

**BEFORE THE HONRABLE SERVICE TRIBUNAL KHYBER PAKHTUNKHWA,**  
**PESHAWAR CAMP COURT ABBOTTABD.**

APPEAL NO 448-A/2022

MST Nacem Akhter SST GGHSS Havelian District Abbottabad.....

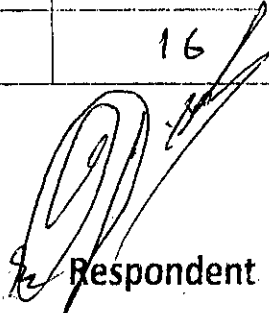
APPELLANT

VS

1 GOVERNMENT OF KHYBER PAKHTUNKHWA THROUGH SECRETARY  
EDUCATION DEPARTMENT PESHAWAR & OTHERS.....RESPONDENTS

**INDEX**

S. No	Description	Annexure	Page No.
1.	Para wise comments & Affidavit		1-6
2.	Copy of civil servant (Amendment) Ordinance 2021	"A"	7 - 10
3	Copy of letter of observation	"B"	11
4	Application of the readjustment	C	12
5	Non-performance certificate	D	13
6	Copy of Letter 16.03.2022	E	14
7	Notification of returned case	F	15
8	Copy of Adjustment Order	G	16

  
Respondent

Dated 14-11-2022

**BEFORE THE HONRABLE SERVICE TRIBUNAL KHYBER  
PAKHTUNKHWA, PESHAWAR CAMP COURT ABBOTTABD.**

APPEAL NO 448-A/2022

NAEEM AKHTAR..... APPELLANT

VS

**GOVERNMENT OF KHYBER PAKHTUNKHWA THROUGH  
SECRETARY EDUCATION DEPARTMENT PESHAWAR &  
OTHERS.....Respondents**

**Para wise comments on behalf of the respondents No 1 to 4.**

**Respectfully Sheweth:**

Para wise comments on behalf of the respondents No 1 to 4 are as under.

**PRELIMINARY OBJECTION**

1. That the appellant has no locus standi/cause of action to file instant appeal.
2. That the appellant is estopped to agitate the instant matter before this Honorable Tribunal.
3. That the appellant has not approached this Honorable Tribunal with clean hands.
4. That the appellant has filed instant appeal with malafide intention for wrongful gain and suppressing the original facts, from this Honorable Tribunal, hence the appeal is liable to be dismissed.
5. That the appeal is hopelessly time barred.
6. That the appellant is treated as per rules and law policy. Therefore appellant is not entitled for any relief and hence appeal is liable to be dismissed without further proceeding.
7. That on the appellant own request she was submitted the application of retirement, under observation her application was returned. Appellant is not entitled for arrear on the period of none performance.
8. That the instant appeal is not maintainable in its present form.
9. That the instant appeal is against the law/service rules hence not maintainable in the eye of law and liable to be dismissed.
10. That the appellant has filed the present appeal out of law..
11. That the act of the respondent with in law and rules. Hence appeal is liable to be dismissed.

**FACTUAL OBJECTION**

1. Para No 1 of the appeal is incorrect that appellant was applied for retirement under age of premature 53 year and 6 moth. Prevailing law of the premature retirement compulsory is age 55 year. Appellant was born on 10-05-1967. she has submitted application of retirement with effect from 30-10-2020. **(.copy of KPK. Civil servant (Amendment) Ordinance,2021 is annexed annexure A.)**
- 2 Para No 2 of appeal is correct to extend that Respondent have forwarded the case through proper channel that Respondent No 3 sent case of retirement to Respondent 2 on 26/10/2020 after then Respondent 2 sent this case to Respondent No 1 on 26/10/2020 but Appellant has not fulfilled the coddle formalities, due to submission of application under premature retirement age.
- 3 Reply of Para No 3 of the appeal is correct to extend that, case of retirement of the appellant was retuned along with others in keeping view of prevailing law, under observation of premature retirement age dated 09-04-2021. Appellant has treated with same others. **(Letter of observation is annexed annexure B.)**
- 4 Reply of Para No 4 of the appeal is correct to extend that Appellant submitted an application to readjustment. Appellant has been adjusted on same post again Dated 07-06-2021. **(Copy of application for readjustment is annexed as annexure" C")**

