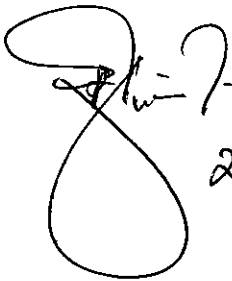


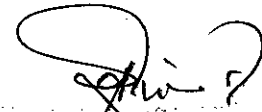
21.10.2020 .. Petitioner in person present.

Usman Ghani learned District Attorney alongwith Sohail Ahmad Zeb Litigation Assistant for respondents present.


From the record, it is evident that the present petitioner and others filed service appeals U/S 4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974 for grant of advance increments with all back benefits on the basis of Para-05(i) (c) of the Notification No. FD (PRC) 1-1 /89 dated 11.08.1991 issued by Finance Department and in pursuance of judgment passed by the August Supreme Court of Pakistan and vide judgment dated 12.05.2009 in appeal No.1276/2007, all the appeals were accepted. In the meanwhile, Khyber Pakhtunkhwa Cessation of Payment of Arrears on Advance Increments on Higher Qualification Bill 2012 having been passed by the Provincial Assembly Khyber Pakhtunkhwa on 8th May, 2012 and assented to by the Governor Khyber Pakhtunkhwa on 11th May, 2012 was published as an Act of the Provincial Legislature of Khyber Pakhtunkhwa. This Act was challenged before the Service Tribunal as well as in the August High Court. Appeals pending in the Service Tribunal were withdrawn by the appellants vide order dated 21.03.2018 of this Tribunal. Writ Petitions were allowed vide order dated 08.06.2017 and the official respondents were directed to provide the benefits of advance increments according to the notification dated 11.08.1991 on attaining higher qualification during service. The respondent departments challenged the said order in the August Supreme Court of Pakistan and vide order dated 18.12.2019 of the August Supreme Court of Pakistan, leave was granted and the impugned judgment passed by the Hon'ble Peshawar High Court was suspended.


21/10/20

In view of the above discussion, the instant execution proceedings are adjourned sine die till the decision by the August Supreme Court of Pakistan. Petitioner is at liberty to seek its restoration after the decision by the August Supreme Court of Pakistan. File be consigned to the record room.



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



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

Reader

Due to summer vacation case to come up for the same on 121
10 / 20 at camp court abbottabad.


Reader

21.11.2019

Petitioner in person present. Mr. Usman Ghani, District Attorney alongwith Mr. Shamim, SO and Legal Advisor for respondents no. 3 and 4 present.

Legal Advisor for respondents no. 3 and 4 produced a copy letter dated 19.11.2019 addressed to respondent no.5 for implementation of judgment under question. The same document was previously submitted vide order sheet dated 19.09.2019. He further clarified that respondent no.5 was competent to provide necessary relief, as sought in the present execution petition. However, no one is present on behalf of respondent no.5. Respondent no.5 is directed to ensure early implementation of the judgment in question. To come up for further proceedings on 21.01.2020 before SB at camp court Abbottabad.


Member
Camp Court Abbottabad

21.01.2020

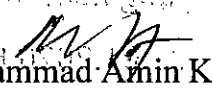
Petitioner in person present. Mr. Muhammad Jan, DDA alongwith Mr. Muhammad Shamim, SO and Mr. Sohail Ahmad Zeb, Assistant for respondents present. Due to general strike of the bar on the call of Khyber Pakhtunkhwa Bar Council, the case is adjourned. To come up for further proceedings on 18.02.2020 before S.B at camp court Abbottabad.


Member
Camp Court A/Abad

11.07.2019


Petitioner in person and Mr. Muhammad Bilal, Deputy District Attorney alongwith M/S Amjid Ali, Assistant, Jaffar Ali, Assistant and Sohail, Assistant for the respondents present.

Representatives of the department are strictly directed to submit implementation report on the next date positively. Copy of personal number of the petitioner has also been handed over to the representatives of the department. Copy of the same is also placed on record of Execution Petition No. 141/2018, titled Qazi Masood-ur-Rehman Versus District Education Officer (Elementary & Secondary Education Department), Haripur and four others respondents. Case to come up for implementation report on 19.09.2019 before S.B at Camp Court Abbottabad.


(Muhammad Amin Khan Kundi)
Member
Camp Court Abbottabad

19.09.2019

Petitioner in person and Mr. Muhammad Bilal Khan, Deputy District Attorney alongwith Mr. Zia-ur-Rehman, Litigation Officer on behalf of respondents No. 1 to 3 and Mr. Sohail, Assistant on behalf of respondent No. 6 present. Representative of respondent No. 1 to 3 submitted objection on the implementation report, which is placed on record. Case to come up for reply and arguments on 21.11.2019 before S.B at Camp Court Abbottabad.


(Muhammad Amin Khan Kundi)
Member
Camp Court Abbottabad

19.03.2019 Petitioner with counsel and Mr. Muhammad Bilal learned Deputy District Attorney alongwith M/S Sardar Ayaz Legal Advisor and Muhammad Shamim S.O present. Learned counsel for the petitioner stated that vide common judgment dated 12.05.2009 in Service Appeal No.1276/2007, relief was granted to 268 number of appellants and the respondent department granted advance increments on higher educational qualification to all the appellants except the petitioner and 8 other appellants who are also petitioners in the connected execution petitions. To that effect learned counsel for the appellant also submitted application placed on file of Execution Petition No.141/2018. Adjourn. To come up for reply and arguments on the said application on 22.05.2019 before S.B at Camp Court A/Abad.


Member

Camp Court A/Abad.

22.05.2019

Petitioner in person and M/S Jaffar Ali, Assistant on behalf of respondent No. 4 and Amjid Ali, Assistant for respondent No. 5 alongwith Mr. Muhammad Bilal Deputy District Attorney for the respondents present. None present on behalf of respondents No. 1 to 3 and 6 therefore, notice be issued to them. Adjourned to 11.07.2019 for implementation report before S.B at Camp Court Abbottabad.



(Muhammad Amin Khan Kundi)

Member

Camp Court Abbottabad

20.12.2018

Petitioner in person present. Mr. Usman Ghani, District Attorney alongwith Mr. Shamim, PA for respondent no. 6 present. None for the other respondents present. Implementation report not submitted. Last opportunity granted. Fresh notice be also issued to the respondents no. 1 to 5 for submission of implementation report. Case to come up for implementation report/further proceedings on 19.03.2019 before S.B at camp court, Abbottabad.



