

1731/2022

BEFORE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Mr. Muhammad Amir Service Appeal No. 1731 to 1741 /2022..... (Appellants)

VERSUS

Government of Khyber Pakhtunkhwa

Khyber Pakhtunkhwa
Service Tribunal

Case No. 5668

Dated 30/5/2023

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11 Authorization

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DEPONENT

CNIC No. 17101-0377128-9

Cell No. 0346-9148582

BEFORE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Mr. Muhammad Amir Khan Service Appeal No. 1731 to 1741/2022.....appellants)

VERSUS

Government of Khyber Pakhtunkhwa

AFFIDAVIT

I, Nabi Gul, Superintendent (BPS-17) Directorate of Social Welfare, Special Education & Women Empowerment Khyber Pakhtunkhwa Peshawar do hereby solemnly affirm and declare on oath that the contents of the reply on behalf of the respondents are true and correct to the best of my knowledge and belief that nothing has been concealed from this Honorable Tribunal.

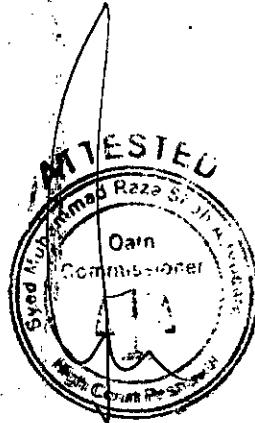
DEPONENT



Nabi Gul
Superintendent (BPS-17)
Directorate of Social Welfare, Special Education &
Women Empowerment Khyber Pakhtunkhwa
Peshawar

CNIC # 17101-0377128-9

Identified by:



30 MAY 2023

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BEFORE THE SERVICE TRIBUNAL KHYBER PAKHTUNKHWA PESHAWAR

Service Appeal No. 1731 to 1741 / 2022

Muhammad Amir Khan **Appellant**

VERSUS

1. Govt. of Khyber Pakhtunkhwa through Chief Secretary, Civil Secretariat Peshawar
2. Govt. of Khyber Pakhtunkhwa through Secretary Finance Department Peshawar
3. Govt. of Khyber Pakhtunkhwa through Secretary Social Welfare, Special Education & Women Empowerment Department Peshawar
4. Director, Social Welfare, Special Education & Women Empowerment Department Peshawar..... **Respondents**

Respectfully Sheweth:

PARA-WISE COMMENT ON BEHALF OF RESPONDENTS FROM 1,2,3 & 5

PRE-LIMINARY OBJECTIONS:

1. The appellant has got no cause of action to file this service appeal.
2. That the appeal is not maintainable in its present form.
3. That the appellant has no locus standi or cause of action to file the present service appeal.
4. The appeal is badly time bared. Therefore, the appeal is not maintainable.
5. That the Health Professional Allowance was granted / allowed by the Federal Govt. only to the employees of Directorate General of Special Education, Govt of Pakistan Islamabad and its allied Institutions in pursuance to the judgment of the Federal Services Tribunal, while the petitioners were neither devolved employees of the Directorate General of Special Education, Government of Pakistan Islamabad nor they have been appointed by the Federal Govt in the Directorate General of Special Education Govt. of Pakistan, Islamabad and its allied institutes, therefore the appeal is not maintainable.
6. The appellant has concealed the material facts from this Honorable Tribunal.
7. That on the same pray / points, the Honorable Peshawar High Court, Abbottabad Bench in its judgment dated 27.10.2022 in Writ Petition No. 68-A/2019 titled "Muhammad Adil Khan & Others VS Government" has converted the writ petition in to departmental appeal which is re-produced as under:

"Learned Counsel for petitioner after arguing the case for a while stated that this writ petition be converted into departmental appeal and sent to Respondent No. 1 for decision according to law.

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In view of the circumstances, we accordingly convert this petition into departmental appeal, which shall be placed before the worthy Chief Secretary, Government of Khyber Pakhtunkhwa, Peshawar for decision according to law” (**Annexure-A**).

This Honorable Service Tribunal is further informed that similar judgment dated 27.10.2022 in the Writ Petition No. 202-A/2021 titled “Muhammad Younis etc VS Government of Khyber Pakhtunkhwa” and judgment dated 27.10.2022 in Writ Petition No. 628-A/2022 titled “Rubina Mazhar VS Govt” have been passed by the Honorable Peshawar High Court, Abbottabad Bench which is re-produced as under:-

“**Same order as in the connected WP No. 68-A/2019**” (**Copies of order sheet dated 27.10.2022 are at Annexure-B & C**). In compliance with Court judgments in the above writ petitions working paper has been prepared and is under consideration between the respondents (**copy of working paper is at Annexure-D**), therefore, the appeal is not maintainable.

FACTS:

1. Pertain to record.
2. Pertain to record.
3. In reply to Para-3 of the facts, it is stated that the Federal Govt. granted / allowed Health Professional Allowance to the employees of Special Education Institutions working under the Administrative control of Directorate General of Special Education, Govt of Pakistan, Islamabad. Judgment dated 18.07.2017 of the Federal Service Tribunal Islamabad by allowing the appeal with the direction to the respondents to continue the Health Allowance already granted to the appellants since 2012 (devolved employees of Special Education, Govt of Pakistan Islamabad) and also directed to refund all deduction made in compliance with impugned orders within a period of one month (**Annex-E**). As far as judgment dated 17.01.2018 of the Supreme Court of Pakistan in the case titled “Federation of Pakistan through Secretary Capital Administration and Development Division Islamabad etc VS Muhammad Attique ur Reman etc (in C.A.811/2016) was the affirmation of the judgment of Honorable Federal Services Tribunal dated 18.07.2017, therefore the appeal of the instant appellants on the basis of the above judgments do not cover their eligibility for Health Allowance (**Annex-F**). As far as consolidated judgments dated 18.07.2017, 11.01.2016 and 05.01.2015 of the Federal Service Tribunal against the stoppage of allowance, the said judgments were purely in favor of the employees working under the

Directorate General of Special Education Islamabad. It is further to clarify that the Govt. of Khyber Pakhtunkhwa Finance Department vide Notification No. FD(SOSR)-7/2019-53 dated 25-11-2019 granted Health Professional Allowance which is re-produced as under was purely for the devolved employees of Special Education Institutions working in the province of Khyber Pakhtunkhwa:

“In pursuance of the Supreme Court of Pakistan Civil Appeal No. 811/2016 titled “Muhammad Atique ur Rehman and others vs Federal Government through Secretary Capital Administration etc”, the Government of Khyber Pakhtunkhwa (Provincial Cabinet) was pleased to approve health professional allowance at the rate of one basic pay to the devolved employees working in the Special Education Institutions from the date of their devolution to Provincial Government of Khyber Pakhtunkhwa.

- 4. Thus the above said allowance will be admissible only to the employees of the Special Education Institutions of Khyber Pakhtunkhwa devolved under the 18th constitutional amendment” (List of Devolved employees is at Annexure-G).

Keeping in view the above factual position, the appellants are not entitled for the relief they prayed for as the Provincial Government in the non-devolved Special Education Institutions has appointed the appellant in Service Appeal No. 1731, 1732 while the appellants in Service Appeal No. 1733 & 1734 have been appointed on Social Welfare side.


- 5. Incorrect, hence denied. The Provincial Government allowed the said allowance only to the employees of Special Education Institutions devolved under the 18th Constitutional amendment due to the facts explained in the preceding paras.
- 6. Incorrect, hence denied. Only the employees of Special Education Institutions (Devolved) filed the mentioned appeal only.
- 7. In reply to Para-7, it is stated that the factual position has been explained in the preceding paras.
- 8. In reply to Para-7, it is stated that the factual position has been explained in the preceding paras.
- 9. Incorrect, hence denied. The appellants have no cause of action to file the present service appeal.
- 10. Incorrect, hence denied. The appellants have no cause of action to file the present service appeal.


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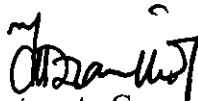
GROUNDS


- A. Incorrect, hence denied. The factual position has been explained in the preceding para.
- B. Incorrect hence denied. The respondents are law abiding civil servants and the appellants have not been treated against the law and rules due to the facts explained in the preceding paras.
- C. Incorrect, hence denied. The factual position has been explained in the preceding paras.
- D. Incorrect, hence denied. The factual position has been explained in the preceding paras.
- E. Incorrect, hence denied. The factual position has been explained in the preceding paras.
- F. Incorrect, hence denied. The verdicts of apex Court was wholly solly for the devolved employees who were working under the administrative control of Directorate General of Special Education Govt. of Pakistan Islamabad while the appellants have been appointed / working under the Directorate of Social Welfare, Special Education & Women Empowerment Govt. of Khyber Pakhtunkhwa.
- G. Incorrect, hence denied. The factual position has been explained in the preceding paras.
- H. The factual position has been explained in the preceding paras.
- I. The respondents also seek permission of this Honorable Tribunal to advance other grounds and proofs at the time of hearing.

In the view of above factual positions, it is humbly prayed that the appeal being devoid of any merit may graciously be dismissed.


