

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.

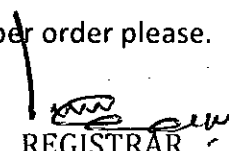

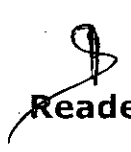
3. As a disgruntled, the appellant appears to be placed similar to a number of petitioners in Writ Petition No.3162-P/2019 and other connected matters decided by the Hon'ble Peshawar High Court. Under the principle of consistency, it would, therefore, be appropriate to dispose of the appeal in hand in 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. 1636 /2020

S.No.	Date of order Proceedings	Order or other proceedings with signature of judge or Magistrate
1	2	3
1	11.03.2020	<p>The present appeal submitted today by Mr. Taimur Ali Khan Advocate, may be entered in the institution register and put up to the Learned Member for proper order please.</p> <p> REGISTRAR</p>
2	18-03-2020	<p>This case is entrusted to S. Bench for preliminary hearing to be put up there on 26.03.2020.</p> <p> 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> Reader</p>

BEFORE THE KPK SERVICE TRIBUNAL PESHAWAR

APPEAL NO. 1636 /2020

Muhammad Naeem Khan

V/S

Govt: of KP

INDEX

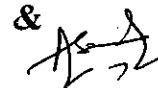
S. No.	Documents	Annexure	P. No.
01	Memo of appeal	-----	01-04
02	Copy of the Notification dated 20.12.2012	A	05
03	Copies of the salary slips of working/serving month and vacations (deduction period)	B&C	06-07
04	Copies of the Judgment & Notification	D&E	08-14
05	Copy of the Departmental appeal	F	15
06	Copy of judgment	G	16-19
07	Vakatlama	-----	20

APPELLANT

THROUGH:



**(TAIMUR ALI KHAN)
ADVOCATE HIGH COURT**

&


**(ASAD MAHMOOD)
ADVOCATE HIGH COURT.
Room No.Fr-08; 4th Flour,
Bilour plaza, Peshawar cantt:
Cell# 0333-9390916**

Note: Spares copies of the appeal will be provided after the preliminary hearing of the case.

BEFORE THE KPK SERVICE TRIBUNAL PESHAWAR.

Service Appeal No. 16362020

Khyber Pakhtunkhwa
Service Tribunal

Diary No. 1765

Dated 11/13/2020

Muhammad Naeem Khan CT (BPS-15),
GHS Kotli Saleh Khana, Nowshera.

APPELLANT

VERSUS

1. The Government of Khyber Pakhtunkhwa through Chief Secretary, Civil Secretariat, 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 AND SUMMER VACATIONS AND AGAINST NOT TAKING ACTION ON THE DEPARTMENTAL APPEAL OF APPELLANT WITHIN THE STATUTORY PERIOD OF NINETY DAYS.

PRAYER

THAT ON THE ACCEPTANCE OF THIS APPEAL RESPONDENTS MAY KINDLY BE DIRECTED NOT TO MAKE DEDUCTION OF CONVEYANCE ALLOWANCE DURING VACATIONS PERIOD (SUMMER & WINTER VACATION) 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 AND APPROPRIATE THAT MAY ALSO BE AWARDED IN FAVOUR OF APPELLANT.

Filed to-day

[Signature]
Registrar
11/13/2020

RESPECTFULLY SHEWETH:-

FACTS:-

1. That the appellant is serving in the Elementary and Secondary Education Department as CT (BPS-15) quite efficiency and upto 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 working in BPS-01 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 appellant was receiving the conveyance allowance 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 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 in light of the judgment dated 03.12.2018 proper Notification were issued on different dates. **(Copies of the Judgment & Notification are attached as Annexure-D&E)**
5. That appellant feeling aggrieved from the action of the respondents regarding deduction of conveyance allowance in vacations period/months filled departmental appeal but was not responded with in the statutory period of ninety days. **(Copy of the Departmental appeal is attached as Annexure-F)**
6. That appellant 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 the conveyance allowance for vacations period/months is illegal, against the law, facts and norms of justice.

