



Form- A

FORM OF ORDER SHEET

Court of _____

Case No. _____ /2021

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1-	27/01/2021	<p>The appeal presented today by Malik Suleman Khan Advocate may be entered in the Institution Register and put to the Learned Member for proper order please.</p> <p style="text-align: right;"> REGISTRAR</p> <p>This case is entrusted to S. Bench for preliminary hearing to be put up there on <u>3-3-21</u></p> <p style="text-align: right;">MEMBER(J)</p>
03.03.2021		<p>The learned Member Judicial Mr. Muhammad Jamal Khan is under transfer, therefore, the case is adjourned. To come up for the same before S.B on 28.07.2021.</p> <p style="text-align: right;"> Reader</p>

**BEFORE THE HON'BLE KHYBER PAKHTUNKHWA SERVICE
TRIBUNAL, PESHAWAR.**

Service Appeal No. _____/2021

Amir Nawaz Khan.....(Appellant)

VERSUS

Government of Khyber Pakhtunkhwa, through Chief Secretary
and others.....(Respondents)

I N D E X

S.No	Description of Documents	Annex	Pages
1.	Service Appeal		1-5
2.	Affidavit		6
3.	Addresses of the parties		7
4.	Copies of the departmental appeals dated 02/10/2020	A	8-25
5.	Copies of the judgments	B	26-59-c
6.	Wakalat Nama		60

Appellant

Through

Dated: 22/01/2021

ATTESTED
Malik Sulaman Khan
Advocate High Courts
Of Pakistan.
Cell No. 0331-8234060

(1)

BEFORE THE HON'BLE KHYBER PAKHTUNKHWA SERVICE

TRIBUNAL, PESHAWAR.

Khyber Pakhtunkhwa
Service Tribunal

Diary No. 1676

Dated 27/11/2021

Service Appeal No. 1636/2021

Amir Nawaz Khan (Director of Physical Education) GHSS
Tarnab, Charsadda R/o Barlab Begu Khel Road, Mohallah
Michan Khel, Lakki Marwat.....(Appellant)

VERSUS

1. Government of Khyber Pakhtunkhwa, through Chief Secretary,
Civil Secretariat, Peshawar.
2. The Secretary (E&SE) Department, Khyber Pakhtunkhwa, Civil
Secretariat, Peshawar.
3. The Secretary Finance Department, Khyber Pakhtunkhwa,
Civil Secretariat, Peshawar.
4. The Accountant General, Khyber Pakhtunkhwa, Office
situated at Fort Road, Near Governor House, Peshawar Cantt.
5. The ADO (E&SE) Department, Khyber Pakhtunkhwa, Office
situated at Mardan Road, Charsadda.....(Respondents)

SERVICE APPEAL U/S 4 OF THE KHYBER
PAKHTUNKHWA SERVICE TRIBUNAL ACT,
1974, AGAINST THE ILLEGAL ACT OF THE

Filed 11/11/2021
Registrar

2

RESPONDENTS WHEREBY THE
RESPONDENTS DENIED TO PAY THE
APPELLANT THE CONVINCENCE ALLOWANCES
OF THE SUMMER AND WINTER VACATIONS.

Respectfully Sheweth:

The appellant very humbly submits as under:

1. That appellant is the law abiding citizen of Pakistan and has never ever violated any law of the land in his entire life.
2. That appellant is the Director of Physical Education in Government Higher Secondary School, Tarnab, Tehsil and District Charsadda.
3. That appellant is entitled for the convince allowances as mentioned above but the respondents have not paid even a single penny of the same to the appellant till date.

3

4. That this Hon'ble Tribunal has already allowed the appeal of one of the employee in respect of the same relief.
5. That the appellant filed departmental appeals on dated 02/10/2020 before the respondents but till yet, the needful has not been done by the respondents. (Copies of the departmental appeals dated 02/10/2020 are attached as annexure "A" respectively).
6. That in light of the judgments of the apex Court i.e. (PLD 1996 SC 1185), (PLD 2003 SC 266), (2003 SCMR 1030), (2010 SCMR 421), (2009 SCMR Page-1), (2005 SCMR 499) and (PLD 2003 SC 266), wherein it is held that the benefit of the order shall be given to other employees as well if their cases are the same with the other employees who's cases had been allowed albeit they were not arrayed as a party to the said case. (Copies of the judgments are attached as annexure "B" respectively).
7. That as per Articles 2-A, 4, 5, 9, 10-A, 25 and 227 of the Constitution of Islamic Republic of Pakistan,

1973, there shall be no discrimination among the same class.

8. That the appeal in hand is well in time and appellant has already exhausted the remedy available under the law.
9. That this Hon'ble Tribunal has ample jurisdiction to entertain the instant appeal and dispose of the same while looking to the law, facts and circumstances of the case in hand.
10. That other points will be agitated by the appellant at the time of arguments with the prior permission of this Hon'ble Tribunal.

It is therefore, very humbly prayed before this Hon'ble Tribunal that on the acceptance of this appeal, the respondents may kindly be directed to provide/ allow/ grant all the convince allowances of the summer and winter vacations to the appellant along with consequential/ back benefits for the sake of justice and good governance.

5

Any other relief may also be granted in favour of the appellant and against the respondents, which deems fit by this Hon'ble Tribunal while looking to the facts and circumstances of the instant appeal, albeit not specifically attached herein, in the instant appeal for the ends of justice.



Appellant

Through

Dated: 22/01/2021

Malik Sulaman Khan
Advocate High Courts
Of Pakistan.

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BEFORE THE HON'BLE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR.

Service Appeal No. _____/2021

Amir Nawaz Khan.....(Appellant)

VERSUS

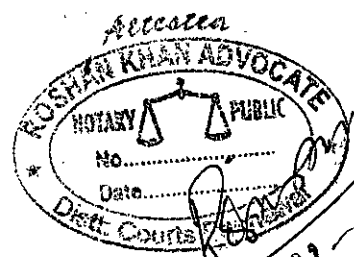
Government of Khyber Pakhtunkhwa, through Chief Secretary and others.....(Respondents)

AFFIDAVIT

I, Amir Nawaz Khan (Director of Physical Education) GHSS Tarnab, Charsadda R/o Barlab Begu Khel Road, Mohallah Michan Khel, Lakki Marwat, do hereby solemnly affirm and declare on oath that the contents of the **Service Appeal** are true and correct to the best of my knowledge and belief and nothing has been concealed from this Hon'ble Tribunal.

[Handwritten Signature]

DEPONENT



22-01-2021

7

**BEFORE THE HON'BLE KHYBER PAKHTUNKHWA SERVICE
TRIBUNAL, PESHAWAR.**

Service Appeal No. _____/2021.

Amir Nawaz Khan.....(Appellant)

VERSUS

Government of Khyber Pakhtunkhwa, through Chief Secretary
and others.....(Respondents)

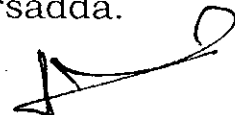
ADDRESSES OF THE PARTIES

APPELLANT:

Amir Nawaz Khan (Director of Physical Education) GHSS
Tarnab, Charsadda R/o Barlab Begu Khel Road, Mohallah
Michan Khel, Lakki Marwat.


RESPONDENTS:

1. Government of Khyber Pakhtunkhwa, through Chief Secretary,
Civil Secretariat, Peshawar.
2. The Secretary (E&SE) Department, Khyber Pakhtunkhwa, Civil
Secretariat, Peshawar.
3. The Secretary Finance Department, Khyber Pakhtunkhwa,
Civil Secretariat, Peshawar.
4. The Accountant General, Khyber Pakhtunkhwa, Office
Situating at Fort Road, Near Governor House, Peshawar Cantt.
5. The ADO (E&SE) Department, Khyber Pakhtunkhwa, Office
situating at Mardan Road, Charsadda.


Appellant

Through

Dated: 22/01/2021


Malik Sulaman Khan
Advocate High Courts
Of Pakistan.

ATTESTED

To

The Respectable ADO, (E&SE) Department,
Khyber Pakhtunkhwa,
Charsadda.

**DEPARTMENTAL APPEAL FOR PROVIDING THE
CONVINCE ALLOWANCE OF THE SUMMER AND
WINTER VACATIONS TO THE APPELLANTS
W.E.F 2011 TILL DATE AS AN ARREAR AND
ONWARD.**

Respected Sir,

The appellants very humbly submit as under:

1. That the appellants are the law abiding citizens of Pakistan, well educated, regular and punctual in duties and have never ever violated any rule of law of the land in their entire lives.
2. That the appellants are related to the respectable profession of teaching since long till date.
3. That convince allowance is admissible to all the Civil Servants and in this respect a Notification No. FD (PRC) 1-1/2011 dated 14/07/2011 was issued.

Later on a revised Notification was also issued on

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dated 20/12/2012 whereby the convince allowance for employees working in BPS-1 to BPS-15 were enhanced/ revised while the employees from BPS-16 to BPS-19 have been treated under the previous notification.

4. That the concerned authority without any valid and justifiable reason has stopped/ deducted the convince allowance under the wrong and illegal pretext that the same is not allowable for the vacation period. ***“one of the employee of education department had filed Service Appeal No. 1888 (CS) /2016 before the Federal Service Tribunal Islamabad regarding the same relief which was accepted by the Hon’ble Tribunal vide its order dated 03/12/2018”.***

5. That the appellants are also the similar employees of the Education Department and under the rule of consistency, the appellants are also entitled to be treated alike as allowed in the above mentioned Service Appeal, but the concerned authority is reluctant to grant the convince allowance to the appellants, hence forth, the appellants are

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compelled by the situations to prefer the instant Departmental Appeal for the redressal of their grievances.

6. That the convince allowances have not been paid/ provided to the appellants despite of the fact that they are entitled and eligible for the same.

7. That the Court/ Tribunal of competent jurisdiction have already allowed/ granted the convince allowance of the period of vacations to other similar and same employees of the Government but the appellants are still deprived from the same relief. (Copy of order is attached).

8. That in light of the judgments of the apex Court i.e. (2009 SCMR 1) (2005 SCMR 499) (PLD 2003 SC 266) (PLD 1996 SC 1185), (PLD 2003 SC 266), (2003 SCMR 1030), (2010 SCMR 421), wherein it is held that the benefit of the order shall be given to other employees as well if their cases are the same with the other employees who's cases had been allowed albeit they were not arrayed as a party to the said case. (Copies of the judgments are attached for ready reference).

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(P.L.D. : 2007: S.C.: 35)

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9. That the non granting of the same relief (Convince Allowance) to the appellants is the violation of Articles 2-A, 3, 4, 5, 8, 9, 10-A, 25 and 227 of the Constitution of Islamic Republic of Pakistan, 1973.
10. That your good ship has ample authority/ jurisdiction to entertain, adjudicate upon and dispose of the instant Departmental Appeal of the appellants in accordance with law while looking to the facts and circumstances of the case in hand.
11. That other legal, factual, oral or documentary points will be agitated before your good ship if opportunity of personal hearing is provided to the appellants.

It is, therefore, very humbly requested before your good ship that on the acceptance of this Departmental Appeal, the convince allowance of the vacations period may kindly be allowed to the appellants as an arrear w.e.f. 2011 till date and onward for the sake of justice and good governance.

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(1) (2) (12)

Any other relief may also be granted in favour of the appellants although the same has not been sought by the appellants in the instant Departmental Appeal if the same is otherwise made out by looking to the facts and circumstances of the case in hand.

Dated: 02/10/2020

Your Obedients

1. Khadija Feroz (Senior Primary School Teacher) Deputy District Officer (Female) Primary Education Tangi Charsadda Wife of Muhammad Alam R/o Marghan, Shodag, Tehsil Tangi District Charsadda.
2. Balqees (Senior Primary School Teacher) Deputy District Officer (Female) Primary Education Tangi Charsadda Wife of Muhammad Saleem R/o Shodag, Tehsil Tangi, District Charsadda.
3. Shakeela Begum (Primary School Head Teacher) Deputy District Officer (Female) Primary Education Tangi Charsadda Wife of Mumtaz Ali R/o Shodag, Teshil Tangi, District Charsadda.
4. Malik Taj (Senor Primary School Teacher) Deputy District Officer (Female) Primary Education Tangi Charsadda S/o Taj Muhammad R/o Mangah Dargi, Tehsil and District Charsadda.
5. Nizar Ali (SSS) GHSS, Tarnab Charsadda, S/o Sardar Ali R/o House No. 109, Street No. 7, Sector J-3, Hayatabad, Peshawar.

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6. Ilham Khan, (Certificated Teacher IT) GHSS Tarnab Charsadda, S/o Mian Gul R/o Mohallah Ababakri, Tarnab, Tehsil and District Charsadda.
7. Naeem Ullah Khan (Senior Certified Teacher) GHSS, Tarnab Charsadda, R/o Jalo Turangzai, P.O. Tarnab, Tehsil and District Charsadda.
8. Alamgir (Certificated Teacher) GHSS Tarnab, Charsadda, S/o Sheeren Gul R/o Jalo Turangzai, P.O. GHSS, Tarnab Charsadda.
9. Zaheer Gul (Certificated Teacher) GHSS Tarnab Charsadda, S/o Fazli Wahid, R/o Tala Shah, Gojar Kallay, P.O. Sher Pao, Tehsil Tangi, District Charsadda.
10. Yar Muhammad (Certificated Teacher) GHSS Tarnab Charsadda, S/o Khan Raziq, R/o Near BHU, Dhand Korona, Tarnab, Tehsil and District Charsadda.
11. Fazali Hayat (Senior Certified Teacher) GHSS Tarnab, Charsadda, S/o Fazali Malik, R/o Bara Kandy, P.O. Tarnab, Tehsil and District Charsadda.
12. Gohar Ali, (Senior Certified Teacher) GHSS Tarnab, Charsadda S/o Zafar Ali Khan R/o Rasheed Abda No. 2, Mohallah Madina Colony, Peshawar.
13. Bukhari Shah (Senior Certified Teacher) GHSS Tarnab, Charsadda S/o Muzammil R/o Mohallah Mando Khel, Tarnab, P.O. Tarnab China, Tehsil and District Charsadda.
14. Akbar Ali (Certificated Teacher) GHSS Tarnab, Charsadda, R/o Akhonzadgan, Tarnab, Tehsil and District Charsadda.
15. Ahmad Ali (Senior Arabic Teacher) GHSS Tarnab, Charsadda S/o Badshah R/o Hwaldar Garhi, Tarnab Tehsil and District Charsadda.

