your kind assistance.

| | | |
|------------|----------|-----------------------------|
| 01/12/2015 | Rs 33610 | BPS 16 (12910--1035--43960) |
| 02/12/2015 | Rs 34675 | BPS 17 (20680--1555--51780) |
| 02/12/2015 | Rs 36230 | Pre-Mature Increment. |

2. That applicant points out and clarify the whole present legal & factual
position of 04 Advance Increments of MA/MSc against CT post. Case of
04 Advance Increments of MA/MSc was decided by the Honourable KPK
Service Tribunal Peshawar on 27/10/2008 in favour of Applicant, and no
appeal was filed before Supreme Court of Pakistan against the said
Judgment. Copy attached

3. That the said judgment was implemented by KPK Service Tribunal
Peshawar itself and under the directions of Tribunal, the representative of
your office (Mr. Malik Muhammad Haroon AAO) himself submitted
implementation report before the Court wherein claim/payroll system
Amendment Form of applicant was shown Approved on 21/09/2010 by
your good self. Copy of Bill and pay print of Sep 2010 is attached for
ready reference.

That applicant is taking 04 Advance Increments of MA/MSc from the
year 2010 regularly, and it is well mentioned here that presently an Act
"Khyber Pakhtunkhwa cessation of payment of arrears on advance
increments on higher education qualification Act" (KPK ACT NO IX OF
2012 dated 15/05/2012) which is in favour of applicant.

In the light of above factual and legal position it is hoped and
requested that salary slip may please be issued with out any complication or
any kind of illegal deduction.

Dated 16/12/2015.

(Muhammad Riaz Khan)
S/O Muhammad Rafique,
S.S.T G.H.S NO 01 Abbottabad.

No 407 Dated 23/12/15

Submitted to Distt. Controller of Accounts
Distt: A. Abad.

Principal
Government High School
Abbottabad

Annexure D

13

22

BEFORE THE PESHAWAR HIGH COURT, ABBOTTABAD BENCH

Writ Petition No 63-A of 2015.

Muhammad Riaz Khan S/O Muhammad Rafique, S.S.T G.H.S NO 01
Abbottabad, R/O Village Nurdubba, P.O Nawan Shehr Tehsil & District
Abbottabad.

Petitioner

Versus

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

Respondents

WRIT PETITION UNDER ARTICLE 199 OF THE
CONSTITUTION OF ISLAMIC REPUBLIC OF PAKISTAN
1973, FOR DECLARATION, THAT UNDER THE LAW
PETITIONER IS ENTITLED FOR FIXATION OF PAY IN
B.P.S NO 17 WITH OUT DEDUCTION OF 02 ADVANCE
INCREMENTS OF MA/MSc OUT OF 04, AND
RESPONDENTS ARE LEGALLY BOUND TO FIX THE
PAY OF PETITIONER WITH OUT DEDUCTION OF ANY
ADVANCE INCREMENT.

PREYER

ON ACCEPTANCE OF INSTANT WRIT PETITION
RESPONDENTS MAY PLEASE BE DIRECTED TO FIX THE PAY
OF PETITIONER WITH EFFECT FROM 02/12/2015 IN B.P.S NO
17 WITH OUT DEDUCTION OF 02 ADVANCE INCREMENTS
OF MA/MSc OUT OF 04.

Respectfully Sheweth,

P.16-18
Abbottabad
Heb

Abbottabad
Heb

14

PESHAWAR HIGH COURT ABBOTTABAD BENCH

JUDICIAL DEPARTMENT

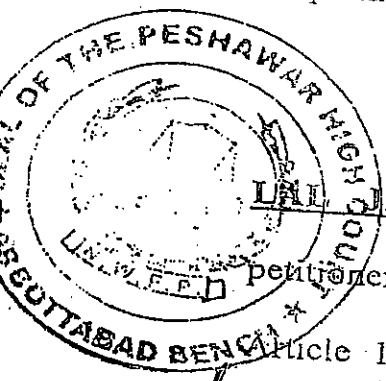
JUDGMENT SHEET

Writ Petition No. 63-4/16

Date of hearing: 02-02-2016

Petitioner M. Riaz Khan by (in person)

Respondents Govt



LAL JIAN KHATTAK, J., Muhammad Riaz Khan

petitioner through the instant writ petition filed under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973 has prayed this Court for issuance of direction to respondents to fix his pay w.e.f. 02.12.2015 in BPS-17 without deduction of two advance increments of MA/M.Sc. out of the four, already granted to him on account of his higher educational qualification.

Marked

govt

certified to be True Copy;
Examiner
Peshawar High Court
Abbottabad Bench
Organized Under Sec 75 Act & Ordins

Arguments heard and record gone through.

Perusal of available case record would reveal that petitioner is seeking fixation of his salary in BPS-17 w.e.f. 02.12.2015 without deduction of two increments granted to him on the basis of his acquiring higher

Attested

IS

~~11~~

qualification. It is worth to mention that pay is one of the terms and conditions of service and if any person is aggrieved from wrong fixation of his pay then he can approach the Services Tribunal for redressal of his grievance but in no case, for fixation of pay in certain scale, a civil servant can file petition under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973, as under Article 212 of the Constitution, jurisdiction of this Court to entertain an issue relating to the terms and conditions of service is barred.