- B. That the appellant have not been treated by the respondents 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, 1989 while the vacations are always announced by the Government, therefore under the law and rules are 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 year are credited to his account and there is no question of deduction of conveyance 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 similar nature appeals were allowed by this august Tribunal in preliminary hearing and the appellant being similar placed person is also entitled the same relief under the principle of consistency and Supreme Court judgment reported as **2009-SCMR-01. (Copy of judgments are attached as Annexure-G)**
- G. That as the act of the respondents is illegal, without any legal authority and not only discriminatory but in is also the result of malafide on the part of respondents.
- H. 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 institutional and clear violation of fundamental rights.
- I. That according to Government Servants Revised Leave Rules, 1981 vacations are holidays and not leave of any kind, therefore, the

deduction of conveyance allowances in vacations is against the law and rules.

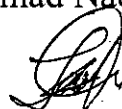
- J. That according to Article 38(e) of the Constitution of Islamic Republic of Pakistan, 1973 the state is bound to reduce disparity in the income and earning of individuals including persons in the services of the Federation, therefore in light of the said Article the appellant fully entitle for the grant of conveyance allowance during vacations.
- K. That the appellant seeks permission of this Honorable Tribunal to advance other grounds and proofs at the time of hearing.

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



APPELLANT
Muhammad Naeem Khan

THROUGH:



(TAIMUR ALI KHAN)
ADVOCATE HIGH COURT



(ASAD MAHMOOD)
ADVOCATE HIGH COURT



(ABDUL WAHID)
ADVOCATE



A-5

GOVERNMENT OF KHYBER PAKHTUNKHWA
FINANCE DEPARTMENT
(REGULATION WING)

NO. FD/SO(SR-1178-52/2012
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 Government 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/-

Attested
LAH

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.

Yours Faithfully,

ATTESTED

hass
Sahibzada Saood Ahmad
Secretary Finance

Encls: NO. FD/SO(SR-1178-52/2012

Dated Peshawar the 20th December, 2012

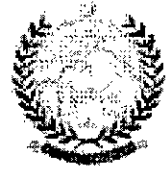
A Copy is forwarded for information to the:

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

Amir
(AMIR AZ AYUBI)
Additional Secretary (Reg)

B-6

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



Personal Information of Mr MUHAMMAD NAEEM KHAN d/w/s of ZAHID ALI

Personnel Number: 00818638 CNIC: 1720143709525 NTN:
Date of Birth: 16.03.1989 Entry into Govt. Service: 27.09.2016 Length of Service: 02 Years 11 Months 006 Days

Employment Category: Active Temporary

Designation: SENIOR CERTIFIED TEACHER 80003714-DISTRICT GOVERNMENT KHYBE
DDO Code: NR6060-G.H.S KOTLI SALEH KH
Payroll Section: 001 GPF Section: 001 Cash Center:
GPF A/C No: Interest Applied: No **GPF Balance:** 34,680.00

Vendor Number: -
Pay and Allowances: Pay scale: BPS For - 2017 Pay Scale Type: Civil BPS: 15 Pay Stage: 2

Wage type		Amount	Wage type		Amount
0001	Basic Pay	18,780.00	1000	House Rent Allowance	2,349.00
1300	Medical Allowance	1,500.00	2148	15% Adhoc Relief All-2013	350.00
2199	Adhoc Relief Allow @10%	275.00	2211	Adhoc Relief All 2016 10%	1,351.00
2224	Adhoc Relief All 2017 10%	1,878.00	2247	Adhoc Relief All 2018 10%	1,878.00
2264	Adhoc Relief All 2019 10%	1,878.00			0.00

Deductions - General

Wage type		Amount	Wage type		Amount
3015	GPF Subscription	-2,890.00	3501	Benevolent Fund	-600.00
3990	Emp.Edu. Fund KPK	-125.00			0.00

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.): 30,239.00 Deductions: (Rs.): -3,615.00 Net Pay: (Rs.): 26,624.00