Government of Khyber Pakhtunkhwa
Chief Secretary, Peshawar
(Respondent No. 1)

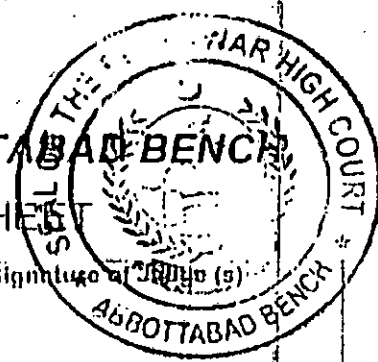

Secretary to Govt. of Khyber
Pakhtunkhwa, Finance Department
(Respondent No. 2)


Secretary to Government of Khyber
Pakhtunkhwa, Social Welfare, Special
Education & Women Empowerment
Department
(Respondent No. 3)


Director, Social Welfare, Special
Education and Women Empowerment,
Govt. of Khyber Pakhtunkhwa
(Respondent No. 5)

PESHAWAR HIGH COURT, ABBOTTABAD BENCH

FORM OF ORDER SHEET



Date of Order of Proceedings

1

27.10.2022

Order or other Proceedings with Signature of Party (s)

2

WP No. 68-A/2019

Present: Muhammad Arshad Khan Tanoli, Advocate for the petitioners.

Mr. Sajid Rehman Khan, AAG for the respondents.

WIQAR AHMAD, J.- Learned counsel for petitioner after arguing the case for a while stated that this writ petition be converted into departmental appeal and sent to respondent No.1 for decision according to law.

In view of the circumstances, we accordingly convert this petition into departmental appeal, which shall be placed before the worthy Chief Secretary, Government of Khyber Pakhtunkhwa, Peshawar for decision according to law.

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EXAMINER
07/NOV/2022
Peshawar High Court Atd Bench
Authorized Under Sec 75 Evid Ordns

(Arshad Iqbal)

For the Justices Usman Ahmad & Kamran Fayaz Abbasi

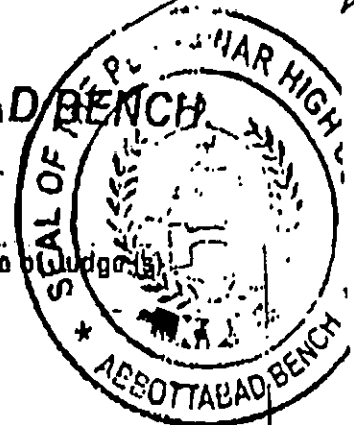
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PESHAWAR HIGH COURT, ABBOTTABAD BENCH
FORM OF ORDER SHEET



Date of Order of Proceedings

1

27.10.2022

Order or other Proceedings with Signature of Judge(s)

2

WP No. 202-A/2021

Present: Muhammad Arshad Khan Tanoll, Advocate,
for the petitioners.

Mr. Sajid Rehman Khan, AAG for the
respondents.

WIQAR AHMAD, J. - Same order as in the connected WP

No. 68-A/2019.

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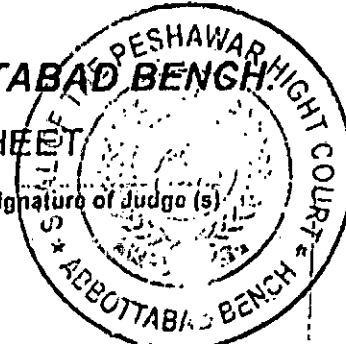
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PESHAWAR HIGH COURT, ABBOTTABAD BENCH

FORM OF ORDER SHEET



Date of Order of Proceedings

1

27.10.2022

Order or other Proceedings with Signature of Judge (s)

2

WP No. 628-A/2022

Present: Muhammad Arshad Khan Tanoli, Advocate, for the petitioners.

Mr. Sajid Rehman Khan, AAG for the respondents.

WIQAR AHMAD, J. - Same order as in the connected WP

No. 68-A/2019.

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Arshad
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(Arshad Iqbal)

Honble Justices Wiqar Ahmad & Kamran Hayat Khan

DRAFT WORKING PAPER IN THE JUDGMENT DATED 27.10.2022 OF THE HONORABLE PESHAWAR HIGH COURT, ABBOTTABAD BENCH IN WRIT PETITION NO. 68-A / 2019 TITLED "MUHAMMAD ADIL KHAN AND OTHERS VERSUS GOVERNMENT OF KHYBER PAKHTUNKHWA

Brief history of the case is that before 18th Constitutional amendment the colleagues of the petitioners (Writ Petition No. 66-A/2019) (Now Devolved to the Province of Khyber Pakhtunkhwa) were working in the Federal Government under the administrative control of Directorate General of Special Education, Government of Pakistan, Islamabad. After the 18th constitutional amendment, the said devolved employees are working under the administrative control of Social Welfare, Special Education and Women Empowerment Department Government of Khyber Pakhtunkhwa since 01.07.2011. Prior to devolution they were receiving Health Allowance since 01-01-2012, when they were under the control of Federal Government. The allowance was stopped to them by the Federal Government and accordingly the petitioners filed Service Appeal in Federal Service Tribunal Islamabad. On 18-07-2017, the Federal Service Tribunal allowed the service appeal and directed the Federal Government to continue the Health Allowance, already granted to the appellant since 2012 and to refund deduction made from them within a period of one month (Annex-I). The Federal Government challenged the judgment of Federal Service Tribunal in Supreme Court of Pakistan and the August Court affirmed the Health Allowance to the employees of Directorate General of Special Education, Islamabad (Annex-II). After shifting the services from Federal Government to Provincial Government the employees of Special Education were receiving the Health Allowance provisionally. On 13-06-2018, the Accounts Officer (PR-04) office of the Accountant General Khyber Pakhtunkhwa wrote a letter, to Deputy Commissioner Peshawar with a copy to Director Social Welfare and Secretary Finance Department Khyber Pakhtunkhwa and informed that although budget for the Health Allowance has been allocated but the same has not been uploaded in SAP computer system till date. He further clarified that the

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Accountant General Office has released the payment (Health Allowance) to these employees on the request of department (Social Welfare & Special Education) in compliance of the Judgment of Supreme Court of Pakistan dated 17-01-2018, provisionally & Subject to its admissibility from Finance Department and that in case the release budget has not been uploaded in SAP system the payment of Health Allowance will be stopped. Accordingly, the employees of Special Education filed a writ petition under article 199 of the constitution of Pakistan 1973, and requested for suspension of the above mentioned letters of Accountant General Office and for continuation of Payment of Health Allowance. During the pendency of the above mentioned petition, the Government of Khyber Pakhtunkhwa Finance Department (Regulation Wing) vide Notification dated 25.11.2019 (**Annex-III**) was pleased to approve Health Allowance at the rate of one running basic pay to the devolved employees working in the Special Education Institutions from the date of their devolution to Provincial Government of Khyber Pakhtunkhwa. The above said allowance will be admissible only to the employees of Special Education Institutions of Khyber Pakhtunkhwa devolved under 18th Constitutional Amendment. The said devolved employees are now receiving one running basic pay (**Frozen on 30.06.2022**) in addition to their monthly salary.

Feeling aggrieved the staff working in different entities i.e. Office of the District Officer, Social Welfare Abbottabad, Government Institute for the Blind, Abbottabad Darul Aman etc filed Writ Petition No. 68-A / 2019 titled "Muhammad Adil Khan & Others VS Government of Khyber Pakhtunkhwa with the prayer that the "respondent department may graciously be directed to grant health professional allowance to the petitioners on the analogy of similarly placed employees of the department who were absorbed after the 18th Constitutional Amendment with effect from the date of receipt of said allowance by the similarly placed employees. Any other relief which this Honorable Court

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deem appropriate in the circumstances of the case may also be allowed to the petitioners”.

The Honorable Peshawar High Court, Abbottabad Bench vide Order dated 27.10.2022 in the above Writ Petition directed that the learned counsel for petitioner after arguing the case for a while stated that his writ petition be converted into departmental appeal and sent to respondent No. 1 for decision according to law. The Honorable Court accordingly converted the petition into departmental appeal for placing before the worthy Chief Secretary, Government of Khyber Pakhtunkhwa, Peshawar for decision according to law.

The worthy Chief Secretary Khyber Pakhtunkhwa is informed that prior to court decisions in the instant Writ Petitions, the Department of Social Welfare, Special Education & Women Empowerment Khyber Pakhtunkhwa had already moved a summary for Chief Minister Khyber Pakhtunkhwa duly signed by Secretary Social Welfare Department as well as endorsed by Honorable Minister for Social Welfare vide dated 22-2-2021 and further to PSO to Chief Secretary Khyber Pakhtunkhwa (Annex-IV).

The worthy Chief Secretary Khyber Pakhtunkhwa is further informed that similar judgment dated 27.10.2022 in the Writ Petition No. 202-A/2021 titled “Muhammad Younis etc VS Government of Khyber Pakhtunkhwa” and judgment dated 27.10.2022 in Writ Petition No. 628-A/2022 titled “Rubina Mazhar VS Govt” have been passed by the Honorable Peshawar High Court, Abbottabad Bench which is re-produced as under:-

“Same order as in the connected WP No. 68-A/2019”

The competent authority is requested to determine the case in light of Court judgment dated 27.10.2022 (Annex-V, VI & VII).

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Judgment Sheet

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In the Federal Service Tribunal, Islamabad

Annex A

Appellate Nos. 363 to 573, 757 to 793, 894 to 918, 918-A, 919 to 943, 998 to 1045, 1108 to 1179, 1224 to 1245, 1265 to 1325, 2327 to 2350, 2352 to 2368 & 2368-A, 2369 to 2443, 2446 to 2484 & 2487 to 2501, 2508 to 2520(R)CS/2016 with M.Ps.

Nusrat Tabir and others

Versus

Secretary, Capital Administration & Development Division,
Secretary, Finance Division and AGPR, Islamabad.

Date of Institution : 04.04.2016, etc.

Date of hearing : 17.07.2017

Date of Judgment : 18.07.2017

Before: Syed Rafique Hussain Shah; and
Syed Muhammad Hamid, Members.