Member
Camp court A/Abad

17.10.2018

Petitioner with counsel present. M/S Amjid Ali, Assistant and Jaffar Shah, Assistant alongwith Mr. Usman Ghani, District Attorney for the respondents present. Implementation report not submitted. Learned District Attorney requested for adjournment. Adjourned. To come up for implementation report on 20.12.2018 before S.B at camp court, Abbottabad.



Member
Camp Court, A/Abad



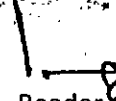
20.12.2018

Petitioner in person present. Mr. Usman Ghani, District Attorney alongwith Mr. Shamim, PA for respondent no. 6 present. None for the other respondents present. Implementation report not submitted. Last opportunity granted. Fresh notice be also issued to the respondents no. 1 to 5 for

Member
Camp Court, A/Abad

FORM OF ORDER SHEET

Execution Petition No: 147/2018

| S.No. | Date of order Proceedings | Order or other proceedings with signature of Judge |
|------------|---------------------------|---|
| 1 | 2 | 3 |
| 1 | 16.05.2018 | <p>The Execution Petition of Mr. Muhammad Fayaz Awan submitted to-day by him, may be entered in the relevant Register and put up to the Court for proper order please.</p> <p>Execution Petition No. <u>147/2018</u></p> <p>Order or other proceedings with signature  REGISTRAR</p> |
| 2- | 18-5-2018 | <p>This Execution Petition be put up before Touring S. Bench at Abbottad on <u>28-6-2018</u></p> |
| 28.06.2018 | 16.05.2018 | <p>The Execution Petition of Mr. Muhammad Fayaz Awan submitted to-day by him, may be entered in the relevant Register and put up to the Court for proper order please.</p> <p>CHAIRMAN</p> <p>REGISTRAR</p> <p>Petitioner M. Fayaz Awan in person present. Mr. Ziaullah, Deputy District Attorney for respondents present. Notices be issued to the respondents for submission of implementation report. To come up for implementation report on 28.08.2018 before S.B. at camp court, Abbottabad.</p> <p>CHAIRMAN</p> <p> Chairman Camp court, A/Abad</p> |
| 28.08.2018 | | <p>Petitioner in person and Shamim PA, Javed DSE and Sardar Jan Alam Advocate for Khyber Teaching Hospital for the respondents present. Due to summer vacations, the case is adjourned. To come up for the same on 17.10.2018 at camp court Abbottabad.</p> <p> Reader</p> |

BEFORE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR.

Execution Petition No: 147 of 2018

Muhammad Fayaz Awan S/O Muhammad Urfan, Pharmacy Technician,
MTI, Ayub Teaching Hospital, Abbottabad. R/O: House No K: 240/10, Kunj
Jadeed, Abbottabad

Appellant

Versus

- 1 Hospital Director (Medical Superintendent), Medical Teaching Institution ATH, Abbottabad.
- 2 Director Finance, MTI, Ayub Teaching Hospital, Abbottabad.
- 3 Medical Director, MTI, Ayub Medical Complex, Abbottabad.
- 4 Director General, Health & Services, Khyber Pakhtunkhwa, Peshawar.
- 5 Secretary to Govt of Khyber Pakhtunkhwa Health Department, Peshawar.
- 6 Secretary to Govt of Khyber Pakhtunkhwa, Finance Department, Peshawar

Respondents

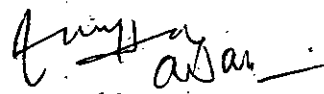
EXECUTION PETITION FOR IMPLEMENTATION OF
JUDGMENT DATED 12/05/2009 PASSED BY KHYBER
PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR (CAMP
COURT ABBOTTABAD).

EXECUTION PETITION

INDEX

| S.No | DESCREPTION OF DOCUMENTS | ANNEXURES | PAGE NO |
|------|---|-----------|----------|
| 1 | Memo; of execution petition | ---- | 1 to 2 |
| 2 | Copy of previous Service appeal for grant of Advance increments | A | 3 to 6 |
| 3 | Copy of Judgment dated 12/05/2009 | B | 7 to 17 |
| 4 | Copy of present service appeal filed against KPK ACT NO IX OF 2012. | C | 18 to 22 |
| 5 | Copy of withdrawal application. | D | 23 |
| 6 | Copy of order dated 21/03/2018 | E | 24 to 25 |

Dated 14/05/2018.


(Muhammad Fayaz Awan)
Petitioner in person

BEFORE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR.

Khyber Pakhtukhwa
Service Tribunal

Execution Petition No: 147 of 2018

Diary No. 723

Dated 16/05/2018

Muhammad Fayaz Awan S/O Muhammad Urfan, Pharmacy Technician,
MTI, Ayub Teaching Hospital, Abbottabad. R/O: House No K: 240/10, Kunj
Jadeed, Abbottabad

Appellant

Versus

- 1 Hospital Director (Medical Superintendent), Medical Teaching Institution ATH, Abbottabad.
- 2 Director Finance, MTI, Ayub Teaching Hospital, Abbottabad.
- 3 Medical Director, MTI, Ayub Medical Complex, Abbottabad.
- 4 Director General, Health & Services, Khyber Pakhtunkhwa, Peshawar.
- 5 Secretary to Govt of Khyber Pakhtunkhwa Health Department, Peshawar.
- 6 Secretary to Govt of Khyber Pakhtunkhwa, Finance Department, Peshawar

Respondents

EXECUTION PETITION FOR IMPLEMENTATION OF
JUDGMENT DATED 12/05/2009 PASSED BY KHYBER
PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR (CAMP
COURT ABBOTTABAD).

PRAYER

IT IS RESPECTFULLY PRAYED THAT RESPONDENTS MAY
PLEASE BE DIRECTED TO IMPLEMENT THE JUDGMENT
DATED 12/05/2009 AND FOR GRANT OF 06 SIX ADVANCE
INCREMENTS OF M.A INSTEAD OF 2(ALREADY
GRANTED) AND 04 FOUR ADVANCE INCREMENTS OF BA
INSTEAD OF 02 (ALREADY GIVEN), WITH ALL BACK
BENEFITS.

Filed to-day
Registrar

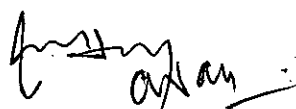
Respectfully Sheweth,

- 1) That petitioner's service appeal relating to advance Increments on his higher qualification was accepted by this Honourable Service Tribunal on 12/05/2009 at Camp Court Abbottabad. Copy of service appeal and judgment is annexed as Annexure "A" & "B".