Payee Name: MUHAMMAD NAEEM KHAN
Account Number: 0104000014884004
Bank Details: THE BANK OF KHYBER, 080008 NOWSHERA BRANCH SAAD PLAZA NOWSHERA BRANCH SAAD PLAZA, NOWSHERA

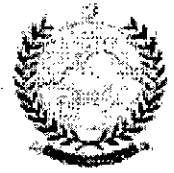
Leaves: Opening Balance: Aailed: Earned: Balance:

Permanent Address: City: NOWSHERA Domicile: NW - Khyber Pakhtunkhwa Housing Status: No Official
Temp. Address: City: Email: m.naeem.kheshgi@gmail.com

Attested
CA/PA

Dist. Govt. NWFP-Provincial
District Accounts Office Nowshera
Monthly Salary Statement (December-2019)

C-7



Personal Information of Mr MUHAMMAD NAEEM KHAN d/w/s of ZAHID ALI

Personnel Number: 00818638

CNIC: 1720143709525

NTN:

Date of Birth: 16.03.1989

Entry into Govt. Service: 27.09.2016

Length of Service: 03 Years 03 Months 006 Days

Employment Category: Active Temporary

Designation: SENIOR CERTIFIED TEACHER

80003714-DISTRICT GOVERNMENT KHYBE

DDO Code: NR6060-G.H.S KOTLI SALEH KH

Payroll Section: 001

GPF Section: 001

Cash Center:

GPF A/C No:

Interest Applied: No

GPF Balance:

46,240.00

Vendor Number: -

Pay and Allowances:

Pay scale: BPS For - 2017

Pay Scale Type: Civil BPS: 15

Pay Stage: 3

Wage type		Amount	Wage type		Amount
0001	Basic Pay	20,110.00	1000	House Rent Allowance	2,349.00
1210	Convey Allowance 2005	2,856.00	1300	Medical Allowance	1,500.00
2148	15% Adhoc Relief All-2013	350.00	2199	Adhoc Relief Allow @10%	275.00
2211	Adhoc Relief All 2016 10%	1,351.00	2224	Adhoc Relief All 2017 10%	2,011.00
2247	Adhoc Relief All 2018 10%	2,011.00	2264	Adhoc Relief All 2019 10%	2,011.00

Deductions - General

Wage type		Amount	Wage type		Amount
3015	GPF Subscription	-2,890.00	3501	Benevolent Fund	-600.00
3990	Emp.Edu. Fund KPK	-125.00			0.00

Deductions - Loans and Advances

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

Deductions - Income Tax

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

Gross Pay (Rs.): 34,824.00 Deductions: (Rs.): -3,615.00 Net Pay: (Rs.): 31,209.00

Payee Name: MUHAMMAD NAEEM KHAN

Account Number: 0104000014884004

Bank Details: THE BANK OF KHYBER, 080008 NOWSHERA BRANCH SAAD PLAZA NOWSHERA BRANCH SAAD PLAZA, NOWSHERA

Leaves: Opening Balance: Aailed: Earned: Balance:

Permanent Address:

City: NOWSHERA

Domicile: NW - Khyber Pakhtunkhwa

Housing Status: No Official

Temp. Address:

City:

Email: m.naeem.kheshgi@gmail.com

Attested
CA

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8/10/11

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D(8) Better Copy

Judgment Sheet
IN THE FEDERAL SERVICE TRIBUNAL, ISLAMABAD

Appeal No.1888(R)CS/2016

Date of Institution	21.10.2016
Date of Hearing	26.11.2018
Date of Judgment	03.12.2018

APPELLANT: Muhammad Sikandar Dar, Lecturer (BPS-17),
Islamabad Model College for Boys. G-10/4
Islamabad.

RESPONDENTS:

- (i) Secretary, Federal Education & Professional training Division, Islamabad.
- (ii) Director Model College, Federal Directorate of Education, Islamabad.
- (iii) Secretary Finance (Regulation wing), Islamabad.

BEFORE: Mr. Sikandar Ismail Khan, and Mr. Manzoor Ali Khan, Members.