Present: Mr. Muhammad Anwar Mughal, Advocate for the appellants.

Syed Zil-e-Husnain Kazimi, Assistant Attorney General for the respondents with M/S Arshad Anjum, Assistant Director, CA & DD; Naveed Akhter, Section Officer, Finance Division; Azhar Nadeem, Asst. Assistant Accounts Officer and Muhammad Jabbar, Senior Auditor, AGPR as D.Rs.

JUDGMENT

SYED RAFIQUE HUSSAIN SHAH, MEMBER:- With this judgment we shall decide the above titled appeals. The facts giving rise to the present appeals are that the Prime Minister of Pakistan approved payment of Health Allowance to the institutions providing Health Services in the year 2012 and the Finance Division issued notification No.2(13)R-2/2011-777 dated 06.02.2012 for grant of Health Allowance, equal to one basic pay of running salary to the health personnel in the employment of Federal Government in BPS Scheme w.e.f. 01.01.2012, in addition to the existing pay and allowances in BPS scheme. Health allowance had been paid to the contemporaries of the appellants in other Government Hospitals including RIMS, Federal Govt. Polyclinic, CDA, ICT, Pakistan Railways and Federal Government Services Hospital, Islamabad, etc. but it was discontinued to the present appellants vide impugned orders dated 08.08.2014, 21.03.2016

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Islamabad

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administrative control of CA&DD and, therefore, the entitlement or eligibility shall be taken into consideration in the light of status of each department or entity separately.

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In order to meet the ends of justice, it would be appropriate that recovery of the Health Allowance already paid to the employees is recovered after a speaking order has been passed by the learned Secretary. It is expected that the Secretary CA&DD shall pass a speaking order preferably within 90 days.

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The Secretary (CA&DD) after perusing the record and affording the opportunity of hearing to the authorized representatives of the petitioners (now appellants) on 14.03.2016 passed the order dated 21.03.2016 and declared the CA&DD's letter dated 13.03.2016 allowing Health Allowance to the DGSE employees unlawful, against the rules, void ab initio and directed the AGPR to recover the said Allowance from their salaries in easy installments.

2. In this backdrop, the appellants filed the instant appeals with the following prayer:-

"It is, therefore, most respectfully prayed that the appellant being entitled to Health Allowance being covered under category of Health Personnel, the said order dated 21.03.2016 by respondent No.1 may therefore, be set aside and it be declared that the action of respondent No.1 in withdrawing the said allowance and recovery thereof from the salaries of appellants, is mala fide, illegal, violative of principles of locus poenitentiae, unfair, unjust, unreasonable, arbitrary, fanciful and capricious and that are entitled to receive the same, from the date it has been withdrawn and stopped from payment."

3. The learned counsel for the appellants argued that the appellants being Federal government Servants under Article 240 of Constitution of the Islamic Republic of Pakistan, 1973 and covered under Section 2 (b) of Civil Servants Act, 1973 were entitled to all pay and allowances prescribed by Federal Government for its employees. Further stated that financial directive contained in Ministry of Finance O.M. No.2(13)R-2/2011 dated 06.02.2012 was unambiguous and clearly stipulated admissibility of Health Allowance to all health personnel in employment of Federal Government in BPS Scheme but despite the said notification of the Finance Division, the appellants were deprived of the

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said benefits. In support of his version, the learned counsel for the appellants referred to the judgments of IS' stated 03.10.2013, 11.01.2016, 18.03.2016 and 14.12.2016 passed in Appeals No.224(R)CS/2013, 867 in 872(R)CS/2013, 1176 to 1487, 1189 in 1251(R)CS/2013 & 381 in 405(R)CS/2016 and prayed for the same relief. The learned counsel vehemently argued that the respondent-Finance Division was blowing hot and cold in the same breath as, on the one hand, it had admitted the claim of the appellants in para 6 of their para-wise comments filed in the Hon'ble Islamabad High Court, Islamabad while, on the other hand, they declined the same claim vide order dated 21.03.2016. He contended that the benefit once granted and acted upon had created a vested right which could not be withdrawn unilaterally, in violation of principle of natural justice. The learned counsel for the appellant lastly argued that impugned orders were void ab initio, common-law and having no sanctity of law as withdrawal / stoppage of salary amounted to punishment which could not be awarded without adopting the due process of law provided under the Government Servants (Efficiency and Discipline) Rules, 1973.

4. The appeals were resisted by the respondents. It was stated that the said allowance was not admissible to the appellants as they did not fall under the definition of health personnel because health personnel meant a person who held a post in any institute or organization delivering services in the health sector and included in Schedule-1. It was further submitted that the Health Allowance was allowed provisionally to the appellants by the AGPR on the basis of CADD Division's letter dated 06.08.2012 but subsequently that Division sent a reference to the Finance Division to seek its concurrence for admissibility of Health Allowance which regretted the same on 14.03.2013 on the ground that they were involved in the process of education, training and rehabilitation of disabled children and persons with disabilities and, hence, could not be declared as health personnel to become entitled for the said allowance. The CADD on 13.03.2013 in its communication to AGPR conveyed sanction of the Health Allowance to DGSE employees without concurrence of the Finance Division and the AGPR made provisional payment to the appellants, which was subsequently discontinued after verification of entitlement in order to prevent the misuse of this allowance by non-entitled personnel. It was submitted by respondent No.2 that health allowance was granted with the

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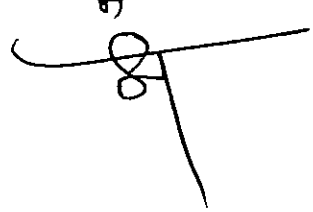
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approval of the Prime Minister, through a summary, specifically moved for three Federal Government Hospitals i.e. Pakistan Institute of Medical Sciences, P.G. Polytechnic and National Institute of Rehabilitation Medicine. The Directorate General of Special Education & Social Welfare, being an educational body, dealt with the process of education, training and rehabilitation of disabled children and persons with disabilities, which was carried out by a multi-professional team including teachers, professionals, doctors, administrators, ministerial and supportive / auxiliary staff did not fall within the ambit of health organization and could not be declared as 'health personnel' to get the said allowance. The respondent No.3 i.e. AGPR in its paraswise comments submitted that the identical cases titled Dr. Farh F. Lodhi, etc. vs Secretary Finance were still pending before the Hon'ble Supreme Court of Pakistan.

5. We heard the learned counsel for the parties and perused the record.

6. The health allowance equal to one basic pay of running salary was granted to the health personnel in the employment of Federal Government, in HPS Scheme, with effect from 01.01.2012. It was made admissible to non-clinical cadres. In reply to a query raised by AGPR vide letter No.TM/18-64/CSHP/HPS/2011-12/186, dated 12.03.2012, the Regulations Wing of the Finance Division vide U.O. No.F-2(13)R-2/2012-172 dated 27.03.2012 furnished definition of the health personnel by stating that 'health personnel' meant a persons who held a post in any institute or organization delivering services in the health sector and included in Schedule-I, but did not include person who was on deputation to the Federal Government from any Province or other authority and who was on contract, or on work charged basis or who was paid from contingencies. The appellants are neither deputationists from any Province or other authority nor have been engaged on contract or on work charged basis. They are also not being paid from contingencies. On the contrary, they are civil servants under section 2 (b) of the Civil Servants Act, 1973 and are delivering services to the disabled children / persons. The beneficiaries / appellants comprised of Academic and Administrative Cadres. According to the definition furnished by the Finance Division vide their u.o. dated 27.03.2012 the appellants are entitled to health allowance. In paras-6 & 7 under Facts of paraswise comments filed before the Hon'ble Islamabad High

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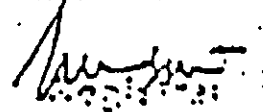
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6 305 to 373(R)CS/2016, etc. with A.F.P. Court Islamabad on behalf of Secretary Finance Division in Writ Petition No.4007/2014, it was categorically admitted that in April, 2014 Ministry of CADD again submitted NIS / BOs containing a provision of Rs.100 million as HPA for DGSE for financial year 2014-15. However, DFA refused to endorse the NIS / BOs and forcefully deducted an amount of Rs.92,542 million of HPA, leaving Rs.7,458 million for the petitioners (now appellants) i.e. 24 employees who belonged to medical profession and came under the criteria of entitlement of HPA, as per DFA (CADD) understanding. D.O. letter dated 09.05.2014 was issued by FA's Organization to AGPR for stoppage of HPA to non-entitled employees and it was duty of AGPR to take action on the said letter and decide entitlement. It was prayed that the petition was an administrative issue with CADD & DGSE; therefore, the Finance Division be excluded from the list of respondents. Now the Finance Division has come up with different stand. It is not allowed to approve and reprobate. No logical reply has been submitted by the respondents for depriving the appellants of their legitimate rights. A large number of employees of the Federal Government, similarly placed, are getting the said advantage. Why, then, the appellants be deprived, is not clear from what has been written in the comments before the Hon'ble Islamabad High Court, Islamabad and the Federal Service Tribunal. This seems to be discriminatory treatment offending Article 4 & 25 of the Constitution of Islamic Republic of Pakistan, 1973. Further, the appellants have been directed by respondent No.1 to refund the paid amount which is against the principle of locus poenitentiae because the Hon'ble Supreme Court of Pakistan has consistently held that the benefit once granted and acted upon created a vested right which could not be withdrawn unilaterally, in violation of natural justice. It is an established law that benefits received by a civil servant, even under erroneous order passed by the competent authority without any fault on the part of civil servant could not be recovered even if the beneficial order was subsequently withdrawn or rectified. We are fortified to take this view in the light of the judgment of Hon'ble Supreme Court of Pakistan reported in PLD 1992 SC 207. Hence, to this extent, the impugned orders are not legally sustainable and liable to be set aside.