Announced
He to

5- For what has been discussed above, this petition, being not maintainable before this Court, is hereby dismissed in limine alongwith CM No.36-A/16.

Announced
He to

SD JUDGE

Announced.
02.02.2016.

Certified to be True Copy
12/2/16
Peshawar High Court
Abbottabad Bench
Authorized Under Sec 23, Acts Ordus

Muhammad Rustom,
P/S

Annexure E

16

BEFORE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR.

Service Appeal No: 775 of 2016



Muhammad Riaz Khan S/O Muhammad Rafique, S.S.T G.H.S NO-01
Abbottabad, R/O Village Nurdubba, P.O Nawan Shehr Tehsil & District
Abbottabad.

Appellant

Khyber Pakhtunkhwa
Service Tribunal

Versus

Diary No. 775

Dated 29-7-2016

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

Abbottabad
He

Respondents

APPEAL UNDER SECTION 4 OF KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL ACT 1974, AGAINST THE IMPUGNED
ACTION OF RESPONDENT NO 1, THAT IS NON ISSUANCE OF
SALARY SLIP (FIXATION OF PAY) IN B.P.S NO 17 WITH OUT
DEDUCTION OF 02 ADVANCE INCREMENTS OF MA/MSc OUT
OF 04, WHICH WERE GRANTED IN PURSUANCE OF THE
ORDER OF THE K.P.K SERVICE TRIBUNAL AND FOR
ISSUANCE OF SALARY SLIP AND ACCEPTANCE OF
DEPARTMENTAL REPRESENTATION DATED 16/12/2005
WHICH IS STILL PENDING WITH OUT RESPONSE. (Application
for condonation of Delay is also attached)

Attended
He

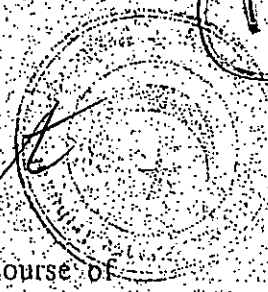
Filed to-day
Registrar
29/7/16

PREYER

ON ACCEPTANCE OF INSTANT SERVICE APPEAL
RESPONDENTS MAY PLEASE BE DIRECTED TO FIX THE PAY
OF APPELLANT WITH EFFECT FROM 02/12/2015 IN B.P.S NO

ATTENDED
[Signature]
EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

Appeal No 775/2016
M. Khatra Khan vs Govt



22.09.2016

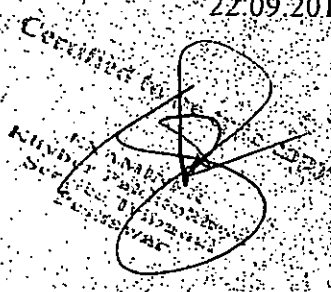
Appellant in person present. During the course of arguments appellant informed the Tribunal that the respondents have not yet passed any order affecting his interest as his pay is yet to be fixed in BPS-17.

In view of the afore-stated position no adverse orders have been passed against the appellant as such the appeal is premature and the same is therefore dismissed in limine. The appellant may however agitate his grievances in the prescribed manners when any order adversely affecting his interest is passed. No orders as to costs. File be consigned to record room.

Attested
[Signature]

ANNOUNCED
22.09.2016

sdf/
Chairman
Comp Court
A/Head



Attested
[Signature]

Number of Writs: 800
Date of Commencement: 13-10-2016
Date of Delivery: 13-10-2016

Annexure F,

18

A.T.M.-9
(See Para, 59, Audit Manual)

PAY SLIP

OFFICE OF THE

No. 77 of 1 2015

20

I, SSA [Name] do hereby certify that [Name]

(.....) he is entitled to draw pay and allowance at the monthly rates shown below from the dates specified less already drawn :-

Detail of calculation 2-7-15 to 1-12-16

| | From | From | From | From |
|-----------------|-------------|------|-------------|-------------|
| Substantive pay | 33120 | - | 40880 | 42810 |
| Officiating pay | 2955 | - | 2955 | 2955 |
| Overseas pay | 5000 | - | 5000 | 5000 |
| Special pay | 16188 | - | 2370 | 2370 |
| Indexed pay | 6320 | - | 6320 | 6320 |
| | 142500 | - | 1180 | 6320 |
| | 3840 | - | 828 | 1180 |
| Total | 3317 | - | 4088 | 828 |
| | | - | | 4281 |

Attested
[Signature]

R/S
[Signature]

[Signature]

Attested
[Signature]

56143 63624 65744
 [Signature] [Signature] [Signature]

Annexure 16

19

BEFORE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR.

Service Appeal No: _____ of 2017



Muhammad Riaz Khan S/O Muhammad Rafique, S.S.T G.H.S
Abbottabad, R/O Village Nurdubba, P.O Nawan Shehr Tehsil & District
Abbottabad.

