

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.

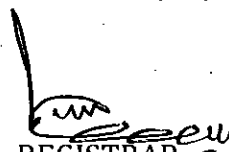

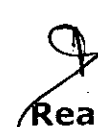
3. As a disgruntled, the appellant appears to be placed similar to a number of petitioners in Writ Petition No.3162-P/2019 and other connected matters decided by the Hon'ble Peshawar High Court. Under the principle of consistency, it would, therefore, be appropriate to dispose of the appeal in hand in 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. 1293 /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 Khalil Shah PST GPS Qazi Abad Umar Miana 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- Annexures of the appeal are not in sequence which may be annexed serial wise as mentioned in the memo of appeal.
- 5- Seven more copies/sets of the appeal along with annexures i.e. complete in all respect may also be submitted with the appeal

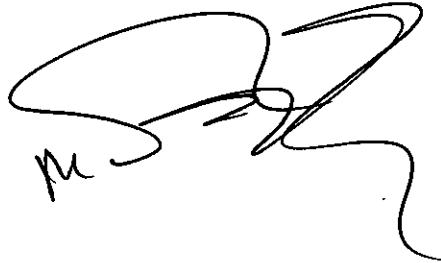
No. 483 /S.T,

Dt. 26-02 /2020.


REGISTRAR
SERVICE TRIBUNAL
KHYBER PAKHTUNKHWA
PESHAWAR.

Mr. Muhammad Daud Barki Adv. Pesh.

Re Submitted.


M

BEFORE THE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL,
PESHAWAR

Appeal No. 1293 /2020

Muhammad Khalil Shah 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

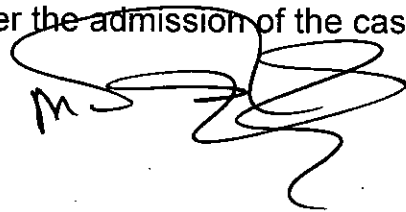


Mohammad Daud Khan Barki
Advocate High Court, Peshawar
Cell: 0300-5985044

Dated: ___ / ___ /2020

Note:

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



①

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR

APPEAL NO. 1293 /2020

Khyber Pakhtunkhwa
Service Tribunal

1. Mr. Muhammad Khalil Shah, P.S.T. (BPS-14)
Govt. Primary School Qazi Abad, Urmar Miana, Peshawar

Case No. 1339
Dated 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.

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.

GROUNDS:

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

- B- That the 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

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

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

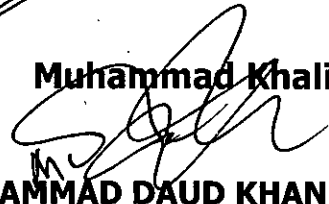
It is therefore, most humbly prayed that the appeal of the appellant may be accepted as prayed for.



APPELLANT

Muhammad Khalil Shah

THROUGH:



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



**GOVERNMENT OF KHYBER PAKHTUNKHWA
FINANCE DEPARTMENT
(REGULATION WING)**

NO. FD/SO(SR-11)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/-

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

Yours Faithfully,

Sahibzada Saood Ahmad
Secretary Finance

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)
Additional Secretary (Reg.)

A. H. S. S.
Mohammad Dawood Barfi
ADVOCATE
Peshawar High Court

ATTESTED

[Signature]

(INTIAZ AYUBI)

Additional Secretary (Reg.)

A - 5

A V R A

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

And B
6



Personal Information of Mr MUHAMMAD KHALIL SHAH d/w/s of PHULIL KHAN

Personnel Number: 00049559 CNIC: 13773704841 NTN: 0
Date of Birth: 18.03.1973 Entry into Govt. Service: 16.02.2000 Length of Service: 19 Years 05 Months 017 Days

Employment Category: Vocational Temporary

Designation: PRIMARY SCHOOL TEACHER 80642235-DISTRICT GOVERNMENT KHYBE
DDO Code: PW6568-District Peshawar
Payroll Section: 003 GPF Section: 001 Cash Center: 15
GPF A/C No: EDU 046155 Interest Applied: Yes GPF Balance: 332,034.00
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%	2,546.00
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 - Rs2620	-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 JUL-2019: 0.00 Exempted: 0.00 Recoverable: 0.00

Gross Pay (Rs.): 49,979.00 Deductions: (Rs.): -4,397.00 Net Pay: (Rs.): 45,582.00

Payee Name: MUHAMMAD KHALIL SHAH

Account Number: 4106591777

Bank Details: NATIONAL BANK OF PAKISTAN, 231516 GUNJ GATE GUNJ GATE,

Leaves: Opening Balance: Aailed: Earned: Balance:

Permanent Address: PESH

City: Peshawar

Temp. Address:

City:

Domicile: NW - Khyber Pakhtunkhwa

Email: mkhalilshah3@gmail.com

A He no
Mohammad Daud Banki
ADVOCATE
Peshawar High Court
Peshawar

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

Amir
7



Personal Information of Mr MUHAMMAD KHALIL SHAH d/w/s of PHULIL KHAN

Personnel Number: 00049559 CNIC: 13773704841 NTN: 0
 Date of Birth: 18.03.1973 Entry into Govt. Service: 16.02.2000 Length of Service: 19 Years 09 Months 016 Days