7. We would like to make an emphasis on the judgments of the Tribunal in Appeals No.224(R)CS/2015 and 351 to 405(R)CS/2016 dated

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2016 IS 1111, 2016, etc. with M.P.s.

05.10.2015 and 14.12.2016 wherein the controversy relating to Health Allowance has already been resolved. When confronted with the said fact, the respondents have failed to deny the fact. As such, the action of the respondents appears to be inconsistent in the light of the aforementioned judgments on account of Article 23 of the Constitution which guarantees equal rights and equal protection of law for every citizen. To ensure uniformity, rule of consistency must be applied while considering the case of the appellants. Since the Hon'ble Apex Court vide its judgment in the case reported as 1996 SCMR 1185 has already held that "rule of good governance demands that the benefits of the said decision be extended to other civil servants also, who may not be parties to the litigation, instead of compelling them to approach the Tribunal or any other legal forum. Hence, the claim of the appellants is required to be decided on the same analogy / principle as framed in the cases of Dr. Farrukh Fiaz Lodhi and others by the Tribunal vide its judgment dated 05.10.2015, 11.01.2016 and 14.12.2016.

8. Foregoing in view and following the rule of consistency, the impugned orders dated 21.03.2016 and 25.03.2016 are set aside with direction to the respondents to continue the Health Allowance already granted to the appellants since 2012, and to refund all deduction made in compliance with the impugned orders within a period of one month from the date the copy of this judgment is received in their office. Since the main appeals have been accepted, Misc. Petitions are also accepted.

- 9. Judgment to apply all the filed appeals mutatis mutandis.
- 10. There shall be no order as to costs.
- 11. Parties shall be informed accordingly.

Sd/-
MEMBER

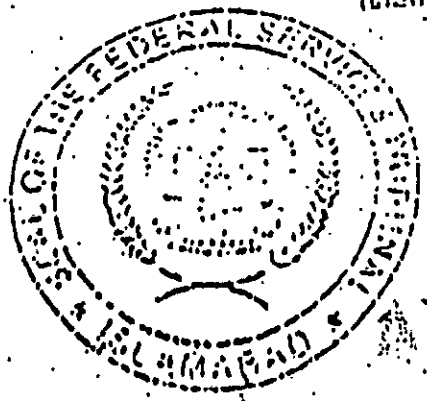
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MEMBER

ISLAMABAD
18.07.2017

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Federal Service Tribunal
Islamabad



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Judgment sheet

In the Federal Service Tribunal, Islamabad.

Appeal No. 565 to 573, 757 to 793, 894 to 918, 918-A, 919 to 943, 998 to 1045, 1108 to 1179, 1224 to 1243, 1265 to 1325, 2327 to 2350, 2352 to 2368 & 2368-A, 2369 to 2443, 2446 to 2484 & 2487 to 2501, 2508 to 2520 (R) CS/2016 with M.Ps.

Nusrat Tahir and others
Versus

Secretary, Capital Administrative & Development Division.
Secretary, Finance Division and AGPR, Islamabad.

Date of Institution : 04-04-2016 etc
Date of Hearing : 17-07-2017
Date of Judgment : 18-7-2017

Before: Syed Rafique Hussain Shah, and
Syed Muhammad Hamid, Members.

Present: Mr. Muhammad Anwar Mughal,
Advocate for the Appellants
Syed Zile-Husnain Kamzi, Assistant
Attorney General for the respondents
with M/S Arshad Anjum, Assistant
Director, CA & DD, Naveed Akhter,
Section Officer, Finance Division,
Azhar Nadeem Awan, Assistant
Accounts Officer and Muhammad
Jabbar, Senior Auditor, AGPR as
D.Rs.

JUDGMENT

SYED RAFIQUE HUSSAIN SHAH, MEMBER: With this judgment we shall decide the above title appeals. The facts giving rise to the present appeals are that the Prime Minister of Pakistan approved payment of Health Allowance to the institutions providing Health Services in the year 2012 and the Finance Division issued notification No. 2(13) R-2/2011-777 dated 6-2-2012 for grant of Health Allowance, equal to one basic pay of running salary to the health personnel in the employment of Federal Government in BPS scheme w.e.f 01-01-2012, in addition to the existing pay and allowance in BPS Scheme. Health allowance has been to the contemporaries of the appellants in other Government Hospitals including PIMS, Federal Govt, Polyclinic, CDA, ICT, Pakistan Railway and Federal Government Services Hospital, Islamabad, etc, but it was discontinued to the present appellants vice impugned orders dated 8-8-2014, 21-03-2016



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and 25-3-2016. The Secretary, Capital Administration & Development Division (CA & DD) vide letter dated 6-8-2012 allowed Health Allowance to 24 personnel of Directorate General of Special Education (DGSE) and the AGPR, Islamabad started paying the said Allowance to these personnel with effect from 01-04-2012. Due to discriminative action Secretary CA & DD the employees of DGSE started agitating the matter with his who vide letter dated 13-3-2013 allowed Health Allowance to all the employees of 16 institutions of DGSE and allied education centers, etc, in view of functions and the services being rendered by them in providing Health Services to the disabled and special children with effect from 01-01-2012 and the AGPR accordingly started paying the said allowance to them. The AGPR vide letter dated 8-8-2014 informed the Director General, DGSE that Finance Division had not provided budget allocation for the year 2014-2015 for the said Allowance, hence, the payment of said Allowance be stopped by submitting the computer changes through concerned DDOs. Subsequently the Finance Division allocated budget for the said Allowance but the CA & DD parked the budget and later on allocated the same to some other organization. Being aggrieved of stoppage of the said Allowance vide letter dated 8-8-2014 the affected employees filed Writ Petition No. 3784/2014, 3858/2014 and 4007/2004 which were disposed of by the Hon'ble Islamabad High Court, Islamabad vide order dated 17-9-2015 in the following manner:-

4. In the light of the above, the instant petition allowing with the connected petitions are converted into representations deemed to be pending before the learned Secretary CADD. The learned Secretary CADD shall afford an opportunity of hearing to an authorized representative of the petitioners and, thereafter pass a speaking order. It is expected that the Secretary shall, inter alia, take into consideration:
 - a) the affidavit dated 26-3-2015 filed by the Secretary Finance the proceedings before this court.
 - b) the fact that in some cases the Health Allowance was paid to the employees by the AGPR pursuant to the approval given by the CADD.
 - c) The request made by and on behalf of the petitioners that in the circumstances recovery of the Health Allowance would cause immense hardship; and
 - d) the fact that the petitioners are employees of different departments and entities under the

Attorney

administrative control of CADD and, therefore, the entitlement of eligibility shall be taken into consideration in the light of status of such department or entity separately.

- 5. In order to meet the ends of justice, it would be appropriate that recovery of the Health Allowance already paid to the employees is recovered after a speaking order has been passed by the learned Secretary. It is expected that the Secretary CADD shall pass a speaking order preferably within 90-days.

The Secretary CA & DD after perusing the record and affording the opportunity of hearing in the authorized representatives of the petitioners (now appellants) on 14-03-2016 passed the order dated 21-3-2016 and declared the CA & DD's letter dated 13-3-2016 allowing Health Allowance to the DGSE employees unlawful, against the rules, void ab initio and directed the AGPR to recover the said Allowance from their salaries in easy installments.

- 2. In this backdrop, the appellants filed the instant appeals with the following prayers.

It is, therefore, most respectfully prayed that the appellant being entitled to Health Allowance being covered under category of Health Personnel, the said order dated 21-3-2016 by respondent No. 1 may therefore, be set aside and it be declared that the action of respondent No. 1 in withdrawing the said allowance and recovery thereof from the salaries of appellants, is malafide, illegal, violative of principles of locus pocnitentiec, unfair, unjust, unreasonable, arbitrary, fanciful and capricious and that are entitled to receive the same, from the date it has been withdrawn and stopped from payments.

- 3. The learned counsel for the appellants argued that the appellants being Federal Government Servants under Article 240 of Constitutions of the Islamic Republic of Pakistan, 1973 and covered under Section 2 (b) of Civil Servants Act. 1973 were entitled to all pay and allowances prescribed by Federal Government for its employees. Further stated that financial directive contained in Ministry of Finance O.M. No. 2 (13) R-2/2011 dated 6-2-2012 was unambiguous and clearly stipulated admissibility of Health Allowance to all health personnel in employment of Federal Government in BPS Scheme but despite the said notification of the Finance Division, the appellants were deprived of the

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said benefits. In support of his version, the learned counsel for the appellants referred to the judgment of FST dated 3-10-2015, 11-01-2016, 18-05-2016 and 14-12-2016 passed in Appeals No. 324 (R) CS/22015, 867 in 872(R) CS/2013, 1176 to 1487, 1189 to 1251 (R) CS/2015 & 381 to 405 (R)CS/2016 and prayed for the same relief. The learned counsel vehemently argued that the respondent-Finance Division was blowing hot and cold in the same breath as on the one hand, it had admitted the claim of the appellants in para 5 of their paras comments filed in the Hon'ble Islamabad High Court, Islamabad while, on the other hand, they declined the same claim vide order dated 21-3-2016. He contended that the benefit once granted and acted upon had created a vested right which could not be withdrawn unilaterally, in violation of principle of natural justice. The learned counsel for the appellant lastly argued that impugned orders were void ab initio, coram-non-judice and having no sanctity of law as withdrawal/stoppage of salary amounted to punishment which could not be awarded without adopting the due process of law provided under the Government Servants (Efficiency and Discipline) Rules, 1973.