- 2) That prior to implementation of the judgment dated 12/05/2009, 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) was promulgated/published by the Government of Khyber Pakhtunkhwa/respondents.
- 3) That the pending implementation matter was legally suspended/hanged in the presence of KPK ACT NO IX OF 2012, so petitioner challenged it through service appeal before this Honourable Tribunal. Copy of service appeal is annexed as Annexure "C"
- 4) That the same service appeal is now decided on 21/03/2018 and petitioner is allowed to seek all his remedies/rights available to him under the law, hence through instant execution petition he is legally entitled for implementation of judgment dated 12/05/2009 and grant of advance increment of MA & BA. Copies of withdrawal application and order dated 21/03/2018 are annexed as Annexure "D" & "E"

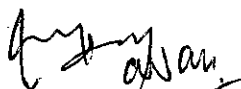
It is therefore respectfully prayed that respondents may please be directed to implement the judgment dated 12/05/2009 and grant of 06 six advance increments of M.A instead of 2 and 04 four advance increments of B.A instead of 02, with all back benefits.

Dated 14/05/2018


(Muhammad Fayaz Awan)
Petitioner in person

VERIFICATION

I do here by verified 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 same nature of any other implementation petition is not pending before Honourable Tribunal


(Muhammad Fayaz Awan)
Petitioner in person

ANNEXURE, A,

BEFORE NWFP SERVICE TRIBUNAL PESHAWAR.



3

Service Appeal No: 76 of 2008

Muhammad Fayaz Awan S/O Muhammad Urfan, Junior Pharmacy Technician, Ayub Teaching Hospital, Abbottabad. R/O: House No K: 240/10, Kunj Jadeed, Abbottabad

Appellant

VERSUS

- 1 Medical Superintendent, Ayub Teaching Hospital, Abbottabad.
- 2 Director Finance, Ayub Teaching Hospital, Abbottabad.
- 3 Chief Executive, Ayub Medical Complex, Abbottabad.
- 4 Director General, Health & Services, N.W.F.P, Peshawar.
- 5 Secretary to Govt of N.W.F.P Health Department, Peshawar.
- 6 Secretary to Govt of N.W.F.P, Finance Department, Peshawar

Respondents

Appeal under Section 4 of NWFP Service Tribunal Act 1974, against the impugned Order dated 23/05/2008, issued under no 7054 Estt/PF/ATD by respondent no 01, whereby appellant's representation dated 21/04/2008, For grant of 06 Six advance increments of M.A Instead of 2(already granted) And 04 Four advance increments of BA instead of 02 (already given) with effect from 01/06/1991, with all back benefits on the basis of Para 5(i) (b) of the Notification No FD (PRC) 1-1 /89 dated 11-08-1991 issued by(respondent No 6) Finance Department N.W.F.P, Peshawar, and in pursuance of Judgments/Law passed by Supreme Court of Pakistan, was refused/dismissed.

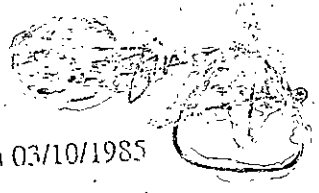
Accepted
Fayaz
Awan

PRAYER

It is respectfully prayed before this Honourable Tribunal that the instant appeal may gracious be accepted, impugned order dated 23/05/2008, issued by respondent No 01 may be set aside and the appellant may be granted 06 advance increments of MA instead of 02 and 04 advance increments of BA instead of 02 w.e.f. 01/06/1991 (total 06 more) with all back benefits

Respectfully Sheweth,

FACTS



- 1) That appellant was appointed as a Dispenser in Health Department on 03/10/1985 in BPS No 06, after that post of applicant was upgraded in BPS No 09 and renamed as Junior Pharmacy Technician on the basis of Service Structure Notification dated 25/08/2006. Now a days applicant is working as Junior Pharmacy Technician in BPS No 09 at Ayub Teaching Hospital, Abbottabad. A Certificate in this respect issued by Concerned authority is Annexed as Annexure A.

- 2) That appellant was passed his F.A Examination before his Service, and being F.A he was granted 02 Advance Increments, similarly appellant during his service as Dispenser, was passed his BA Examination on 06/11/1987 and was entitled for 04 advance increments but was granted only 02, appellant was also passed his M.A. examination on 25/03/1990 and he was entitled for six 06 advance increments but only given 02 Advance Increments. Due to Entitlement applicant refers Para 5 (1) (b) of the Notification No FD(PRC)1-1/89 dated 11/08/1991, issued by (respondent no 06) Finance Department, N.W.F.P, Peshawar but the same was not given by the respondents in their office routine matters until now. Copy of said Notification is Annexure B.

- 3) That appellant being Dispenser in Health Department was/is a member of Civil Employees (BPS-1-15) of the Provincial Government of N.W.F.P and was/is entitled advance increments in pursuance of Notification 11/08/1991 referred above, whose Para # 5, Clause (b) caters for the grant of Six Advance Increments Instead of 02 on attaining M.A/M.Sc and 04 advance increments of BA/B.Sc(instead of 02) against Dispenser post because Prescribed Qualification of the said post was/is also Matric (SSC), So appellant was/is entitled the same and Respondents did not give his Constitutional rights.

- 4) That respondents had wrongly interpreted the Scheme of Advance Increments, given to the Civil Employees at Para No 05 of the Notification referred herein above (Annexure B) and appellant was/is given heavy loss of 06 Advanced Increments. w.e.f. 01/06/1991 (date of application of Notification), appellant was/is entitled for 04 Advanced Increments for B.A and 06 for M.A, but he was only 02 for B.A And also 02 for M.A against the Govt Policy contained in Notification/Circular dated 11/08/1991 was/is passed by N.W.F.P Provincial Assembly in their Budget Session 1991-92.

- 5) That Honourable Federal Service Tribunal Islamabad has already decided the same view on 03/11/1996 in Appeal No 449(R)/96, and after that on 9th September, 2003 Honourable Supreme Court of Pakistan upheld the same

*Attested
by
[Signature]*

judgment in her reported judgment (PLD 2004 Supreme Court 77) by dismissing the Appeal No 1432 of 1997, which was filed by the Federal Govt. Copy of Judgment dated 03/11/1996 passed in Appeal No 449(R)/96 by F.S.T, is annexed as Annexure C.