- 5 Para No 5 of the appeal is correct to the extent that the appellant has submitted an application dated 29-06-2020 to Respondent No 3 which was referred through proper channel for salary of intervening period, in which Appellant has not performed her duties. ( **copy of non performance duty certificate is annexure as annexed D**)
- 6 Para No 6 of the appeal is incorrect that the Respondent No 1 issued notification dated 16-03-2022 regularize the intervening period as leave on full pay with effect from 01-10-2020 to 07-06-2021.in respect of appellant in accordance with rule and law. Appellant has not made the necessary party to Principal of GGHSS Havelian Abbottabad, who was the actual Drawing Disbursing officer (DDO). Principal was ready to paying as leave on full pay of intervening period from salary budget accordingly, Appellant was denied as leave on full pay. Once respondent No 3 has directed the concerned Principal to pay as leave on full pay of said period date 07-11-2022 accordance with notification. Appellant has missed the necessary party and appeal is not filling within statutory period of 90 days due to impugned Notification issue dated 16-03-2022 which has challenged and service appeal is filed on 26-03-2022. So service appeal is liable to be dismissed accordingly.(**copy of letter annexure as annexed E**).

**GROUNDS**

a. Para of the ground "a" is incorrect, that according to civil servant (Amendment) Ordinance, 2021. A government servant can apply for pre mature retirement after the length of service of 25 year and age will be 55 year. Appellant is not eligible due to her age as 53 year. Respondent No 1 returned the retirement cases along with Appellant dated 09-04-2021, under the observation whose service was not 55 years. to Authorities. Hence Appellant has been treated as per rules. The appellant does not have the right to claim retirement of premature under age. **(copy of notification of the return case is annexed as annexure F).**

b. Reply of Para of the ground "b" is correct to extend that Respondent No 3 has adjusted the appellant on 07-06-2021 against the same post and school as appellant has submitted application for readjustment on same place.

**(Copy of adjustment order is annexed as annexure "G")**

c. Reply of Para of the ground "c" is incorrect that appellant applied for retirement dated 01-10-2020 with effect from 31-11-2020. Respondent No 3 sent the case to the Respondent 2 Dated 26-10-2020 for the further proceeding then after Respondent 2 sent the case to Respondent No1 to decide matter accordance with law dated 26-11-2020. Respondent No 1 return the case under observation premature retirement age is not completed vide the notification dated 09-04-2021.

- d. Reply of Para of the ground "d" is incorrect that Appellant submitted an application for under age premature retirement on own request and leave the school since intervening period without work. It is crystal clear where there is no work there is no pay as per Honorable Supreme court judgment. So Appellant is not entitled to regular salary as work in intervening period due to nonperformance of duty, so competent authority has regularized the intervening period as leave on full pay. Appellant was treated in accordance with law and rules.
- e. Para of the ground "e" is incorrect to the extent that the Appellant was instructed, you are underage but on her insist retirement case was forwarded for sanction before the competent authority, whereof her case was rejected after process. Responsibility of the non performance, wrong decision is the Appellant' personal. it is therefore said period has regularized as leave full pay.
- f. Para of the ground "f" incorrect and denied strongly. Hence the competent authority respondent No 1 is pleased to regularize the intervening period as leave on full pay with effect from 01-12-2020 to 07-06-2021 in respect of Mst Naheem Akhter SST(G) – BS 17.GGHSS Havelian, Abbottabad. This notification has issued vide No AO(E&SED/7-1/Abbottabad dated 16-03-2022 in accordance with rule and law due to none performance of duty in said period. it is therefore so instant appeal is liable to be dismissed.

6

IT IS THEREFORE HUMBL Y PRAYED THAT IN THE LIGHT OF FOREGOING COMMENTS THE APPEAL MAY GRACIOUSLY BE DISMISSED WITH COST THROUGHOUT.

District Education Officer  
Female Abbottabad.