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16. Sher Alam (Senior Theology Teacher) GHSS Tarnab, Charsadda S/o Abdul Muhammad R/o Painsa Khel, Tarnab, Tehsil and District Charsadda.
17. Zia ul Haq (Qari) Government High School Gonda, S/o Atta ul Haq, R/o Ano, P.O. Shabqadar Fort, Tehsil and District Charsadda.
18. Ahmad Ali (Certificated Teacher) District Officer School and Literacy (Male Secondary) Charsadda, R/o Jalo, P.O Tarnab, Tehsil and District Charsadda.
19. Bakhtiar Ahmad (Subject Specialist) GHSS Tarnab, Charsadda, S/o Fazal Wahid R/o Tala Shah Gojar Kallay P.O. Sher Pao, Tehsil and District Charsadda.
20. Muhammad Tariq (Subject Specialist) GHSS Tarnab, Charsadda, S/o Feroz Shah R/o Karka Daudzai P.O. Nahaqi Daudzai, Peshawar.
21. Zahid Qayum (Subject Specialist) GHSS Tarnab, Charsadda S/o Abdul Qayum R/o Katozai, Mohallah Sahib Haq Sahib, Shabqadar, District Charsadda.
22. Riaz ul Haq (Subject Specialist) GHSS Tarnab, Charsadda S/o Atta ul Haq R/o P.O. Shabqadar, Tehsil Shabqadar, District Charsadda.
23. Zahid Rafiq (Subject Specialist) GHSS Tarnab, Charsadda, S/o Muhammad Rafiq Khan R/o Abdu Saeed Khel, Tarnab, Tehsil and District Charsadda.
24. Sheraz Ali (Subject Specialist) GHSS Tarnab, Charsadda, S/o Latif Sher, R/o Mohallah Pir Qala, Shabqadar, District Charsadda.
25. Hazrat Ali (Subject Specialist) GHSS Tarnab, Charsadda S/o Muhammad Qamar R/o Mohallah Malmala, Tarnab, Tehsil and District Charsadda.

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26. Ajmal Qadir (Subject Specialist) GHSS Tarnab, Charsadda, S/o Abdul Qadir R/o Dagai Ghulam Qadir, Tehsil and District Charsadda.
27. Zaheen ullah (Subject Specialist) GHSS Tarnab, Charsadda S/o Rooh Ullah R/o Prang Mohallah Miandad Khel, Charsadda.
28. Muhammad Ibrahim (Subject Specialist) GHSS Tarnab, Charsadda S/o Muhammad Islam R/o P.O. Sardheri, Mohallah Akbar Abad, Charsadda.
29. Amir Nawaz Khan (Director of Physical Education) GHSS Tarnab, Charsadda R/o Barlab Begu Khel Road, Mohallah Michan Khel, Lakki Marwat.
30. Hamayun (Subject Specialist) GHSS Tarnab, Charsadda S/o Saif ur Rehman R/o P.O. Charsadda, Mohallah Said Pao, Charsadda.
31. Haider Ali (Secondary School Teacher) GHSS Tarnab, Charsadda S/o Sahar Gul R/o Tailian, Prang, Tehsil and District Charsadda.
32. Muhammad Saeed Khan (Secondary School Teacher) GHSS Tarnab, Charsadda S/o Lal Muhammad R/o Pinda Khel, Tarnab, Tehsil and District Charsadda.
33. Wajid ur Rehman (Secondary School Teacher) GHSS Tarnab, Charsadda S/o Inayat ur Rehman R/o P.O. Sher Pao, Mohallah Aslam Kalay, Tangi District Charsadda.
34. Amjad Ali (Secondary School Teacher) GHSS Tarnab, Charsadda S/o Riaz ud Din R/o Spalmai, P.O. Tarnab, Tehsil and District Charsadda.
35. Shaukat Ali (Secondary School Teacher) GHSS Tarnab, Charsadda S/o Haleem Ullah R/o P.O. Mirza Dher, Tehsil Tangi District Charsadda.

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- (P) (B) (16)
36. Naimat Ullah (Secondary School Teacher) District Officer School and Literacy (Male Secondary) Charsadda S/o Syed Nazeef R/o Utmanzai, Charsadda.
 37. Ameer Jamal Shah (Secondary School Teacher) Government High School Gh Hamid Gul Charsadda, S/o Mubarak Shah R/o P.O. Ashrafia Colony, Sufaid Masjid, Mohallah Afghani Colony Peshawar.
 38. Ahmad Zeb (Senior Certified Teacher) GHSS Tarnab, Charsadda S/o Muhammad Sarwar Khan R/o P.O. Tarnab, Shahi Kalali, Tehsil and District Charsadda.
 39. Saad Ullah Khan (Certified Teacher) GHSS Tarnab, Charsadda S/o Zafar Ali R/o Mando Khel, Tarnab, Tehsil and District Charsadda.
 40. Fazali Mabood (Certificated Teacher) GHSS Tarnab, Charsadda S/o Fazli Mahmood R/o Ghazo Dheri, China, Tehsil and District Charsadda.
 41. Imdad ul Haq (Theology Teacher) Master Government High School Batagram Charsadda S/o Atta Ullah R/o P.O. Shabqadar, Mathra, District Charsadda.
 42. Nia Ullah (Subejct Specialist) GHSS Tarnab, Charsadda R/o Sami ul Haq R/o P.O. Lakaray, Sagi Bala, Tehsil Safi District Mohmand.
 43. Jehangir Khan (Subject Specialist I.T) GHSS Hassanzai, Charsadda S/o Abdul Malik R/o Halimzai, Narkhel, Tehsil and District Charsadda.
 44. Mohammad Ijaz (Senior Subject Specialist) BPS-16, GHSS Tarnab, Charsadda S/o Behram Khan R/o Hesara Korona, Basher Abda, Tehsil and District Charsadda.

Through

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Mr. Malik Sulaman Khan
 Advocate High Courts & Federal Shariat
 Court of Pakistan
 Mob: 0331-8234060/0342-9848326
 3/10/2020
Malik Sulaman Khan
 Advocate High Court,
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 Cell No. 0331-8234060

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To

The Respectable Secretary Education KP
Office situated at Civil Secretariat,
Peshawar.

**DEPARTMENTAL APPEAL FOR PROVIDING THE
CONVINCE ALLOWANCE OF THE SUMMER AND
WINTER VACATIONS TO THE APPELLANTS
W.E.F 2011 TILL DATE AS AN ARREAR AND
ONWARD.**

Respected Sir,

The appellants very humbly submit as under:

1. That the appellants are the law abiding citizens of Pakistan; well educated, regular and punctual in duties and have never ever violated any rule of law of the land in their entire lives.
2. That the appellants are related to the respectable profession of teaching since long till date.
3. That convince allowance is admissible to all the Civil Servants and in this respect a Notification No. FD (PRC) 1-1/2011 dated 14/07/2011 was issued. Later on a revised Notification was also issued on

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Mr. Malik Salam Khan
Add. Secy. (HR) / Peshawar
Civil Secretariat
331-223/60/3342-9848321

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dated 20/12/2012 whereby the convince allowance for employees working in BPS-1 to BPS-15 were enhanced/ revised while the employees from BPS-16 to BPS-19 have been treated under the previous notification.

4. That the concerned authority without any valid and justifiable reason has stopped/ deducted the convince allowance under the wrong and illegal pretext that the same is not allowable for the vacation period. ***“one of the employee of education department had filed Service Appeal No. 1888 (CS) /2016 before the Federal Service Tribunal Islamabad regarding the same relief which was accepted by the Hon’ble Tribunal vide its order dated 03/12/2018”.***
5. That the appellants are also the similar employees of the Education Department and under the rule of consistency, the appellants are also entitled to be treated alike as allowed in the above mentioned Service Appeal, but the concerned authority is reluctant to grant the convince allowance to the appellants, hence forth, the appellants are

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Saiman Khan
2-9848324

(19)

compelled by the situations to prefer the instant Departmental Appeal for the redressal of their grievances.

6. That the convince allowances have not been paid/ provided to the appellants despite of the fact that they are entitled and eligible for the same.
7. That the Court/ Tribunal of competent jurisdiction have already allowed/ granted the convince allowance of the period of vacations to other similar and same employees of the Government but the appellants are still deprived from the same relief. (Copy of order is attached).
8. That in light of the judgments of the apex Court i.e. (PLD 1996 SC 1185), (PLD 2003 SC 266), (2003 SCMR 1030), (2010 SCMR 421), wherein it is held that the benefit of the order shall be given to other employees as well if their cases are the same with the other employees who's cases had been allowed albeit they were not arrayed as a party to the said case. (Copies of the judgments are attached for ready reference).

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9. That the non granting of the same relief (Convince Allowance) to the appellants is the violation of Articles 2-A, 3, 4, 5, 8, 9, 10-A, 25 and 227 of the Constitution of Islamic Republic of Pakistan, 1973.
10. That your good ship has ample authority/ jurisdiction to entertain, adjudicate upon and dispose of the instant Departmental Appeal of the appellants in accordance with law while looking to the facts and circumstances of the case in hand.
11. That other legal, factual, oral or documentary points will be agitated before your good ship if opportunity of personal hearing is provided to the appellants.

It is, therefore, very humbly requested before your good ship that on the acceptance of this Departmental Appeal, the convince allowance of the vacations period may kindly be allowed to the appellants as an arrear w.e.f. 2011 till date and onward for the sake of justice and good governance.

ATTESTED

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Court of Sessions
Moh: 9331-8234070342-7848326

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Any other relief may also be granted in favour of the appellants although the same has not been sought by the appellants in the instant Departmental Appeal if the same is otherwise made out by looking to the facts and circumstances of the case in hand.

Dated: 02/10/2020

Your Obedients

1. Khadija Feroz (Senior Primary School Teacher) Deputy District Officer (Female) Primary Education Tangi Charsadda Wife of Muhammad Alam R/o Marghan, Shodag, Tehsil Tangi District Charsadda.
2. Balqees (Senior Primary School Teacher) Deputy District Officer (Female) Primary Education Tangi Charsadda Wife of Muhammad Saleem R/o Shodag, Tehsil Tangi, District Charsadda.
3. Shakeela Begum (Primary School Head Teacher) Deputy District Officer (Female) Primary Education Tangi Charsadda Wife of Mumtaz Ali R/o Shodag, Teshil Tangi, District Charsadda.
4. Malik Taj (Senor Primary School Teacher) Deputy District Officer (Female) Primary Education Tangi Charsadda S/o Taj Muhammad R/o Mangah Dargi, Tehsil and District Charsadda.
5. Nizar Ali (SSS) GHSS, Tarnab Charsadda, S/o Sardar Ali R/o House No. 109, Street No. 7, Sector J-3, Hayatabad, Peshawar.

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6. Ilham Khan, (Certificated Teacher IT) GHSS Tarnab Charsadda, S/o Mian Gul R/o Mohallah Ababakri, Tarnab, Tehsil and District Charsadda.
7. Naeem Ullah Khan (Senior Certified Teacher) GHSS, Tarnab Charsadda, R/o Jalo Turangzai, P.O. Tarnab, Tehsil and District Charsadda.
8. Alamgir (Certificated Teacher) GHSS Tarnab, Charsadda, S/o Sheeren Gul R/o Jalo Turangzai, P.O. GHSS, Tarnab Charsadda.
9. Zaheer Gul (Certificated Teacher) GHSS Tarnab Charsadda, S/o Fazli Wahid, R/o Tala Shah, Gojar Kallay, P.O. Sher Pao, Tehsil Tangi, District Charsadda.
10. Yar Muhammad (Certificated Teacher) GHSS Tarnab Charsadda, S/o Khan Raziq, R/o Near BHU, Dhand Korona, Tarnab, Tehsil and District Charsadda.
11. Fazali Hayat (Senior Certified Teacher) GHSS Tarnab, Charsadda, S/o Fazali Malik, R/o Bara Kandy, P.O. Tarnab, Tehsil and District Charsadda.
12. Gohar Ali, (Senior Certified Teacher) GHSS Tarnab, Charsadda S/o Zafar Ali Khan R/o Rasheed Abda No. 2, Mohallah Madina Colony, Peshawar.
13. Bukhari Shah (Senior Certified Teacher) GHSS Tarnab, Charsadda S/o Muzammil R/o Mohallah Mando Khel, Tarnab, P.O. Tarnab China, Tehsil and District Charsadda.
14. Akbar Ali (Certificated Teacher) GHSS Tarnab, Charsadda, R/o Akhonzadgan, Tarnab, Tehsil and District Charsadda.
15. Ahmad Ali (Senior Arabic Teacher) GHSS Tarnab, Charsadda S/o Badshah R/o Hwaldar Garhi, Tarnab Tehsil and District Charsadda.

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16. Sher Alam (Senior Theology Teacher) GHSS Tarnab, Charsadda S/o Abdul Muhammad R/o Painsa Khel, Tarnab, Tehsil and District Charsadda.
17. Zia ul Haq (Qari) Government High School Gonda, S/o Atta ul Haq, R/o Ano, P.O. Shabqadar Fort, Tehsil and District Charsadda.
18. Ahmad Ali (Certificated Teacher) District Officer School and Literacy (Male Secondary) Charsadda, R/o Jalo, P.O Tarnab, Tehsil and District Charsadda.
19. Bakhtiar Ahmad (Subject Specialist) GHSS Tarnab, Charsadda, S/o Fazal Wahid R/o Tala Shah Gojar Kallay P.O. Sher Pao, Tehsil and District Charsadda.
20. Muhammad Tariq (Subject Specialist) GHSS Tarnab, Charsadda, S/o Feroz Shah R/o Karka Daudzai P.O. Nahaqi Daudzai, Peshawar.
21. Zahid Qayum (Subject Specialist) GHSS Tarnab, Charsadda S/o Abdul Qayum R/o Katozai, Mohallah Sahib Haq Sahib, Shabqadar, District Charsadda.
22. Riaz ul Haq (Subject Specialist) GHSS Tarnab, Charsadda S/o Atta ul Haq R/o P.O. Shabqadar, Tehsil Shabqadar, District Charsadda.
23. Zahid Rafiq (Subject Specialist) GHSS Tarnab, Charsadda, S/o Muhammad Rafiq Khan R/o Abdu Saeed Khel, Tarnab, Tehsil and District Charsadda.
24. Sheraz Ali (Subject Specialist) GHSS Tarnab, Charsadda, S/o Latif Sher, R/o Mohallah Pir Qala, Shabqadar, District Charsadda.
25. Hazrat Ali (Subject Specialist) GHSS Tarnab, Charsadda S/o Muhammad Qamar R/o Mohallah Malmala, Tarnab, Tehsil and District Charsadda.

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26. Ajmal Qadir (Subject Specialist) GHSS Tarnab, Charsadda, S/o Abdul Qadir R/o Dagai Ghulam Qadir, Tehsil and District Charsadda.
27. Zaheen ullah (Subject Specialist) GHSS Tarnab, Charsadda S/o Rooh Ullah R/o Prang Mohallah Miandad Khel, Charsadda.
28. Muhammad Ibrahim (Subject Specialist) GHSS Tarnab, Charsadda S/o Muhammad Islam R/o P.O. Sardheri, Mohallah Akbar Abad, Charsadda.
29. Amir Nawaz Khan (Director of Physical Education) GHSS Tarnab, Charsadda R/o Barlab Begu Khel Road, Mohallah Michan Khel, Lakki Marwat.
30. Hamayun (Subject Specialist) GHSS Tarnab, Charsadda S/o Saif ur Rehman R/o P.O. Charsadda, Mohallah Said Pao, Charsadda.
31. Haider Ali (Secondary School Teacher) GHSS Tarnab, Charsadda S/o Sahar Gul R/o Tailian, Prang, Tehsil and District Charsadda.
32. Muhammad Saeed Khan (Secondary School Teacher) GHSS Tarnab, Charsadda S/o Lal Muhammad R/o Painsa Khel, Tarnab, Tehsil and District Charsadda.
33. Wajid ur Rehman (Secondary School Teacher) GHSS Tarnab, Charsadda S/o Inayat ur Rehman R/o P.O. Sher Pao, Mohallah Aslam Kalay, Tangi District Charsadda.
34. Amjad Ali (Secondary School Teacher) GHSS Tarnab, Charsadda S/o Riaz ud Din R/o Spalmai, P.O. Tarnab, Tehsil and District Charsadda.
35. Shaukat Ali (Secondary School Teacher) GHSS Tarnab, Charsadda S/o Haleem Ullah R/o P.O. Mirza Dher, Tehsil Tangi District Charsadda.

