


FORM OF ORDER SHEET

Court of _____

Restoration Application No. 469/2023

S.No.	Date of order Proceedings	Order or other proceedings with signature of judge
1	2	3
1	07.07.2023	<p>The application for restoration of appeal No. 671/2019 submitted today by Mr. Shamsul Hadi Advocate. It is fixed for hearing before touring Division Bench at Swat on _____ .Original file be requisitioned.</p> <p>By the order of Chairman</p> <p> REGISTRAR</p>

BEFORE THE KHYBER PAKHTOON KHWA SERVICES
TRIBUNAL, PESHAWAR

Restoration Application No. 469/2023

APPLICATION NO. 1

Khyber Pakhtunkhwa
Service Tribunal

IN

Diary No. 6333

SERVICE APPEAL NO. 671/2019

Dated 7/7/2023

SALAT KHAN (SST), PRESENTLY POSTED AT GHS GANSHAL,
BUNER
APPELLANT

VERSUS

1. DISTRICT EDUCATION OFFICER (MALE), BUNER
2. ACCOUNTANT GENERAL, KHYBER PAKHTUNKHWA, CIVIL
SECRETARIAT, PESHAWAR
3. DISTRICT ACCOUNT OFFICER, BUNER

RESPONDENTS

APPLICATION FOR RESTORATION OF THE ABOVE
MENTIONED SERVICE APPEAL WHICH WAS ADJOURNED
SIN DIE BY THIS HONORABLE COURT ON DATED 07-11-2023

RESPECTFULLY SHEWETH,

FACTS

1. That the above noted case was fixed before this honorable court on 07-11-2023.
2. That the said appeals were adjourned sine die till the decision in writ petition NO. 913/2014.

Copy of order sheet is attached as Annexure A

3. That, vide judgment Dated 14-06-2023, the said writ petition has been decided. Honorable Peshawar High Court decided writ petition No. 913/2014.

Copy of judgment is attached as Annexure B

That the petitioners through the instant petition requested the Honorable
Tribunal to restore this appeal.

That the valuable rights of plaintiffs are involved for its decision on merit.

IT IS THEREFORE MOST HUMBLY PRAYED THAT ON
ACCEPTANCE OF THIS APPLICATION THE ABOVE TITLED CASE
MAY KINDLY BE RESTORED FOR ITS DECISION ON MERIT.

APPLICANT

THROUGH

SHAMS UL HADI

ADVOCATE HIGH COURT (S)

DATED: 23-06-2023

VERIFICATION

THIS IS TO VERIFY THAT THE CONTENTS OF THIS APPLICATION
ARE TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE
AND THIS IS THE FIRST APPLICATION OF SUCH NATURE IN THE
INSTANT CASE.

DEPONENT



23 JUN 2023

BEFORE THE KHYBER PAKHTOON KHWA SERVICES
TRIBUNAL, PESHAWAR

Service Appeal No. 677/2019.

Salat Khan (SST)

Presently posted at GHS Ganshal, Buner.....Appellant

V E R S U S

1. District Education Officer(Male) Buner.
2. Accountant General, Khyber Pakhtunkhwa, Civil secretariat, Peshawar.
3. District Accounts Officer, Buner.....Respondents

APPEAL UNDER SECTION 4 OF KHYBER
PUKHTUNKHWA SERVICES TRIBUNAL ACT
1974 AGAINST THE IMPUGNED OFFICE ORDER
DATED:02/12/2014.

PRAYER IN APPEAL:

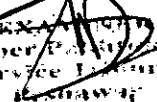
On acceptance of this appeal, the impugned Office Order Dated: 02.12.2014 may kindly be set aside and the respondents may kindly be directed not to recover the disputed amount in shape of recovery of advance increments and further the respondents may kindly be directed issue/release the recovered amount if so to the appellant.

Respectfully Sheweth:

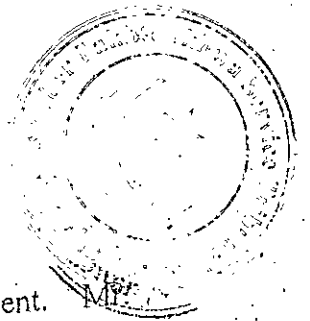
1. That the appellant being Teacher "SST" joined the respondent/department since long and as such performing his duties with zeal and zest.