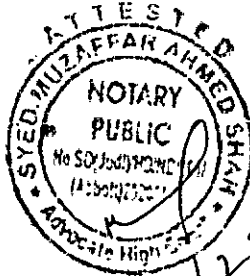
4 (Respondent No 3)

Director ( E & SE)  
(Khyber Pakhtunkhawa  
Peshawar.

(Respondent No 01 & 02)

AFFIDAVIT

*Stated on oath that the contents of instant Para wise comments are true and correct to the best of my knowledge and belief and nothing has been concealed from this Honorable Tribunal.*



4 Respondent No 3

20.11



# KHYBER PAKHTUNKHWA

Published by Authority

PESHAWAR, TUESDAY, 18<sup>th</sup> MAY, 2021.

## PROVINCIAL ASSEMBLY SECRETARLAT KHYBER PAKHTUNKHWA

### NOTIFICATION

Dated Peshawar, the 18<sup>th</sup> May, 2021.

No. PA/Khyber Pakhtunkhwa/Bills-150/2021/7705.— The Khyber Pakhtunkhwa Civil Servants (Amendment) Bill, 2021 having been passed by the Provincial Assembly of Khyber Pakhtunkhwa on 20<sup>th</sup> April, 2021 and assented to by the Governor of the Khyber Pakhtunkhwa on 30<sup>th</sup> April, 2021 is hereby published as an Act of the Provincial Legislature of the Khyber Pakhtunkhwa.

### THE KHYBER PAKHTUNKHWA CIVIL SERVANTS (AMENDMENT) ACT, 2021. (KHYBER PAKHTUNKHWA ACT NO. XI OF 2021)

*(First published after having received the assent of the Governor of the Khyber Pakhtunkhwa in the Gazette of the Khyber Pakhtunkhwa, (Extraordinary), dated the 18<sup>th</sup> May, 2021).*

### AN ACT

*further to amend the Khyber Pakhtunkhwa Civil Servants Act, 1973*

WHEREAS it is expedient further to amend the Khyber Pakhtunkhwa Civil Servants Act, 1973 (Khyber Pakhtunkhwa Act No. XVIII of 1973) in the manner hereafter appearing:

It is hereby enacted by the Provincial Assembly of Khyber Pakhtunkhwa as follows:

1. **Short title and commencement.**— (1) This Act may be called the Khyber Pakhtunkhwa Civil Servants (Amendment) Act, 2021.

(2) It shall come into force from 31<sup>st</sup> July, 2019.

2. **Substitution of section 13 of the Khyber Pakhtunkhwa Act No. XVIII of 1973.**— In the Khyber Pakhtunkhwa Civil Servants Act, 1973 (Khyber Pakhtunkhwa Act No. XVIII of 1973), hereinafter referred to as the said Act, for section 13, the following shall be substituted, namely:



**13. Retirement from service.**--- (1) A Civil Servant shall retire from service on the completion of sixtieth (60<sup>th</sup>) year of his age.

(2) A Civil Servant may opt to retire early from service, after completion of twenty five (25) years of qualifying service or attaining the age of fifty five (55) years, whichever is later.

(3) Notwithstanding anything contained in sub-sections (1) and (2), the competent authority may in the public interest, direct that a Civil Servant may retire from service, from such date, as may be determined by the competent authority, after he has completed twenty (20) years of service, qualifying for pension or other retirement benefits, in the manner as may be prescribed:

Provided that no direction under this sub-section shall be made until the Civil Servant has been informed in writing of the grounds on which it is proposed to make the direction, and has been given a reasonable opportunity of showing cause against the said direction.

**Explantation.**--- In this section, the expression "competent authority" means the appointing authority prescribed in rule 4 of the Khyber Pakhtunkhwa Civil Servants (Appointment, Promotion and Transfer) Rules, 1989."

**3. Insertion of section 13A of the Khyber Pakhtunkhwa Act No. XVIII of 1973.** --- In the said Act, after section 13, as so substituted, the following new section shall be inserted, namely:

**"13A. Protection of certain acts.**--- (1) All the Civil Servants, who were conditionally retired from service on or after 31<sup>st</sup> day of July, 2019 shall, for all intents and purposes, be deemed to have been regularly retired from service on the date of attaining sixtieth (60<sup>th</sup>) years of age.