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36. Naimat Ullah (Secondary School Teacher) District Officer School and Literacy (Male Secondary) Charsadda S/o Syed Nazeef R/o Utmanzai, Charsadda.
37. Ameer Jamal Shah (Secondary School Teacher) Government High School Gh Hamid Gul Charsadda, S/o Mubarak Shah R/o P.O. Ashrafia Colony, Sufaid Masjid, Mohallah Afghani Colony Peshawar.
38. Ahmad Zeb (Senior Certified Teacher) GHSS Tarnab, Charsadda S/o Muhammad Sarwar Khan R/o P.O. Tarnab, Shahi Kalali, Tehsil and District Charsadda.
39. Saad Ullah Khan (Certified Teacher) GHSS Tarnab, Charsadda S/o Zafar Ali R/o Mando Khel, Tarnab, Tehsil and District Charsadda.
40. Fazali Mabood (Certificated Teacher) GHSS Tarnab, Charsadda S/o Fazli Mahmood R/o Ghazo Dheri, China, Tehsil and District Charsadda.
41. Imdad ul Haq (Theology Teacher) Master Government High School Batagram Charsadda S/o Atta Ullah R/o P.O. Shabqadar, Mathra, District Charsadda.
42. Nia Ullah (Subejct Specialist) GHSS Tarnab, Charsadda R/o Sami ul Haq R/o P.O. Lakaray, Sagi Bala, Tehsil Safi District Mohmand.
43. Jehangir Khan (Subject Specialist I.T) GHSS Hassanzai, Charsadda S/o Abdul Malik R/o Halimzai, Narkhel, Tehsil and District Charsadda.
44. Mohammad Ijaz (Senior Subject Specialist) BPS-16, GHSS Tarnab, Charsadda S/o Behram Khan R/o Hesara Korona, Basher Abda, Tehsil and District Charsadda.

Through

Appellants

37/10/2020
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Advocate High Court,
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1996 S C M R 1185

[Supreme Court of Pakistan]

Before Ajmal Mian, Saiduzzaman Siddiqui and Mukhtar Ahmad Junejo, JJ

HAMEED AKHTAR NIAZI---Appellant

versus

THE SECRETARY, ESTABLISHMENT DIVISION, GOVERNMENT OF
PAKISTAN and others---Respondents

Civil Appeal No.345 of 1987, decided on 24th April, 1996.

(On appeal from the judgment dated 11-12-1986 of the Federal Service Tribunal, Islamabad, passed in Appeal No. 124(L) of 1980).

Per Ajmal Mian, J.; Saiduzzaman Siddiqui, J. agreeing---

(a) Civil Servants Act (LXXI of 1973)---

---S. 8(4)---Constitution of Pakistan (1973), Art. 212(3)---Establishment Secretary's D.O. Letter No.2/4/75-AVI, dated 2-10-1975---Seniority---Merger of four occupational groups of civil servants---Leave to appeal was granted to consider the questions as to whether the seniority list of 1979 was properly prepared in accordance with law and what was the effect of the reliance from the Government side in the Supreme Court in another appeal on the list of 1976; whether when preparing the list of 1979, S. 8(4) of the Civil Servants Act, 1973 and other related provisions of law had been kept in view; whether a civil servant could be allowed to count his seniority in a post from a date earlier than the one of his actual regular continuous officiation in that post; if not whether the fact that the respondents in appeal belonged to the different civil services of Pakistan would make any difference; whether one uniform principle of seniority would apply to all members of the Secretariat Group or the officers joining the Group from different sources/cadres would have to be treated differently; if so, whether such treatment with or without the support of statutory rules or directions would not be in contravention of the relevant provisions of Civil Servants Act, 1973 and in that context what was the effect of the abolition of C.S.P. Cadre; whether the eligibility of civil servant for appointment to a selection post conferred any right of seniority in that post and cadre without issuance of a formal promotion/appointment order in accordance with the prescribed procedure and whether in that context a civil servant belonging to ex C.S.P. Cadre was entitled to 'automatic promotion to the post of Deputy Secretary after he had completed eight years of service but without the requirement of being actually selected/promoted or appointed; and what was the effect of the Supreme Court judgment in Khizar Haider Malik ad others v Muhammad Rafiq Malik and another 1987 SCMR 78 on the case.

(b) Civil Servants Act, (LXXI of 1973)---

---Ss. 8 & 23---Seniority---Merger of C.S.P and P.S.P cadres and creation of APUG---Seniority of such an officer, who was working in province or elsewhere, could not be distorted/disturbed to his detriment on account of the merger of said groups and creation of APUG and junior of such civil servant could not be made senior to him nor a junior to his junior could be made senior to him but this has to be done within the framework of the rules of reorganization of services---If

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the case of any civil servant does not fall within the ambit of said re-organisation rules, S. 23 of the Civil Servants Act, 1973 can be pressed into service by the President of Pakistan to obliterate the inequitable and unjust result arising out of the merger of the two cadres in respect of seniority of any of the civil servants.

ESTACODE, 1989 Edn., pp. 1014, 1096 and 1097 ref.

(c) Service Tribunals Act (LXX of 1973)---

---S. 4---Constitution of Pakistan (1973), Art.212---Appeal to Service Tribunal or Supreme Court---Effect---If the Service Tribunal or Supreme Court decides a point of law relating to the terms of service of a civil servant which covers not only the case of civil servant who litigated, but also of other civil servants, who may have not taken any legal proceedings, in such a case, the dictates and rule of good governance demand that the benefit of such judgment by Service Tribunal/Supreme Court be extended to other civil servants, who may not be parties to the litigation instead of compelling them to approach the Service Tribunal or any other forum.

Per Mukhtac Ahmad Junejo, J.---

(d) Service Tribunals Act (LXX of 1973)---

---S. 4---Appeal to Service Tribunal, scope and extent.

M. Bilal, Senior Advocate Supreme Court and Ejaz Muhammad Khan, Advocate-on-Record for Appellant.

Raja Muhammad Bashir, Deputy Attorney-General and Ch. Akhtar Ali, Advocate-on-Record for Respondents.

Dates of hearing: 7th and 8th April, 1996.

JUDGMENT

AJMAL MIAN, J.---This is an appeal with the leave of this Court against the judgment dated 11-12-1986 passed by the Federal Service Tribunal, Islamabad, hereinafter referred to as the Tribunal, passed in Appeal No.124(1)

of 1980, filed by the appellant, praying for the following reliefs:--

"16. In view of the above, the appellant (who was eventually promoted with effect from 28-8-1980) humbly prays that this honourable Tribunal may kindly direct the respondent No. 1 to proceed in accordance with law and to declare him to have been promoted before the ineligible and junior officers promoted in August, 1979 and February and May, 1980. It is further prayed that full salary and all other benefits may also kindly be allowed to the appellant from the date on which he would have been promoted if his name had been put up for the consideration of the C.S.B. according to his seniority. Cost may also graciously be allowed,"

dismissing the same for the reasons recorded in Appeal NO. I 16(R) of 1981, filed by one M. Ramizul Haq.

2. Leave to appeal was granted to consider inter alia the following questions:--

(a) Whether the seniority list of 1979 was properly prepared in accordance with law and what is

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the effect of the reliance from the Government side in the Supreme Court in another appeal on the list of 1976? (28)

(b) Whether when preparing the list of 1979, section 8(4) of the Civil Servants Act, 1973 and other related provisions of law, have been kept in view?

(c) Whether a civil servant can be allowed to count his seniority in a post from a date earlier than the one of his actual regular continuous officiation in that post; if not, whether the fact that the respondents belonged to the defunct Civil Service of Pakistan will make any difference?

(d) Whether one uniform principle of seniority will apply to all members of the Secretariat Group or the officers joining the Group from different source/cadres would have to be treated differently; if so, whether such treatment whether with or without the support of statutory rules or directions would not be in contravention of the relevant provisions of the Civil Servants Act, 1973, and in this context what is that effect of the abolition of the C.S.P. Cadre? and

(e) Whether the eligibility of a civil servant for appointment to a selection post confers any right of seniority in that post and cadre without issuance of a formal promotion/appointment order in accordance with the prescribed procedure and whether in this context a civil servant belonging to ex-C.S.P cadre is entitled to automatic promotion to the post of Deputy Secretary after he completes eight years of service but without the aforementioned requirement of being actually selected/promoted or appointed? and

(f) What is the effect on this case of the judgment of this Court in Khizar Haider Malik and others v. Muhammad Rafiq Malik and another 1987 SCMR 78.?

3. It may be observed that the order of granting leave was recalled on 10-2-1992, but upon review, the same was set aside through an order dated 14-2-1994 and thereby the aforesaid leave granting order was restored.

4. The brief facts are that the appellant joined Pakistan Military Lands and Cantonments Service on the basis of the results of competitive examination held in June, 1960. It is the case of the appellant that in 1967, he proceeded to U.S.A. on study leave and obtained a Master's Degree in Public Administration from the Maxwell School of Public Affairs and Citizenship, Syracuse University. It is also his case that in June/July, 1972, the Planning Division recommended him for promotion to the post of Deputy Secretary to the Government of Pakistan. It is his further case that pending approval of the Establishment Division, Planning Division promoted him as Deputy Secretary by an order dated 9-8-1972. The above order reads as follows:--

"OFFICE ORDER

It has been decided that Mr.Hameed Akhtar Niazi, PML & CS will look after the work of Deputy Secretary (Administration) with immediate effect. He will be designated as Officer on Special Duty (Administration).

Mr. Zafar Iqbal is posted as Deputy Secretary, Programming."

It has also been averred by the appellant that he was promoted as Deputy Secretary on regular basis on 9-4-1973 and posted in the Establishment Division.

5. It seems that in August, 1973, C.S.P. and P.S.P. cadres were merged into All Pakistan Unified Grades, hereinafter referred to as APUG. It further seems that after the aforesaid merger, four occupational groups were created, namely, Tribal Areas Group, District Management Group,,

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Secretariat Group and Police Group. The appellant opted for the Secretariat Group. It is the case of the appellant that the Gradation List of Deputy Secretaries i.e. of the Secretariat Group was prepared in accordance with the provision of section 8(4) of the Civil Servants Act, 1973, hereinafter referred to as the Act, which provides that "Seniority in a post, service or cadre to which a civil servant is promoted shall take effect from the date of regular appointment to that post". According to the appellant, the above Gradation List was circulated in June, 1976, wherein the appellant's name appeared at Serial No. 69. However, the appellant learnt in August, 1979, that civil servants belonging to erstwhile Civil Service of Pakistan (C.S.P.), whose names appeared much below the appellant in the aforesaid Gradation Lists of 1976, were being promoted to the rank of Joint Secretary (Grade-20) and his name had not been put up for promotion to the General Selection Board for consideration. He first made efforts to get redress from the department, but eventually, he filed the aforementioned service appeal in the Tribunal, which was dismissed as stated above. After that he filed a petition for leave to appeal in this Court, which was granted to consider the above questions.

6. It may be pertinent to observe that in the above appeal, besides the Federation, 14 civil servants were arrayed as respondents. It may further be observed that, in addition to the above respondents, 7 other civil servants were impleaded pursuant to an application dated 4-1-1988. Dr. Sh. Aleem Mehmood was impleaded as a respondent (respondent No. 23 in the present appeal) on his own application, whereas the applications of Muhammad Aslam and Tariq Junejo for being impleaded, remained pending till today: However, they were heard. One, Malik Zahoor Akhtar, has also appeared though he had not filed any application for getting himself impleaded in the aforesaid appeal.

7. Be that as it may, in support of the above appeal, Mr. M. Bilal, learned Sr. A.S.C. for the appellant, has vehemently contended that after the merger of the two cadres, namely, C. S. P. and P. S. P. and creation of APUG, the Gradation List of the Deputy Secretaries prepared in 1976 could not have been disturbed and that certain civil servants could not have been given seniority over the appellant from a date prior to their regular appointments as the Deputy Secretaries in the above cadre. To reinforce the above submission, reliance has been placed by him inter alia on section 8(4) of the Act and para. 8 of ESTACODE, 1989 Edition, under the caption "Secretariat Group" at Serial No. 19 incorporated on the authority of O.M.No.2/2/75-ACR, dated 12-4-1976.

The aforementioned newly added respondent supports Mr. Bilal's contention.

On the other hand, Mr. Raja Muhammad Bashir, learned Deputy Attorney-General, has contended that seniority inter se of the civil servants belonging to C.S.P. cadre obtaining prior to its merger could not have been distorted to the detriment of any of the above civil servants and, therefore, if C.S.P. officers, who were not actually posted as Deputy Secretaries but were deputed to various Provinces on account of public exigencies, could not have been made junior to civil servants who were junior to them prior to the merger of aforesaid two cadres and who were working as Deputy Secretaries and were senior inter alia to the appellant.

8. It appears that the Tribunal proceeded on the premises as urged by learned Deputy Attorney-General. It may be advantageous to reproduce: the relevant portion of the impugned judgment, which reads as follows:--

"It appears that the question of seniority was not examined when persons not being Members of the Service were appointed to APU J with the approval of the President vide Notification No.1/1/73-ARC, dated 14-9-1973. Nevertheless, the seniority lists were prepared of the Deputy Secretaries and Joint Secretaries, etc. and they included only those officers of the former C.S.P. who at the relevant time were serving against these posts. At that time, the Rule for appointment of the Deputy Secretaries was that a C.S.P. Officer who had completed 8 years' service could be

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appointed as Deputy Secretary. No doubt, subsequently by Office Memo. No.3/7/74-AR.II, dated the 20th May, 1974, 12 years period was provided for Grade-19 and for horizontal movement of Grade-18 Officers to the post of Deputy Secretary vide para. 3 of Office Memo. No. 2/2/75-ARC, dated 21-2-1975, but this deviation in the length of service is immaterial as far as C.S.P. Officers are concerned. Their names already existed as Members of C.S.P. and subsequently of APUG. Their seniority was to be changed in accordance with some principle and not by making any, rule affecting their vested right. All Rules made under the Civil Servants Act or the Civil Servants Ordinance have to be construed with prospective operation and not with retrospective operation. All those Rules which affect the former Officers of the C.S.P. have to be applied for the situations existing after the enactment of the Civil Servants Ordinance, 1973, and the Rules made thereunder. The seniority of the C.S.P. Officers in APUG could not, therefore, be distorted. Any seniority to which a Member of the Cadre was entitled before the constitution of Secretariat Group, could not be affected by the provisions of section 8(4) of the Civil Servants Act, 1973. In other words, the seniority of such, a person cannot be destroyed by any subsequent change in the principles of seniority. By making a provision in the relevant Officer Memorandum that seniority shall count from the date when an officer becomes Deputy Secretary or is promoted to Grade-19, whichever is earlier, the distortion in the seniority of other Federal Services was removed, but in case of C.S.P. Officers this formula could not work as there was no scale comparable to Grade-19 (Junior Administrative Grade) and the C.S.P. Officers used to be promoted to the Joint Secretary's grade from Senior C.S.P. Scale which is comparable with Grade-18, and the post of Deputy Secretary was never a promotion post in the cadre. Thus, in our opinion, if after the coming into force of the Civil Servants Act, an officer of former C.S.P. who was senior to his colleagues working as Deputy Secretary in the Secretariat, but an officer who was working, in the Province or elsewhere would, when brought to the Secretariat later, retain his seniority vis-a-vis his own colleagues. In other words, if an officer of the former C.S.P. is appointed as Deputy Secretary in the Secretariat Sub-Group, within APUG, he would count his seniority from the date he completes 8 years of service if any of his colleagues junior to him had already been promoted. It is this principle, which the Establishment Division has applied and we think that this is a proper course by which the distortion in the seniority can be removed."