Appellant

Versus

Khyber Pakhtunkhwa
Service Tribunal

Diary No. 23

Dated 12-01-2017

- 1 District Comptroller of Accounts, Abbottabad.
- 2 Accountant General Khyber Pakhtunkhwa Peshawar.
- 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
FINAL ORDER (REVISED SALARY SLIP) DATED 29/12/2016
ISSUED BY RESPONDENT NO 1, WHEREBY DEDUCTED/
RECOVERED TWO ADVANCE INCREMENTS OUT OF FOUR
AND SHOWN Rs 142560/- R.O.P (RECOVERY OF
OVERPAYMENT) HAS BEEN MADE, THESE INCREMENTS
WERE GRANTED IN PURSUANCE OF THE ORDER OF THE
K.P.K SERVICE TRIBUNAL. 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, GRANTED BY
COMPETENT COURT OF LAW

filed to-day
Registrar

12/1/17

ATTESTED
E. K. ANWER
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar



M. Riaz vs Govt

21.07.2017

Appellant present in person. This is an office objection to the effect that without filing departmental appeal against the salary slip dated 29.12.2016, the present appeal has been filed which is not maintainable.

Attended
[Signature]

The appellant argued that under Section 4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974 he can directly approach this Tribunal within 30 days after issuance of impugned pay slip without challenging it before the departmental appellate authority. This Tribunal is not in agreement with the appellant for the reason that the pay slip is issued by the office of Accountant General and the appellant may file departmental appeal to the higher authority (Finance Department). The appellant could not approach this Tribunal without preferring departmental appeal.

Resultantly, this appeal is dismissed being not maintainable by upholding the office objection. The appellant is directed to move departmental appeal and after exhausting departmental remedy, he can approach to this Tribunal, if so advised. File be consigned to the record room.

Date of Presentation of Application 25-7-17
 Number of Writs 1
 Copying Fee 6/-
 Urgent 2/-
 Total 8/-
 Name of Counsel [Signature]
 Date of Completion of Copy 25-7-17
 Date of Delivery of Copy 25-7-17

[Signature]
Chairman
and just A/Asad.

Certified to be true copy
ANNOUNCED
21.07.2017
KHYBER PAKHTUNKHWA
Service Tribunal,
Peshawar

Annexure H

21

To

The Secretary Finance Department Government of Khyber Pakhtunkhwa Peshawar.

The Accountant General Khyber Pakhtunkhwa Peshawar.

Subject

DEPARTMENTAL APPEAL ON THE BASIS OF DIRECTIONS PASSED BY KHYBER PUKHTUNKHWA SERVICE TRIBUNAL PESHAWAR IN ITS ORDER DATED 21/07/2017 AT CAMP COURT ABBOTTABAD, AGAINST THE ILLEGAL REVISED SALARY SLIP DATED 29/12/2016 ISSUED BY DISTRICT ACCOUNTS OFFICER ABBOTTABAD, WHEREBY DEDUCTED/ RECOVERED TWO ADVANCE INCREMENTS OUT OF FOUR ADVANCE INCREMENTS OF MA/MSc AND SHOWN Rs 142560/- R.O.P (RECOVERY OF OVERPAYMENT) HAS BEEN MADE.

Sir

With due respect Appellant requests that, he received 04 advance Increments of MA/MSc, on the basis of the judgment of Khyber Pukhtunkhwa Service Tribunal Peshawar dated 27/10/2008 and the same was implemented in letter and spirit, and he was being taken the same 04 advance increments of MA/Msc from the due date, with out any disturbance.

That in the meanwhile an ACT NO IX of 2012 dated 15/05/2012 passed by Khyber Pakhtunkhwa Provincial Assembly Peshawar, titled "The Khyber Pakhtunkhwa Cessation of Payment of Arrears on Advance Increments on Higher Educational Qualification" was issued/promulgated and its sub section 2 of section 2 is clear and in the favour of appellant.

That appellant after up-gradation of his post in BPS No 17, submitted his application to District Accounts Officer Abbottabad for issuance of revised salary slip for the month of December 2015, which was issued to the appellant on 29/12/2016 whereby appellant's pay Rs 33120/-PM instead of 36230/-PM is fixed with effect from 02/12/2015

by deducting two advance increments out of four of MA/MSc and also shown Rs 142500/- as recovery of payment.

That the same impugned action of District Accounts Officer Abbottabad i.e. deduction of 02 Advance increments out of 04 was challenged by Appellant before KPK Service Tribunal Peshawar, which is decided by the Tribunal on 21/07/2017, wherein appellant was directed to file the instant departmental appeal, Hence this appeal. Copies of Court Order, salary slip and previous court order is also attached.

That impugned salary slip issued by DAO Abbottabad is against law, and deduction of 02 advance increments out of 04 is illegal contempt of Court, while under the law, the appellant was/is entitled of 04 advance increments and DAO Atd is not at all entitled to withdraw the benefit extended to the appellant by a competent Courts of law, i.e. Service Tribunal & Supreme Court of Pakistan.

It is, therefore, requested that on acceptance of this departmental appeal, impugned/revised salary slip dated 29/12/2016 issued by DAO Atd, may please be cancelled and DAO Atd may please be directed to restore the 02 advance increments of MA/MSc out of 04 and in case amount refunded/deducted from the salary of appellant may be ordered the refund of same and granted all back benefits.