Employment Category: Vocational Temporary,

Designation: PRIMARY SCHOOL TEACHER 80642235-DISTRICT GOVERNMENT KHYBE

DDO Code: PW6568-District Peshawar

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

GPF A/C No: EDU 046155 Interest Applied: Yes **GPF Balance:** 387,717.00

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%	2,546.00	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	-109.00	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: 1,415.35 Recovered till NOV-2019: 303.00 Exempted: 353.27 Recoverable: 759.08

Gross Pay (Rs.): 52,835.00 Deductions: (Rs.): -4,054.00 Net Pay: (Rs.): 48,781.00

Payee Name: MUHAMMAD KHALIL SHAH

Account Number: 4106591777

Bank Details: NATIONAL BANK OF PAKISTAN, 231516 GUNJ GATE GUNJ GATE,

Leaves: Opening Balance: Availed: Earned: Balance:

Permanent Address: PESH

City: Peshawar

Domicile: NW - Khyber Pakhtunkhwa

Housing Status: No Official

Temp. Address:

City:

Email: mkhalilshah3@gmail.com

Mohammad Daud Barki

Mohammad Daud Barki
ADVOCATE
 Peshawar High Court
 Peshawar

Muhammad
Khalil
Shah

GPS Qazi Abad
Umar Miana
Peshawar

Ann D
9

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: 04.09.2019

Your Obediently

Muhammad Khalil Shah, P.S.T.
GPS Qazi Abad, Urmar Miana, Peshawar

And E (9)

Judgment Sheet

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 Mohammad Khattak, Advocate..

Mr. Mujahid Ali Khan, AAG, for respondents.

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

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

ATTESTED

EXAMINER
Peshawar High Court

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.

Attested
Mohammad Durrani
 Advocate
 Peshawar High Court

ATTESTED

EXAMINER
 Peshawar High Court

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

Mohammad Dawood Barki
ADVOCATE
Peshawar High Court
Peshawar

ATTESTED
EXAMINER
Peshawar High Court

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

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

4. Since the matter pertains 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
 Muhammad Dawood Barki
 ADVOCATE
 Peshawar High Court
 Peshawar

ATTESTED
 EXAMINER
 Peshawar High Court

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

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

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

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

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

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

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

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

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

Announced on;
1st of October, 2019
Jarhad

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JUDGE
[Signature]
JUDGE

TESTED

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

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[Signature]
ADVOCATE
Peshawar High Court

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EXAMINER
Peshawar High Court, Peshawar
Authorised Under Article 167 of
The Constitution of Pakistan
21 OCT 2019

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**BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR**

APPEAL NO. 1452 /2019

Diary No. 1500

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

Dated 24/10/2019

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. ED (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

Mohammad Dawood Barki
ADVOCATE
Peshawar High Court
Peshawar

Filed to-day
Registrar
24/10/19

Received from Mr. Maqsaad Hayat

11/11/19

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Appeal No. 1452/2019
Marbad Hayat vs Govt

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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.

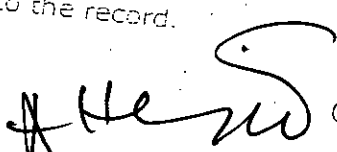

The record suggests that while handing down judgment in the Writ Petition preferred by the appellant, the Honourable High Court not only expounded the definition of "Pay" as well as "Salary" but also entitlement of a civil servant for the Conveyance Allowance during the period of vacations. It is important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

بعد الت صیر میں کرو سٹر بیوٹل

KPIK
چیف

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محمد علی شاہ
۲۰ بجانب

محمد علی شاہ بنام قلم

سٹر اسٹیل

مورخہ
مقدمہ
دعوی
جرم

باعث تحریر آنکہ

مقدمہ مندرجہ عنوان بالا میں اپنی طرف سے واسطے پیروی و جواب دہی وکل کارروائی متعلقہ
آن مقام کے لیے محمد علی شاہ کو دفین ہری اسٹیل

مقرر کر کے اقرار کیا جاتا ہے۔ کہ صاحب موصوف کو مقدمہ کی کل کارروائی کا کامل اختیار ہوگا

وکیل صاحب کو راضی نامہ کرنے و تقرر ثالث و فیصلہ پر حلف دیئے جواب دہی از

بصورت ڈگری کرنے اجراء اور وصولی چیک و روپیہ عرضی

زیرا اس پر دستخط کرانے کا اختیار ہوگا۔ نیز صورت عدم

اور منسوخی نیز دائر کرنے اپیل نگرانی و نظر ثانی و پیروی

مقدمہ مذکور کے کل یا جزوی کارروائی کے واسطے اور

تقرر کا اختیار ہوگا۔ اور صاحب مقرر شدہ کو بھی

اور اس کا ساختہ پر داخست منظور قبول ہوگا دوران

سب سے و ہوگا۔ کوئی تاریخ پیشی مقام دور

گے۔ کہ پیروی مذکور کریں۔ لہذا وکالت

المرقوم

M. M. M.

الع

مقام