RESPONDENTS: Mr. Ghulam rasool Bhatti, Adocacte for appellent.
Mr. Arshad Mehmood Malik, Assistant Attorney General with Rana Muhammad Nazir, DD, FDE (Legal) and Mr. Arshad Anjum, AD ; Federal Education & Professiona Training Division, DRs.

JUDGMENT

SIKANDAR ISMAIL KHAN, MEMBER: Through the instant appeal, the appellent has prayed for issuance of a direction to the respondents not to deduct the conveyance allowance from the salaries of the appellent during summer and winter vacation are treated as holidays but not leave of any kind and the same be allowed as decided by the superior courts.

Attested
2/11/18
[Signature]

2. The facts as narrated in the memo of appeal are that the appellent is performing his duties as lecturer (BS-17) in Islamabad Model College for Boys. G-10/4, Islamabad. Being aggrieved by the deduction of conveyance allowance, the appellent preferred Departmental representation dated 22.06.2016 which has not been responded. Hence this appeal.

3. The learned counsel for the appellent has argued that travelling allowance and conveyance allowance is part of compensatory allowance with means an allowance granted to meet the personal expenditure necessitated by the special circumstances in which duty is performed. Further, in identical matter, the Hon'ble Sindh Service Tribunal allowed the conveyance allowance to all the teaching staff during summer and winter vacations vide judgment date 23.12.2015 which has been implemented by the department. Hence deduction of conveyance allowance from the salaries of the appellent and other reaching staff during summer and winter vacations is clear discrimination against the right of the appellent. He also referred judgment of this Tribunal dated 17.10.2017 passed in identical matter in appeals No.289 to 298 CS/2015 and upheld by

the Hon'ble Supreme Court of Pakistan in CPs No. 4957 to 4966 of 2017 dated 13.07.2018.

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4. The appeals resisted by the respondents. It is stated that in fact the summer and winter vacations are holidays and not a leave, however, physically the teaching and other related staff are not on duty in the school and colleges during vacation, the presence of vacations, the science laboratories and libraries are also closed during holidays, therefore, conveyance allowance to vocational staff is not allowed in support of the arguments, the learned Assistant Attorney General referred SR No: 263.264 and 266.
5. We have heard the learned counsel for both the parties and have perused the available record admittedly. The summer and winter vacations are holidays and not leave of any kind but the appellant along with other colleagues are being ignored on the ground that physically the teaching and other related staff are not on duty in the school and college during vacations. We are not convinced with this assertion of the respondents especially when the summer and winter vacation are treated as holidays. We also sought wisdom from the judgment passed by the various courts and upheld by the honorable supreme court of Pakistan in identical matter. We may also like to mention that all the educational institution charge educational fee and other dues even for the winter and summer vacations. So how the respondents justify themselves by deducting the conveyance allowance of the staff for the same period. The equality should be maintained in all respect. This tribunal has already adjudicated the issue vide its judgment as referred to in Para 3 above and the said judgment has been upheld by the Honorable Supreme Court of Pakistan. It is imperative to reproduce hereunder the relevant portions of the judgment as a ready reckon:-

"8. FR-82(b) enunciates in unambiguous terms that vacations count as duty. Even during vacations a government servant/teacher is required to be prepared for any call of duty in the relevant department. The vacations are available not on the basis of any option for the government servant/teachers working in school and colleges. The period of earned leave is curtailed by one month for each year. The summer vacations are not granted on the demand and option of the teachers. They are allowed lesser earned leave than the rest of the government servant of various departments.

9. the conveyance allowance is admissible to the government servants who are on duty. The statute treats the period of vacations as duty. The explanation given by the Finance Division is in conflict with statutory provisions like FR-82(B) which are to reign supreme as compared to the explanation of the Finance Division. There seems to be no justification whatsoever for depriving the appellant of the payment of the conveyance allowance during the period of summer vacation.

10. in the circumstances, we are constrained to allow these appeals. Order accordingly. The conveyance allowance is payable to the appellants w.e.f the vacation 2014. When the departmental appeal/representation were filed by these appellants.