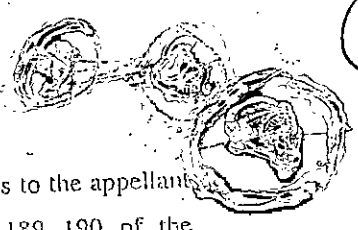
5

- 6) That now, In the Meanwhile, Honourable Supreme Court Of Pakistan has also decided the same matters/view in CPLA No 525,526 and 590 of 2007 on 19/07/2007, and ultimately declared that Employees (appellant) are also Entitled for their Advanced Increments given in Para 5 (1) of Notification No FD(PCR)1-1/89 Dated 11/08/1991 without any change/exception. Copies of Supreme Court judgments are annexed as Annexure D & E.
- 7) That appellant in the light of above Judgments of the Supreme Court dated 09/09/2003 & 19/07/2007, submitted his departmental representation to respondent no 1 on 21/04/2008, received it by him under diary no 2244 dated 22/04/2008, which was refused by the respondent no 01, on 23/05/2008 and final/dismissal order was issued. Copy of representation is annexed as Annexure F, and Impugned order is annexed as Annexure G, Hence this appeal inters - alia on the following ground, and appellant's appeal is within 30 days from the refusal/dismissal of his departmental representation.

Grounds

- a) That the impugned order dated 23/05/2008, passed by respondent no 01 on appellant's representation dated 21/04/2008 is arbitrary, unjust, and against all the norms of justice and equity. Hence liable to set aside.
- b) That the impugned order dated 23/05/2008, is against law, facts of the case, also against letter and spirit of the Judgments of Honourable Supreme Court of Pakistan (PLD 2004 Supreme Court 77) and dated 19/07/2007 passed in CPLA No 525,526 & 590 of 2007 and also dated 29/01/2008 in Civil Review Petition No 216 & 217 of 2007.
- c) That the Policy contained in Notification/Circular dated 11/08/1991 at its Para 5 was/is passed by N.W.F.P Provincial Assembly in their Budget Session 1991-92 and then Hon. le Governor approved the same and Finance Department issued the said Circular after completing the legal requirements
- d) That all the Respondents neither have power nor any jurisdiction to change, withheld/deny the Government Policy contained in Circular/Notification dated 11/08/1991 and cannot apply according to their own wishes and whims against the said policy.

Attested
1
Fazal
Awan



- e) That the action of respondents in refusing the grant of advance increments to the appellant on the basis of Circular dated 11/08/1991, violated the Article 25,189 190 of the Constitution.
- f) That the said Circular (Annexure B) was/is issued for Civil Provincial Employees of N.W.F.P (BPS-1-15) and appellant being Junior Pharmacy Technician (Health Department) falls under the same and fully entitled for the relief of Advanced Increments of M.A (six) & B.A (four) along with back benefits as claimed by him.
- g) That the case of appellant is the same nature in number of Increments in pursuance of Para 5 (i) of Notification, which was decided by Supreme Court of Pakistan on 19/07/2007 passed in CPLA Nos 525,526 and 590 of 2007 (Annexure D & E).
- h) That under the law appellant's case is quite Clear after the Judgment passed in CPLA No 525,526 and 590 of 2007 by Supreme Court, and refusal/dismissal of appellant's representation is illegal, without jurisdiction and unconstitutional.
- i) That there is now no dispute available in the case of appellant as Honorable Supreme Court of Pakistan has decided all the disputed matters involved in the instant appeal on 19/07/2007. (CPLA No 525,526 & 590 of 2007)
- j) That appellant's service appeal is maintainable and appellant's post was/is Dispenser/ Junior Pharmacy Technician and prescribed qualification of the said post was Matric and appellant is now working in BPS # 09 against Junior Pharmacy Technician post and Instant Case falls under Para 5(1) (b) of the Circular dated 11/08/1991 (Annexure B)

⁰⁵ It is there fore respectfully prayed that while setting aside impugned order dated 23/04/2008 approved/issued by respondent no 01, and appellant's appeal may kindly be accepted and 4 advance increments of BA instead of 02 and 06 advance increments of M.A instead of 02 w.e.f. 01/06/1991, along with all back benefits may graciously be granted to the appellant in the interest of justice.

*Accepted
by
awar*

Muhammad Fayaz Awan
(Muhammad Fayaz Awan)
Appellant in person

Affidavit

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

R.O.A.C.
Muhammad Fayaz Awan
20/05/08

Muhammad Fayaz Awan
(Muhammad Fayaz Awan)
DEPONENT

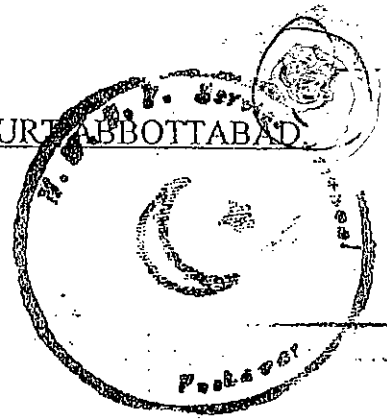
ANNEXURE - (B)

(7)

BEFORE THE NWFP SERVICE TRIBUNAL, CAMP COURT ABBOTTABAD

E. P. No. 147/14

Appeal No. 1276/2007



Date of institution - 27.12.2007

Date of decision - 12.05.2009

Muhammad Akram, S/O Sikandar Khan, C.T. Teacher, Government High School, Kuthwal, Abbottabad.....(Appellant)

VERSUS

- 1. District Coordination Officer, Abbottabad.
- 2. Executive District officer (S &L) Abbottabad.
- 3. District Accounts Officer, Abbottabad.
- 4. Director (S&L) Department, Peshawar.
- 5. Secretary to Government of NWFP (S&L) Department Peshawar.
- 6. Accountant General NWFP Peshawar.
- 7. Secretary to Government of NWFP Finance Department, Peshawar.

Appellant in person present.

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

MR. ABDUL JALIL.....MEMBER.

MR. BISMILLAH SHAH.....MEMBER.

*Attested
Arshad Alam*

*Attested
Arshad Alam*

JUDGMENT.