(2) Any Civil Servant, who has completed sixty (60) years of age but is not retired from service, by virtue of or in pursuance of the Khyber Pakhtunkhwa Civil Servants (Amendment) Act, 2019, shall be deemed to have been retired from service from the date when such Civil Servant has completed sixty (60) years of age.

(3) Any salary, allowances and other ancillary benefits received or drawn by such Civil Servant under this section on or after 31<sup>st</sup> day of July, 2019 shall be deemed to be validly received and drawn."

**4. Repeal.**--- The Khyber Pakhtunkhwa Civil Servants (Amendment) Ordinance, 2021 ( Khyber Pakhtunkhwa Ordinance, No. II of 2021), is hereby repealed.

BY ORDER OF MR. SPEAKER  
PROVINCIAL ASSEMBLY OF KHYBER  
PAKHTUNKHWA

(NASRULLAH KHAN KHATTAK)  
Secretary  
Provincial Assembly of Khyber Pakhtunkhwa

EXTRAORDINARY  
GOVERNMENT



REGISTERED NO. PIII

G A Z E T T E

## KHYBER PAKHTUNKHWA

Published by Authority

PESHAWAR, WEDNESDAY, 31<sup>st</sup> JULY, 2019.

### PROVINCIAL ASSEMBLY SECRETARIAT KHYBER PAKHTUNKHWA

#### NOTIFICATION

Dated Peshawar, the 31st July, 2019.

No. PA/Khyber Pakhtunkhwa/Bills-58/2019/2340.— The Khyber Pakhtunkhwa Civil Servants (Amendment) Bill, 2019 having been passed by the Provincial Assembly of Khyber Pakhtunkhwa on 22<sup>nd</sup> July, 2019 and assented to by the Governor of the Khyber Pakhtunkhwa on 30<sup>th</sup> July, 2019 is hereby published as an Act of the Provincial Legislature of the Khyber Pakhtunkhwa.

#### THE KHYBER PAKHTUNKHWA CIVIL SERVANTS (AMENDMENT) ACT, 2019. (KHYBER PAKHTUNKHWA ACT NO. XXX OF 2019)

*(First published after having received the assent of the Governor of the Khyber Pakhtunkhwa in the Gazette of the Khyber Pakhtunkhwa, (Extraordinary), dated the 31st July, 2019).*

AN  
ACT

*further to amend the Khyber Pakhtunkhwa  
Civil Servants Act, 1973.*

WHEREAS it is expedient further to amend the Khyber Pakhtunkhwa Civil Servants Act, 1973 (Khyber Pakhtunkhwa Act No. XVIII of 1973), for the purposes hereinafter appearing:

It is hereby enacted as follows:

1. **Short title and commencement.**---(1) This Act may be called the Khyber Pakhtunkhwa Civil Servants (Amendment) Act, 2019.

(2) It shall come into force at once.

**2. Amendment of section 13 of the Khyber Pakhtunkhwa Act No. XVIII of 1973.---**

In the Khyber Pakhtunkhwa Civil Servants Act, 1973 (Khyber Pakhtunkhwa Act No. XVIII of 1973), in section 13,-

- (a) in clause (a), after the words "qualifying service", the words and commas "or attaining the age of fifty-five years, whichever is later." shall be inserted; and
- (b) in clause (b), for the word "sixtieth" the words "sixty- three" shall be substituted.

**BY ORDER OF MR. SPEAKER  
PROVINCIAL ASSEMBLY OF KHYBER  
PAKHTUNKHWA**

---

**(NASRULLAH KHAN KHATTAK)**  
Secretary  
Provincial Assembly of Khyber Pakhtunkhwa



GOVERNMENT OF KHYBER PAKHTUNKHWA  
ELEMENTARY & SECONDARY EDUCATION DEPARTMENT

SO (A/Cs)/E&SE/6-Misc/2021  
Peshawar, the April 9<sup>th</sup>, 2021

To The Director,  
Elementary & Secondary Education Department,  
Khyber Pakhtunkhwa, Peshawar.