4. The Appeals were resisted by the respondents. It was stated that the said allowance was not admissible to the appellants as they did not fall under the definition of health personnel because health personnel means a person who held a post in any institute or organization delivering services in the health sector and included in Schedule-I. It was further submitted that the Health Allowance was allowed provisionally to the appellants by the AGPR on the basis of CADD Division's letter dated 6-8-2012 but subsequently that Division sent a reference to the Finance Division to seek its concurrence for admissibility of Health Allowance which regretted the same on 14-3-2013 on the ground that they were involved in the process of education, training and rehabilitation of disabled children and persons with disabilities and, hence, could not be declared as health personnel to become entitled for the said allowance. The CADD on 13-3-2013 in its communication to AGPR conveyed sanction of the Health Allowance to DGSE employees without concurrence of the Finance Division and the AGPR made provisional payment to the appellants, which was subsequently discontinued after verification of entitlement in order to prevent the misuse of this allowance by non-entitled personnel. It was submitted by respondent No. 2 that health allowance was granted with the

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approval of the Prime Minister, through a summary, specifically moved for three Federal Government Hospitals i.e. Pakistan Institute of Medical Sciences, F.G. Polyclinic and National Institute of Rehabilitation Medicine. The Directorate General of Special Education and Social Welfare, being an educational body, dealt with the process of education, training and rehabilitation of disabled children and person with disabilities, which was carried out by a multi-professional team including teacher, professionals, doctors, administrators, ministerial and supportive/ancillary staff did not "health personnel" to get the said allowance. The respondent No.3 i.e. AGPR in its parawise comments submitted that the identical cases titled DR. Farkh F, Lodhi, etc. vs Secretary Finance were still pending before the Hon'ble Supreme Court of Pakistan.

5. We heard the learned counsel for the parties and perused the record.

6. The health allowance equal to one basic pay of running salary was granted to the health personnel in the employment of Federal Government, in BPS Scheme, with effect from 01-01-2012. It was made admissible to no-clinical cadres. In reply to a query raised by AGPR vide letter No. TM/18-64/CSHP/HPS/2011-12/186, dated 12-3-2012, the Regulations Wing of the Finance Division vide U.O. No. F.2(13) R-2/2012-172 dated 27-3-2012 furnished definition of the health personnel by stating that "health personnel" meant a person who held a post in any institute or organization delivering services in the health sector and included in Schedule-I, but not include person who was on deputation to the contract, or on work charged basis or who was paid from contingencies. The appellants are neither deputationists from any Province or other authority nor have been engaged on contract or on work charged basis. They are also not being paid from contingencies. On the contrary, they are delivering services to the disabled children/person. The beneficiaries / appellants comprised of Academic and Administrative Cadres. According to the definition furnished by the Finance Division vide their U.O. dated 27-3-2012 the appellants are entitled to health allowance. In paras 6 & 7 under facts of parawise comments filed before the Hon'ble Islamabad High

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Court, Islamabad on behalf of Secretary Finance Division in Writ Petition o. 4007/2014, it was categorically admitted that in April 2014 Ministry of CADD again submitted NIS/BOs containing a provision of Rs. 100 million as HPA for DGSE for financial year 2014-15, however, DFA refused to endorse of HPA, leaving Rs. 7.458 million for the petitioners (now appellants) i.e. 24 employees who belonged to medical profession and came under the criteria of entitlement of HPA, as per DFA (CADD) understanding, D.O letter dated 9-5-2014 was issued by FA's Organization to AGPR to take action on the said letter and decide entitlement. It was prayed that petition was an administrative issue with CADD & DGSE, therefore, the Finance Division be excluded from the list of respondents. Now the Finance Division has come up the different stand. It is not allowed in approbate and reprobate. No logical reply has been submitted by the respondents for depriving the appellants of their legitimate right. A large number of employees of the Federal Government, similarly placed are getting the said advantage. Why, then, the appellants be deprived is not clear from what has been written in the comments is before the Hon'ble Islamabad High Court, Islamabad and the Federal Service Tribunal, this seems to be discriminatory treatment offending Article 4 & 25 of the Constitution of Islamic Republic of Pakistan. Further, the appellants have been directed by respondent No.1 to refund the paid amount which is against the principle of locus poenitentiae because the Honorable Supreme Court of Pakistan has consistently held that the benefit once granted and acted upon created a vested right which could not be withdrawn unilaterally, in violation of natural justice. It is an established law that benefits received by a civil servant even under erroneous order passed by the competent authority without any fault on the part of civil servant could not be recovered even if the beneficial order was subsequently withdrawn or rectified. We fare fortified to take this view in the light of the judgment of Hon'ble Supreme Court of Pakistan reported in PLD 1992 SC 207. Hence, to this extent, the impugned orders are not legally sustainable and liable to be set aside.

7. We would like to make an emphasis on the judgments of the Tribunal in Appeals No. 224@CS/2015 and 381 to 405 (R) CS/2016 dated

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05.10.2015 and 14.12.2016 wherein the controversy relating to Health Allowance has already been resolved. When confronted with the said fact, the respondents have failed to deny the fact. As such, the action of the respondents appears to be inconsistent in the light of the aforementioned judgments on account of Article 25 of the Constitution which guarantees equal rights and equal protection of law for every citizen. To ensure uniformity, rule of consistency must be applied while considering the case of the appellant. Since the Hon'ble Apex Court vide its judgment in the case reported as 1996 SCMR 1185 has already held that "rule of good governance demands that the benefits of the said decision be extended to other civil servants also, who may not be parties to the litigation, instead of compelling them to approach the Tribunal or any other legal forum. Hence, the claim of the appellants is required to be decided on the same analogy / principle as framed in the cases of Dr. Farrukh Fiaz Lodhi and others by the Tribunal vide its judgment dated 05.10.2015, 11.01.2016 and 14.12.2016.

8. Foregoing in view and following the rule of consistency, the impugned orders dated 21.03.2016 and 25.03.2016 are set aside with the direction to the respondents to continue the Health Allowance already granted to the appellants since 2012 and to refund all deduction made in compliance with the impugned orders within a period of one month from the date the copy of this judgment is received in their office. Since the main appeals have been accepted. Misc. Petitions are also accepted.

9. Judgment to apply all the titled appeals mutatis mutandis.

10. There shall be not order as to costs.

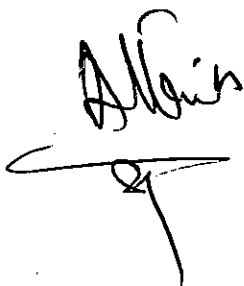
11. Parties shall be informed accordingly.

ISLAMABAD
18.07.2017

SD/-- MEMBER

SD/-- MEMBER

Sd/--- Registrar
Federal Services Tribunal
Islamabad.



Muhammad Attique ur Rehman
etc.

(in C.A.811/2016)

...Respondents(s)

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~~ANNEX B~~

For the Appellant(s)
(in all cases)

Mr. Sajid Ilyas Bhatti, DAG
Syed Rifaqat Hussain Shah, AOR
Ms. Saadia Kanwal, S.O Fin.
Mr. Abid Hussain Charina, S.O Fin.
Mr. Sajid Javed, Asstt. Legal Fin.
Mr. Abdul Razzaq, AAO MEG
Rawalpindi

For the Respondent(s)

In-person

For the Respondent(s)
(in C.A.216/16)

Mr. Muhammad Ilyas Lodhi, ASC
Malik Itaat Hussain Awan, ASC

Amicus Curiae:

Mr. Muhammad Makhdoom Ali
Khan, Sr. ASC
Mr. Sikandar Bashir Mohmand, ASC

Date of Hearing

17.01.2018.

JUDGMENT

UMAR ATA BANDIAL, J.— By leave of this Court granted on 23.02.2016, 01.4.2016 and 12.12.2017 in the several connected appeals before us, the appellant Federal Government challenges the judgments delivered on common questions of fact and law by the learned Federal Service Tribunal on 05.10.2015, 11.01.2016 and 18.07.2017. The judgments impugned in the connected appeals declare the respondent employees of different institutions functioning under the Directorate General of Special Education ("DGSE") to be entitled to payment of Health Allowance granted by the Federal Government vide its Office Memoranda dated 04.02.2012 and 06.2.2012. These Memoranda are issued by the Finance Division (Regulations Wing) Government of Pakistan pursuant to approval granted by the Prime Minister under the Rules of Business, 1973. It would be useful to reproduce the two

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Senior Court Associate
Supreme Court of Pakistan

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memoranda containing the terms and conditions for the grant of Health Allowance to eligible persons;

Government of Pakistan
Finance Division
(Regulations Wing)
F.No.2(13)R-2/2011 Islamabad, the 04th Feb, 2012

OFFICE MEMORANDUM

Subject: GRANT OF ADHOC ALLOWANCE EQUAL TO ONE BASIC PAY AT THE INITIAL OF THE SCALE TO THE HEALTH PERSONNEL IN BPS SCHEME.

The undersigned is directed to say that the Ordinance No.VI of 2011 that sanctioned the Career Structure for Health Personnel Scheme (CSHP) has lapsed on 26.12.2011. Accordingly, CSHP is no longer in the field and all health personnel have consequently reverted to the BPS scheme. In order to compensate health personnel for the loss of benefits sought under CSHP while preserving their status as Civil Servants, it has been decided by the Federal Government to grant adhoc allowance equal to one basic pay at the initial of the scale to the health personnel in the employment of Federal Government in BPS scheme, with effect from 1st January, 2012. This will be in addition to their existing pay/allowances in BPS Scheme.