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

| <u>Sr. No.</u> | <u>Appeal No.</u> | <u>Name of appellant.</u> |
|----------------|-------------------|---------------------------|
| 1. | 1277/2007 | Saidur Rahman, |
| 2. | 1278/2007 | Munibur Rahman, |
| 3. | 1279/2007 | Muharamad Siddique, |
| | 01/2008 | Maroof Khan |
| | 02/2003 | Amjad Hussain Awan |

EXAMINER
NWFP SERVICE TRIBUNAL
Peshawar
ATTESTED

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

Attended

Asghar



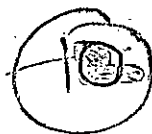
- 42. 595/2008 Abdur Razzaq,
- 43. 596/2008 Abdur Razzaq,
- 44. 597/2008 Shaukat Ali Abbasi,
- 45. 598/2008 Abdul Hamid Lodhi,
- 46. 599/2008 Umar Khatab,
- 47. 680/2008 Abdul Majid
- 48. 681/2008 Muhammad Saleem,
- 49. 682/2008 Bashir Ahmad,
- 50. 714/2008 Mazhar Khan,
- 51. 715/2008 Muhammad Saeed,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

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Attested
by
Awan

EXAMINER
NWFP SERVICE TRIBUNAL
PESHAWAR

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

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

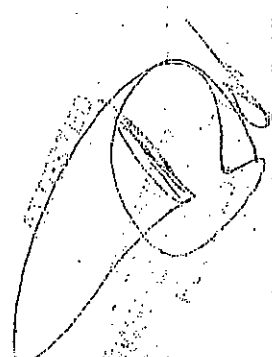
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150. 1428/2008 Mahmood Ali,
 151. 1429/2008 Bibi Rizwana,
 152. 1430/2008 Kousar Shahcen,
 153. 1441/2008 Amanullah,
 154. 1442/2008 Gul Khitab Ahmad Turk,
 155. 1443/2008 Muhammad Saeed,
 156. 1444/2008 Muhammad Aslam,
 157. 1445/2008 Mubashar Hassan,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

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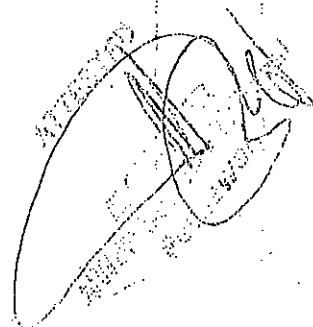
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186. 1702/2008 Muhammad Ajmal,
 187. 1703/2008 Muhammad Anwar Adil,
 188. 1704/2008 Syed Abbas Ali Shah,
 189. 1746/2008 Tanveer Ahmad,
 190. 1747/2008, Aurangzeb,
 191. 1748/2008 Rasheed Ahmad,
 192. 1749/2008 Muhammad Daud,
 193. 1750/2008 Sajjad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

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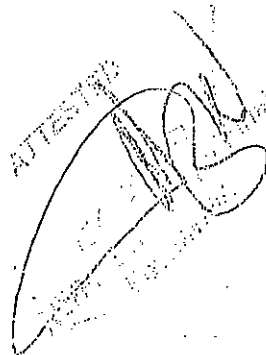
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| 221. | 229/2009 | Nasir Ali, |
| 222. | 230/2009 | Ali Nawaz, |
| 223. | 231/2009 | Wajid Hussain, |
| 224. | 232/2009 | Waheed Khan, |
| 225. | 233/2009 | Muhammad Saleem, |
| 226. | 234/2009 | Mujtaba Ahmad Hashmi, |
| 227. | 235/2009 | Khalid Muhammad, |
| 228. | 246/2009 | Abid Saeed Khan, |
| 229. | 237/2009 | Imran Jalani, |
| 230. | 238/2009 | Asif Awan, |
| 231. | 239/2009 | Aurangzeb |
| 232. | 240/2009 | Khalid Mahmood, |
| 233. | 241/2009 | Muhammad Naeem, |
| 234. | 242/2009 | Khurshid Qamar, |
| 235. | 243/2009 | Nawazish Hussain |
| 236. | 244/2009 | Syed Zafar Ali Shah, |
| 237. | 245/2009 | Muhammad Ishaq, |
| 238. | 246/2009 | Muhammad Pervez, |
| 239. | 247/2009 | Masroor Hussain |
| 240. | 248/2009 | Muhammad Sadique |
| 241. | 249/2009 | Muhammad Younas |
| 242. | 250/2009 | Muhammad Imtiaz |
| 243. | 251/2009 | Maqbool Shah |
| 244. | 252/2009 | Moazzam Khan |
| 245. | 414/2009 | Tahir Usman |
| 246. | 415/2009 | Mir Muhammad |
| 247. | 416/2009 | Naheem Kausar |
| 248. | 246/2009 | Khalida Bibi |
| 249. | 418/2009 | Abida Bibi |
| 250. | 419/2009 | Azim Shah |
| 251. | 433/2009 | Ghazala Bibi |
| 252. | 434/2009 | Riaz Khan |
| 253. | 500/2009 | Muntaz Khan |
| 254. | 501/2009 | Lal Afsar |
| 255. | 502/2009 | Badri Zaman |
| 256. | 503/2009 | Liaqat |

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

15

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

Attested
H. H. Khan

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

4. We heard the arguments and perused the record.

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H. H. Khan

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

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

EXAMINER
NWFP Services Tribunal
Peshawar

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

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

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

EXAMINER
NWFP Service Tribunal
Peshawar

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

"The learned Addl. A.G. has given an undertaking for implementation of the judgment of this Court within a period of two weeks and in view thereof, this criminal original is disposed of with the direction that the



judgment should be implemented in letter and spirit within two weeks under intimation to the Registrar of this Court."

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

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

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

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ANNOUNCED.
12.05.2009.

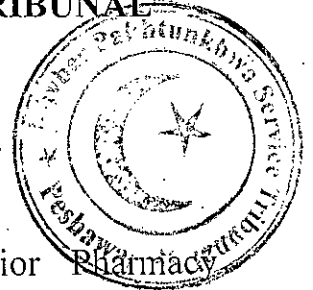
sd-
(BISMILLAH SHAH)
MEMBER.

sd-
(ABDUL JALIL)
MEMBER.
CAMP COURT ABBOTTABAD.

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| Organ | 24/- |
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| Date of delivery of copy | 13/7/09 |

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BEFORE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR.



Service Appeal No: 582 of 2014

Muhammad Fayaz Awan S/O Muhammad Urfan, Junior Pharmacist
Technician, Ayub Teaching Hospital, Abbottabad. R/O: House No K:
240/10, Kunj Jadeed, Abbottabad.