Attested
AMM

6. For the foregoing reasons and in view of the rule of consistence we have no hesitation to accept the appeal. Therefore, the respondents are directed not to deduct the conveyance allowance from the salary of the appellant during summer and winter vacations. The conveyance allowance already deducted should be reimbursed to the appellant forthwith. This judgment is considered in rem and not in personam and thus the respondents should pay the said allowance to all similarly placed employees of the educational institutions to avoid discrimination under Article 4 & 25 of the constitution as well as un-necessary litigation.
7. There shall be no order as to cost. Parties shall be informed.

D-172/18
D-8

IN THE FEDERAL SERVICE TRIBUNAL ISLAMABAD

Appeal No. 1886(R)CS/2016

Date of Institution	24.10.2016
Date of Hearing	26.11.2018
Date of Judgment	03.12.2018

APPELLANT: Muhammad Sikander Dar, Lecturer (ES-17)
Islamabad Model College for Boys, G-10/7
Islamabad

RESPONDENTS:

- (i) Secretary Federal Education & Professional Training
Division Islamabad
- (ii) Director Model Colleges, Federal Directorate of
Education, Islamabad
- (iii) Secretary Federal Regulation and Inspection of
Education

Set-off: Mr. Sikander Ismail Khan, and
Mr. Manzoor Ali Khan, Members.

Present: Mr. Ghulam Farooq Shalizi, Advocate for
appellant.

Mr. Arshad Mehmood Malik, Assistant Director
General with Rank, Muhammad Noor, DDO
DE (Legal) and Mr. Arshad Anjum, Director
Education, Professional Training Division.

JUDGMENT

SIKANDER ISMAIL KHAN, MEMBER: Through the instant appeal
the appellant has prayed for issuance of a direction to the
respondents not to deduct the conveyance allowance from his
salaries of the appellant during his absence and interventions to
vacations are treated as leave but not leave of any kind and
the same be allowed or decided by the superior court.

The facts narrated in the memo of appeal are that the
appellant is performing his duties as Lecturer (ES-17) in Islamabad
Model College for Boys, G-10/7 Islamabad being appointed by
the deduction of conveyance allowance. The appellant

Attested
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9

...with other colleagues in the profession...
 ...the judgment of the Hon. Supreme Court of...
 ...in the school and colleges...
 ...the summer and winter vacations...
 ...the various courts and upheld by the Hon. Supreme Court of...
 ...the educational institutions charge...
 ...the winter and summer vacations...
 ...deducting the conveyance...
 ...allowance of the staff for the same period...
 ...be maintained in all respects...
 ...adjudicated the issue...
 ...and the said judgment has been upheld by the Hon. Supreme Court of...
 ...it is imperative to reproduce...
 ...the relevant portions of the judgment as a ready...

...12-22-51, enunciates in unambiguous terms...
 ...that vacations count as duty. Even during vacations...
 ...of government servant/teacher is required to be...
 ...prepared for any call of duty in the relevant...
 ...of government. The vacations are available not on the...
 ...basis of any vacation for the government...
 ...servant/teacher working in school and colleges...
 ...The period of earned leave is curtailed by one...
 ...month for each year. The summer vacations are not...
 ...granted on the demand and option of the...
 ...teachers. They are allowed lesser earned leave...
 ...than the rest of the government servants of various...
 ...departments.

...The conveyance allowance is admissible to...
 ...the government servants who are on duty...
 ...during the period of vacations as duty. The...
 ...allowance covered by the Finance Division is in...
 ...accordance with the statutory provision, like...
 ...which are to be taken into account as compared to the...
 ...provision of the Finance Division. There seems...
 ...to be no justification for the...
 ...of the...
 ...of the...

Attested
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AT 50
9/4

Attested
C. J. [Signature]

[Heavily obscured and mirrored text, likely bleed-through from the reverse side of the page. The text is illegible due to the high level of noise and contrast in the scan.]