2. This Division's OM No.2(13)R-2/2011-598 dated 17th November, 2011 may be treated as withdrawn w.e.f. 26.12.2011.

Sd/-
(M. Munir Sadig)
Deputy Secretary (R-1)

Government of Pakistan
Finance Division
(Regulations Wing)
F.No.2(13)R-2/2011-777 Islamabad, the 06th February, 2012

OFFICE MEMORANDUM

Subject: GRANT OF ADHOC ALLOWANCE EQUAL TO ONE BASIC PAY OF RUNNING SALARY TO THE HEALTH PERSONNEL IN BPS SCHEME.

In continuation of Finance, Division's O.M. No.F.2(13)R-2/2011, dated 4.2.2012, it has been decided by the Federal Government to grant benefit of one basic pay of running salary as Health Allowance to the health personnel in the employment of Federal Government, in BPS scheme, with effect from 1st January, 2012. This will be in addition to their existing allowances in BPS Scheme. Also grant of stipend amounting to Rs.50,000 per month to the postgraduate residents and Rs.24,000 per month for House Officers respectively w.e.f. 1.7.2011 will continue.

Sd/-
(Manzoor Ali Khan)
Sr. Joint Secretary (Regulations)
(emphasis supplied)

2. Learned Deputy Attorney General has contended that the Health Allowance granted by the Federal Government is available to health personnel in the employment of the Federal Government in the BPS scheme at three hospitals established in

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Senior Court Associate
Islamabad

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Islamabad, namely, Pakistan Institute of Medical Sciences ("PIMS"), Federal Government Polyclinic ("FGP") and National Institution of Rehabilitation Medicines ("NIRM"). The employees at these hospitals do not have a career structure in place after the Career Structure for Health Personnel Scheme Ordinance, 2011 ("Ordinance") lapsed on 26.1.2011. The Health Allowance was accordingly granted by the Federal Government as a form of compensation. It is clear from the two memoranda dated 04.2.2012 and 06.2.2012 reproduced above that the Health Allowance is granted to "health personnel". However, the composition of the category of employees that are eligible for the benefit has not been provided therein. The respondents who are several hundred in number are unrepresented by counsel. In view of the fact that a large number of employees are affected by the instant controversy, the Court has sought assistance from Mr. Muhammad Makhdoom Ali Khan, Sr. ASC and Mr. Sikandar Bashir Mohmand, ASC as amicus curiae in the matter. Mr. Sikandar Bashir Mohmand, ASC made able submissions before the Court that highlighted important facts and documents on record which simplified the controversy appreciably.

3. It transpires that an Office Memorandum dated 27.03.2012 by the Finance Division (Regulations Wing) clarifies that the term "health personnel" used in the above mentioned memoranda bears the meaning given to that expression in Section 2(b) of the Ordinance. This definition refers to the contents of Schedule-I to the Ordinance, which specifies the service providers who qualify as health personnel. A perusal of Schedule-I shows that five categories of service providers are

Ali Khan
Sikandar

[Signature]
 Senior Counsel
 Supreme Court of Pakistan

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classified as health personnel, namely: Doctors, Allied, Nurses, Paramedics and Support. The services specified under the categories of Paramedics and Support include Teachers, Audiovisual Operators, Technicians, Librarians, etc.

4. The administrative Ministry for the health institutions of the Federal Government at Islamabad is the Ministry of Capital Administration and Development Division ("CADD"). It is an admitted fact that vide order dated 13.03.2013 the Ministry of CADD granted the Health Allowance to the employees of the DGSE and its allied special education centers/ institutions including National Trust for the Disabled ("NTD") and the National Council for Rehabilitation of Disabled Persons ("NCRDP"). The respondents were thereby acknowledged as beneficiaries of the said grant and were paid the Health Allowance with effect from 01.1.2012 until 27.10.2014, when the Finance Division informed the Accountant General Pakistan Revenue ("AGPR") that only health personnel working in Federal Government hospitals and clinics were qualified to receive the Health Allowance. The AGPR correspondingly instructed the DGSE to stop payment of the said allowance to its employees as no budget allocation for the said emolument had been made in the financial year 2014-15.

5. The discontinuation of their Health Allowance was taken to the Islamabad High Court by some of the respondents. Vide order dated 17.9.2015 the learned High Court referred the dispute to the Secretary CADD for passing a speaking order thereon; and till then restrained recovery of past payments of the Health Allowance from the affected employees of DGSE and allied centers. The Secretary CADD heard the parties and by

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Senior Court Associate
Supreme Court of Pakistan

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order dated 21.3.2016 rejected the entitlement of the respondents to receive the said allowance. The principal ground of his decision is that employees of the DOSE were engaged in the process of education, training and rehabilitation of disabled children and therefore did not fall within the ambit of a health organization. The respondents successfully challenged the said order before the learned Federal Service Tribunal which has, *inter alia*, by the impugned judgment dated 18.07.2017 declared that the respondents are entitled to the grant of Health Allowance.

6. Learned Deputy Attorney General has contended that after the lapse of the Ordinance that had provided a career structure for the doctors, nurses and paramedics working in PIMS, FGP and NIRM, the Health Allowance was granted by the Federal Government as compensation to the said health personnel. He was, however, unable to show any contemporaneous direction issued by the Ministry of CADL or the Ministry of Finance that restricted the grant of the Health Allowance to the claimed employees of the three hospitals specified by him. As already noted above, the definition of health personnel provided in the Ministry of Finance Office Memorandum dated 27.3.2012 is wide in scope and therefore unhelpful to his plea.

7. We have examined the definition of "health personnel" adopted by said memorandum dated 27.3.2012 from Section 2(b) of the Ordinance which is to the following effect:

"b) 'health personnel' means a person who holds a post in any institute or organization delivering services in the health sector and included in Schedule-I, but does not include:
i) a person who is on deputation to the Federal Government from any Province or other authority;

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Senior Court Associate

ii) a person who is employed on contract, or on work charged basis or who is paid from contingencies."

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8. It is noted that the foregoing definition of health personnel covers persons holding posts in any institute or organization who are delivering services in the health sector that are included in Schedule-I to the Ordinance. Learned Deputy Attorney General was unable to distinguish the respondents, who are employees of the DGSE and allied institutions/centers, NCRDP and NTD, from the paramedic and support staff positions that qualify as health personnel according to Schedule-I to the Ordinance. It is not denied by the appellant that education, training and rehabilitation of disabled persons are services provided in the health sector. These services fall within the terms of Schedule-I to the Ordinance and therefore the providers thereof qualify as health personnel.

9. Accordingly, not only do the respondents fall within the category of persons who are, in terms of Finance Division Memoranda dated 06.2.2012 and 27.3.2012, eligible for grant of the Health Allowance but their entitlement has in fact been admitted by both the Ministry of CADD and Ministry of Finance. In this respect the aforementioned letter dated 13.3.2013 issued by the Ministry of CADD is referred. Also the affidavit of the Secretary Finance, Government of Pakistan filed in the Islamabad High Court pursuant to that Court's order dated 20.3.2015 passed in Writ Petition No. 4007 of 2014, specifically records that the proposal approved by the Prime Minister vide Summary dated 25.1.2012 did not restrict admissibility of the Health Allowance to the personnel of the three hospitals (identified by the learned DAG). For that reason the Finance

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Senior Court Associate

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Division Memoranda dated 04.2.2012 and 6.2.2012 made the allowance available to all health personnel employed by the Federal Government in the BPS Scheme.

10. As a result, the said allowance was paid to the health personnel of the DGSE and its allied institutions until 27.10.2014 when the Finance Division instructed the AGPR to confine the grant of the allowance to employees of Federal Government hospitals and clinics. This instruction represents merely a change of opinion which is not occasioned by an amendment in the terms of eligibility for the Health Allowance. Therefore, as the Memoranda dated 04.2.2012, 06.2.2012 and 27.3.2012 issued by the Finance Division, Government of Pakistan still hold the field in their original terms, there is no merit in the objection by the learned DAG to the entitlement of the respondents to claim and receive the Health Allowance.

11. As a secondary and also tenuous argument, learned Deputy Attorney General contended that the Health Allowance is granted under executive fiat without any statutory backing therefore the same can be withdrawn by the Federal Government at any time. That is clearly a flawed contention. It is admitted that grant of the Health Allowance and the terms of eligibility to receive the same were determined by the competent authority, Ministry of Finance in accordance with Rules of Business of the Federal Government. The original terms of the said lawful grant still hold the field. These were acted upon and payment of the Health Allowance to the respondents has conferred a vested right upon them. In such circumstances, the executive is barred by the rule of *locus poenitentiae* from unilaterally rescinding and retrieving the benefit availed by its recipients. Reference is made

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Senior Civil Assistant
Customs Court of Pakistan

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to Pakistan, through the Secretary, Ministry of Finance vs.

Muhammad Hidayatullah Faruqi (PLD 1969 SC 407) and
The Engineer-in-Chief Branch vs. Jalaluddin (PLD 1992 SC

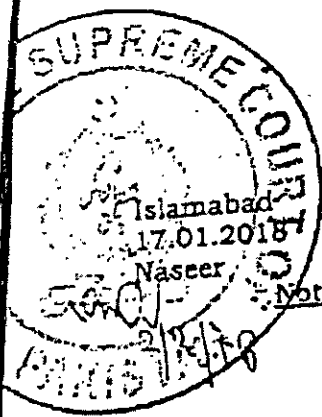
207). Therefore without a change of the terms of eligibility for
the Health Allowance even the prospective exclusion of the
respondents from receipt of the benefit shall constitute arbitrary
and unlawful action.