Versus

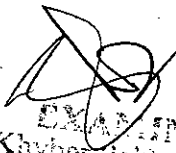
~~_____~~ Appellant
548
10-4-14

- 1 Government of Khyber Pakhtunkhwa through Secretary Finance Department Peshawar.
- 2 Government of Khyber Pakhtunkhwa through Secretary Health Department, Peshawar.
- 3 Director General, Health & Services Khyber Pakhtunkhwa, Peshawar.
- 4 Chief Executive, Ayub Medical Complex, Abbottabad.
- 5 Medical Superintendent, Ayub Teaching Hospital, Abbottabad.
- 6 Director Finance, Ayub Teaching Hospital, Abbottabad.

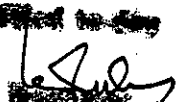
Respondents

SERVICE APPEAL IS BEING FILED WITH OUT DEPARTMENTAL APPEAL WHICH IS IMPOSSIBLE IN THE CIRCUMSTANCES OF THE CASE AND THE SAME LAW POINT IS ALSO DECIDED BY THE PESHAWAR HIGH COURT, ABBOTTABAD BENCH IN WRIT PETITION NO 159-A OF 2014, FILED BY APPELLANT AND OTHERS AGAINST THE IMPUGNED ACT.


ATTESTED


EXAMINER
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

APPEAL UNDER SECTION 4 OF KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT 1974, AGAINST THE IMPUGNED "KHYBER PAKHTUNKHWA ACT NO. IX of 2012" (KHYBER PAKHTUNKHWA CESSATION OF PAYMENT OF ARREARS ON ADVANCE INCREMENTS ON HIGHER EDUCATIONAL QUALIFICATION ACT, 2012) WHICH IS UNCONSTITUTIONAL, WITHOUT LAWFUL AUTHORITY, ARBITRARY, PERVERSE, DISCREMINATORY' AGAINST THE PRINCIPAL OF NATURAL


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re-submitted to the
and filed.


24/4/14

JUSTICE AND INEFFECTIVE UPON THE APPELLANT'S RIGHTS OF ADVANCE INCREMENTS, GRANTED IN SERVICE APPEAL NO 760 OF 2008 ACCEPTED BY KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PASSED ON 12/05/2009 ALONG WITH ALL BACK BENEFITS WITH EFFECT FROM HIS RELEVANT DATE OF CLAIM.

PRAYER:-

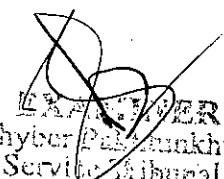
ON ACCEPTANCE OF THE INSTANT SERVICE APPEAL, DECLARED THE SAID ACT (KHYBER PAKHTUNKHWA ACT NO.IX of 2012) AS ILLEGAL UNCONSTITUTIONAL INEFFECTIVE UPON THE APPELLANT'S RIGHTS OF ADVANCE INCREMENTS AND RESPONDENTS BE GRACIOUSLY DIRECTED TO GRANT RELEVANT ADVANCE INCREMENTS (ALREADY DECIDED ON 12/05/2009) TO THE APPELLANT WITH EFFECT FROM THEIR RELEVANT DATES OF CLAIMS WITH ALL BACK BENEFITS.

Respectfully Sheweth,

FACTS

- 1) That appellant being junior pharmacy Technician was granted advance Increments on his higher qualification (six advance Increments of MA/MSc instead of two and four advance Increments of BA/BSc instead of two) on the basis of acceptance of his individual Service Appeal by this Honourable Service Tribunal and passed a consolidated judgment on 12/05/2009 at Camp Court Abbottabad. Copy of service appeal and relevant pages of Judgment is annexed as "Annexure "A" & "B"".
- 2) That when respondents' after passing long time' did not implement the existing judgment of Service Tribunal, appellant filed execution petition before this Tribunal, but 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) was promulgated/published by the respondents. Copy of Act no IX is annexed as Annexure "C".

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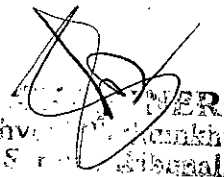

KHYBER
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

- 3) That appellant withdrew his execution petition with the reason, to challenge the vires of impugned Act through Constitution Petition (Writ Petition) before Peshawar High Court. Copy of Service Tribunal Order passed in execution Petition is annexed as Annexure "D".
- 4) That appellant and others challenged the vires of impugned Act through the Writ petition before Peshawar High Court Abbottabad Bench, which was decided/disposed of with the law relating to jurisdictional matters in the prevailing issue, and High Court held that remedy by way of service appeal before the Service Tribunal is available to the appellant against the impugned Act. Copy of High Court Order is annexed as Annexure "E"
- 5) That in pursuance of law as decided by High Court in appellant's Writ Petition, the instant service appeal is being filed with out departmental appeal, as under the law, it is not possible because the is no appellate departmental authority available, above the Governor KPK who is the promulgating/issuing final authority of impugned Act, Hence this Service appeal inter alia on the following Grounds.

Grounds

- a) That it is undoubted fact that respondents illegally snatched the legal rights of the appellant in an uncivilized way in a very haste manner, which is against the equity and there is no single example is available in the civilized society.
- b) That it is admittedly proved that Service Tribunal passed its judgment on 12/05/2009 and respondents did not implement it after passing long period of 04 years, moreover Service Tribunal accepted the 267 service appeals through said single judgment dated 12/05/2009, while 90 % of cases has already been implemented, thus gross

ATTESTED


 MEMBER
 Khwaja Muhammad Khwaja
 Service Tribunal,
 Peshawar

discriminatory treatment is involved in the case of appellant and the said Act is against Article 25 of the Constitution.