9. In this regard, it may be pertinent to refer to page 1014 of the ESTACODE,, 1989 Edition, in which under the caption "Reorganisation of APUG in to four Occupational Groups Seniority of members of the Group" at Serial No. 17 has provided as under on the basis of Establishment Secretary's D.O. Letter No.2/4/75-AVI, dated 2-10-1975:--

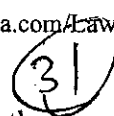
"Sl. No. 17:

Kindly refer to Establishment Secretary's Circular D.O. Nos.5/1/73ARC, dated the 7th September, 1973, 2/2/73-AVI, dated the 26th November, 1973, and 2/1/74-AVI, dated the 29th May, 1974, alongwith which the combined seniority lists of officers of All-Pakistan Unified Grades in various grades were circulated.

2. In the meantime, the All-Pakistan Unified Grades has been organised into four Occupational Groups---the Secretariat Group, the District Management Group, the Police Group and the Tribal Areas Group. The rules and procedures etc. governing the administration of each of these Groups have already been issued and sent to you vide the Establishment Division's Office Memoranda No.2/2/75-ARC, dated 21st February, 1975 (Secretariat Group) No.2/2/74-ARC, dated 23rd February, 1974 (District Management Group), No.3/2/75-ARC, dated 31st May, 1975 (Police Group) and D.O. No. 1/6/73-ARC, dated 20th October, 1973 (Tribal Areas Group). Consequently the seniority lists have now been drawn up separately in respect of each Group.

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3. As already indicated, each group will henceforth be managed under the respective rules quoted above. A member of a particular Group will be governed by prospects of promotion and advancement available within the Group. While entry into other Groups by horizontal movement is possible with the approval of Central Selection Board, there will be no automatic mobility from one Group to the other. In other words, officers shown in any particular Group will now belong to that Group once for all unless specifically selected and approved for movement to another Group.

4. You may now kindly inform the officers under your administrative control accordingly. Officers shown in the Secretariat Group but belonging originally to some other Group may let this Division know finally as to whether they would like to remain in the Secretariat Group or go back to their parent Group. Option once exercised will- be final. Such option should reach us not later than 31st October, 1975. Failure to exercise option by that date will be presumed to be an option for the Group where the name appears presently.

5. In the meantime, these lists may be treated as provisional and in case there are any omissions or discrepancies, these may please be communicated to us immediately for rectification."

10. Reference may also be made to paras. 3 and 8 of the ESTOCODE, 1989 Edition, at pages 1096 and 1097 thereof under the caption "Secretariat Group" at Serial No. 19 and which read as under:--

Para. 3 of the ESTACODE: 3. Deputy Secretary.--Appointment to the post of Deputy Secretary will be made in accordance with the following methods: --

(i) By promotion of Grade-18 Officers of Office Management Group and the Secretariat Group on the recommendations of the Central Selection Board.

(ii) By horizontal movement from other Occupational Groups of Grade 19 Officers who have been recommended by the Ministries/Divisions, Departments or Provincial Governments and have been found fit by the Central Selection Board.

(iii) By direct appointment or the recommendations of the Federal Public Service Commission of persons possessing such qualifications and experience etc., as may be prescribed.

Para. 8 of the ESTACODE: 8. Deputy Secretary.--Seniority would be determined from the date of continuous regular officiation as Deputy Secretary, or in a post in Grade-19, whichever is earlier."

11. We may observe that in the present case, section 8(4) of the Act is relevant as it will be covered by the rules framed for regulating APUG. It is evident from afore-quoted para. 4 of ESTACODE, 1989 Edition, at page 1014 that after the creation of Secretariat Group, the civil servants were given the option to opt the above Group or any other Group by 31-10-1975. Whereas above quoted para. 3 of the ESTACODE at page 1096 under the caption" Secretariat Group" at Serial No.19, indicates as to how the appointment to the post of Deputy Secretary will be made i.e. by promotion of Grade-18 Officers by horizontal movement and by direct appointment on the recommendation of the Federal Public Service Commission.

12. It may further be noticed that para. 8 of the above ESTACODE at page 1097 provides that seniority would be determined from the date of continuous regular officiation as Deputy Secretary or in a post in Grade-19, whichever is earlier.

13. The Tribunal has not taken into consideration that above relevant provisions of the

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ESTACODE while dilating upon the controversy in issue. It should have decided, whether the respondents had exercised the options in terms of aforesaid para. 4 of the above ESTACODE at page 1014, by 31-10-1975 and whether the seniority list was prepared as per aforesaid para. 8 of the ESTACODE, i.e. from the date of continuous regular officiation as Deputy Secretary or in a post in Grade-19, whichever is earlier.

14. There is no doubt that the seniority of an officer, who is working in a Province or elsewhere, cannot be distorted/disturbed to his detriment on account of the merger of above two cadres of C.S.P. and P.S.P. and creation of APUG. His junior cannot be made senior to him nor a junior to his junior can be made senior to him. But, this is to be done within the framework of the rules of reorganisation as given in the above ESTACODE. If the case of any civil servant does not fall within the ambit of the above rules, section 23 of the Act can be pressed into service by the President to obliterate the inequitable and unjust result arising out of the above reorganisation in respect of seniority of any of the civil servants.

15. It was also contended by Mr. Raja Muhammad Bashir, learned Deputy Attorney-General, that since that appellant has already been promoted to Grade-20, the above appeal has become in fruituous. However, this contention was refuted by Mr. Bilal and it was urged by him that the appellant is entitled to get his seniority restored according to the rules.

16. In our view, it will be just and proper to remand the case to the Tribunal with the direction to re-examine the above case after notice to the affected persons and to decide the same afresh in the light of above observations. We may observe that if the Tribunal or this Court decides a point of law relating to the terms of service of a civil servant which covers not only the case of the civil servant who litigated, but also of other civil servants, who may have not taken any legal proceedings; in such a case, the dictates of justice and rule of good governance demand that the benefit of the above judgment be extended to other civil servants, who may not be parties to the above litigation instead of compelling them to approach the Tribunal or any other legal forum.

17. The above appeal stands disposed of in the above terms, with no order as to costs.

(Sd.)

Ajmal Mian, J.

(Sd.)

Saiduzzaman Siddiqui, J.

MUKHATAR AHMAD JUNEJO, J.--My learned brother Ajmal Mian, J. was kind enough to send me draft of the judgment proposed to be delivered by him in Civil Appeal No.345 of 1987 (Hameed Akhtar Niazi v. The Secretary, Establishment Division, Government of Pakistan etc.) With due respects to my learned brother, I am unable to agree with him that this matter be remanded to the Federal Service Tribunal with some directions including the direction to re decide the case.

The facts of the case have already been given by my learned brother and they need not be reiterated. In the context of the facts given in para.4 of the draft judgment, appellant Hameed Akhtar Niazi filed his appeal before the Federal Service Tribunal under section 4 of the Service Tribunals Act with prayer in the following words:--

"In view of the above the appellant who was eventually promoted with effect from 28-8-1980 humbly prays that this Honourable Tribunal may kindly direct the respondent No.1 to proceed in accordance with law and to declare him to have been promoted before the ineligible and junior officers promoted in August, 1979 and February and May, 1980. It is further prayed that full salary and all other benefits may also kindly be allowed to the appellant from the date on which

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ne would have been promoted if his name had been put up for the consideration of the C.B.S. according to his seniority. Cost may also graciously be allowed. "

Perusal of the prayer shows that the appellant seeks his promotion from a date earlier than the dates of promotion of certain officers termed by him to be ineligible and junior. According to section 4 of the Service Tribunals Act, a civil servant can invoke jurisdiction of the Tribunal in respect of any of his terms and conditions of service. However, no appeal shall lie to a Tribunal against an order or decision of a departmental authority determining the fitness or otherwise of a person to be appointed to or hold a particular post or to be promoted to a higher post or grade, vide clause (b) of the proviso to section 4 of C the said Act. By asking the Tribunal to direct his promotion on a date earlier than the promotion of ineligible and junior officers, the appellant wanted the Tribunal to determine him to be fit for promotion and to determine the other officers to be ineligible for promotion by labelling them as ineligible. As regards the claim for salary and monetary benefits, the same is again based on the presumptive promotion of the appellant. Since the main relief of promotion cannot be given to the appellant by the Tribunal, the consequential relief can also not be given to him.

In my humble view appellant's appeal before the Federal Service Tribunal was not maintainable and it required to be rejected. In my humble view this appeal merits dismissal.

(Sd.)

Mukhtar Ahmad Junejo, J.

ORDER OF THE COURT

By majority judgment this appeal is allowed, .The case is remanded to the Tribunal in terms of the majority view.

(Sd.)

Ajmal Mian, J.

(Sd.)

Saiduzzaman Siddiqui, J.

(Sd.)

Mukhtar Ahmad Junejo, J.

M.B.A./H-251/S

Appeal allowed

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P L D 2003 Supreme Court 266

Present: Tanvir Ahmed Khan, Khalil-ur-Rehman Ramday and Falak Sher, JJ

AAMIR IKRAM and 10 others---Petitioners

Versus

DISTRICT HEALTH OFFICER, VEHARI and others---Respondents

Civil Petitions for Leave to Appeal Nos.2253/L to 2263/L of 2002, decided on 4th December, 2002.

(On appeal from the judgment dated 5-12-2001 of the Punjab Service Tribunal, Lahore, passed in Appeals Nos.543/1999, 544/1999, 553/1999, 544/1999, 556/1999, 557/1999, 559/1999, 564/1999, 568/1999, 1822/1999 and 1823/1999 respectively).

(a) Punjab Service Tribunals Act (IX of 1974)---

---S. 4---Constitution of Pakistan 1973), Art. 212(3)---Termination of service---Service Tribunal by allowing petitioners' appeals ordered their reinstatement in service, but treated intervening period as extraordinary leave---Validity---Supreme Court had already granted back-benefits to other employees of the same Department while accepting their petitions filed against the same impugned judgment---Present petitioners were party in the impugned judgment of Tribunal and were aggrieved of the same, but had filed petitions now---Observing that Department should have been magnanimous enough to have allowed such benefit to the present petitioners, Supreme Court converted petitions into appeal and allowed all back-benefits to the petitioners.

(b) Constitution of Pakistan (1973)---

---Art. 212(3)---Petition for leave to appeal---Delay of 146 days. condonation of---Supreme Court out of impugned judgment had already granted same relief to other employees of the same Department---Delay in present matter should not come in the way of petitioners for dispensation of complete and substantial justice, who were sailing in the same boat.

Muhammad Anwar Ghuman, Advocate Supreme Court with Ch. Mehdi Khan Mehtab, Advocate-on-Record for Petitioners.

Dr. Muhammad Abid and Arshad Hussain Bukhari. Law Assistant for Respondents.

Date of hearing: 4th December. 2002.

JUDGMENT

TANVIR AHMED KHAN, J.--Leave to appeal is sought against the judgment dated 5-12-2001 passed by the Punjab Service Tribunal, Lahore (hereinafter referred to as the Tribunal), whereby the appeals filed by the petitioners against the termination of their services were accepted. However the intervening period was ordered to be treated as extraordinary leave.

This matter was earlier assailed through Civil Petitions Nos.403-L to 425-L of 2002 by Sher Muhammad Shehzad and others against the same impugned judgment. This Court, through its

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been clearly stated that option was to be given by those employees whose service was not pensionable to convert the same as pensionable in lieu of giving up of their right to receive that part of the provident fund contributed by the financial institutions as such, paragraph 2 was applicable only to such employees.

In the concluding portion of paragraph 1, it was by operation of the new scheme itself that previous scheme of pension and provident fund, etc., was made inoperative qua the employees of National Bank on the assumption that the said decision as to exercise of option and surrender of amount of provident fund was not applicable to them as their service was already pensionable.

Such instruments (Circulars) are to be constructed keeping in view the real intention behind them for taking such decision which should be explored by scrutiny of the attending circumstances and in particular the instrument as a whole. It is clear from the circular that the decision was taken to provide better social security to the employees of the financial institutions and in the case of employees of National Bank of Pakistan whose service was already pensionable, they were given benefit to the same as per its own force. There is no possibility of even entertaining any doubt as to its applicability to them qua the entertaining to receive the entire amount accumulated in their provident fund account on 30-11-1977 at the time of closure of the said amount whether contributed by them or the bank with interest up to the date of payment to which no legal exception can be taken.

Benefit was extended to all the persons falling in the same category, therefore, in order to do complete justice, all those employees of the National Bank of Pakistan covered by the circular are entitled to receive whole of the amount available in the provident fund account as on 30-11-1977 contributed by them and the bank.

Hameed Akhtar Niazi v. The Secretary, Establishment Division Government of Pakistan and others
1996 SCMR 1185 ref.

Rana Muhammad Sarwar, Advocate Supreme Court for Appellants.

Javed Altaf, Advocate Supreme Court and Sardar Muhammad Aslam, D.A.-G. for Respondents.

Date of hearing: 5th March, 2003.

JUDGMENT

MUNIR A. SHEIKH, J.---This appeal by leave of the Court is directed against the judgment, dated 31-7-1998 of a Division Bench of the Lahore High Court, Lahore whereby I.C.A, filed by the appellants against the judgment, dated 12-7-1982 of the learned Single Judge of the said Court, dismissing their Constitutional Petition No.10916 of 1980, has been dismissed.

2. The facts of the case briefly stated are that the appellants who were employees of National Bank of Pakistan in the matter of Provident Fund, etc., were governed by the National Bank of Pakistan Employees Provident, Pension and Guarantee Fund, Rules framed under Bye-Law No.8(a)(v) with the approval of the Central Government. According to this Bye-Law, the bank was 'to contribute towards the said fund which was credited to the account of the said employees and this fund was to be administrated and maintained by a Committee constituted under the said rules. The employees were entitled to receive the said amount in the said fund alongwith interest at the prescribed rates. It may also be mentioned here that the service of the employees of National Bank of Pakistan was pensionable.