12. In the circumstances, we do not find any error or
defect in the impugned judgments of the learned Federal Service
Tribunal dated 05.10.2015, 11.1.2016 and 18.7.2017.
Consequently, these appeals are dismissed and the entitlement
of employees of the DGSE, allied institutions/centers, NCRDP
and NTD to receive the Health Allowance is affirmed.

Sd/- Mian Saqib Nisar, CJ
Sd/- Umar Ata Bandial, J
Sd/- Ijaz ul Ahsan, J

Certified to be True Copy

Senior Court Associate
Supreme Court of Pakistan
Islamabad



Not approved for reporting.

C.R. No: 8158/2022 Civil/Criminal
Date of Presentation: 20.4.22
No of Words: 5100
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Date of Delivery of Copy: 26/4/2022
Compared by/Prepared by: [Signature]



Government of Khyber Pakhtunkhwa
Directorate of Social Welfare, Special Education &
Women Empowerment Jamrud Road.

Annex G

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Dated Peshawar the 31/01/2019

NOTIFICATION

No. DI/Absorption/Dev-Emp/DSW/3331-40 In pursuance of Section II-B of the Khyber Pakhtunkhwa Civil Servants (Amendment) Act, 1973, (Khyber Pakhtunkhwa Act No. XVIII of 1973) the following devolved employees of the Federal Government holding various posts in Federal Government entities, on regular basis before the commencement of the 18th constitutional (amendment) Act 2010 (Act No. X of 2010) shall be deemed to be civil servants of the Province for all intents and purposes under the Act ibid. 000

S.#	Name	Designation	BPS
1	2	3	4
1	Mr. Nasir Khan Lodhi	Admin Officer	16
2	Mr. Muhammad Rauf	- do -	16
3	Mr. Daud Khan	S/S Stenographer	16
4	Mr. Noor Wahid	Office Assistant	16
5	Mr. Rehmat Ullah	- do -	16
6	Mr. Hidayat Ullah	- do -	16
7	Mr. Abid Ali Shah	- do -	16
8	Mr. Javed Iqbal Naseem	- do -	16
9	Mr. Munir Khan	- do -	16
10	Mr. Ishtiaq Ahmad	- do -	16
11	Mr. Muhammad Munir	- do -	16
12	Mr. Muhammad Sharif	- do -	16
13	Mr. Majid Ali Shah	- do -	16
14	Mr. Muhsin Ali	Computer Operator	16
15	Mr. Tehmasab Khalid	- do -	16
16	Mr. Wajid Maqsood	- do -	16
17	Mr. Jawad Ali	- do -	16
18	Mr. Adnan Ali	- do -	16
19	Mr. Muhammad Asif	- do -	16
20	Mrs. Amina Shafiq	- do -	16
21	Mr. Khalid Mahmood	- do -	16
22	Mr. Rambail Khan	J/Scale Stenographer	14
23	Mr. Sardar Ullah Shah	- do -	14
24	Mr. Hayat Zada	- do -	14
25	Mr. Fazal Wahab	- do -	14
26	Mr. Asif Iqbal	- do -	14
27	Mr. Naimat Ullah	- do -	14
28	Mr. Fazal Rehman	- do -	14

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29	Mr. Khan Rehman	- do -	14
30	Mr. Ahmad Ali	- do -	14
31	Mr. Salah Ud Din	- do -	14
32	Mr. Muhammad Faizan	- do -	14
33	Mr. Khalid Khan	Senior Clerk	14
34	Mr. Gul Sher	- do -	14
35	Mr. Ajab Khan	- do -	14
36	Mr. Jafar Shah	- do -	14
37	Mr. Habib Ullah	- do -	14
38	Mr. M. Afzal Khan	- do -	14
39	Mr. Muhammad Nauman	- do -	14
40	Mr. Nizam-Ud-Din	- do -	14
41	Mr. Zawar Ali	- do -	14
42	Mr. Sher Azim	- do -	14
43	Mr. Said Alam	Junior Clerk	11
44	Mr. Furqan Jamil	- do -	11
45	Mr. Haroon Rashid	- do -	11
46	Mr. Imran Khan	- do -	11
47	Mr. Muhammad Ayaz	- do -	11
48	Mr. Siraj Ud Din	- do -	11
49	Mr. M. Saeed Khan	- do -	11
50	Mr. Imran Khan	- do -	11
51	Mrs. Seema Anjum	Nursery Teacher	15
52	Mrs. Hina Rehman	- do -	15
53	Mr. Kamal Yousaf	Music Teacher	15
54	Mr. M. Iqbal Khan	Junior Instructor	15
55	Mr. Amjad Ali	- do -	15
56	Mr. Tanveer Ahmed	- do -	15
57	Mrs. Farwa Rubab	- do -	15
58	Mr. Kamran Yousafzai	J. Computer Instructor	15
59	Mr. Mehmood Alam	- do -	15
60	Mr. Rahmat Nabi	- do -	15
61	Mr. Zulfiqar Wazir	- do -	15
62	Mr. Muhammad Younas	- do -	15
63	Mr. Rizwan Qayum	- do -	15
64	Ms. Amina Mushtaq	Vocational Instructor	15
65	Mrs. Anwar Sabih	- do -	15
66	Mrs. Shagufa Nasren	- do -	15
67	Mrs. Shabana Tabassum	- do -	15
68	Mrs. Nasreen Begum	Vocational Teacher	12
69	Mrs. Talat Gul Farin	- do -	12
70	Mrs. Shuzla Farveeq	- do -	12
71	Mr. Muhammad Siddique	- do -	12
72	Mr. Wajid Ali	- do -	12

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73	Mrs. Nazia Parveen	- do -	12
74	Mrs. Sabra Gul	- do -	12
75	Mrs. Robecna Mughal	- do -	12
76	Mr. Amjad Hussain	- do -	12
77	Mr. Qamar Nazir	- do -	12
78	Mrs. Amraiz Begum	- do -	12
79	Mrs. Yasmin	- do -	12
80	Mrs. Fehmeeda Syed	- do -	12
81	Mrs. Shaheen Begum	- do -	12
82	Mrs. Inklri	- do -	12
83	Ms. Faryal Afridi	- do -	12
84	Ms. Waheeda Gul	- do -	12
85	Mrs. Nuzhat Rehman	- do -	12
86	Mr. Wali Marjan	Workshop Technician	12
87	Mr. Asif Khan	- do -	12
88	Mrs. Riffat Jabeen	- do -	12
89	Mr. Irfan Ullah	Brail Teacher	12
90	Mr. Abdul Hal	- do -	12
91	Mr. Habib Ullah	- do -	12
92	Mr. Muhammad Ishaq	- do -	12
93	Mrs. Uzma Naeem	- do -	12
94	Mr. Asif Mehmood	- do -	12
95	Mr. Tauheed Ali Raza	- do -	12
96	Mrs. Zarbeena	- do -	12
97	Mr. Tajammul Hussain	- do -	12
98	Mr. Rafi Ullah	Qari	10
99	Mr. Masoud Jan	PTI	10
100	Mr. Muhammad Nauman	- do -	10
101	Mrs. Feroza Bibi	Voc Training Instructor	08
102	Mr. Zahid Ali	- do -	08
103	Mr. Sultan Wali Khan	- do -	08
104	Mrs. Nasima Zulfiqar Ali	- do -	08
105	Mrs. Shazia Bibi	- do -	08
106	Mrs. Sunnyy	- do -	08
107	Mr. Alamgir Khan	- do -	08
108	Mrs. Nasira Bibi	LHV	09
109	Mrs. Nasreen	- do -	09
110	Mrs. Bibi Rani	- do -	09
111	Mrs. Bulbul Jamal	Adult Literacy Worker	08
112	Mrs. Farida Bibi	- do -	08
113	Mr. Yousaf Ali Khan	- do -	08
114	Mr. Ali Zeb Khan	Recreation Youth Worker	07
115	Mr. Sharif Khan	- do -	07
116	Mr. Mir Afzal Khan	- do -	07

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4			
117	Mrs. Hameeda Bibi	- do -	07
118	Mr. Mukhtar Khan	- do -	07
119	Mr. Bakht Amir Shah	Driver	07
120	Mr. Aslam Perwaiz	- do -	07
121	Mr. Sher Umer	- do -	07
122	Mr. Muhammad Riaz	- do -	07
123	Mr. Ameer Muhammad	- do -	07
124	Mr. Ahmad Noor	- do -	07
125	Mr. Naveed Ahmad	- do -	07
126	Mr. Naveed Muhammad	- do -	07
127	Mr. Abdul Sami	- do -	07
128	Mr. Muhammad Bashir	- do -	07
129	Mr. Adnan	- do -	07
130	Mr. Wilayat Ali	- do -	07
131	Mr. Himayat Ullah	- do -	07
132	Mr. Muhammad Suhnan	- do -	07
133	Mr. Muhammad Ramzan	- do -	07
134	Mr. Rehman Ullah	- do -	07
135	Mr. Aown Abbas	- do -	07
136	Mr. Sikandar Khan	- do -	07
137	Mr. Khalid	- do -	07
138	Mr. Ahmad Bilal	- do -	07
139	Mr. Maqsood Ahmad Baig	- do -	07
140	Mr. Karim Parah	Attendant	05
141	Mr. Ahmad Ali	- do -	05
142	Mr. Siraj Ahmad	- do -	05
143	Mr. Syed Ali Khan	- do -	05
144	Mr. Waqas Hussain	- do -	05
145	Mr. Sajjad Ahmad	- do -	05
146	Mr. Shabir Ali	- do -	05
147	Mr. Asfandiar	- do -	05
148	Mr. Shah Jehan	- do -	05
149	Mr. Naili Amal Khan	- do -	05
150	Mr. Shah Nawaz	- do -	05
151	Mr. Irfanullah	- do -	05
152	Mr. Zahid Ali	- do -	05
153	Mr. Farhan Ali	- do -	05
154	Mr. Asad Mehmood	- do -	05
155	Mr. Ismail Khan	- do -	05
156	Mr. Siraj Ahmad	- do -	05
157	Mr. Malik Riaz	- do -	05
158	Mr. Shakir Ullah	- do -	05
159	Muhammad Safeer	- do -	05
160	Mr. Abdul Wahab	- do -	05