- c) That the action of respondents is admittedly arbitrary capricious unjust and against all norms of justice and against Tribunal Judgment and order as well as constitution of Pakistan.
- d) That impugned Act (Khyber Pakhtunkhwa Act No IX) is admittedly against the Article 25 of the Constitution as well as Constitution it self, according to said Act advance increments taken before issuance of Act (15/05/2012) would be legal, correct and valid but the same rights of advance increments (execution Petitions) would stand abated as per impugned Act, Such kind of target date of any Act/Notification /Memorandum/letter is not only illegal, against law but also against the Constitutional rights of the petitioners and in this respect the Learned larger bench of Supreme Court decided the same matters in (1991 SCMR 1041) (relevant at para 33 page 1092) thus liable to be declared illegal.
- e) That under the law provincial assembly has no power to change the nature of constitutional rights/Article nor pass any Act which is against to any Article of Constitution and the impugned Act cannot be passed in the presence of Article 25 of the Constitution.
- f) That Constitution cannot allow pick and choose types of colourful activities between the citizens thus impugned Act is unconstitutional.
- g) That it is an admitted fact that under question Act is the matter of great public importance.
- h) That appellant, who is once again dragged into litigation, that his grievances have been solved completely by this Honourable Tribunal by accepting his service appeal on 12/05/2009, but respondents published an illegal impugned Act, thus the conduct of the respondents is uncivilized in the civilized society and as such requires

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 Khyber Pakhtunkhwa
 Service Tribunal,
 Peshawar

indulgence of this Honourable Tribunal by awarding appropriate punishment to the respondents

It is, therefore, respectfully prayed that on acceptance of the instant Service appeal, this Honourable Tribunal may please be declared the said Act (Khyber Pakhtunkhwa Act No. IX of 2012) as illegal unconstitutional and respondents be graciously directed to grant advance increments of (B.A/B.Sc & M.A/M.Sc) to the appellant with effect from his relevant dates of claims, decided in service appeal no 760 of 2008, with all back benefits in the interest of natural justice.

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 05/04/2014

Muhammad Fayaz Awan
(Muhammad Fayaz Awan)
Appellant in person

Affidavit

I, Muhammad Fayaz Awan S/O Muhammad Urfan, Junior Pharmacy Technician, Ayub Teaching Hospital, Abbottabad. R/O: House No K: 240/10, Kunj Jadeed, 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 05/04/2014

Muhammad Fayaz Awan
(Muhammad Fayaz Awan)
Appellant in person
DEPONENT

5-4-2014
ATTESTED
Sardar Maghool-ur-Rehman Advocate
Dati Commissionner
Abbottabad
Date: 05/04/2014
L.No: 14709
E.No: 14709
Peshawar
true copy

BEFORE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR.

Service Appeal No: 582 of 2014



Muhammad Fayaz Awan S/O Muhammad Urfan, Junior Pharmacy Technician, Ayub Teaching Hospital, Abbottabad. R/O: House No K: 240/10, Kunj Jadeed, Abbottabad

Appellant

Versus

Government of Khyber Pakhtunkhwa through Secretary Finance Department Peshawar and 05 Other.

Respondents

APPLICATION FOR WITHDRAWAL OF INSTANT SERVICE APPEAL WITH PERMISSION TO BRING FRESH IMPLEMENTATION PETITION FOR IMPLEMENTATION OF JUDGMENT DATED 12/05/2009 PASSED BY THIS TRIBUNAL (CAMP COURT ABBOTTABAD).

Respectfully Sheweth,

- 1) That appellant's service appeal relating to advance Increments on his higher qualification was accepted by this Honourable Service Tribunal on 12/05/2009 at Camp Court Abbottabad, during its implementation petition, 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) was promulgated/published by the respondents.
- 2) That appellant withdrew his previous execution petition, and challenged the vires of impugned Act through instant service appeal, during its pendency, the involved matter in the titled service appeal has been solved and settled through writ petition, as Peshawar High Court has finally declared the said Act as null and void and accepted the rights of appellant.
- 3) That in the prevailing situation there is no need to continue the matters in the titled service appeal and appellant wants to withdraw it with permission to file fresh execution petition under the law.

It is therefore humbly prayed that this application for withdrawal of service appeal with permission to bring fresh execution petition may graciously be accepted in the interest of justice.

Dated 21/03/2018

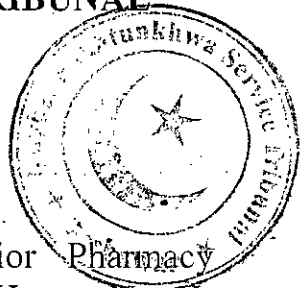
Certified to be true copy

Muhammad Fayaz Awan
(Muhammad Fayaz Awan)
Appellant Inperson

Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

**BEFORE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR.**

Service Appeal No: 582 of 2014



Muhammad Fayaz Awan S/O Muhammad Urfan, Junior Pharmacy Technician, Ayub Teaching Hospital, Abbottabad. R/O: House No K: 240/10, Kunj Jadeed, Abbottabad.

~~Signature~~ Appellant
582
10-4-14

Versus

- 1 Government of Khyber Pakhtunkhwa through Secretary Finance Department Peshawar.
- 2 Government of Khyber Pakhtunkhwa through Secretary Health Department, Peshawar.
- 3 Director General, Health & Services Khyber Pakhtunkhwa, Peshawar.
- 4 Chief Executive, Ayub Medical Complex, Abbottabad.
- 5 Medical Superintendent, Ayub Teaching Hospital, Abbottabad.
- 6 Director Finance, Ayub Teaching Hospital, Abbottabad.

Respondents

SERVICE APPEAL IS BEING FILED WITH OUT DEPARTMENTAL APPEAL WHICH IS IMPOSSIBLE IN THE CIRCUMSTANCES OF THE CASE AND THE SAME LAW POINT IS ALSO DECIDED BY THE PESHAWAR HIGH COURT, ABBOTTABAD BENCH IN WRIT PETITION NO 159-A OF 2014, FILED BY APPELLANT AND OTHERS AGAINST THE IMPUGNED ACT.

ATTESTED

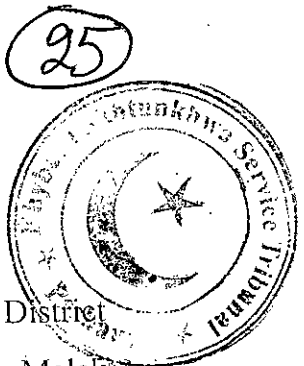
EXAMINER
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

APPEAL UNDER SECTION 4 OF KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT 1974, AGAINST THE IMPUGNED "KHYBER PAKHTUNKHWA ACT NO. IX of 2012" (KHYBER PAKHTUNKHWA CESSATION OF PAYMENT OF ARREARS ON ADVANCE INCREMENTS ON HIGHER EDUCATIONAL QUALIFICATION ACT, 2012) WHICH IS UNCONSTITUTIONAL, WITHOUT LAWFUL AUTHORITY, ARBITRARY, PERVERSE, DISCREMINATORY' AGAINST THE PRINCIPAL OF NATURAL

10/4/14

re-submitted to the
and filed.