(1)

11

In the circumstances, we have considered
all the appeal grounds and in accordance
with the provisions of the Act, we have
allowed the appeal. The conveyance allowance
of £1,000 per annum for the vacation of 2014 and the
departmental appeal representation were
allowed to the appellant.

For the foregoing reasons and in view of the above
consideration, we have no objection to the appeal
being allowed. The respondent is directed to deduct the
conveyance allowance from the salary of the appellant during
summer and winter vacations. The conveyance allowance
already deducted should be reimbursed to the appellant
forthwith. The judgment is considered final and no appeal
and in the respondent should pay the said allowance to all
similarly placed employees of the Educational Institutions to
avoid discrimination under Article 14 of the Constitution
well to be necessary. It is directed.

There shall be no order as to costs. Parties shall bear their own costs.

Sd/
MEMBER

13/12/2018

for a
single
13/12

Attested
CALL

13/12/2018
13/12/2018

13/12/2018
13/12/2018

13/12/2018
13/12/2018

E

E-12

10007 (137)

F.No. 3(1)R-5/2014-504-A

Government of Pakistan
Finance Division
(Regulations Wing)

COURT CASE

Islamabad, the 9th January, 2019

To: The Director General,
Federal Directorate of Education,
Islamabad.

Subject: ORDER PASSED IN APPEAL NO. 1888(R)CS/2016 FILED BY MR. MUHAMMAD SIKANDAR DAR VS M/O F.& P.T. ETC.

Sir: Reference Federal Service Tribunal's judgment in Appeal No. 1888(R)CS/2016 dated 3-12-2018.

2. The Matter is under consideration in Finance Division. It is requested that financial implication and number of beneficiaries, in case the deduction of Conveyance Allowance during summer / winter vacations is discontinued, in respect of all employees of Federal Government educational institutions who are availing summer/ winter vacations, w.e.f 21-10-2016, may be furnished to this Division, for further processing of the case.

P-133/c

[Signature]
o/c (Abdul Ghaffar Khah)
Section Officer (R-5)

ATTESTED

[Signature]

Attested
[Signature]

Government of Pakistan
Finance Division
(Regulations Wing)

13

F.No. 3(1)R-5/2014

Islamabad, the 29th January, 2019

OFFICE MEMORANDUM

Subject: FST's ORDER PASSED IN APPEAL NO. 1888(R)CS/2016 FILED BY MR. MUHAMMAD SIKANDAR DAR VS M/O FE& P.T. ETC.

The undersigned is directed to refer to Federal Service Tribunal's judgment in Appeal No. 1888(R)CS/2016 dated 5-12-2018 (Copy enclosed).

2. The Matter is under consideration in Finance Division. As Supreme Court has already upheld the judgement of FST dated 17-10-2017 in the identical case, vide their judgement dated 13-7-2018, it is requested that financial implication and number of beneficiaries, in case the deduction of Conveyance Allowance during summer / winter vacations is discontinued, w.e.f. 21-10-2016, in respect of all employees of Federal Government Educational Institutions Cantt. Garrison Directorate Rawalpindi who are availing summer/ winter vacations, may be furnished to this Division, for further processing of the case.

(Signature)
o/c (Abdul Ghaffar Khan)
Section Officer (R-5)

Ministry of Defence,
(Section Officer (D-22)),
Government of Pakistan,
Rawalpindi.

ATTESTED

(Signature)

Attested
L.A.R.

23-5-19

BEFORE THE FEDERAL SERVICE TRIBUNAL, ISLAMABAD

M.P No. 187/2019 In Appeal No. 1888(R)CS

18

19

Muhammad Sikandar Dar

...Petitioner

Vs.

1. Secretary Federal Education & Professional Training Division, Islamabad.
2. Director Medical Colleges, Federal Directorate of Education, Islamabad
3. Secretary Finance (Regulation Wing), Islamabad

...Respondents

REPORT ON BEHALF OF FINANCE DIVISION

Respectfully Sheweth:

Vide Misc. Petition No. MP No. 187/2019 in Appeal No. 1888(R)CS/2016, the petitioner Mr. Muhammad Sikandar Dar (Grade BS-18) have prayed before the honourable Federal Service Tribunal, Islamabad, that the respondents be directed to implement the FST, Islamabad's judgment dated 03-12-2018, in its true letter and spirit.