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161	Mr. Johar Ali	- do -	05
162	S. Amjad Ali Shah	- do -	05
163	Mr. Siraj Khan	- do -	05
164	Mr. Muhammad Wisal	- do -	05
165	Mr. Misal Khan	- do -	05
166	Mr. Tariq Zada	- do -	05
167	Mr. Zaliid Shah	- do -	05
168	Mr. Sajjad Ali	- do -	05
169	Mr. Muhammad Ishaq	- do -	05
170	Mr. Akhtar Ali	- do -	05
171	Mr. Muhammad Daud	- do -	05
172	Mr. Askar Khan	- do -	05
173	Mr. Waheed Jan	- do -	05
174	Mr. Asmat Gul	- do -	05
175	Mr. Istikhhar Khan	- do -	05
176	Mr. Waqas Rashid	- do -	05
177	Mr. Lal Muhammad	- do -	05
178	Mr. Humif Khan	- do -	05
179	Mr. Pir Madar	- do -	05
180	Mr. Hazrat Bilal	- do -	05
181	Mr. Nawab Zada	- do -	05
182	Mr. Ralman Ali	- do -	05
183	Mr. Fazal Amin	- do -	05
184	Mr. Humair Inayat Malik	- do -	05
185	Mst. Mahajireen Bibi	Aya	05
186	Mrs. Tahira Naqvi	- do -	05
187	Mrs. Azra Bukhari	- do -	05
188	Mrs. Ulfat Begum	- do -	05
189	Mrs. Siagufa	- do -	05
190	Mrs. Jameela Khatun	- do -	05
191	Mrs. Ambareen Ismail	- do -	05
192	Mrs. Relana Bibi	- do -	05
193	Mst. Nalcedn Bibi	- do -	05
194	Mr. Sohail Ahmad	Naib Qasid	04
195	Mr. Sardar Ali	- do -	04
196	Mr. Faiz-Ur-Rahman	- do -	04
197	Mr. Liaqat Ali	- do -	04
198	Mr. Farhad Ali Shah	- do -	04
199	Mr. Nadar Khan	- do -	04
200	Mr. Asifullah	- do -	04
201	Mr. Inamullah	- do -	04
202	Mr. Muhammad Ghafoor	- do -	04
203	Mr. Mukhtar Shah	- do -	04
204	Mr. Amjad Hussain	- do -	04

205	Mr. Zia Ullah	- do -	04
206	Mr. Bakht Zamin	- do -	04
207	Mr. Mir Shah Jehan	- do -	04
208	Mr. Muhammad Shakeel	- do -	04
209	Mr. Tahir	- do -	04
210	Mr. Shaukat Hussain	- do -	04
211	Mr. Najam Khan	- do -	04
212	Mr. Zahir Ullah	- do -	04
213	Mr. Bakht Zaman	- do -	04
214	Mr. Shakri Muhammad	- do -	04
215	Mr. Khush Qadam	- do -	04
216	Mr. Fazle Maula	Chowkidar	04
217	Mr. Muhammad Ikram	- do -	04
218	Mr. Khan Zaib	- do -	04
219	Mr. Zafar Ali	- do -	04
220	Mr. Said Azam	- do -	04
221	Mr. Nizam Wali	- do -	04
222	Mr. Bashir	- do -	04
223	Mr. Ibad Ullah	- do -	04
224	Mr. Adnan	- do -	04
225	Mr. Muhammad Bilal	- do -	04
226	Mr. Muzafar Shah	- do -	04
227	Mr. Sajid Ahmad	- do -	04
228	Mr. Muhammad Hafeez	- do -	04
229	Mr. Ikram Ali	- do -	04
230	Mr. Shahid Hussain	- do -	04
231	Mr. Muhammad Nawaz	- do -	04
232	Mr. Sad Bad Shah	- do -	04
233	Mr. Muhammad Zafar	- do -	04
234	Mr. Gulab Khan	- do -	04
235	Mr. Faisal Khan	- do -	04
236	Mr. Muhammad Abbas	- do -	04
237	Mr. Nisar Ali	- do -	04
238	Mr. Hayat Khan	- do -	04
239	Mr. Tauti Muhammad	- do -	04
240	Mr. Muhammad Azam	- do -	04
241	Mr. Farid Ullah Jan	- do -	04
242	Mr. Mumtaz Ullah	Mali	04
243	Mr. Akbar Ali	- do -	04
244	Mr. Musafir Gul	- do -	04
245	Mr. Lal Bishdar	- do -	04
246	Mr. Faizan Akhtar	- do -	04
247	Mr. Suhbat Khan	- do -	04
248	Mr. Gul Muhammad	- do -	04

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249	Mr. Shah Jehan	- do -	04
250	Mr. Imran Ali	- do -	04
251	Mr. Zafar Hussain	- do -	04
252	Mr. Muhammad Shafiq	- do -	04
253	Mr. Fazal Rabi	- do -	04
254	Mr. Sultu Nawaz	Sanitary Worker	04
255	Mr. Javed Iqbal	- do -	04
256	Mr. Riaz Ahmad	- do -	04
257	Mr. Ikram Ullah	- do -	04
258	Mr. Sajid Ullah	- do -	04
259	Mr. Wasif Ali Rauf	- do -	04
260	Mr. Ayaz	- do -	04
261	Mst. Fazilat Bibi	- do -	04
262	Mr. Danial Masih	- do -	04
263	Ms. Maryam Salim	- do -	04
264	Mst. Naheed Begum	- do -	04
265	Mr. Siddique Ali	- do -	04
266	Mr. Anjad Ali	- do -	04
267	Mr. Rahid Ali	- do -	04
268	Mr. Muhammad Irshad	- do -	04
269	Mr. Iqbal Hussain	- do -	04
270	Mr. Haji Ahmad	- do -	04
271	Mr. Arshad Ali	- do -	04
272	Mr. Raza Muhammad	- do -	04
273	Mr. Suhail	- do -	04
274	Mr. Seyad Ali	- do -	04
275	Mr. Saleem Khan	- do -	04
276	Mr. Kamran Khan	- do -	04
277	Mr. Abid Jan	- do -	04
278	Mr. Abbas Ali	- do -	04
279	Mr. Javed Hashim	- do -	04
280	Mr. Fazal Khaliq	- do -	04
281	Mr. Tariq Masih	- do -	04
282	Mst. Hasina Bibi	Dai / Midwife	04
283	Mst. Sharafat Nisa	- do -	04
284	Mr. Hameed Gul	Cook	05
285	Mr. Javed Ali	- do -	04
286	Syed Fawad Ali	- do -	04
287	Mr. Nasir Pervaiz	Cook Helper	04
288	Mr. Hafiz Ur Rahman	Hostel Bearer	05
289	Mr. Hazrat Ali	- do -	05
290	Mr. Asad Ali	- do -	05
291	Mr. Waseem Arshad	- do -	05

Handwritten signature/initials

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-Sd-

DIRECTOR

Social welfare, Special Education &
Women Empowerment Department
Khyber PakhtunkhwaIncl. No. and Date even

Copy forwarded for information and necessary action to the:

1. The Section Officer-VI Social Welfare, SE & WE Department Khyber Pakhtunkhwa.
2. Secretary to Govt of KP Establishment Department Khyber Pakhtunkhwa.
3. Secretary to Govt of KP Finance Department Khyber Pakhtunkhwa.
4. Principal Secretary to Chief Minister Khyber Pakhtunkhwa.
5. PSO to Chief Secretary Khyber Pakhtunkhwa.
6. Accountant General Khyber Pakhtunkhwa.
7. Director Information Khyber Pakhtunkhwa.
8. All In-charges of Devolved Institutions Khyber Pakhtunkhwa. *VTCD Pesh*
9. PA to Director Social Welfare, SE & WE Khyber Pakhtunkhwa.

*Falati Jinn*DEPUTY DIRECTOR
(ISDC)Social welfare, Special Education &
Women Empowerment Department
Khyber Pakhtunkhwa*Atta*
ga



Government of Khyber Pakhtunkhwa
Social Welfare, Special Education & Women
Empowerment Department
Dated Peshawar the, 30-05-2023

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AUTHORIZATION

Mr. Syed Nabi Gul Superintendent, of Litigation Section Directorate of Social Welfare, Special Education & Women Empowerment Peshawar, is hereby authorized to submit para-wise reply /comments in S.A No.1731-1741/2022 titled Muhammad Amir Khan & Others Vs Govt of Khyber Pakhtunkhwa on behalf of Secretary, Social Welfare, Special Education & Women Empowerment Department.

-Sd-
Secretary,
Social Welfare, Special Education and
Women Empowerment Department

Endst: of Even No. & Date:-

Copy is forwarded to the:-

1. Syed Nabi Gul Superintendent, Directorate of Social Welfare Khyber Pakhtunkhwa
2. PS to Secretary Social Welfare Khyber Pakhtunkhwa Peshawar.

Section Officer (Lit)
Social Welfare Department