Abbottabad
KPK

Yours Sincerely

Dated 06/08/2017

Muhammad Riaz Khan S/O Muhammad Rafique, Now S.S (Math) G.H.S.S Jared District Mansehra.
R/O Village Nurdubba, P.O Nawan Shehr Tehsil & District Abbottabad.

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR



Service Appeal No. 312/2015

Date of Institution... 10.04.2015
Date of decision... 10.01.2018

Muhammad Islam, PSHT (BPS-15), GPS Mehrdi, District Malakand.
(Appellant)

Versus

1. The Government of Khyber Pakhtunkhwa through Secretary of Education (E&SE) Khyber Pakhtunkhwa, Peshawar and 4others.
(Respondents)

Mr. Noor Muhammad Khattak Advocate

For appellant.

MR. Kabir Ullah Khattak,
Additional Advocate General

... For respondents.

MR. NIAZ MUHAMMAD KHAN, ...
MR. MUHAMMAD HAMID MUGHAL, ...

CHAIRMAN
MEMBER

JUDGMENT

NIAZ MUHAMMAD KHAN, CHAIRMAN: - Arguments of the learned counsel for the parties heard and record perused.

FACTS

2. The appellant was granted two advance increments due to higher qualification on 26.08.2009 from 14.05.1999. These advance increments were granted to the appellant on the basis of judgment of this Tribunal dated 13.07.2009. The appellant received the arrears of the same advance and was also being paid the said increments thereafter. Then on 30.05.2014 the pay fixation

ATTESTED

[Signature]

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

party recovered amount of 88846/- on the basis of the Khyber Pakhtunkhwa Cessation of Payment of Arrears on Advance Increments on Higher Education Qualification Act, 2012. Against this recovery the appellant filed a departmental appeal on 15.12.2014 which was not responded to and thereafter he filed the present service appeal on 10.04.2015.

ARGUMENTS

3. Learned counsel for the appellant argued that the pay fixation party misinterpreted the above mentioned Act because in accordance with sub section 2 of section 2 of the Act the advance increments of the appellants were saved.

4. On the other hand the learned AAG argued that the present appeal was not maintainable as there was not original or appellate order. He relied upon a judgment reported as 2006SCMR 1630. He further argued that in accordance with the Act the pay fixation party had rightly recovered the amount. He further argued that Accountant General was not made party to the present appeal.

CONCLUSION

5. Non impleading of Accountant General as party is not fatal for the present service appeal because Accountant General is not a necessary party. The Secretary Finance was already made respondent to the present appeal. Coming to the objection of the learned AAG regarding non presence of original or appellate order, the very order dated 30.05.2014 ordering the recovery of amount is the original order. Against which the appellant had filed the departmental appeal which was not responded to. The very Act rely upon by the respondents for recovery of the advance increments on higher qualification is named as Khyber

ATTESTED
EXAMINER
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

Pakhtunkhwa Cessation of Payment of Arrears on Advance Increments on Higher Qualification Act 2012. This Act ~~was~~ in fact, was promulgated for non-payment of arrears and not for those increments which had already been paid to the civil servants. Sub section 2 of section 2 further clarifies this position by lying down that any order made, instruction issued, decision, judgment or order of court or tribunal implemented immediately before the commencement of the Act shall be deemed to have been validly made. Though commencement of the Act was from 01.12.2001 as the Act was given retrospective effect, which effect has been declared ultra vires by the Worthy Peshawar High Court vide judgment dated 08.06.2017 entitled "*Muhammad Iqbal and two others Vs. Government of Khyber Pakhtunkhwa and three others.*"

6. In view of the above, the appeal is accepted. Parties are left to bear their own costs. File be consigned to the record room.

Mughal

(Muhammad Hamid Mughal)
Member

Niaz
(Niaz Muhammad Khan)
Chairman

ANNOUNCED
10.01.2018

Date of Presentation of Application _____
 Number of Words _____ 1200 26-1-2018
 Copying Fee _____ 6-00
 Urgent _____ 2-00
 Total _____ 8-00
 Name of Copyist _____
 Date of Completion of Copy _____ 26-1-18
 Date of Delivery of Copy _____ 26-1-18

Certified to be true copy
Saleh
 MEMBER
 Khyber Pakhtunkhwa
 Service Tribunal,
 Peshawar

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

Appeal No. 1314/2017

Muhammad Riaz.....Appellant

VERSUS

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

PARA WISE COMMENTS ON BEHALF OF RESPONDENTS NO. 1 TO 2.

INDEX

| Sr.No | Description | Page Nos | Annexures |
|-------|---|----------|-----------|
| 1 | Comments alongwith affidavit | 1 to 3 | |
| 2 | Copy of the judgment of Supreme Court of Pakistan | 4 to 6 | "A" |


District Accounts Officer
Abbottabad

(Respondent No. 2)
District Accounts Officer
Abbottabad

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

Appeal No. 1314/2017

Muhammad Riaz.....Appellant

VERSUS

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

Para wise Comments on behalf of Respondents No. 1 to 2.

