

06.07.2020

Counsel for the appellant present.

1. At the outset learned counsel referred to copy of order dated 11.11.2019 passed in Appeal No. 1452/2019 and requested for disposal of instant appeal also in terms of the order.
2. It shall be useful for the purpose to reproduce hereunder the contents of referred order dated 11.11.2019:-

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

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

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

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

3. As a disgruntled, the appellant appears to be placed similar to a number of petitioners in Writ Petition No.3162-P/2019 and other connected matters decided by the Hon'ble Peshawar High Court. Under the principle of consistency, it would, therefore, be appropriate to dispose of the appeal in hand in accordance with the order dated 11.11.2019 passed in Service Appeal No.1452. Disposed of similarly. File be consigned to the record room.

ANNOUNCED
06.07.2020

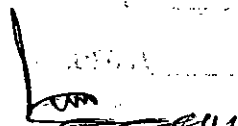



Member (J)

Form- A

FORM OF ORDER SHEET

Court of _____

Case No. 1291 /2020

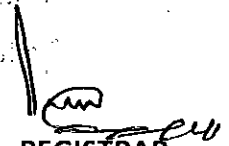
S.No.	Date of order Proceedings	Order or other proceedings with signature of judge or Magistrate
1	2	3
1	04.03.2020	<p>The present appeal submitted today by Mr. Muhammad Daud Khan Barki Advocate, may be entered in the institution register and put up to the Learned Member for proper order please.</p> <p style="text-align: right;"> REGISTRAR</p>
2	06/03/20	<p>This case is entrusted to S. Bench for preliminary hearing to be put up there on 26.03.2020.</p> <p style="text-align: right;"> MEMBER</p>
26.03.2020		<p>Due to public holiday on account of COVID-19, the case is adjourned to 06.07.2020 for the same. To come up for the same as before S.B.</p> <p style="text-align: right;"> Reader</p>

The appeal of Mr. Muhammad Fazil SPST GHSS Zahir Abad Peshawar received today i.e. on 25.02.2020 is incomplete on the following score which is returned to the counsel for the appellant for completion and resubmission within 15 days:

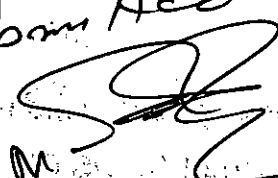
- 1- Memorandum of appeal may be got signed by the appellant.
- 2- Annexures of the appeal may be attested.
- 3- Index of the appeal is not according to the documents which may be prepared according to the Khyber Pakhtunkhwa Service Tribunal rules 1974.
- 4- Approved file cover is not used.
- ⑤ Seven more copies/sets of the appeal along with annexures i.e. complete in all respect may also be submitted with the appeal

No. 485 /S.T,

Dt: 26.02 /2020.


REGISTRAR
SERVICE TRIBUNAL
KHYBER PAKHTUNKHWA
PESHAWAR.

Mr. Muhammad Daud Barki Adv. Pesh.

Re Suban Had


BEFORE THE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL,
PESHAWAR

Appeal No. 1291 /2020

Muhammad Fazil

Vs

Education Department

INDEX

S.No	Description of Documents	Annex	Pages
1.	Memo of appeal		1-4
2.	Notification	A	5
3.	Pay Slips	B-C	6-7
4.	Departmental appeal	D	8
5.	Judgment of the High Court	E	9-15
6.	Service Tribunal judgment	F	16-17
7.	Vakalat Nama		18

Through Appellant

Dated: ___/___/2020


Mohammad Daud Khan Barki
Advocate High Court, Peshawar
Cell: 0300-5985044

Note:

Spare copies will be submitted after the admission of the case.

M


①

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

APPEAL NO. 1291 /2020

Khyber Pakhtunkhwa
Service Tribunal

1. Mr. Muhammad Fazil, S.P.S.T. (BPS-14),
Govt. Higher Secondary School Zahir Abad, Peshawar

Registry No. 1332

Date 25/2/2020

.....**APPELLANT**

VERSUS

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

.....**RESPONDENTS**

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

Filed to-day

Registrar

25/2/20

PRAYER:

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

R/SHEWETH:
ON FACTS:

- 1- That the appellants are serving in the Elementary & Secondary Education Department quite efficiently and up to the entire satisfaction of their superiors.
- 2- That the Conveyance Allowance is admissible to all the Civil Servants and to this effect a Notification No. FD (PRC)1-1/2011 dated 14.07.2011 was issued. That later on vide revised Notification dated 20.12.2012 whereby the conveyance allowance for employees working in BPS 1 to 15 were enhance/revised while employees from BPS- 16 to 19 have been treated under the previous Notification by not enhancing their conveyance allowance. Copy of the Notification dated 20.12.2012 are attached as annexure..... **A.**
- 3- That appellants were receiving the conveyance allowances as admissible under the law and rules but the respondents without any valid and justifiable reasons stopped/deducted the payment of conveyance allowance under the wrong and illegal pretext that the same is not allowed for the leave period. Copies of the Salary Slips of working/serving month and vacations (deduction period) are attached as annexure.....**B & C.**
- 4- That appellant feeling aggrieved from the action of the respondents regarding deduction of conveyance allowance in vacations period/months filed Departmental appeal but no reply has been received so far. That feeling aggrieved the appellants along with his other colleagues filed Writ Petition No. 3162-P/2019 before the Peshawar High Court, Peshawar which was disposed of vide judgment dated 01.10.2019 with the directions to approach the proper forum i.e. Service Tribunal. Copies of the Departmental appeal & judgment is attached as annexure.....**D & E.**
- 5- That some of colleagues of the appellants approached to this august Tribunal in different service appeal which was allowed by this august Tribunal vide its judgment dated 11.11.2019. Copy of the judgment is attached as annexure.....**F.**
- 6- That where after the appellant waited for the statutory period of ninety days but no reply has been received from the respondents. That appellant feeling aggrieved and having no other remedy filed the instant service appeal on the following grounds amongst the others.

GROUND:

- A- That the action and inaction of the respondents regarding deduction of conveyance allowance for vacations period/months is illegal, against the law, facts, norms of natural justice.

- B- That the appellants have not been treated by the respondent Department in accordance with law and rules on the subject noted above and as such the respondents violated Article 4 and 25 of the constitution of Islamic Republic of Pakistan 1973.
- C- That the action of the respondents is without any legal authority, discriminatory and in clear violation of fundamental rights duly conferred by the Constitution and is liable to be declared as null and void.
- D- That there is clear difference between leave and vacation as leave is applied by the Civil Servant in light Government Servant Revised Leave Rules, 1981 while the vacations are always announced by the Government, therefore under the law and Rules the appellant fully entitled for the grant of conveyance allowance during vacations period.
- E- That the Government Servants Revised Leave Rules, 1981 clearly explain that the civil servants who avail the vacations are allowed only one leave in a month whereas, the other civil servants may avail 04 days leave in a calendar months and the same are credited to his account and in this way he may avail 48 days earned leave with full pay, whereas the Government servants to avail vacation such as appellant is allowed one day leave in a month and twelve (12) days in a year and earned leave for twelve days in a year are credited to his account and there is no question of deduction of conveyance allowance for vacation period, the respondents while making the deduction of conveyance allowance lost sight of this legal aspects and illegally and without any authority started the recovery and deduction of conveyance allowance from appellant.
- F- That as the act of the respondents is illegal, unconstitutional, without any legal authority and not only discriminatory but is also the result of malafide on the part of respondents.
- G- That appellant has the vested right of equal treatment before law and the act of the respondents to deprive the petitioners from the conveyance/allowance is unconstitutional and clear violation of fundamental rights.
- H- That according to Government Servants Revised leave Rules, 1981 vacations are holidays and not leave of any kind, therefore, the deduction of conveyance allowance in vacations is against the law and rules.
- I- That according to Article 38 (e) of the Constitution of Islamic Republic of Pakistan, 1973 the state is bound to reduce disparity in the income and earning of individuals including persons in the services of the federation, therefore in light of the said Article the

4

appellant fully entitle for the grant of conveyance allowance during vacations.

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

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

M. Fazil

APPELLANT

Muhammad Fazil

THROUGH:

M. Daud Khan Barki

**MOHAMMAD DAUD KHAN BARKI
ADVOCATE HIGH COURT, PESHAWAR
Mobile No. 0300-5985044**

Aw. A-5



GOVERNMENT OF KHYBER PAKHTUNKHWA
FINANCE DEPARTMENT
(REGULATION WING)

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

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

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

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

Dear Sir,

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

S.NO	BPS	EXISTING RATE (PM)	REVISED RATE (PM)
1.	1-4	Rs. 1,500/-	Rs. 1,700/-
2.	5-10	Rs. 1,500/-	Rs. 1,840/-
3.	11-15	Rs. 2,000/-	Rs. 2,720/-
4.	16-19	Rs. 5,000/-	Rs. 5,000/-