24/4/14



582/14

21.03.2018

Appellant present in person and Mr. Usman Ghani, District Attorney alongwith Saquib Shahzad, Assistant and Malak Muhammad Haroon, AAO for the respondents present.

The appellant submitted an application for withdrawal of the present service appeal with permission to submit fresh implementation petition for implementation of the judgment dated 12.05.2009 passed by this Tribunal.

The learned District Attorney objected to that part of this application in which the appellants seeks permission for implementation of the judgment of this Tribunal, inter-alia, on the grounds of limitation and resjudicata. In this appeal, the appellant has challenged the vires of Act No. IX of 2012 and that vires to the extent of retrospectivity has been decided by the Worthy Peshawar High Court in Writ Petition No. 913-P/2014, decided on 08.6.2017. According to the appellant after that judgment his grievance has been redressed and he can file a fresh application for the execution of the judgment of 2009 which was not executed due to that Act.

Since a question of law is involved which can be determined by the executing court only. However, this Bench has no objection on filing of execution petition subject to all legal and factual exceptions.

Consequently, the present appeal is dismissed as withdrawn. The appellant can seek all his legal rights available to him under the law. File be consigned to the record room.

Announced
21.03.2018

Sd/- Chairman,
Camp Court A/Abad
Sd/- Member.

Certified to be true copy

[Signature]
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

Date of Presentation of Application *05-04-18*

Number of Words *6800*

Copying Fee *6800*

Urgent *2*

Total *6800*

Name of Clerk *[Signature]*

05-04-18

05-04-18

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

Execution Petition No: 147 of 2018

Muhammad Fayyaz Awan Versus Hospital Director etc.

PARAWISE REPLY OF EXECUTION PETITION ON BEHALF OF RESPONDENTS NO 1 TO 3

10/9

PRELIMINARY OBJECTION:

1. That the petitioner has no cause of action against the answering respondents.
2. That the petitioner has no locus standi against the answering respondents.
3. That the petition is bad for ~~bad~~ mis-joinder of necessary parties.

FACTS:

1. That Para No.1 needs no reply.
2. That Para No.2 is not related with answering respondents.
3. That Para No.3 needs no reply.
4. That Para No.4 is correct.

That prayer of the petition is not related to the answering respondents being Performa respondents hence may graciously be dismissed with cost.

Respondents 1 to 3

Through:-


(SARDAR JAN-E-ALAM)
Advocate High Court, Abbottabad.

Dated: 19/09/2019

VERIFICATION:-

Verified that the contents of foregoing reply are true and correct to the best of my knowledge and belief and that nothing has been concealed from this Hon'ble Tribunal.

Dated:-19/09/2019

...Respondents 1 to 3

AYUB TEACHING HOSPITAL ABBOTTABADAbbottabad the 19-11 2019

To

The Secretary to govt of Khyber Pakhtunkhawa,
Health department,
Peshawar.

Subject:- IMPLEMENTATION OF JUDGMENT DATED 12-5-2009 OF KHYBER PAKHTUNKHWA SERVICE TRIBUNAL IN SERVICE APPEAL NO. 582/2014 TITLED MUHAMMAD FAYYAZ AWAN PHARMACY TECHNICIAN, MTI ATH, ABBOTTABAD VERSUS SECRETARY TO GOVT OF K.P.K HEALTH DEPARTMENT AND OTHERS.

Reference Section officer (Lit-ii)/FD/2-1541/2014 dated 24-09-2019 on the subject mentioned above.

Enclosed please find herewith a copy of execution petition No. 147/18 in service appeal No.582/14 received from Section Officer (Lit-ii) vide No. SO(Lit-ii)FD/2-1541/2014 dated 24-09-2019.

The factual position of the case has already been sent to your office vide this office letter No. ATH/M.S/2010/8480-81 dated 5-7-2010. (copy of the same is sent herewith again for necessary action.

Mr. Mohammed Fayaz Awan was appointed in Health department on 03-10-1985 as compounder at District Headquarter Hospital, Abbottabad and was transferred to Ayub Teaching Hospital Abbottabad by the Director General Health, Peshawar on 19-11-2001 and was adjusted against the post of Dispenser.

As per service book record he was granted 03 advance increments on higher qualification i.e. one each on F.A. & B.A. & M.A. (Sr.No.01 of service book page No.01 attached) as prescribed qualification for the post of Dispenser was Matric. On increasing the number of increments by one more in the pay revision scheme, 1991, (Sr. No.02) and the official was granted two more advance increments of F.A. and B.A. (Sr.No.03 of service book record attached) Thus he was granted total 06 advance increments on higher qualification then prescribed qualification.

The official had filed a suit in the service tribunal for grant of 06 increments of MA instead of 02 (already granted). And 04 advance increments instead of 02 already given with back benefits as per Finance deptt: letter No.FD PRC 1-1/89 dated 11/08/1991 and the honorable court when deciding cases of advance increments of teachers of education department included his name in Sr. No. 57 treating it as same case with the case filed by the said teachers.

--2--

As the case filed by petitioner is for grant of 12 increments i.e of 02 on F.A. 04 on B.A. and 06 on M.A. qualification which has been included and decided with cases of other nature.

Your advice in the matter is requested as the decision of court if implemented in the said case would challenge the government policy i.e. Pay Revision Scheme, 1991 and in case of implementation the pays fixed on higher educational increments granted in respect of all employees in the province will have to be revised and further payments on this account are to be made.

Priority is requested being court matter.

[Handwritten signature]
19.11.19

MEDICAL DIRECTOR
AYUB TEACHING INSTITUTION
ABBOTTABAD *[Handwritten initials]*
18/11/19

Copy to:-

1. The Director General Khyber Pakhtunkhwa Health service Peshawar.
2. Litigation Officer Ayub Teaching Hospital Abbottabad for information and n/action.
3. The Secretary to Govt of K.P. (^{Finance} ~~Health~~ deptt) Peshawar.

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

No. 2060 /ST

Dated 26 / 11 / 2019

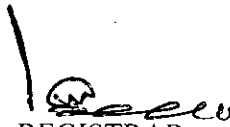
To

The Secretary Health Department,
Government of Khyber Pakhtunkhwa,
Peshawar.

SUBJECT: - **ORDER IN EXECUTION PETITION NO. 147/2018, MR. MUHAMMAD FAYAZ AWAN.**

I am directed to forward herewith a certified copy of order dated 21.11.2019 passed by this Tribunal on the above subject for strict compliance.

Encl: As above


REGISTRAR
KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL
PESHAWAR.