Respectfully Sheweth:-

Comments on behalf of respondents are submitted as under:-

PRELIMINARY OBJECTION:-

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

Factual objections:-

1. In reply to Para No.1 of the appeal it is submitted that judgment of honorable tribunal has lost its efficacy for the purpose of implementation by clear intendment through sections 1 & 2 of Khyber Pakhtunkhwa cessation of payment arrears on advance increments on higher education qualification Act No. IX of 2012.

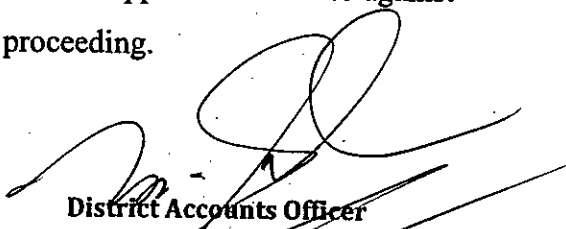
2. That Para No.2 of the appeal is incorrect as composed hence, denied. The Act was passed by the Provincial Assembly and assented by the Governor KPK who isn't party in the present appeal. The answering respondents are bound to obey the will of the legislature & cannot deviate from any provision of enactment.
3. That the appellant had to make recovery of 2 increments out of 4 he received on account of M.A qualification but he did not agree and exerted both stress and strain and pressurized this office. The delay in issuance of the pay slip was merely on the part of appellant.
4. No comment.
5. In reply to Para No. 5, it is submitted that due to the promulgation of Khyber Pakhtunkhwa cessation of payment arrears on advance increments on higher education qualification Act No. IX of 2012, all the execution/implementations petitions were dismissed by this honorable tribunal. It is further submitted that Mr. Muhammad Haroon had filed Civil Petition No 360 of 2013' before the August Supreme Court of Pakistan against the order dated 30/01/2013, passed by this Honorable tribunal and the same was dismissed on 29/08/2013. (Copy of the judgment is annexed as Annexure "A").
6. That Para No.6, of the appeal is subject to proof. Further added that it is the rule of the administration of justice that things should be done in particular manner & not by any other means, any deviation from the same amounts illegality.
7. That Para No. 7, of the appeal is relates to record.
8. That the respondents seek leave of this Honorable tribunal to agitate additional grounds at the time of arguments.

Grounds:

- a. That ground a, is incorrect hence, denied. Respondents have never snatched any legal rights of the appellant.
- b. That complete reply has already been given in above Para No. 1 of the factual objections.
- c. That ground c, is incorrect hence, denied.
- d. That ground d, does not relate to answering respondents.
- e. No comment.
- f. That ground f, as composed is incorrect hence, denied retail reply has already been given in above Paras.
- g. That the respondents seek leave of this Honorable Tribunal to agitate additional grounds at the time of arguments.

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.

Accountant General
Peshawar
(Respondent No. 1)


District Accounts Officer
Abbottabad
(Respondent No. 2)
District Accounts Officer
Abbottabad

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

Appeal No. 1314/2017

Muhammad Riaz.....Appellant

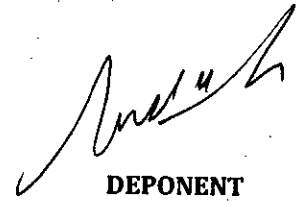
VERSUS

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

Para wise Comments on behalf of Respondents No. 1 to 2.

AFFIDAVIT

I, Mr. Yasir Iqbal, AAO District Accounts Office, 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.


DEPONENT

In the Supreme Court of Pakistan
(Appellate Jurisdiction)

Annexure "A"

Present:
Mr. Justice Anwar Zaheer Jamali
Mr. Justice Khilji Arif Hussain
Mr. Justice Ijaz Ahmed Chaudhry

Civil Petition No. 360 of 2013.
(on appeal from judgment of KPK Service Tribunal, Peshawar
dated 30.1.2013, passed in Implementation Petition No. 49/2012)

Muhammad Haroon

...Petitioner

Versus

Executive District Officer, Elementary & Secondary Education Dept. Haripur, etc.
... Respondents

Petitioner: In person.

For official respondents: Mr. Naveed Akhtar Khan, Addl.A.G. KPK.
Mr. Saeed-ur-Rehman, ADO (Edu.), Haripur.

Date of hearing: 29.8.2013

JUDGMENT

Anwar Zaheer Jamali, J.- By this petition under Article 212(3) of the Constitution of Islamic Republic of Pakistan, 1973, leave to appeal is sought by petitioner Muhammad Haroon against the order dated 30.1.2013, passed by the Khyber Pakhtunkhwa Service Tribunal, Peshawar (in short "the Tribunal"), whereby his implementation application No.49/2012, in service Appeal No.506/2009, was dismissed in view of sections-1 & 2 of Khyber Pakhtunkhwa Cessation of Payment of Salaries on Advance Increments on Higher Educational Qualification Act, 2012 (Khyber Pakhtunkhwa Act No.IK of 2012).

We have heard the arguments of petitioner. He has placed reliance on the earlier judgment of the Tribunal dated 12.5.2009, whereby he was held entitled for the benefit of advance increments on the basis of higher qualification. For this purpose, he has also placed reliance upon the judgment of this Court, reported as PIA Corporation v. Aziz-ur-Rehman Chaudhry (2011 SCMR 219).