3. On 30-11-1977, a decision was taken by the concerned authorities for re-structuring of pensionary retirement benefits of Officers/Executives of the National Bank of Pakistan and Financial Institutions

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which was embodied in Circular No.77(9)-IFXI/77, paragraphs 1, 2 and 9 of which are relevant for disposal of this appeal, for the decision thereof revolves around the construction as to its applicability and scope to the employees: of the financial institutions which are reproduced below in extenso for facility of ready reference:--

"I am directed to say that with a view to providing better social security, it has been decided to introduce pensions and retirement benefits for the officers/executives of the banks including the State Bank of Pakistan and financial institutions as have been introduced by the Federal Government for civil servants. The pension scheme also includes the benefit of family pension to the officers/executive's wife and or to his children in the case of demise of the pensioner. The existing schemes of pension in the case of the National Bank of Pakistan, Contributory Provident Fund and Gratuity shall be discontinued.

(2)?????? The previous continuous service of officer/executive shall count as qualifying service for pension. The contribution made by the bank and financial institution towards the Contributory Provident Fund shall be withdrawn as that service shall now count for the purpose of pension. The contribution of the officers/executives plus interest thereon standing in their respective Provident Fund Account shall be transferred and credit to the Provident Fund Accounts to be established under the new Provident Fund Scheme.

(9)?????? At page 189 of p.b. An officer who was in non-pensionable service on 1st May, 1977 and who was entitled to the benefits of Contributory Provident Fund, shall, unless the amount of the Contributory Provident Fund has been paid to be allowed to opt for the new scheme of pension, gratuity and provident fund, in lieu of the existing retirement benefits admissible to him. This option shall be exercised in writing and communicated to the competent authority within 6 months from the date of the issue of these orders. These officers who do not exercise and communicate their options for the pensionary benefits sanctioned in this letter within the prescribed time limit, shall not be entitled to the benefits thereof and shall continue on their existing terms.

(10)????? Since the rates of pension and gratuity given above have been fixed by the Pay Commission on the side of the Federal Government, the existing provisions and any changes or revision in the rates of scales of pension or gratuity that may hereafter be made by the Federal Government shall also apply to the officers/executives of banks including the State Bank of Pakistan and financial institutions."

4. It appears that like others, an option was also sought from the employees of the National Bank whether they would like to be governed under the old rules or this decision and it appears that they opted for the said policy decision as a consequence of which the contribution made by the bank towards the provident fund of its employees was treated to have been surrendered in its favour, as such, they were held to be not entitled to the said amount. Aggrieved by the act of the respondent-bank of withholding the payment of that part of the provident fund which was contributed by it, the appellants approached the High Court through Constitutional Petition No. 10916 of 1980 which was dismissed through judgment, dated 12-7-1982 by the learned Single Judge of the said Court against which ICA filed by them has also been dismissed through the impugned judgment, dated 31-7-1998 against which this appeal by leave is directed.

5. The main burden of arguments presented by Rana Muhammad Sarwar, learned counsel for the appellants in support of this appeal was that from the policy decision as embodied in the said circular if read as a whole and in particular paragraphs Nos. 1, 2 and 9 which have been reproduced above, it is abundantly clear that paragraph 2 of the said circular under which option was required to be given was applicable only to those employees of financial institutions whose service under the previous arrangements or the rules was not pensionable. They were required if they wanted to be governed by

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the new policy decision which had the benefit of converting their service as pensionable to surrender the part of the amount in the provident fund contributed by the bank or the financial institutions and not to those whose service was already pensionable, for in such a case; there is no question of surrendering the part of the provident fund contributed by the bank.

6. The argument has considerable force. It is clear from a bare reading of the said circular as a whole that the intention behind taking the same was to provide better social security to the employees of the financial institutions and it was made clear in the later part of paragraph I that so far as the employees of the National Bank were concerned, the existing schemes of pension, contributory fund and gratuity shall be discontinued. It is, therefore, clear from this part of the said paragraph that the existing schemes of pension, contributory fund and gratuity in respect of the employees of National Bank were discontinued by their own operation, as such, it was not dependent upon the exercise of option by them in their favour. The argument of learned counsel for the appellant that such employees as a matter of fact were, left with no choice but to accept that from 30-11-1977, their previous scheme as to gratuity had become inoperative and they were automatically governed by the said scheme embodied in the circular, has force as a consequence of which they could not be, deprived of the right to receive the amount available in their provident fund account on 30-11-1977 alongwith interest up to the date of payment whether it was contributed by them or the bank.

7. The legal consequence of latter part of paragraph 1 that the old scheme of pension, provident fund, etc., previously applicable to employees of National Bank of Pakistan became operative from 30-11-1977 was the closure of the provident fund account within the contemplation of rule 23 of the relevant rules which reads as under:--

"23. The administrators shall have power to close the Fund at any time if they consider such a course advisable or necessary, in which event the Fund shall be divided amongst the members by payment to each member of such sum as may be standing to his credit at the time of such closure."

8. This being the position, the employees of the National Bank were entitled to receive whole of the amount accumulated in their account of provident fund (total amount of contribution made by them and the bank alongwith interest up to the date of payment), therefore, the act of withholding the payment of that part of the amount available in the said account which was contributed by the bank was illegal and without lawful authority and could not be sustained.

9. The argument of learned counsel for the respondent-bank that as per paragraph 2 of the policy decision reproduced above that an option was to be given by all the employees of the financial institutions whether they would like to opt for the new scheme or the previous one and in case the option was given in favour of the said policy decision by operation of the said paragraph, they had to surrender the amount in the provident fund contributed by the National Bank has, no substance.

10. We have also observed that the judgments of the High Court in the Constitutional petition and ICA proceeded mainly upon the assumption that since option under paragraph 2 of the decision had been given, therefore, the appellants had to surrender the amount of contribution made by the bank. It has altogether been ignored that this paragraph is not independent but it is to be read in conjunction with the entire policy decision embodied in the said circular and in particular paragraph-9 thereof. In paragraph 9, it has been clearly stated that option was to be given by those employees whose service was not pensionable to convert the same as pensionable in lieu of giving up of their right to receive that part of the provident fund contributed by the financial institutions as such, paragraph-2 was applicable only to such employees.

11. Learned counsel for the respondents when faced with this difficulty tried to overcome it by arguing that the service of the employee of the National Bank though was pensionable but it was less favourable in that upper limit of amount of pension had been fixed and family pension was not

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2010 S C M R 421

[Supreme Court of Pakistan]

Present: Javed Iqbal, Sayed Zahid Hussain and Muhammad Sair Ali, JJ

STATE BANK OF PAKISTAN and others---Petitioners

Versus

Mst. MUMTAZ SULTANA and others-Respondents

Civil Petitions Nos.123-K and 179-K of 2007, decided on 5th August, 2009.

(Against the order dated 14-11-2006 and 26-1-2007 of the High Court of Sindh, passed in C.P. No.D-969 of 2005 and C.P. No.1683 of 2006 respectively).

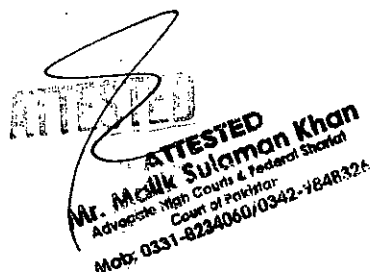
(a) Constitution of Pakistan (1973)---

----Arts. 25, 189, 190 & 185(3)---Civil Service---Voluntary Golden Handshake Scheme (VGHS) floated by State Bank of Pakistan through Circular No.7 of 1997, dated 23-10-1997 for getting voluntary retirement by its employees---Exercise of option for retirement by petitioners under such scheme---Non-payment of pensionary/retirement benefits claimed by petitioners on basis of earlier judgments, passed, by Supreme Court in cases filed against the employees/Bank by other employees---High Court accepted petitioners' constitutional petition---Plea of Bank that petitioners were not party to earlier litigation before Supreme Court; and that petitioners had approached High Court with delay---Validity---State Bank being a statutory public body was obliged to have redressed grievances of its employees instead of relegating them to seek remedy from courts---Declaration of Supreme Court in such judgments about legal status of such scheme was not for one segment of employees, but was for one and all falling within its purview---Benefits accruing from legal position stated in such judgments would be given to those, who were not party before Supreme Court---Bank was party to earlier litigation, thus, was obliged to implement such judgments in letter and spirit and apply to all those falling within such Scheme---Petitioners (non-parties) became entitled to benefits the moment Supreme Court in its earlier judgments interpreted such scheme and laid down principles as to its import and efficacy---Bank had not treated petitioners justly, fairly and in consonance with such judgments of Supreme Court---Judgments of Supreme Court, unless reviewed, would have binding force---Such previous judgments of Supreme Court had remained intact---Petitioners could not be knocked out on principles of laches---Impugned order was just and fair---Supreme Court refused to grant leave to appeal in circumstances. ?

Abdul Qadir Ismail and others v. State Bank of Pakistan 2001 SCMR 884; Khyber Zaman and others v. Governor, State Bank of Pakistan, Karachi and others 2005 SCMR 235; Muhammad Mubeen-us-Salam and others v. Federation of Pakistan through Secretary, Ministry of Defence and others PLD 2006 SC 602; Muhammad Sohail and 2 others v. Government of N.-W.F.P. and others 1996 SCMR 218; Pir Bakhsh and others v. The Chairman, Allotment Committee and Others PLD 1987 SC 145; Hameed Akhtar Niazi v. The Secretary, Establishment Division, Government of Pakistan and others 1996 SCMR 1185; Tara Chand and others v. Karachi Water and Sewerage Board, Karachi and others 2005 PLC- (C.S.) 368; Zulfiqar-ul-Husnain and 19 others v. Oil and Gas Development Corporation 2003 SCMR 1115; The Chairman, District Screening Committee, Lahore and another v. Sharif Ahmad Hashmi PLD 1976 SC 258; The



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Chairman, PIAC and others v. Nasim Malik PLD 1990 SC 951; Fazal Elahi Siddiqi v. Pakistan through Secretary, Establishment Division and 2 others PLD 1990 SC 692; Anwar Hussain v. Agricultural Development Bank of Pakistan and others PLD 1984 SC 194; The Principle, Cadet College, Kohat and another v. Muhammad Shoab Qureshi PLD 1984 SC 170; Juma Khan and others v. Mst. Bibi Zenaba and others PLD 2002 SC 823; Sheikh Mahmud Ahmed v. Azad Government of the State of Jammu and Kashmir through Chief Secretary, Muzaffarabad PLD 1987 SC (AJ&K) 21; Muhammad Baran and others v. Member (Settlement and Rehabilitation), Board of Revenue, Punjab & others PLD 1991 SC 691; Haji Behram Khan v. Abdul Hameed Khan Achakzai and others PLD 1990 SC 353; Muhammad Yaqoob v. The Chief Settlement and Rehabilitation Commission, Lahore and others 1988 SCMR 563; Civil Appeal No.558 of 2008; Chief Executive, Progressive Paper Limited/The Chairman, National Press Trust, Islamabad v. Syed Asad Abbas and others 2007 PLC (C.S.) 340 and Aamir Ikram and 10 others v. District Health Officer, Vehari and others 2003. PLC (C. S.) 488 ref.

Chairman Pakistan Railways, Lahore v. Muhammad Latif and others 1984 SCMR 286; Khawaja Abdul Hameed Nasir and others v. National Bank of Pakistan and others 2003 SCMR 1030; Volume-V of Constitution of India by Dr. Durga Das Basu, Eighth Edition p.5958; Messrs Pfizer Laboratories Limited v. Federation of Pakistan and others PLD 1998 SC 64; Messrs Shiv Shanker Dal Mills and others v. State of Haryana and others and others AIR 1980 SC 1037; Judicial Review of Public Actions Vol. II at pp.521 and 533; Pir Bakhsh and others v. The Chairman, Allotment Committee and others PLD 1987 SC 145 and Messrs Army Welfare Sugar Mills Ltd. and others v. Federation of Pakistan and others 1992 SCMR 1652 rel.

(b) Constitution of Pakistan (1973)---

---Art. 199---Civil Procedure Code (V of 1908), O.XX, R.1---Constitutional petition decided by High Court after long time of its hearing---Validity---High Court had duly considered all essential aspects of case---Such delay would not have effect on impairing correctness, legality and efficacy of impugned judgment in circumstances.?

Khalid Anwar, Senior Advocate Supreme Court for Petitioners (in both cases).

Fakhruddin G. Ibrahim, Senior Advocate Supreme Court for Respondents Nos.1-43, 92, 101 (in C.P. No.123-K of 2007).

Abdul Raheem Bhatti, Advocate Supreme Court for Respondents Nos.44-91, 102-104 (in C.P. No.123-K of 2007).

Fakharuddin G. Ibrahim, Senior Advocate Supreme Court for Respondents Nos.1-495 (in C.P. No.179-K of 2007).

Abdul Raheem Bhatti, Advocate Supreme Court for Respondents Nos.496-979 (in C.P. No.179-K of 2007).

Date of hearing: 5th August, 2009.

JUDGMENT

SAYED ZAHID HUSSAIN, J.--- Mumtaz Sultana and others had filed petition (C.P.No.D-969 of 2005) under Articles 199 and 187 read with Articles 2-A, 4, 25, 37 and 38 of the Constitution of Islamic Republic of Pakistan, 1973 for extending the retirement/pensionary benefits to them as per the judgment of this Court dated 29-4-2004. The petition was decided by the learned

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Division Bench of the High Court of Sindh, Karachi on 14-11-2006 issuing direction that "the pensionary benefits of the predecessors-in-interest of the petitioners would be calculated as of 15-12-1997 and consequently the petitioners given the same in accordance with the decisions of the Honourable Supreme Court in the various C.P.L.As. referred to above." This judgment has been assailed through C. P. L. A. No.123-K of 2007 seeking leave to appeal there against. Likewise, Jamil Akhtar Siddiqui and others filed a petition (C. P. No. D-1683 of 2006) for almost a similar relief. The said petition was thereafter decided by the learned Division Bench of the High Court of Sindh on 26-1-2007 with reference to the decision in C.P.No.D-969 of 2005. C.P.No.179-K of 2007 has been filed there against for leave to appeal.

2. The respondents in these petitions, who were petitioners before the High Court, were either the employees or widows of deceased employees. The petitioner bank will be hereafter referred to as the "Bank" and the respondents as the "Employees". Due to the identity of the subject-matter and the controversy involved, the petitions have been fixed together and heard as such, which will stand disposed of through this judgment.