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

A. H. Siddiqui
Secretary
ADVOCACY
Peshawar

Yours Faithfully

Sahibzada Saad Ahmad
Secretary Finance

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

Dated Peshawar the 20th December, 2012

A Copy is forwarded for information to the:

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

Intiaz Ayubi
(INTIAZ AYUBI)
Additional Secretary (Reg)

Dist. Govt. NWFP-Provincial
District Accounts Office Peshawar Dist.
Monthly Salary Statement (August-2019)

A n a B
6



Personal Information of Mr MUHAMMAD FAZIL d/w/s of MOLVI ABDUL WAKEEL

Personnel Number: 00049534 CNIC: 13878565984 NTN: 0
Date of Birth: 02.03.1978 Entry into Govt. Service: 17.02.2000 Length of Service: 19 Years 06 Months 016 Days

Employment Category: Active Temporary

Designation: SENIOR PRIMARY SCHOOL TEA 80642235-DISTRICT GOVERNMENT KHYBE

DDO Code: PW6568-District Peshawar

Payroll Section: 003 GPF Section: 001 Cash Center: 15

GPF A/C No: EDU 046160 Interest Applied: Yes GPF Balance: 385,559.00

Vendor Number: -

Pay and Allowances: Pay scale: BPS For - 2017 Pay Scale Type: Civil - BPS: 14 Pay Stage: 15

Wage type		Amount	Wage type		Amount
0001	Basic Pay	32,730.00	1000	House Rent Allowance	2,214.00
1300	Medical Allowance	1,500.00	2148	15% Adhoc Relief All-2013	700.00
2199	Adhoc Relief Allow @10%	470.00	2211	Adhoc Relief All 2016 10%	2,540.00
2224	Adhoc Relief All 2017 10%	3,273.00	2247	Adhoc Relief All 2018 10%	3,273.00
2264	Adhoc Relief All 2019 10%	3,273.00			0.00

Deductions - General

Wage type		Amount	Wage type		Amount
3014	GPF Subscription	-2,620.00	3501	Benevolent Fund	-600.00
3990	Emp.Edu. Fund KPK	-125.00	4004	R. Benefits & Death Comp:	-1,052.00

Deductions - Loans and Advances

Loan	Description	Principal amount	Deduction	Balance

Deductions - Income Tax

Payable: 0.00 Recovered till AUG-2019: 0.00 Exempted: 0.00 Recoverable: 0.00

Gross Pay (Rs.): 49,973.00 Deductions: (Rs.): -4,397.00 Net Pay: (Rs.): 45,576.00

Payee Name: MUHAMMAD FAZIL

Account Number: 7900029403

Bank Details: HABIB BANK LIMITED, 220223 CITY BRANCH, PESHAWAR. CITY BRANCH, PESHAWAR., PESHAWAR

Leaves: Opening Balance: Aailed: Earned: Balance:

Permanent Address: PESH

City: Peshawar

Domicile: NW - Khyber Pakhtunkhwa

Housing Status: No Official

Temp. Address:

City:

Email: mfazil88896@gmail.com

Mohammad Dawood Barki
ADVOCATE
Peshawar High Court
Peshawar

Annex
7

Dist. Govt. NWFP-Provincial
District Accounts Office Peshawar Dist.
Monthly Salary Statement (September-2019)



Personal Information of Mr MUHAMMAD FAZIL d/w/s of MOLVI ABDUL WAKEEL

Personnel Number: 00049534 CNIC: 13878565984 NTN: 0
Date of Birth: 02.03.1978 Entry into Govt. Service: 17.02.2000 Length of Service: 19 Years 07 Months 015 Days

Employment Category: Active Temporary

Designation: SENIOR PRIMARY SCHOOL TEA 80642235-DISTRICT GOVERNMENT KHYBE

DDO Code: PW6568-District Peshawar

Payroll Section: 003 GPF Section: 001 Cash Center: 15

GPF A/C No: EDU 046160 Interest Applied: Yes GPF Balance: 388,179.00

Vendor Number: -

Pay and Allowances: Pay scale: BPS For - 2017 Pay Scale Type: Civil BPS: 14 Pay Stage: 15