As against it, learned Additional Advocate General KPK, Mr. Naveed Akhtar Khan, strongly contends that benefit of earlier judgment dated 12.5.2009,

ATTESTED

Superintendent
Supreme Court, Pakistan
ISLAMABAD

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

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

"1. Short title, application and commencement. - (1) This Act may be called the 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 1st 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."

ATTESTED

Supplement
Supplement
ISLAMABAD

C.P-360 of 2013

5. A bare reading of the above sections from Khyber Pakhtunkhwa Act No. IX of 2012 makes it crystal clear that whatever benefit the petitioner was claiming through the judgment dated 12.5.2009, has been nullified by the legislature through clear intendment in unequivocal terms, while vires of the said Act have not been challenged before any forum.

6. This being the position, leave to appeal is refused and this petition is

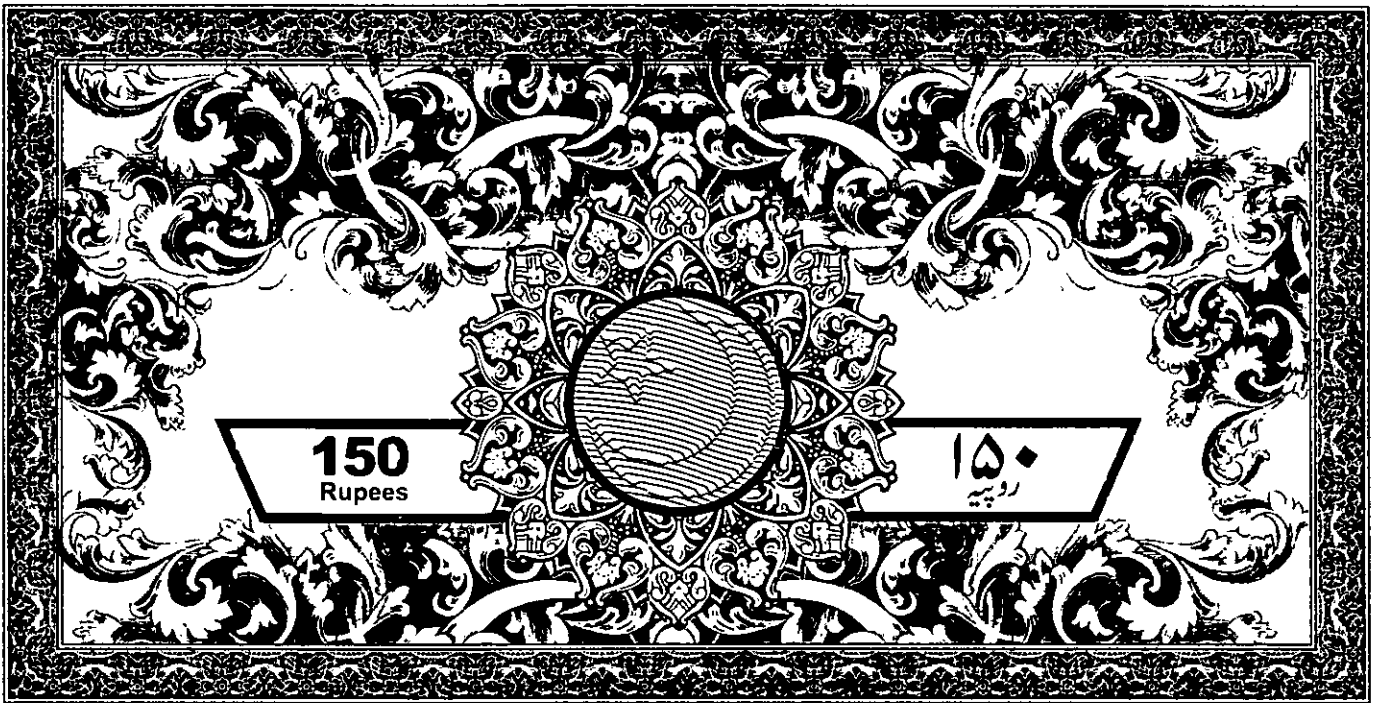


Sd/- Anwar Zaheer Jamali, J.
Sd/- Khilji Arif Hussain, J.
Sd/- Ijaz Ahmed Chaudhry, J.
Certified to be True Copy

Superintendent
Supreme Court of Pakistan
ISLAMABAD

10565/13

| | | |
|----------------------|----------|----------------|
| Case No. | 10565/13 | Civil/Criminal |
| Date of Filing | 28/8/13 | |
| No. of Writs | 1 | |
| No. of Parties | | |
| Registration Fee Rs. | 5.00 | |
| Case Fee Rs. | 5.00 | |
| Stamp Fee Rs. | 10.00 | |
| Name of Counsel | 47419 | |
| Date of entry | 28/8/13 | |
| Case assigned to | | |
| Remarks | | |