3. On 23-10-1997, Voluntary Golden Handshake Scheme (VGHS) was floated by the Bank through Circular No.9 of 1997. Hundreds of employees exercised the option thereunder within the prescribed period and were informed that they would be relieved from their duties w.e.f. 15-12-1997. Disputes started cropping up leading to the litigation about the efficacy, applicability and implementation of the scheme. According to Mr. Khalid Anwar, the learned Senior Advocate Supreme Court, the first judgment on the issue by this Court was of 2-4-2001 in C. P. No.12 of 2001 to 63 of 2001 etc. Abdul Qadir Ismail and others v. State Bank of Pakistan 2001 SCMR 884 under which the pensionary benefits were to be calculated by taking into account the period between 1-12-1997 to 15-12-1997. The second judgment brought to our notice is dated 19-11-2002, wherein the Bank was directed to calculate the pensionary benefits of the "petitioners and other employees", who had opted for Voluntary Golden Handshake Scheme on the basis of last pay drawn. The third judgment on the subject was of 29-4-2004, Khyber Zaman and others v. Governor, State Bank of Pakistan, Karachi and others 2005 SCMR 235, whereby pensionary benefits/retirement benefits were ordered to be paid to the petitioners by calculating all the retirement/financial benefits on the basis of last pay drawn after treating the date of retirement as 15-12-1997. The fourth judgment in the matter was dated 3-2-2005, when they were directed to approach the bank for relief and in case of denial, to approach the proper forum. The fifth judgment cited by the learned counsel is of 3-2-2005, which is order of withdrawal of the petitions, with a view to first approach the Bank for relief and then to approach the proper forum if they were dissatisfied with the ensuing order of the Bank. The object of the learned counsel to state these developments and point out these successive judgments by this Court was to show that the scope of relief and benefit continued successively varying; and that such a benefit could only be given to the petitioners before the Court and non-parties were not entitled to such a benefit. The representations filed by the employees did not prove fruitful and appeals filed by them before Federal Service Tribunal were hit by the judgment in Muhammad Mubeenus-Salam and others v. Federation of Pakistan through Secretary, Ministry of Defence and others PLD 2006 SC 602. They then filed the above-mentioned petitions before the High Court of Sindh.

4. After stating the object and purpose of floating Voluntary Golden Handshake Scheme that it was; "In order to survive as the leading policy making institution of the country it had to restructure and modernize as an institution and customize its policies to cater to its own workforce. The SBP introduced several initiatives one of whom was to offer an Honourable exit to its redundant employees vide, its Voluntary Golden Handshake Scheme 1997 ("the Scheme") which was introduced by way of Circular No.9 of 1997 dated the 23rd day "of October, 1997." He informs us that the employees, who had voluntarily opted for retirement have continuously engaged the Bank in litigation by making unwarranted belated claims, having enormous financial

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implications. According to the learned counsel the "Employees" herein were not entitled to such benefits as they were not party before this Court in the judgments referred to above. He invoked the bar of limitation that stood in their way in filing the petitions before the High Court, which suffered from laches but the High Court has by disregarding these aspects granted relief to them. It is contended that through the second judgment, the scope of benefit was extended to the "petitioners and other employees" but in the later judgments there is no mention of "other employees" which means that only the petitioners were entitled to such benefits. Distinction between a judgment in-rem and judgment in-personam is being highlighted to contend that since the employees were not parties in the earlier round of litigation before this Court, the benefit of the judgment could not be extended to them. Reference in this context is being made to Article 55 of Qanun-e-Shahadat Order, 1984. He has cited Muhammad Sohail and 2 others v. Government of N.-W.F.P. and others 1996 SCMR 218, [which highlighted the distinction in judgment in-rem and judgment in-personam with reference to an earlier judgment in Pir Bakhsh and others v. The Chairman, Allotment Committee and others PLD 1987 SC 145], Hameed Akhtar Niazi v. The Secretary, Establishment Division, Government of Pakistan and others 1996 SCMR 1185, [in this case it was held that the benefit of the judgment of Service Tribunal/Supreme Court could be extended to those civil servants who were not party to the litigation, the judgment in Muhammad Sohail's case, supra, was given on 31-10-1995 by Ajmal Mian, J (as his lordship then was) whereas in Hameed Akhtar Niazi's case which was decided on 24-4-1996, the author of the judgment was the same Honourable Judge, Chairman Pakistan Railways, Lahore v. Muhammad Latif and others 1984 SCMR 286, [Shafi-ur-Rehman, J., (as he then was) had held that the benefit of determination made by the Court could not be denied to a non-party to the litigation], Tara Chand and others v. Karachi Water and Sewerage Board, Karachi and others 2005 PLC (C.S.) 368, [the same principle reiterated as in Hameed Akhtar Niazi's case], Zulfiqar-ul-Husnain and 19 others v. Oil and Gas Development Corporation 2003 SCMR 1115, The Chairman, District Screening Committee, Lahore and another v. Sharif Ahmad Hashmi PLD 1976 SC 258, The Chairman, PIAC and others v. Nasim Malik PLD 1990 SC 951, Fazal Elahi Siddiqi v. Pakistan through Secretary, Establishment Division and 2 others PLD 1990 S.O 692, Anwar Hussain v. Agricultural Development Bank of Pakistan and others PLD 1984 SC 194, [in this case and the case of The Principle, Cadet College, Kohat and another v. Muhammad Shoab Qureshi PLD 1984 SC 170, the status of the employees of non-statutory organizations qua writ jurisdiction was examined]. His contention is that the petitions also deserved to be dismissed as the same were not maintainable in view of Article 212 of the Constitution of Islamic Republic of Pakistan, 1973. The delayed pronouncement of judgment by the learned High Court has also been brought to our notice with reference to the provisions of rule 1 of Order XX, C.P.C. and Juma Khan and others v. Mst. Bibi Zenaba and others PLD 2002 SC 823, Sheikh Mahmud Ahmed v. Azad Government of the State of Jammu and Kashmir through Chief Secretary, Muzaffarabad PLD 1987 SC (AJ&K) 21.

5. Mr. Fakhruddin G. Ibrahim, the learned Senior Advocate Supreme Court for the employees has pleaded for the dismissal of the petition emphasizing that jurisdiction under Article 185(3) of the Constitution of Islamic Republic of Pakistan, 1973 is discretionary and since the equity is against the Bank, it is not a fit case for grant of leave. According to him, the judgment of the High Court is just and fair, which redressed the grievance of the Employees, by giving them the benefits about which this Court had already given its verdict. It is contended that a-public institution like State Bank of Pakistan, should not have denied the benefit to its employees; and that in the judgment dated 29-4-2004, the use of the word "petitioners" did not necessarily mean the exclusion of "other employees". He also invokes the provisions of Article 25 of the Constitution of Islamic Republic of Pakistan, 1973 to contend that the State Bank of Pakistan should not have made discrimination inter-se the Employees. According to the learned Counsel though the Employees were not party before this Court in the earlier rounds yet they have rightly been given relief by the High Court and that this Court has also got the power of doing complete justice under Article 187 of the Constitution of Islamic Republic of Pakistan, 1973. He has cited

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Muhammad Baran and others v. Member (Settlement and Rehabilitation), Board of Revenue, Punjab and others PLD 1991 SC 691, [in this case the leave already granted was withdrawn], Haji Behram Khan v. Abdul Hameed Khan Achakzai and others PLD 1990 SC 353, Muhammad Yaqoob v. The, Chief Settlement and Rehabilitation Commissioner, Lahore and others 1988 SCMR 563, and an unreported judgment dated 11 and 12-6-2008 passed in Civil Appeal No.558 of 2008.

6. Mr. Abdul Raheem Bhatti, the learned Advocate Supreme Court, contends that earlier judgments were implemented by the Bank irrespective of the fact whether Employees were party before the Court or not and that it was only the later judgment, which was not being implemented on the plea of their being non-party. He has cited Khyber Zaman and others v. Governor, State Bank of Pakistan, Karachi and others 2005 SCMR 235, Abdul Qadir Islamil and others v. State Bank of Pakistan and others 2001 SCMR 884, Khawaja Abdul Hameed Nasir and others v. National Bank of Pakistan and others 2003 SCMR 1030, [following Hameed Akhtar Niazi's case the benefit was extended to all the persons falling in the same category and covered by the circular], Hameed Akhtar Niazi v. The Secretary, Establishment Division, Government of Pakistan and others 1996 SCMR 1185, Chief Executive, Progressive Paper Limited/The Chairman, National Press Trust, Islamabad v. Syed Asad Abbas and others 2007 PLC (C.S.) 340 and Aamir Ikram and 10 others v. District Health Officer, Vehari and others 2003 PLC (C.S.) 488, [in this case it was observed that similar relief had been granted by the Court earlier to other employees, the employees approaching the Court later on could not be denied the same relief].

7. There is no denial of the fact that the 'employees' had been in the service of the Bank, who opted for retirement under the Golden Hand Shake Scheme; and also that disputes started cropping up about the import, effectiveness and implementation of the said scheme. In the first judgment (ibid) the matter was decided about the relevant period i.e. 1-12-1997 to 15-12-1997 in the year, 2001. In the second judgment, the direction made by this Court was "to calculate the pensionary benefits of the petitioners and other employees who had opted for Voluntary Golden Handshake Scheme and the payments already made shall be adjusted." It was in the year, 2002. In the third judgment, the decision was made in the year, 2004 that "pensionary benefits/retirement benefits shall be paid to the petitioners by calculating all the retirement/financial benefits on the basis of last pay drawn" as on 15-12-1997. The fourth and fifth judgments ibid were of year, 2005. Non implementation in stricto sensu by the Bank gave rise to contempt proceedings and the employees were directed to approach the Bank in the first instance and then to seek remedy before the proper forum, if not satisfied. They did approach the Bank but were not given the benefit ensuing from the judgment. Their grievance thus remained un-redressed and thus had to file constitutional petitions in the High Court of Sindh.

8. Undoubtedly, the State Bank of Pakistan is the central Bank of the country vested with multiple responsibilities and functions as per the statute. It is indeed a statutory public body. It was, its own duty and obligation to have redressed the grievances of the employees instead of relegating them to seek remedy from the Courts. Had it, itself given them what was due, as per the legal position declared by this Court, necessity of approaching the Court would not have arisen. Juristically, there is distinction between judgment in-rem and judgment in-personam, as adumbrated and highlighted by the learned counsel for the petitioner. Though such a proposition cannot be disputed yet the applicability of such a doctrine to the instant case is out of question. Undoubtedly and undisputedly the State Bank of Pakistan was party before this Court in all the above-referred judgments. The legal position stated and declared by this Court about the scheme was not for one segment of employees. It was for one and all, falling within the purview of the Scheme. The ambit of Articles 189 and 190 of the Constitution of Islamic Republic of Pakistan, 1973 would get attracted with all force. There is no dearth of precedents where as a result of the legal position stated by the Court benefits accruing, were given even to those who were not party before this Court. Reference in this context may be made to Hameed Akhtar Niazi's case (supra), Chairman Pakistan Railways case (supra), Khawaja Abdul Hameed Nasir's case (supra), and Aamir Ikram's case (supra).

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9. Even in India where by virtue of Article 141 of their Constitution, the law declared by the Supreme Court is considered to be binding on all Courts the Supreme Court took the view, as per page 5958 of Volume-V of Constitution of India by Dr. Durga Das Basu, Eighth Edition "the law declared by the Supreme Court is binding on the State, and, therefore, its officers are bound to follow it, whether they are parties or not in the litigation". It may be mentioned that the issue about the employees not being party to the litigation before this Court loses significance as the Bank itself was party, who was obliged to follow and implement the judgment in letter and spirit, to one and all. The effect of the judgment of the Supreme Court cannot be whittled down or washed away on such premises as are being canvassed by the Bank.

10. Indeed it does not behave that a statutory institution like State Bank of Pakistan should rest its defence on such flimsy grounds to deny the benefits to those, who had been working for it. In Messrs Pfizer Laboratories Limited v. Federation of Pakistan and others PLD 1998 SC 64 Ajmal Mian, J, (as his lordship then was) referred to the observations made in Messrs Shiv Shanker Dal Mills and others v. State of Haryana and others and others AIR 1980 SC 1037, that the public bodies should not take the plea of limitation in returning the money to the public nor "a negative plea of alternate remedy" should be taken; and that in writ jurisdiction "it is perfectly open for the Court, exercising this flexible power, to pass such order such as public interest dictates and equity projects". What the High Court has done in the instant case by accepting the petitions of the employees, is simply to give effect to the judgment of the Court and redress the grievance of the employees as they were not being treated justly and fairly and in consonance with the judgment of this Court. The High Court rather felt bound by the judgment of the Court and instead of demeaning the same, acted in compliance of dictates of Article 189 of the Constitution of Islamic Republic of Pakistan, 1973.

11. Justice (Retd.) Fazal Karim in his work "Judicial Review of Public Actions" has dealt with this subject in Volume-II at pages 512, 521 and 533 and observed:---

"The matter can be looked at as follows. The superior Courts serve, while deciding cases, two purposes; one, the private purpose of deciding disputes between the parties and two, the public purpose of making law to ensure uniformity and thereby to ensure confidence in the administration of justice and in appropriate cases to clarify the law, the practice and procedures and thereby to help maintain the standards of first instance Courts and tribunals. As Lord Diplock observed in Hoffmann-La Roche v. Secretary of State "Although such a decision is directly binding only as between the parties to the proceedings in which it was made, the application of the doctrine of precedent has the consequence of enabling the benefit of it to accrue to all other persons whose legal rights have been interfered with in relying on the law which the statutory instrument purported to declare".

"The classic example of such a decision being binding upon third parties is Cooper v. Aaron. Although the State of Arkansas was not a party in the historical Brown case, yet the governor and the legislature of that state were held bound by the Supreme Court's decision in Brown."

"The use of precedent also promotes equality, namely, the ideal that like cases should be treated alike, which is one of the most important ingredients of justice. "Like cases must be decided alike, not only to achieve distributive justice but primarily to maintain the certainty". (underlining by me for relevance and emphasis)

12. It may be kept in view that while maintaining and observing the distinction between a judgment in-rem and a judgment in-personam, as highlighted in the premier judgment of this Court in Pir Bakhsh and others v. The Chairman, Allotment Committee and others PLD 1987

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[Supreme Court of Pakistan]

Present: Abdul Hameed Dogar, C.J., Ijaz-ul-Hassan Khan, Muhammad Qaim Jan Khan
and Ch. Ejaz Yousaf, JJ

GOVERNMENT OF PUNJAB, through Secretary Education, Civil Secretariat, Lahore and
others----Petitioners

Versus

SAMEENA PARVEEN and others----Respondents

Criminal Petitions Nos.71-L and 72-L, Civil Petitions 215-L, 216-L, 217-L, 218-L, 224-L to 236-L of
2006, decided on 29th April, 2008.

(On appeal from the judgment, dated 29-1-2008 of the Lahore High Court, Lahore passed in Cr.O.P.
No.370/W and 561/W of 2007, Writ Petitions Nos.11525, 11263, 11516, 11662, 11663, 11766, 11881,
11835, 12136 and 12185 of 2007, 86, 123, 274, 345, 599, 643 and 11619 of 2008).

Civil service---

---Administration of justice---If a Tribunal or the Supreme Court decides a point of law relating to
the terms and conditions of a civil servant who litigated, and there were other civil servants, who may
not have taken any legal proceedings, in such a case, the dictates of justice and rule of good
governance demand that the benefit of the said decision be extended to other civil servants also, who
may, not be parties to that litigation, instead of compelling them to approach the Tribunal or any other
legal forum---All citizens are equal before law and entitled to equal protection of law as per Art.25 of the
Constitution.

Hameed Akhtar Niazi v. The Secretary, Establishment Division, Government of Pakistan and others 1996
SCMR 1185 and Tara Chand and others v. Karachi Water and Sewerage Board, Karachi and others 2005
SCMR 499 fol.