Wage type		Amount	Wage type		Amount
0001	Basic Pay	32,730.00	1000	House Rent Allowance	2,214.00
1210	Convey Allowance 2005	2,856.00	1300	Medical Allowance	1,500.00
2148	15% Adhoc Relief All-2013	700.00	2199	Adhoc Relief Allow @10%	470.00
2211	Adhoc Relief All 2016 10%	2,540.00	2224	Adhoc Relief All 2017 10%	3,273.00
2247	Adhoc Relief All 2018 10%	3,273.00	2264	Adhoc Relief All 2019 10%	3,273.00

Deductions - General

Wage type		Amount	Wage type		Amount
3014	GPF Subscription	-2,620.00	3501	Benevolent Fund	-600.00
3609	Income Tax	-85.00	3990	Emp.Edu. Fund KPK	-125.00
4004	R. Benefits & Death Comp:	-600.00			0.00

Deductions - Loans and Advances

Loan	Description	Principal amount	Deduction	Balance
------	-------------	------------------	-----------	---------

Deductions - Income Tax

Payable: 1,411.75 Recovered till SEP-2019: 85.00 Exempted: 564.36 Recoverable: 762.39

Gross Pay (Rs.): 52,829.00 Deductions: (Rs.): -4,030.00 Net Pay: (Rs.): 48,799.00

Payee Name: MUHAMMAD FAZIL

Account Number: 7900029403

Bank Details: HABIB BANK LIMITED, 220223 CITY BRANCH, PESHAWAR. CITY BRANCH, PESHAWAR, PESHAWAR

Leaves: Opening Balance: Aailed: Earned: Balance:

Permanent Address: PESH

City: Peshawar

Domicile: NW - Khyber Pakhtunkhwa

Housing Status: No Official

Temp. Address:

City:

Email: mfazil88896@gmail.com

A. Heind
M. Shafiq
Mohammad Peshawar
ADVOCATE
Peshawar High Court
Peshawar

To

A no D

8

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

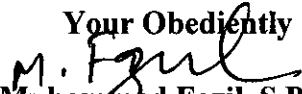
Subject: DEPARTMENTAL APPEAL AGAINST THE IMPUGNED ACTION OF THE CONCERNED AUTHORITY BY ILLEGALLY AND UNLAWFULLY DEDUCTING THE CONVEYANCE ALLOWANCE DURING WINTER & SUMMER VACATIONS

Respected Sir,

With due respect it is stated that I am the employee of your good self Department and is serving as SPET (BP-16) quite efficiency and up to the entire satisfaction of the superiors. It is stated for kind information that Conveyance Allowance is admissible to all the civil servants and to this effect a Notification No. FD (PRC) 1-1/2011 dated 14.07.2011 was issued. Later on vide revised Notification dated 20.12.2012 whereby the conveyance allowance for employees working in BPS 1 to 15 were enhance/revised while employees from BPS-16 to 19 have been treated under the previous Notification by not enhancing their conveyance allowance. Respected Sir, I was receiving the conveyance allowance as admissible under the law and rules but the concerned authority without any valid and justifiable reasons stopped/deducted the payment of conveyance allowance under the wrong and illegal pretext that the same is not allowed for the leave period. One of the employee of Education Department in Islamabad filed service appeal No.1888 (R) CS/2016 before the Federal Service Tribunal, Islamabad regarding conveyance allowance which was accepted by the Honorable Service Tribunal vide its judgment dated 03.12.2018. That I also the similar employee of Education Department and under the principle of consistency I am also entitled for the same treatment meted out in the above mentioned service appeal but the concerned authority is not willing to issue/grant the same conveyance allowance which is granting to other employees. **Copy attached.** I am feeling aggrieved from the action of the concerned authority regarding deduction of conveyance allowance in vacations period/months preferred this Departmental appeal before your good self.

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

Dated: 02.09.2019

Your Obediently

Muhammad Fazil, S.P.S.T.
GHSS Zahir Abad, Peshawar

Amr. E

Judgment Sheet

(9) (8)

IN THE PESHAWAR HIGH COURT, PESHAWAR.
JUDICIAL DEPARTMENT.

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



JUDGMENT

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

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

Mr. Mujahid Ali Khan, AAG, for respondents.

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

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

ATTESTED

ATTESTED
EXAMINER
Peshawar High Court

Attested
M. S. J.