دو قطعہ اسٹامپ ہائی ۱۵۰ روپیہ کے

لے الٹ ٹیبلٹوں کو سروس ٹیبلٹوں کے ساتھ

سروس اپریل ۲۰۱۶ء / ۱۳۱۶ھ

محمد ریاض خان نام حکومت

حسینا، ناہ خان آباد، پٹیوٹی

منگہ محمد ریاض خان ولد محمد رفیقہ قوم بھٹان سکندریہ

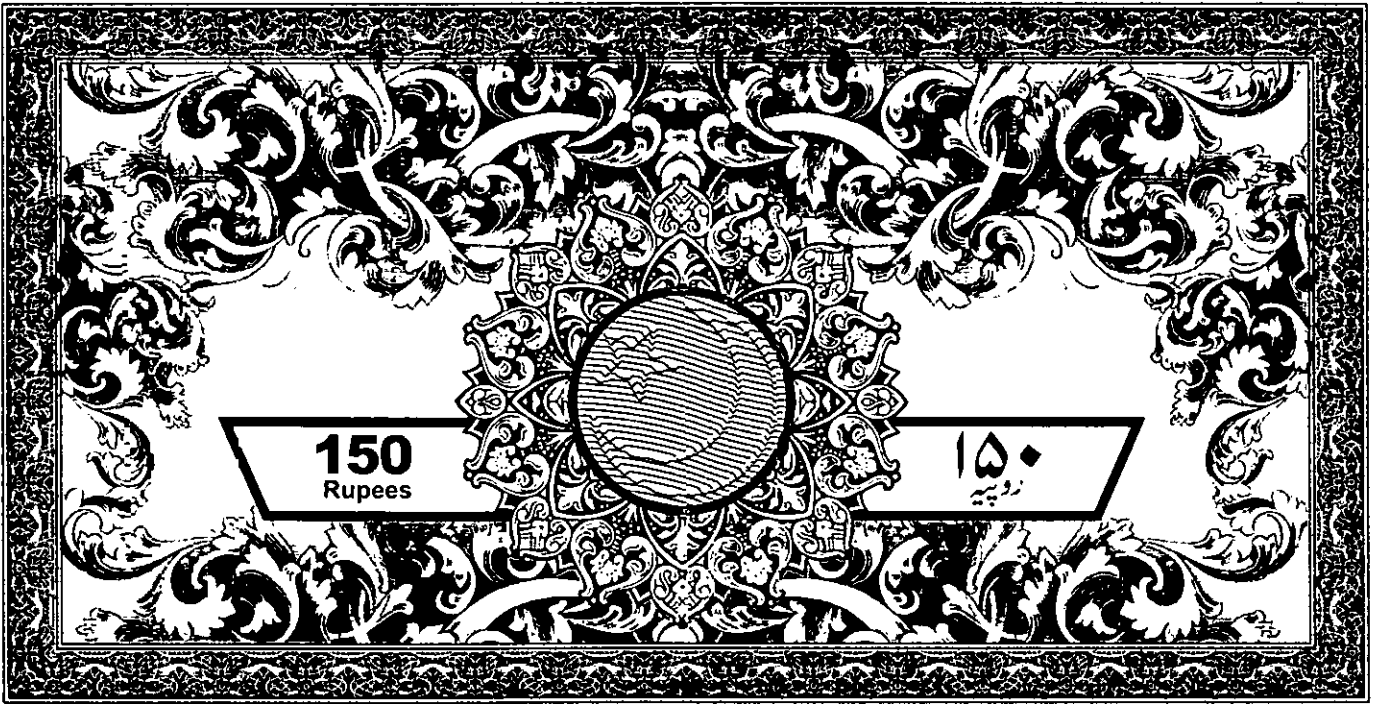
کوٹا شہر تحصیل و ضلع اسٹ آباد ماہیوں حلقہ

افسردہ ہیں کہ میری سروس اپریل

جو کہ سروس ٹیبلٹوں کے ساتھ

میں زیر حالت ہے جس میں





2 تاریخ لکھی ہے۔ عید امس
 میں اپنی طرف سے مسی راشد امین خان
 ولد شکر علی خان کتہہ گلہ پورہ کا جیروں کھوئی
 سندرو ٹی ٹی ایم اسٹ ایبڈ گھر حصار خانم
 صاحب کے ذریعے اختیار دینا یوں کہ وہ میری
 طرف سے لے کر 2 ہا پیروی و جواب دہی
 اس میں عنوان مادر کریں،
 عنوان ہا لے اقدام بخت جواب در خواست
 وغیرہ قبول ہو گئے۔ 2085-08-05-15/11
 الف
 محمد یوسف خان و لڑ محمد رحمت



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

Appeal No. 1314/2017

Muhammad Riaz.....Appellant

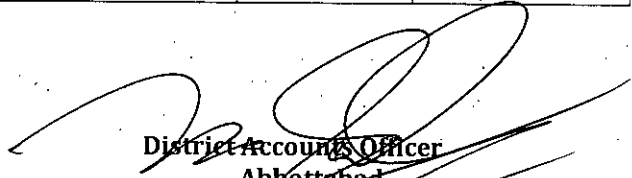
VERSUS

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

PARA WISE COMMENTS ON BEHALF OF RESPONDENTS NO. 1 TO 2.