Subject: PREMATURE RETIREMENT AND ENCASHMENT OF LPR

Dear Sir,

I am directed to refer to the subject noted above and to state that the premature retirement cases of the following teachers were submitted to Chief Secretary/Chief Minister Khyber Pakhtunkhwa for approval which have been returned by Establishment department with the observation that the age of the teachers are less than the 55 years as required for premature retirement under Khyber Pakhtunkhwa, Civil Servant (Amendment) Ordinance, 2021.

S.No.	Name of Teacher/Designation/BPS/School & District
1.	Mr. Hidayat Ur Rehman SST (BPS-19), GMS Sabi, District Peshawar.
2.	Mr. Fazli Akbar Khan SST (Sc.) BPS-17, GHS Kosh, District Upper Chitral
3.	Mr. Atta Ullah Khan, Superintendent BPS-17, O/o SDEO (Male), Kohat
4.	Ms. Sheeba Nahid Rani, SST (G) BPS-17, GGHS Sheikhul Bandi Abbotabad
5.	Mst. Zahida Parveen, HM BPS-17, GGHS Kundi Sherawal, Haripur
6.	Mst. Shazia Noor, Principal BPS-19, GGHSS Bandi Muneem, Haripur
7.	Mst. Naheem Akhtar, SST BPS-17, GGHSS Havelian, Abbotabad.
8.	Mst. Farah Saleem, HM BS-17, GGHS Bigwani Shumail D.I Khan

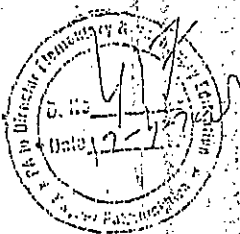
I am, therefore, directed to request you to ensure that the said teachers are performing their duties regularly and their salaries are released properly.

(Encl: All Original Cases)

Encl: of even No. & date:

Copy forwarded for information and necessary action to:

1. The Section Officer (Schools/Male), Elementary & Secondary Education Department.
2. The Section Officer (Schools/Female), Elementary & Secondary Education Department.
3. PS to Secretary, Elementary & Secondary Education Department.
4. PA to Additional Secretary, Elementary & Secondary Education Department.



(ABDUL GHAFFAR)  
SECTION OFFICER (ACCOUNTS)

SECTION OFFICER (ACCOUNTS)

ADDED

1172  
1174

DDA  
Rahul  
10/4/2021

12/4/2021



27.07.2020

Mr. Munfat Ali Yousafzai, Advocate for the appellant is present.

2. My this single order is going to dispose of the instant appeal bearing No. 3003 of 2020 Captioned Sher Ali Khan Versus Government of Khyber Pakhtunkhwa through Chief Secretary, Khyber Pakhtunkhwa, Peshawar and four other respondents.

3. Through the instant appeal submitted under Section-4 of the Services Tribunal Act, 1974, the actions of the respondents by withholding the conveyance allowance and its deduction from appellant during the course of winter and summer vacations have been challenged. It was stated that adverse actions/orders of deduction of conveyance allowance were called in question in departmental appeal within the stipulated period of time but no action was taken. It has been prayed that the respondents may kindly be directed not to deduct the conveyance allowance during vacation period irrespective of the fact whether it were summer or winter vacations and make the payment of all outstanding amount of conveyance allowance which has been deducted previously with all back benefits.

4. Learned counsel for the appellant invited the attention of this Single Bench to the judgment dated 1<sup>st</sup> October 2019 passed by the Hon'ble Peshawar High Court, Peshawar vide Writ Petition Bearing No. 3162-P/2019 Akhtar Hussain and 60 others versus Government of Khyber Pakhtunkhwa, while dilating upon the issue it has been held in categorical terms that pay means the amount drawn monthly by a civil servant as pay, and include special pay, personal pay and any other emoluments declared by the prescribed authority to be paid. It was also held that conveyance allowance is the part and parcel of pay. The petitioners agitating the matter in the august High Court were stated to be civil servants and their claims were held falling within the terms and conditions of service enumerated in

*[Handwritten signature]*

ATTESTED  
*[Handwritten signature]*  
SECRETARY  
GOVERNMENT OF KHYBER PAKHTUNKHWA  
PESHAWAR