Peshawar High Court
Seal

Rooh-ul-Amin Khan

10



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

Asadullah Khan

M. A. Khan
 Mohammad Asadullah Khan
 ADVOCATE
 Peshawar High Court
 Peshawar

ATTESTED

EXAMINER
 Peshawar High Court

11

10

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

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

looked

ATTESTED

EXAMINER
Peshawar High Court

Mohammad
ADY. C.M.C.
Peshawar High Court

12

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

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

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

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

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

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

ATTESTED
 EXAMINER
 Peshawar High Court
 ADVOCATE
 Peshawar High Court
 Peshawar

13

~~13~~

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

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

Lawyer Sami

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

ATTESTED

[Signature]
 ATTESTED
 EXAMINER
 Peshawar High Court
[Signature]
 Peshawar High Court
 Peshawar

14

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

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

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

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

Conclusion

A. H. ...
Mohammed ...
ADVOCATE
Peshawar High Court

ATTESTED
EXAMINER
Peshawar High Court

15

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

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

Announced on;
1st of October, 2019
"Jaichad"

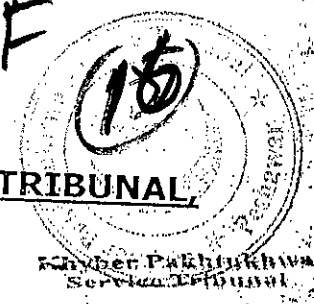
[Signature]
JUDGE
[Signature]
JUDGE

[Signature]
MAMUN
JUDGE
Peshawar High Court
Peshawar

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

CERTIFIED TO BE TRUE COPY
EXAMINER
Peshawar High Court, Peshawar
Authorized Under Article 177 of
The Constitution of Pakistan Order 1973
21 OCT 2019

AWAF



**BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR**

APPEAL NO. 1452 /2019

Khyber Pakhtunkhwa
Service Tribunal

Diary No. 1500

Dated 24/10/2019

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

APPELLANT

VERSUS

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

.....**RESPONDENTS**

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

PRAYER:

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

R/SHEWETH:
ON FACTS:

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

A He ni
Mohammad Qasim
Advocate
Peshawar High Court
Peshawar

Filed to-day
Registrar
24/10/19

Received to-day
14/11/19

Appeal No. 1452/2019
Masood Hayat vs Govt

17

11.11.2019

Counsel for the appellant present.

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

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

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

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

File be consigned to the record.

ANNOUNCED
11.11.2019

Chairman

Mohammad Dawood Bhatti
ADVOCATE
Peshawar High Court
Peshawar

محمد فاضل

۲، منجانب

محمد فاضل بنام محمد شمس

مورخہ

مقدمہ

دعویٰ سرگسٹر سبزی

جرم

باعث تحریر آنکہ

مقدمہ مندرجہ عنوان بالا میں اپنی طرف سے واسطے پیروی و جواب دہی مکمل کارروائی متعلقہ آن مقام کے لیے محمد زاوود خان بری راجہ صاحب مقرر کر کے اقرار کیا جاتا ہے۔ کہ صاحب موصوف کو مقدمہ کی کل کارروائی کا کامل اختیار ہوگا۔ نیز وکیل صاحب کو راضی نامہ کرنے و تقرر ثالث و فیصلہ پر حلف دینے جواب دہی اور اقبال دعویٰ اور بصورت ڈگری کرنے اجراء اور وصولی چیک و روپیہ ارضی دعویٰ اور درخواست ہر قسم کی تصدیق زرائیں پر دستخط کرانے کا اختیار ہوگا۔ نیز صورت عدم پیروی یا ڈگری یکطرفہ یا اپیل کی برآمدگی اور منسوخی نیز دائر کرنے اپیل نگرانی و نظر ثانی و پیروی کرنے کا مختار ہوگا۔ از بصورت ضرورت مقدمہ مذکور کے کل یا جزوی کارروائی کے واسطے اور وکیل یا مختار قانونی کو اپنے ہمراہ اپنے بجائے تقرر کا اختیار ہوگا۔ اور صاحب مقرر شدہ کو بھی وہی جملہ مذکورہ باختیارات حاصل ہوں گے اور اس کا ساختہ پر داختم منظور و قبول ہوگا دوران مقدمہ میں جو خرچہ ہر جانہ التوا کے مقدمہ کے سبب سے ہوگا۔ کوئی تبارخ پیشی مقام دورہ پر ہو یا حد سے باہر ہو تو وکیل صاحب پائند ہوں گے۔ کہ پیروی مذکور کریں۔ لہذا کالت نامہ لکھ دیا کہ سندر ہے۔

Handwritten signature and initials on the left side of the page.

M. Fazul

المرقوم ۱۷/۱۱/۲۰

العبد دگ واہ العبد کے لئے منظور ہے۔