INDEX

| Sr.No | Description | Page Nos | Annexures |
|--------------|---|-----------------|------------------|
| 1 | Comments alongwith affidavit | 1 to 3 | |
| 2 | Copy of the judgment of Supreme Court of Pakistan | 4 to 6 | "A" |


District Accounts Officer
Abbottabad
(Respondent No. 2)
District Accounts Officer
Abbottabad

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

Appeal No. 1314/2017

Muhammad Riaz.....Appellant

VERSUS

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

Para wise Comments on behalf of Respondents No. 1 to 2.

Respectfully Sheweth:-

Comments on behalf of respondents are submitted as under:-

PRELIMINARY OBJECTION:-

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

Factual objections:-

1. In reply to Para No.1 of the appeal it is submitted that judgment of honorable tribunal has lost its efficacy for the purpose of implementation by clear intendment through sections 1 & 2 of Khyber Pakhtunkhwa cessation of payment arrears on advance increments on higher education qualification Act No. IX of 2012.

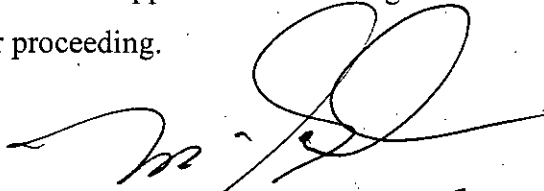
2. That Para No.2 of the appeal is incorrect as composed hence, denied. The Act was passed by the Provincial Assembly and assented by the Governor KPK who isn't party in the present appeal. The answering respondents are bound to obey the will of the legislature & cannot deviate from any provision of enactment.
3. That the appellant had to make recovery of 2 increments out of 4 he received on account of M.A qualification but he did not agree and exerted both stress and strain and pressurized this office. The delay in issuance of the pay slip was merely on the part of appellant.
4. No comment.
5. In reply to Para No. 5, it is submitted that due to the promulgation of Khyber Pakhtunkhwa cessation of payment arrears on advance increments on higher education qualification Act No. IX of 2012, all the execution/implementations petitions were dismissed by this honorable tribunal. It is further submitted that Mr. Muhammad Haroon had filed Civil Petition No 360 of 2013' before the August Supreme Court of Pakistan against the order dated 30/01/2013, passed by this Honorable tribunal and the same was dismissed on 29/08/2013. (Copy of the judgment is annexed as Annexure "A").
6. That Para No.6, of the appeal is subject to proof. Further added that it is the rule of the administration of justice that things should be done in particular manner & not by any other means, any deviation from the same amounts illegality.
7. That Para No. 7, of the appeal is relates to record.
8. That the respondents seek leave of this Honorable tribunal to agitate additional grounds at the time of arguments.

Grounds:

- a. That ground a, is incorrect hence, denied. Respondents have never snatched any legal rights of the appellant.
- b. That complete reply has already been given in above Para No. 1 of the factual objections.
- c. That ground c, is incorrect hence, denied.
- d. That ground d, does not relate to answering respondents.
- e. No comment.
- f. That ground f, as composed is incorrect hence, denied retail reply has already been given in above Paras.
- g. That the respondents seek leave of this Honorable Tribunal to agitate additional grounds at the time of arguments.

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.

Accountant General
Peshawar
(Respondent No. 1)


District Accounts Officer
Abbottabad
(Respondent No. 2)

District Accounts Officer
Abbottabad

BEFORE THE HONORABLE KHYBER PAKHTUNKHWA SERVICE

TRIBUNAL PESHAWAR CAMP COURT ABBOTTABAD.

Appeal No. 1314/2017

Muhammad Riaz.....Appellant

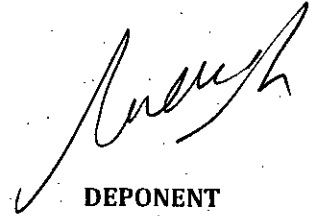
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AFFIDAVIT

I, Mr. Yasir Iqbal, AAO District Accounts Office, 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.


DEPONENT

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

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

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(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."

ATTESTED

Superintendent
Supreme Court of Pakistan
ISLAMABAD

5. A bare reading of the above sections from Khyber Pakhtunkhwa Act No.IX of 2012 makes it crystal clear that whatever benefit the petitioner was claiming through the judgment dated 12.5.2009, has been nullified by the legislature through clear intendment in unequivocal terms, while vires of the said Act have not been challenged before any forum.

6. This being the position, leave to appeal is refused and this petition is



Sd/- Anwar Zaheer Jamali, J.
Sd/- Khilji Arif Hussain, J.
Sd/- Ijaz Ahmed Chaudhry, J.
Certified to be True Copy

[Signature]
Superintendent
Supreme Court of Pakistan
ISLAMABAD

10565/13

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| Case No. | Civil/Criminal |
| Date of Presentation | 28.8.13 |
| No. of Words | 90 |
| No. of Copies | 10 |
| Registration Fee Rs. | 5.00 |
| Copy Fee Rs. | 5.00 |
| Court Fee Rs. | 10 |
| Date of Copy | 4/9/13 |
| Date of Receipt | 5/9/13 |
| Received By | <i>[Signature]</i> |