2. FST in their judgment dated 03-12-2018 has directed as under:

"The respondents are directed not to deduct the conveyance allowance from the salary of the appellant during summer and winter vacations. The conveyance allowance already deducted should be reimbursed to the appellant forthwith. This judgment is considered in rem and not in personam and thus the respondents should pay the said allowance to all similarly placed employees of the educational institutions to avoid discrimination under Article 4 & 25 of the Constitution as well as unnecessary litigation.

3. It is submitted that the matter is under consideration in Finance Division. Ministry of Federal Education and Professional Training and Ministry of Defence have been requested to provide financial implications in case the deduction of Conveyance Allowance during summer/winter vacation is discontinued, in respect of all employees of Federal Government educational institutions who are availing summer/winter vacations (Annex-I). Reply from the concerned quarters is still awaited.

4. It is, therefore, humbly, prayed that Finance Division may be allowed more time for implementation of the honourable, FST's judgment and Respondent No. 1 may please be directed to provide requisite information/documents to the Finance Division, please.

DL 25-3-2019

On behalf of Secretary, Finance Division
Government of Pakistan
Islamabad.

Section Officer (Legal-III)
Finance Division
Government of Pakistan
Islamabad

ATTESTED

Attested
[Signature]

F 15

TO

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 summer vacations.

R/Sir,

It is stated that I am the employ of your good self department and is serving as C.T (BPS-15) quite efficient and up to the entire satisfaction of the superiors. It is stated for your 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 where by the conveyance allowance for employs working in BPS (1-15) was enhance/revised while employees from BPS (16-19) has been treated under the previous notification by not enhancing their conveyance allowance.

R/Sir, I was receiving the conveyance allowance as admissible under the rules but the concerned authority without any valid and justifiable reasons stopped/ deducted the conveyance allowance under the wrong and illegal pretext that the same is not allowed for the leave period. One of the employ of our 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 vides its judgment dated 03/12/2018. Similarly an employee of our Elementary & Secondary Education Deptt. named Mr. Magsood Hayat, SCT (BPS-16) forwarded an appeal no. 1452/2019 before the Service Tribunal KPK which was judged by Service Tribunal and decided in his favor vide Diary No. 1500 dated 24/10/2019 (copy attached). I am also employee of Education Department and under the principle of consistency I am also entitled for the same treatment but the concerned authority is not willing to grant me conveyance allowance which is being granting to other employees.

It is therefore, most humbly requested that on acceptance of this departmental appeal the concerned authority may kindly be directed not to deduct conveyance allowance from my salary during the vacations.

Yours obediently

(Name) M. Naeem Khan Desig: C.T

(School Name) GHS Kotli Saleh Khana NBR

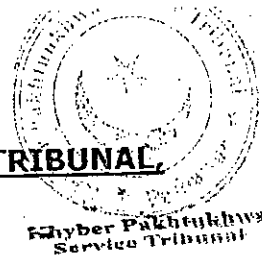
Recommended and forwarded for further n/a please.

3168- Dated: -05/12/2019

Attested
2019

G-16 (R1)

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



(616)

APPEAL NO. 1452 /2019

Khyber Pakhtunkhwa
Service Tribunal

Diary No. 1500

Dated 24/10/2019

Mr. Maqсад 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

Attested
and

ATTESTED
BY
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

Filed to-day
Registrar
24/10/19

Registered to-day
11/11/19

Appeal No. 1452/2019
Markad Hayat vs Govt

G-16
2

G(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.