Mst. Muqqadas Akhtar and another v. Province of Punjab through Secretary Education Department,
Government of Punjab and another 2000 PLC (C.S.) 867 ref.

Ms. Afshan Ghazanfar, A.A.-G., Punjab and Rana Abdul Qayyum, D.S. (Education) Punjab for
Petitioners.

S.M. Tayyab, Senior Advocate Supreme Court for Respondents (in Cr.Ps. Nos.71-L, 72-L and C.P.224-L
of 2008).

Nemo for other Respondents.

ORDER

ABDUL HAMEED DOGAR, C.J.---Through this order we intend to dispose of above captioned
petitions filed against common judgment, dated 29-1-2008 passed by learned Judge in Chambers of
Lahore High Court, Lahore whereby Cr.O.P. No.370/W and 561/W of 2007, Writ Petitions Nos.11525,
11263, 11516, 11662, 11663, 11766, 11881, 11835, 12136 and 12185 of 2007, 86, 123, 274, 345, 599, 643
and 11619 of 2008 filed by respondents were allowed and the impugned orders passed by

petitioner/authority were set aside.





2. Briefly, stated facts giving rise to the filing of instant petitions are that respondents were appointed as PTC Teachers during the year 1995/1996 after completion of all legal requirements and they joined their respective place of posting. After sometime, their appointments were cancelled being bogus vide order No.277/E-1, dated 3-4-1998. This order was assailed before learned Lahore High Court, Lahore and same was declared to be without lawful authority in the case reported as Mst. Muqqadas Akhtar and another v. Province of Punjab through Secretary Education Department, Government of Punjab and another 2000 PLC (C.S.) 867. The relevant paragraph is reproduced as under:--

"Consequently the petitioners are declared to be in service and the action of the Headmasters/Incharge of the Schools stopping the petitioners from performance of their duties as PTC Teachers on the basis of the above said impugned order, is declared to be without lawful authority. It is, however, clarified that the department is at liberty to proceed against petitioners, if so desired, on individual basis under the relevant law and under the Punjab Civil Servant (Efficiency and Discipline) Rules, 1975."

In view of above judgment, the respondents were absolved of the charges of bogus appointments. But later on once again the services of respondents were terminated vide order, dated 3-8-2005, which order was challenged before learned Lahore High Court, Lahore through Writ Petition No.16864 of 2005. The said writ petition was allowed vide judgment, dated 11-12-2006 and the impugned order, was declared as illegal and without lawful authority. Similarly, one of the teachers namely Mst. Naseem Akhtar assailed the order, dated 3-8-2005 before Punjab Service Tribunal, Lahore through Appeal No.903 of 2006 which was also allowed vide judgment, dated 4-9-2006. The said judgment was maintained by this Court in Civil Petition No.1960-L of 2006 vide judgment, dated 2-11-2006. On 26-9-2007 once again the services of respondents were terminated. Feeling aggrieved they filed above mentioned petitions before the learned Lahore High Court, Lahore which were allowed vide impugned judgment as stated above.

3. It is mainly contended by learned A.A.-G. Punjab appearing on behalf of petitioners that the jurisdiction of the learned High Court is barred under Article 212 of the Constitution of Islamic Republic of Pakistan, 1973 in matters involving determination of terms and conditions of civil servants. She further contended that the appointments of the respondents were bogus and fake as they were never selected by the competent authority, therefore the orders of dismissal passed by departmental authority were in accordance with law, which did not call for any interference by this Court.

4. On the other hand, Mr. S. M. Tayyub, learned Senior Advocate Supreme Court appearing on behalf of some of the respondents supported the impugned judgment and contended that appointments of respondents had taken place in accordance with rules and prescribed procedure. They submitted their applications in pursuance of advertisement of the posts of PTC Teachers. They passed the required test and were appointed by the competent authority. According to him, the respondents were in service for about 9-10 years and during this period no objection was raised, and subsequently on vague allegations they were dismissed from service. He further contended that cases of respondents were at par with Mst. Naseem Akhtar which was decided by this Court in Civil Petition No. 1960-L of 2006 vide judgment, dated 2-11-2006.

5. We have considered the arguments of both the parties and have gone through the record and proceedings of the case in minute particulars. The matter has already been decided by this Court in the case of Mst. Naseem Akhtar (supra), and it has been held that the appointment orders of the respondents as PTC Teachers were genuine. It was held by this Court in the case of Hameed Akhtar Niazi v. The Secretary, Establishment Division, Government of Pakistan and others 1996 SCMR 1185 that if a Tribunal or this Court decides a point of law relating to the terms and conditions of a civil servant who litigated, and there were other civil servants, who may not have taken any legal proceedings, in such a case, the dictates of justice and rule of good governance demand that the benefit of the said decision be extended to other civil servants also who may not be parties to that


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litigation instead of compelling them to approach the Tribunal or any other legal forum. This view was reiterated by this Court in the case of Tara Chand and others v. Karachi Water and Sewerage Board, Karachi and others 2005 SCMR 499 and it was held that according to Article 25 of the Constitution of Islamic Republic of Pakistan, 1973 all citizens are equal before law and entitled to equal protection of law.

6. In this view of the matter, we are of the view that no ground for interference in the impugned judgment is made out. Accordingly, the petitions being devoid of force are dismissed and leave to appeal refused.

M.B.A./G-13/SC

Petitions dismissed

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2005 S C M R 499



[Supreme Court of Pakistan]

Present: Nazim Hussain Siddiqui, C.J., Javed Iqbal and Abdul Hameed Dogar, JJ

TARA CHAND and others—Petitioners

Versus

KARACHI WATER AND SEWERAGE BOARD, KARACHI and others—Respondents

Civil Review Petition No.259 of 2002, Civil Miscellaneous Applications Nos.874 and 875 of 2001 in Civil Appeal No. 1235 of 2000, decided on 14th December, 2004.

(On review against the judgment of this Court, dated 14-5-2002 passed in Civil Appeal No. 1235 of 2000).

(a) Constitution of Pakistan (1973)---

---Arts. 185, 188 & 25---Supreme Court Rules 1980, O.XXXIII, R.5--Civil Procedure Code (V of 1908), O.XLI, R.33---Review petition--Civil service---Contentions of the petitioner were that neither notice about grant of leave to appeal by the Supreme Court nor that of ex parte order by the Supreme Court was served upon him; that he was one of the petitioners who impugned the departmental orders of retrenchment and termination before the High Court, which were set aside to appeal by the Supreme Court; that the moment he came to know about the decision of the Supreme Court, he had approached the Court and filed Civil Review Petition well within time and that though he was a non-appealing party in the appeals, yet he was entitled to the same relief on the basis of principle of equality---Validity---Held, since the services of all such persons were dispensed with by, single order, as such, there was no distinction between their case and that of the appellants and was identical on all fours---When Tribunal or Court decides a point of law relating to the terms of service of a civil servant which covered not only the case of civil servants who litigated, but also of other civil servants, who might have not taken any legal proceedings, the dictates of justice and rule of good governance demand that the benefit of the decision be extended to other civil servants, who might not be parties to the litigation instead of compelling them to approach the Tribunal or any other legal forum--Article 25 of the Constitution was also explicit on the point that all citizens were equal before law and were entitled to equal protection of law.

Hameed Akhtar Niazi v. The Secretary, Establishment Division, Government of Pakistan and others 1996 SCMR 1185; Abdul Hameed Nasir and others v. National Bank of Pakistan and others 2003 SCMR 1030; Hakim Muhammad Nabi Khan and 2 others v. Warasatullah through Legal Representatives 1987 SCMR 1698; Province of Punjab through Collector Bahawalpur, District, Bahawalpur and others v. Col. Abdul Majeed and others 1997 SCMR 1692 ref.

(b) Judgment in personam---

---Definition.

A judgment determining the rights of persons inter se in or to any money or property in dispute, but not affecting the status of persons or things or determining any interest in property except between the parties. They include all judgment for money.

Normally a judgment binds only those who are parties to it. Such judgments are known as Judgments in personam.

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Judgments in personam or inter parties are those which determine the rights of parties inter se to or in the subject-matter in dispute, whether it be corporeal property of any kind whatever or a liquidated or unliquidated demand, but do not affect the status of either persons or things, or make any disposition of property or declare or determine any interest in it except as between the parties litigant. They include all judgments which are not judgments in rem.

A judgment in personam determines the rights of the parties inter se to or in the subject-matter in dispute, whether it be corporeal property of any kind whatever or a liquidated or unliquidated demand, but does not affect the status of either persons or things, or make any disposition of property, or declare or determine any interest in it except as between the parties litigant. Judgments in personam include all judgments which are not judgments in rem, but as many judgments in the latter class deal with the status of persons and not of things, the description "Judgment inter parties" is preferable to 'Judgment in personam'.

A judgment against a particular person, as distinguished from a judgment against a thing or a right or status.

The Oxford Companion to Law by Dawid M. Walker; K.J. Aiyar's Judicial Dictionary (10th Edition 1988); Words and Phrases legally defined (Vol: 3 I-N) and Black's Law Dictionary with pronunciations (6th Edition) ref.

(c) Judgment in rem--

---Definition.

A legal determination binding not only the parties but all persons. It applies particularly to judgments in Admiralty, declaring the status of a ship, matrimonial causes, grants of probate and administration and condemnation of goods by a competent Court.

A judgment which gives to the successful party possession or declaration of some definite right which right is available against the whole world.

A judgment in rem may be defined as the judgment of a Court of competent jurisdiction determining the status of a person or thing, or the disposition of a thing (as distinct from the particular interest in it of a party to the litigation). Apart from the application of the term to persons, it must affect the res in the way of condemnation, forfeiture, declaration of status or title or order for sale or transfer.

An adjudication pronounced upon the status of some particular thing or subject-matter, by a Tribunal, having competent authority is judgment in rem, It is founded on a proceeding instituted against or on something or subject-matter whose status or condition is to be determined or one brought to enforce a right in the thing itself. It operates upon the property. It is a solemn declaration of the status of some person or thing. It is binding- upon all persons insofar as their interests in the property are concerned.

The Oxford Companion to by Dawid M. Walker; K.J. Aiyar's Judicial Dictionary (10th Edition 1988); Words and Phrases legally defined (Vol: 3 I-N) and Black's Law Dictionary with pronunciations (6th Edition) quoted.

Syed Iftikhar Hussain Gillani, Senior Advocate Supreme Court for Petitioner (in Civil Review Petition No.259 of 2002).

Ibrar Hussain, Advocate Supreme Court for Respondents (in Civil Review Petition No.259 of 2002).

M. Bilal, Senior Advocate Supreme Court and Ch. Akhtar Ali, Advocate-on-Record for Applicants (in Civil Miscellaneous Applications Nos.874 and 875 of 2001).

Ibrar Hussain, Advocate Supreme Court for, Respondents Nos. 1-3 (in Civil Miscellaneous Applications Nos.874 and 875 of 2001).

Raja Abdul Ghafoor, Advocate-on-Record for Respondents Nos.4-5 (in Civil Miscellaneous Applications Nos.874 and 875 of 2001).

Date of hearing: 14th December, 2004.

ORDER

ABDUL HAMEEIJ DOGAR, J.—The background leading to the filing of the above mentioned matters are that about 130 employees of Karachi Water and Sewerage Board including petitioner Tara Chand (in Civil Review Petition No.259 of 2002) and applicants, namely, Muhammad Haneef, Bashir Ahmad, Muhammad Dawood and Asadullah Saher (In Civil Miscellaneous Applications Nos.874 and 875 of 2001) challenged the orders, dated 11-7-1998, 18-7-1998 and 20-7-1998 passed by Vice Chairman about retrenchment and termination of their services through Constitution Petition No.D-1151 of 1998 before the learned High Court of Sindh at Karachi. The said petition was dismissed vide judgment, dated 4-6-1999 by the learned Division Bench of High Court of Sindh, Karachi. The said judgment was challenged in Civil Petition Nos.352-K, 396-K and 464-K of 1999. In which leave to appeal was granted and the appeals were numbered as Civil Appeals Nos.1232 to 1235 of 2000. In the aforesaid appeals, petitioner Tara Chand and applicants, namely, Muhammad Haneef, Bashir Ahmad, Muhammad Dawood and Asadullah Saher were arrayed as respondents. After grant of leave to appeal, the notices were issued to them but were not served upon them and an ex parte order was passed by the Assistant Registrar (Civil) against them on 13-3-2001. However, above appeals were heard and allowed by this Court vide judgment, dated 14-5-2002 and the orders, dated 11-7-1998, 18-7-1998 and 20-7-1998 passed by the Vice Chairman of the Board were set aside and were declared without lawful authority. All the appellants therein were reinstated in service.

2. On coming to know about the above decision, petitioner Tara Chand along with Javed Hussain, Muhammad Shah, Kanyolai, Muhammad Hanif Shaikh, Abdul Shakoor, Mujahid Hanif and Muhammad Iqbal Palejo filed Review Petition No.259 of 2002 on 11-6-2002 wherein they urged that in fact they were respondents in the aforesaid Civil appeals but were not served, as such, ex parte order passed against them in their absence be set aside and they may be allowed- the same relief as granted to appellants.

3. However the aforesaid Civil Review Petition was returned by Assistant Registrar (Civil) on 13-3-2001 to the Advocate-on-Record with the objection that the same was not entertainable under Order XXVI rule 6 of Supreme Court Rules, 1980 as the counsel who had drawn this review petition did not appear and argue the case in the above mentioned appeals. The said order was challenged through Civil Miscellaneous Appeal No.42 of 2003 under Order V rule 33 of Supreme Court Rules, 1980; which was allowed only to the extent of petitioner Tara Chand were as against others, it was dismissed for non-prosecution by a learned Judge in Chambers, vide order, dated 20-11-2003. Petitioner Tara Chand filed amended review petition whereas applicants, namely, Muhammad Haneef, Bashir Ahmad, Muhammad Dawood and Asadullah Saher moved Civil Miscellaneous Application No.874 of 2001 for setting aside the order, dated 13-3-2001 as Civil Miscellaneous Application No.875 of 2001 for transposition from the side of respondents to the side of appellants.

4. We have heard Messrs Syed Iftikhar Hussain Gillani, learned Senior Advocate Supreme Court for petitioner, M. Bilal, Senior Advocate Supreme Court for applicants and Messrs Ibrar Hussain and Raja Abdul Ghafoor, learned Advocates Supreme Court for the respondents and have gone through the record and proceedings in minute particulars.

5. Syed Iftikhar Hussain Gillani, learned Advocate Supreme Court, contended that in fact petitioner Tara Chand was arrayed as respondent No.47 in Civil Appeal No.1235 of 2000. According to him, neither

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(54) (2001) notice about grant of leave to appeal per that of ex parte order, dated 13-6-2001 was served upon him. Admittedly, he was one of the petitioners who impugned the departmental orders of retrenchment and termination before the learned High Court of Sindh, which were set aside in appeal by this Court. The moment he came to know about the decision, he approached this Court and filed above mentioned civil review petition well within time. Though he is a non-appealing party in the aforementioned appeals, yet is entitled to the same relief on the basis of principle of rule of equality. In support, he relied upon the case of Hameed Akhtar Niazi v. The Secretary, Establishment Division, Government of Pakistan and others 1996 SCMR 1185.