ATTESTED

1. That initially, the appellant and others approached the Peshawar High court and Service Tribunal Khyber Pakhtunkhwa for grant of "Advance increments granted to


Khyber Pakhtunkhwa
Service Tribunal
Peshawar
23/6/23

Appeal No. 671/2019
Salaf Khan vs Grand




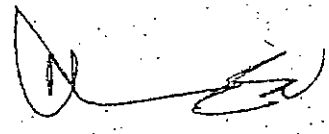
7th Nov, 2022


1. Learned counsel for the appellant present. Mr. Muhammad Riaz Khan Paindakhel, Asst. AG alongwith Mr. Muhammad Shafiq, Assistant on behalf of respondent No.4 present.

2. After arguing the matter at some length, the learned counsel for the appellant as well as learned Asst. AG suggested that the decision in the writ petition No. 913-P/2014 was pending before the Hon'ble Peshawar High Court which decision might in anyway have bearing upon the merits and decision of these appeals; therefore, it would be appropriate that this and connected appeals are adjourned sine-die, leaving the parties at liberty to get these restored and decided accordingly after decision of the above writ petition by the Hon'ble Peshawar High Court. Adjourned Sine-die accordingly. Consign.

3. Pronounced in open court in Swat and given under my hand and seal of the Tribunal on this 07th day of November, 2022.


(Salah Ud Din)
Member(J)


(Kalim Arshad Khan)
Chairman
Camp Court Swat


23/6/23

Date of Appeal
Number of
Copying Fee
Urgent
Fee
Name
Date of
Page 2
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23-6-23
Shahzad
23-6-23
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① *Best file*
Annexure
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IN THE PESHAWAR HIGH COURT PESHAWAR

W.P.No:- 913-P/2014

12110 3388117



1. Muhammad Iqbal.
2. Aziz Khan.
3. Latifullah, retired Inspectors, Police Department, Khyber Pakhtunkhwa.....Petitioners

Versus

1. Government of Khyber Pakhtunkhwa, through Secretary to Government, Finance Department. Peshawar.
2. Secretary to Government, Law Department, Peshawar.
3. Secretary, Provincial Assembly, Khyber Pakhtunkhwa,
4. Provincial Police Officer, Khyber Pakhtunkhwa, Peshawar.....Respondents

WRIT PETITION U/A 199 OF THE CONSTITUTION OF ISLAMIC REPUBLIC OF PAKISTAN, 1973 FOR DECLARING THE IMPUGNED ACT NO:-IX OF 2012, (KHYBER PAKHTUNKHWA CESSATION OF PAYMENT OF ARREARS ON ADVANCE INCREMENTS ON HIGHER EDUCATIONAL QUALIFICATION ACT, 2012) AS WITHOUT JURISDICTION VIS-A-VIS PETITIONERS.

Respectfully Sheweth;

Petitioners beg to submit as under:-

1. That, petitioners have retired after serving the police department for more than 30 years with unblemished record.

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20 MAR 2014

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Peshawar High Court

2. That, petitioners filed writ petition no:-3600 of 2010 before this honourable Court that was allowed on 28-10-2010 and they were held entitled to benefit already accrued to other civil servants for two advance increments on acquiring LL.B. degrees. They had to run from pillar to post for recovery of their arrears of increments until they were completely disillusioned with delaying devices of respondents.
3. That, petitioners thus filed a petition for contempt of court bearing no:- 201-P of 2013 wherein this honourable was pleased to pass an order for implementation of judgment but finally the **Impugned act no:- IX of 2012, Khyber Pakhtunkhwa cessation of payment of arrears on advance increments on higher educational qualification Act, 2012**, of the provincial Assembly of Khyber Pakhtunkhwa, hereinafter called as, Impugned Act, was presented in court. It is **Annexure A**.
4. That, section 2 of the impugned Act provides for cessation of arrears on advance increments w.e.f. 01-12-2001 inter alia, besides nullifying judgments and order of High Court and Supreme Court of Pakistan for the purpose of any claim for payment of arrears on account of advance increments. *Copy of Grounds of C.O.C. & W.P. are Annexures B & C*
5. That, civil servants seek redress of their grievances from superior courts, whenever political inexpediency by their superiors or political *pundits* confronts to smother their efforts in furtherance of the rule of law and administration of justice.
6. That, now petitioners seeking justice and rule of law are travelling in the same boat as those officers who were granted relief by