Attested
Chairman

ANNOUNCED
11.11.2019

Certified to be a true copy of the original
Khan
ATTEN
Chairman

G 18/01 (18)

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR

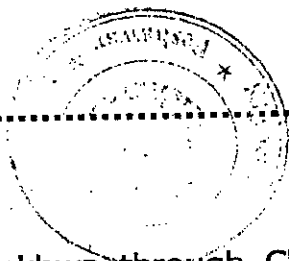
APPEAL NO. 2099 /2019

Khyber Pakhtunkhwa
Service Tribunal

Diary No. 2322

Dated 24/12/19

Mr. Muhammad Riaz, SCT (BPS-16),
GHS Yaqoobi, District Sawabi.



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.

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.

Filed by
Muhammad Riaz
Registrar
24/12/19

Attested
Attd

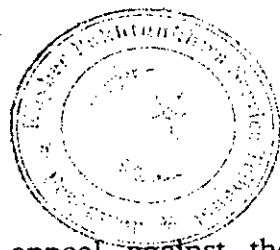
R/SHEWETH:
ON FACTS:

- 1- That the appellant is serving in the Elementary & Secondary Education Department as SCT (BPS-16) 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

Received
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

13.02.2020

Learned counsel for the appellant present. Heard.




The appellant has filed the present service appeal against the deduction of conveyance allowance of the government servant/teacher working in school/college during vacations period.

Learned counsel for the appellant stated at the bar that identical nature Service Appeal No.1452/2019 has already been disposed of by this Tribunal vide order dated 11.11.2019. Learned counsel for the appellant stressed that being an identical nature case, the present service appeal may also be disposed of in terms of the said order dated 11.11.2019 passed in Service Appeal No.1452/2019.

Order dated 11.11.2019 of this Tribunal passed in Service Appeal No.1452/2019 perused. Judgment dated 03.12.2018 passed by learned Federal Service Tribunal in Appeal No.1888(R)CS/2016 and judgment dated 01.10.2019 of the Hon'ble Peshawar High Court Peshawar in Writ Petition No.3162-P/2019 referred to in the order dated 11.11.2019 in Service Appeal No.1452/2019, also gone through and plea taken by the learned counsel for the appellant is found genuine. Consequently the instant service appeal is also disposed of in terms of order dated 11.11.2019 passed in Service Appeal No.1452/2019, with the observation that the judgment of Hon'ble Peshawar High Court passed in writ petitions including Writ Petition 3162-P/2019 shall be honored and implemented by the respondents within shortest possible time.

This may also be observed that perusal of the judgment of Federal Service Tribunal in Appeal No.1888(R) CS/2016 reflects that in an identical nature case, the Federal Service Tribunal has held that the conveyance allowance is payable to the appellants w.e.f the vacations of the year when the departmental appeal/representation was filed by the appellants.

File be consigned to the record room.

Attested
13/2/20

(Muhammad Hamid Mughal)
Member (J)

Announced
13.02.2020

VAKALAT NAMA

NO. _____/2020

IN THE COURT OF KP Service Tribunal

Muhammad Naeem Khan (Appellant)
(Petitioner)
(Plaintiff)

VERSUS Govt of KP

Govt of KP (Respondent)
(Defendant)

I/We, Muhammad Naeem Khan

Do hereby appoint and constitute **Taimur Ali Khan, Advocate High Court Peshawar**, to appear, plead, act, compromise, withdraw or refer to arbitration for me/us as my/our Counsel/Advocate in the above noted matter, without any liability for his default and with the authority to engage/appoint any other Advocate/Counsel on my/our costs.

I/We authorize the said Advocate to deposit, withdraw and receive on my/our behalf all sums and amounts payable or deposited on my/our account in the above noted matter. The Advocate/Counsel is also at liberty to leave my/our case at any stage of the proceedings, if his any fee left unpaid or is outstanding against me/us.

Dated _____/2020

M. Naeem Khan (CLIENT)

ACCEPTED

Taimur Ali Khan
TAIMUR ALI KHAN
Advocate High Court
BC-10-4240
CNIC: 17101-7395544-5
Cell No. 0333-9390916

OFFICE:

Room # FF-17, 5th Floor,
Bilour Plaza, Peshawar,
Cantt: Peshawar