6. Mr. M. Bilal, learned Senior Advocate Supreme Court on behalf of applicants, namely, Muhammad Haneef, Bashir Ahmad, Muhammad Dawood and Asadullah Saher contended that the applicants were also the petitioners before the learned High Court of Sindh and had challenged the departmental orders passed against them. They were also arrayed as respondents Nos. 50, 58, 92 and 104 in Civil Appeal No. 1235 of 2000 before this Court, which was allowed. Their matter is identical on all aspects with those appellants, therefore, deserves the same relief.

7. On the other hand, Messrs Ibrar Hussain and Raja Abdul Ghafoor, learned Advocate Supreme Courts, vehemently opposed the above contentions and argued that the judgment of this Court passed in the aforesaid civil appeals was in fact judgment in personam and not in rem, as such, the petitioner and applicants are not entitled to any relief. According to them, this being a service matter, they should have approached the Service Tribunal for redressal of their grievance which jurisdiction was not invoked by them.

8. Admittedly, petitioner Tara Chand and applicants, namely, Muhammad Haneef, Bashir Ahmad, Muhammad Dawood and Asadullah Saher had challenged the orders, dated 11-7-1998, 18-7-1998 and 20-7-1998 of their retrenchment and termination along with other petitioners in writ petition before learned High Court of Sindh. It is also an admitted fact that petitioner and applicants were arrayed as respondents in Civil Appeal No. 1235 of 2000 before this Court wherein the above said order of learned High Court was challenged. Since the services of all of them were dispensed with by single order, as such, there is no distinction in between their case and that of appellants and is identical on all fours.

9. As to whether impugned judgment is 'judgment in personam' or 'judgment in rem', it would be appropriate to reproduce their definitions as defined in various dictionaries:

(I) The Oxford Companion to Law by David M. Walker

Judgment in personam.--- A judgment determining the rights of B persons inter se in or to any money or property in dispute, but not affecting the status of persons or things or determining any interest in property except between the parties. They include all judgments for money.

Rem, Judgment in.--- A legal determination binding not only the parties but all persons. It applies particularly to judgments in Admiralty, declaring the status of a ship, matrimonial causes, grants of probate and administration and condemnation of goods by a competent Court.

(II) K. J. Aiyar's Judicial Dictionary (10th Edition 1988)

Normally a judgment binds only those who are parties to it. Such judgments are known as Judgments in personam.

Rem, Judgment in.--- A judgment which gives to the successful party possession or declaration of some definite right which right is available against the whole world.

(III) Words and Phrases legally defined (Vol. 3 I-N)

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Judgment, In personam.--- A judgment in personam or inter parties are those which determine the rights of parties inter se to or in the subject-matter in dispute, whether it be corporeal property of any kind whatever or a liquidated or unliquidated demand, but do not affect the status of either persons or things, or make any disposition of property or declare or determine any interest in it except as between the parties litigant. They include all judgments which are not judgments in rem.

A judgment in personam determines the rights of the parties inter se to or in the subject matter in dispute, whether it be corporeal property of any kind whatever or a liquidated or unliquidated demand, but does not affect the status of either persons or things, or make any disposition of property, or declare or determine any interest in it except as between the parties litigant. Judgments in personam include all judgments which are not judgments in rem, but as many judgments in the latter class deal with the status of persons and not of things, the description "Judgment inter parties" is preferable to 'Judgment in personam'.

Judgment, In Rem.--- A judgment in rem may be defined as the judgment of a Court of competent jurisdiction determining the status of a person or thing, or the disposition of a thing (as distinct from the particular interest in it of a party to the litigation). Apart from the application of the term to persons, it must affect the res in the way of condemnation, forfeiture, declaration of status or title, or order for sale or transfer.

(IV) Black's Law Dictionary with pronunciations (6th Edition).

Judgment in personam or inter parties. A judgment against a particular person, as distinguished from a judgment against a thing or a right or status.

Judgment in rem. An adjudication pronounced upon the status of some particular thing or subject-matter, by a Tribunal, having competent authority. Booth v. Copley, 238 Ky.23, 140 S.W 2d, 62, 666. It is founded on a proceeding instituted against or on something or subject-matter whose status or condition is to be determined. Eureka Building and Iran Assn v. Shultz, 139E Kan, 435, 32 P.2d 477, 480; or one brought to enforce a right in the thing itself. Federal Land Bank of Omaha v. Jafferson, 229 Iowa 1054, 295 N.W. 855, 857. It operates upon the property, Guild v. Walis, 150 Or. 69, 40 P. 2nd 747, 742. It is a solemn declaration for the status of some person or thing. Jones v. Teat, Tex Civ. Appellant. 57 S.W. 2d. 617, 620. It is binding upon all persons in so far as their interests in the property are concerned.

10. To further elaborate the above aspect, it would be relevant to refer the case of Hameed Akhtar Niazi (supra) wherein this Court has held that when Tribunal or Court decides a point of law relating to the terms of service of a civil servant which covers not only the case of the Civil servants who litigated, but also of other civil servants, who may have not taken any legal proceedings, the dictates of Justice and rule of C good governance demand that the benefit of the above judgment be extended to other civil servants, who may not be parties to the above litigation instead of compelling them to approach the Tribunal or any other legal forum. This Court in the case of Khawaja Abdul Hameed Nasir and others v. National Bank of Pakistan and others 2003 SCMR 1030 also extended the benefit to all the persons falling within the same category in order to do complete justice. To further fortify, reference is made to the case of Hakim Muhammad Nabi Khan and 2 others v, Warasatullah through Legal Representatives 1987 SCMR 1698, wherein this Court had allowed benefit of relief to non-appearing party of doing complete justice. Irrespective of above, this Court in the case of Province of Punjab through Collector Bahawalpur, District, Bahawalpur and others v. Col. Abdul Majeed and others 1997 SCMR 1692, while discussing the provisions of Order XLI, rule 33, C.P.C. and Order XXXIII; rule 5 of the Supreme Court Rules, 1980, has held at page 1709 as under:---

"Not only this it is now well-settled that under Order XLI, rule 33, C.P.C., that the High Court and under Order XXXIII, rule 5 of the Supreme Court Rules this Court, can exercise the appellate powers in favour of all or any of the respondents or parties although such respondents or parties

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may not have filed any appeal or objection.

11. Irrespective of above case laws, our Constitutional provisions are also explicit. According to Article 25 of the Constitution of Islamic Republic of Pakistan, 1973, all citizens are equal before law and are entitled to equal protection of law.

12. The result, therefore, is that for the reasons stated above, we find force in the contentions of learned counsel for petitioner and applicants and allow Civil Review Petition No.259 of 2002 and Civil Miscellaneous Applications Nos. 874 and 875 of 2001. Accordingly, petitioner Tara Chand and applicants, namely, Muhammad Haneef, Bashir Ahmad, Muhammad Dawood and Asadulah, Saher are also extended the same relief which has been allowed by this Court on 14-5-2002 in Civil Appeal No. 1235 of 2000.

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Order accordingly.

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F L D 2003 Supreme Court 266

Present: Tanvir Ahmed Khan, Khalil-ur-Rehman Ramday and Falak Sher, JJ

AAMIR IKRAM and 10 others---Petitioners

Versus

DISTRICT HEALTH OFFICER, VEHARI and others---Respondents

Civil Petitions for Leave to Appeal Nos.2253/L to 2263/L of 2002, decided on 4th December, 2002.

(On appeal from the judgment dated 5-12-2001 of the Punjab Service Tribunal, Lahore, passed in Appeals Nos.543/1999, 544/1999, 553/1999, 544/1999, 556/1999, 557/1999, 559/1999, 564/1999, 568/1999, 1822/1999 and 1823/1999 respectively).

(a) Punjab Service Tribunals Act (IX of 1974)---

---S. 4---Constitution of Pakistan 1973), Art. 212(3)---Termination of service---Service Tribunal by allowing petitioners' appeals ordered their reinstatement in service, but treated intervening period as extraordinary leave---Validity---Supreme Court had already granted back-benefits to other employees of the same Department while accepting their petitions filed against the same impugned judgment---Present petitioners were party in the impugned judgment of Tribunal and were aggrieved of the same, but had filed petitions now---Observing that Department should have been magnanimous enough to have allowed such benefit to the present petitioners, Supreme Court converted petitions into appeal and allowed all back-benefits to the petitioners.

(b) Constitution of Pakistan (1973)---

---Art. 212(3)---Petition for leave to appeal---Delay of 146 days. condonation of---Supreme Court out of impugned judgment had already granted same relief to other employees of the same Department---Delay in present matter should not come in the way of petitioners for dispensation of complete and substantial justice, who were sailing in the same boat.

Muhammad Anwar Ghuman, Advocate Supreme Court with Ch. Mehdi Khan Mehtab, Advocate-on-Record for Petitioners.

Dr. Muhammad Abid and Arshad Hussain Bukhari. Law Assistant for Respondents.

Date of hearing: 4th December, 2002.

JUDGMENT

TANVIR AHMED KHAN, J.--Leave to appeal is sought against the judgment dated 5-12-2001 passed by the Punjab Service Tribunal, Lahore (hereinafter referred to as the Tribunal), whereby the appeals filed by the petitioners against the termination of their services were accepted. However the intervening period was ordered to be treated as extraordinary leave.

This matter was earlier assailed through Civil Petitions Nos.403-L to 425-L of 2002 by Sher Muhammad Shehzad and others against the same impugned judgment. This Court, through its judgment dated 3-5-2002, accepted the plea raised therein by the aggrieved persons and converted all the above petitions into appeals and allowed the same by granting them back benefits. The present petitioners were also party in the aforesaid judgment of the Tribunal and were aggrieved of the same. However, they have now tiled IA the instant petitions with a delay of 146 days.

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Dist. Govt. KP-Provincial
District Accounts Office Charsadda
Monthly Salary Statement (August-2020)

59-B

Personal Information of Mr AMIR NAWAZ KHAN d/w/s of SAHID IAN

Personnel Number: 00330916 CNIC: 1120103705559 NTN:
 Date of Birth: 20.04.1967 Entry into Govt. Service: 25.05.1992 Length of Service: 28 Years 03 Months 008 Days

Employment Category: Active Permanent

Designation: DIRECTOR OF PHYSICAL EDUC 80001077-DISTRICT GOVERNMENT KHYBE
 DDO Code: CA6057-PRINCIPAL GOVERNMENT HIGHER SECONDARY SCHOOL TARNAB CHARASADDA
 Payroll Section: 001 GPF Section: 001 Cash Center:
 GPF A/C No: EDUBU 11121 Interest Applied: Yes **GPF Balance:** 467,873.00
 Vendor Number: -

Pay and Allowances: Pay scale: BPS For - 2017 Pay Scale Type: Civil BPS: 17 Pay Stage: 14

Wage type		Amount	Wage type		Amount
0001	Basic Pay	62,570.00	1000	House Rent Allowance	4,433.00
1210	Convey Allowance 2005	5,000.00	1947	Medical Allow 15% (16-22)	2,318.00
2148	15% Adhoc Relief All-2013	1,260.00	2199	Adhoc Relief Allow @10%	906.00
2211	Adhoc Relief All 2016 10%	4,667.00	2224	Adhoc Relief All 2017 10%	6,257.00
2247	Adhoc Relief All 2018 10%	6,257.00	2265	Adhoc Relief All 2019 05%	3,128.00

Deductions - General

Wage type		Amount	Wage type		Amount
3017	GPF Subscription	-4,270.00	3501	Benevolent Fund	-800.00
3609	Income Tax	-1,755.00	3990	Emp.Edu. Fund KPK	-250.00
4004	R. Benefits & Death Comp:	-900.00			0.00

Deductions - Loans and Advances

Loan	Description	Principal amount	Deduction	Balance

Deductions - Income Tax

Payable: 28,077.80 Recovered till AUG-2020: 3,510.00 Exempted: 7019.20 Recoverable: 17,548.60

Gross Pay (Rs.): 96,796.00 Deductions: (Rs.): -7,975.00 Net Pay: (Rs.): 88,821.00

Payee Name: AMIR NAWAZ KHAN
 Account Number: 11690006840601
 Bank Details: HABIB BANK LIMITED, 221169 LAKKI MARWAT LAKKI MARWAT, LAKKI MARWAT

Leaves: Opening Balance: Aailed: Earned: Balance:

Permanent Address: City: LK Domicile: - Housing Status: No Official
 Temp. Address: City: Email: nawazkhanmarwatkpk333@gmail.com

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

59-c

Personal Information of Mr AMIR NAWAZ KHAN d/w/s of SAHID KHAN

Personnel Number: 00330916 CNIC: 1120103705559 NTN:
Date of Birth: 20.04.1967 Entry into Govt. Service: 25.05.1992 Length of Service: 27 Years 02 Months 008 Days

Employment Category: Active Permanent

Designation: DIRECTOR OF PHYSICAL EDUCATION 80001077-DISTRICT GOVERNMENT KHYBER
DDO Code: CA6057-PRINCIPAL GOVERNMENT HIGHER SECONDARY SCHOOL TARNAB CHARASADDA
Payroll Section: 001 GPF Section: 001 Cash Center:
GPF A/C No: EDUBU 11121 Interest Applied: Yes **GPF Balance:** 364,098.00

Vendor Number: -
Pay and Allowances: Pay scale: BPS For - 2017 Pay Scale Type: Civil BPS: 17 Pay Stage: 13

Wage type		Amount	Wage type		Amount
0001	Basic Pay	60,270.00	1000	House Rent Allowance	4,433.00
1947	Medical Allow 15% (16-22)	2,318.00	2148	15% Adhoc Relief All-2013	1,260.00
2199	Adhoc Relief Allow @10%	906.00	2211	Adhoc Relief All 2016 10%	4,667.00
2224	Adhoc Relief All 2017 10%	6,027.00	2247	Adhoc Relief All 2018 10%	6,027.00
2265	Adhoc Relief All 2019 05%	3,013.00			0.00

Deductions - General

Wage type		Amount	Wage type		Amount
3017	GPF Subscription - Rs4270	-4,270.00	3501	Benevolent Fund	-800.00
3609	Income Tax	-1,168.00	3990	Emp.Edu. Fund KPK	-250.00
4004	R. Benefits & Death Comp:	-900.00			0.00

Deductions - Loans and Advances

Loan	Description	Principal amount	Deduction	Balance

Deductions - Income Tax

Payable: 23,352.83 Recovered till JUL-2019: 1,168.00 Exempted: 9340.79 Recoverable: 12,844.04

Gross Pay (Rs.): 88,921.00 Deductions: (Rs.): -7,388.00 Net Pay: (Rs.): 81,533.00

Payee Name: AMIR NAWAZ KHAN
Account Number: 11690006840601
Bank Details: HABIB BANK LIMITED, 221169 LAKKI MARWAT LAKKI MARWAT, LAKKI MARWAT

Leaves: Opening Balance: Availed: Earned: Balance:

Permanent Address: City: LK Domicile: - Housing Status: No Official
Temp. Address: City: Email: nawazkhanmarwatkpk333@gmail.com

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