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August Supreme Court of Pakistan in well known cases of denial of their rights of seniority and other judgments whereby Acts of parliament were struck down as ultra vires in so many cases..

7. That, petitioners being seriously aggrieved seek redress by invoking jurisdiction of this honourable court to assail the Impugned Act, as without jurisdiction, without lawful authority hence ultra vires of provisions of the Constitution of Pakistan, 1973, on the following amongst other grounds:-

GROUNDS:

A. That, section 2 of the Impugned Act whereby retrospective effect is given w.e.f. 01-12-2001 besides nullifying judgments of High Court and Supreme Court of Pakistan are against the principles of trichotomy of powers enshrined as basis of the Constitution of Islamic Republic of Pakistan, 1973, particularly vis-à-vis petitioners.

B. That the impugned legislation has advanced the mischief rather than suppressing the mischief, therefore, the vires of Section 2 thereof are based on unreasonable classification having no nexus with the object sought to be achieved. This unreasonable restriction is an arbitrary exercise of authority.

C. That, the efforts of petitioner being civil servants request revival of the independent, impartial and professional status of the legislature as an institution and to affirm its legislative authority in

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Peshawar High Court

(4)

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furtherance of the rule of law. The petitioner's further grievance is that legal and constitutional safeguards meant to protect their fundamental rights from excessive political interference are being systemically breached.

D. That, with its safeguards thus withered, people's representatives are seem to be growing inefficient and demoralized and with it, the machinery of the State, mandated to enforce good governance, rule of law and fundamental rights of the people of Pakistan are becoming unaccountable.

E. That the impugned Act has trampled fundamental rights of petitioners. There are intrinsic omissions and commissions therein which makes it clear and obvious that by no stretch of the imagination, the impugned Act in question is neither legally sustainable, transparent, fair, open nor passed in the interest of public welfare so far as the rights of petitioners are concerned.

F. That, the impugned Act has reopened past and closed transactions which could not be intention of legislature in a society where rule of law governs the state and its machinery. Vested rights once accrued to a citizen could not be taken away.

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Peshawar High Court

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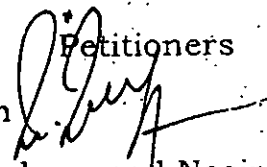
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In view of submissions above, the Impugned Act, qua rights of petitioners may graciously be declared as without jurisdiction and without lawful authority, hence ultra-vires of provisions of the Constitution of Pakistan, 1973 and law.

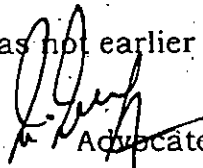
Any other relief as deemed appropriate in the circumstances of the case may also be granted.

Dated; - 17-03-2014

Petitioners
Through 
Muhammad Nasir Mahfooz
Advocate Supreme Court.


Certificate:-

Certified that petitioner has not earlier filed any writ petition on the subject


Advocate

Books relied

1. Constitution of Pakistan.


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Peshawar High Court

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Deputy Registrar

20 MAR 2014

(6)

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IN THE PESHAWAR HIGH COURT PESHAWAR

W.P.No:- 913-P/2014

Muhammad Iqbal & others.....Petitioners

Versus

Govt. of KPK & others.....Respondents

AFFIDAVIT

I, Muhammad Iqbal retired Inspectors, Police Department, do hereby declare on oath that the contents of this writ petition are true and correct to the best of my knowledge and belief and nothing has been concealed from this august court.

Identified by:

M. Nasir Mahfooz
M.Nasir Mahfooz

Advocate, Peshawar

Muhammad Iqbal
DEPONENT

17301-7828012-1

5416-
 I certified that the above was verified on solemnly
 affirmation before me in office, this 19th
 day of March 2014 by *Muhammad Iqbal*
 do. Retired Inspector v. Police Dept. Peshawar
 who was identified by *M. Nasir Mahfooz*
 who is personally known to me:
 Oath Commissioner
 Peshawar High Court Peshawar
 19/3/2014

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 EXAMINER
 Peshawar High Court, Peshawar
 Authorized Under Article 8, 7 of
 the Qanoon-e-Shahadat Act 1954
 23 JUN 2023

FILED TODAY
 Deputy Registrar
 20 MAR 2014

JUDGMENT SHEET
PESHAWAR HIGH COURT, PESHAWAR
JUDICIAL DEPARTMENT

W.P. No.913-P/2014 with CM No.1534-P/2022

Muhammad Iqbal and others

Vs.

**Government of Khyber Pakhtunkhwa through Secretary
to Government, Finance Department,
Peshawar and others**



Date of hearing **14.06.2023**

Petitioner(s) by: **Nemo.**

Respondent(s) by: **Mr. Amir Javed, Advocate General
Khyber Pakhtunkhwa and Barrister
Muhammad Yaseen Raza Khan, Addl:
Advocate General alongwith Mr. Fazl-e-
Khaliq, Litigation Officer, O/o DEO
(M&F), Swabi.**

JUDGMENT

IJAZ ANWAR, J. For the reasons recorded in Writ Petition bearing **No.3081-P/2012** titled, **Anayat Ullah Khan and others Vs. Government of Khyber Pakhtunkhwa through Chief Secretary, Peshawar and others**”, this writ petition is disposed of.

Announced
Dt:14.06.2023

JUDGE

JUDGE

(DB) **Hon'ble Mr. Justice Ijaz Anwar and Hon'ble Mr. Justice Syed Muhammad Attique Shah**

Muhammad Iqbal

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EXAMINER
Peshawar High Court, Peshawar
Authorized Under Article 8, 7 of
the Oath-e-Shahadat Act 1984

23 JUN 2023

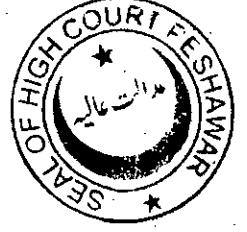
JUDGMENT SHEET
PESHAWAR HIGH COURT, PESHAWAR
JUDICIAL DEPARTMENT

W.P. No.3081-P/2012 with CM No.1672-P/2022

Anayat Ullah Khan and others

Vs.

**Government of Khyber Pakhtunkhwa through Chief
Secretary, Peshawar and others**



Date of hearing **14.06.2023**

Petitioner(s) by: **M/s. Noor Muhammad Khattak and L.
Nawab Ali Noor, Advocates.**

Respondent(s) by: **Mr. Amir Javed, Advocate General
Khyber Pakhtunkhwa and Barrister
Muhammad Yaseen Raza Khan, Addl:
Advocate General a/w Mr. Fazl-e-Khaliq,
Litigation Officer, DEO (M&F), Swabi.**

JUDGMENT

IJAZ ANWAR, J. Through this single judgment, we intend to decide the instant writ petition and Writ Petitions, listed below, since in all these cases, similar questions of law and facts are involved. The connected writ petitions are:-

- 24
- i. *W.P. No.913-P/2014 titled, Muhammad Iqbal and others Vs. Government of Khyber Pakhtunkhwa through Secretary to Government, Finance Department, Peshawar and others.*
 - ii. *W.P. No.1418-P/2014 titled, Molvi Muhammad and others Vs. Government of Khyber Pakhtunkhwa through Secretary Elementary & Secondary Education Department, Peshawar and others*
 - iii. *W.P. No.2053-P/2014 titled, Saeed Ullah and others Vs. Government of Khyber Pakhtunkhwa through Secretary S&GAD, Peshawar and others*
 - iv. *W.P. No.1182-P/2018 titled, Muhammad Rehman and others Vs. Government of Khyber Pakhtunkhwa through Chief Secretary, Peshawar and others*
 - v. *W.P. No.2326-P/2019 titled, Muhammad Anwar Vs. Government of Khyber*

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Peshawar High Court

Pakhtunkhwa through Secretary
Education, Peshawar and others
vi. W.P. No.1680-P/2021 titled, Ghandal
Khan Vs. District Education Officer
(Male), Peshawar and others

2. In the instant writ petition, the petitioners have
prayed for the following relief:-

*"It is, therefore, humbly prayed that on acceptance
of this writ petition, this Hon'ble Court may be
pleased to declare the act as against the basic
norms of law & rules repugnant to constitution, law
and practice/policy as such no legal effect liable to
mauled set-aside".*

3. In all these petitions, the petitioners have
mainly questioned the vires of the Khyber Pakhtunkhwa
Cessation of Payment of Arrears on Advance Increments on
Higher Educational Qualification Act, 2012 (hereinafter to be
referred as "the Act").

4. Comments were called from the respondents
who furnished the same, wherein, they opposed the issuance of
desired writ asked for by the petitioners.

5. Arguments heard and record perused.

6. Perusal of the record transpires that the
petitioners have questioned the vires of "the Act" on the
ground that promulgation of "the Act" had defeated the
judgments of the superior Courts. He further contended that
vested rights of the petitioners have accrued in the matter and
placed reliance on the judgments reported as "FECTO Belarus
Tractor Ltd Vs. Government of Pakistan through Finance
Economic Affairs and others (PLD 2005 SC 605), 2013

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Peshawar High Court

SCMR 1749, 2013 SCMR 1752 (Contempt of Court Proceedings case) and AIR 1975 SC 2199".

7. On the other hand, the learned Advocate General, Khyber Pakhtunkhwa has referred to a recent judgment of the Hon'ble Supreme Court of Pakistan passed in the case titled "The Divisional Superintendent, Pakistan Railways, Rawalpindi and others Vs. Syed Irshad Ali Abid (2021 PLC (C.S.) 277)" and contended that the grant of increments on higher educational qualification has since been discontinued through Notification dated 13.09.2001, as such, it is a past and closed transaction and that necessary time was granted to the employees who have any claim, albeit, when they failed to claim the same for long ten years, as such, "the Act" in question was promulgated. He has also produced a letter dated 29.04.2010 issued by the Additional Secretary (Regulation), Government of Khyber Pakhtunkhwa Finance Department (Regulation Wing), whereby, clarification was given about the advance increments on higher educational qualification and according to which, a period of sixty days was provided for the remaining claims and argued that even then, petitioners have failed to claim the advance increments at the relevant time.

8. During the course of hearing, learned counsel for the petitioners has produced letters/applications which were duly placed on file and contended that the rights of the petitioners to the grant of advance increments were secured

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Peshawar High Court

and guaranteed by a Government's circular letter dated 11.08.1991 and that the case of the petitioners was matured at the relevant time before the cut-of-date i.e. 13.09.2001 when the grant of such increments was discontinued. He also referred to a judgment of the Hon'ble Supreme Court of Pakistan passed in "CPLAs No.525 and 526/2007 decided on 19.07.2007".

9. At this stage, the learned Advocate General, Khyber Pakhtunkhwa, representing the respondents, contended that the civil servants, who were holding higher educational qualification prior to discontinuation of advance increments in the year, 2001, are entitled for the benefit flowing from circular letter dated 11.08.1991, however, those who have improved their qualification after the notification dated 13.09.2001, under no circumstances, can claim the same benefit and that the bar created through "the Act" would be equally applicable.

10. In view of the above, we, without commenting upon the vires of "the Act" and in view of the statement of the learned Advocate General, Khyber Pakhtunkhwa, dispose of this and the connected writ petitions and direct the respondents to consider the case of the petitioners in the light of circular letter dated 11.08.1991 and in case, they fulfill the condition mentioned therein for the grant of advance increments prior to the cut-of-date, they be allowed such benefit. It is, however, clarified that only the case of the present petitioners, shall be

ATTESTED
EXAMINER
Peshawar High Court

considered and that others cannot claim such benefits, having
not agitated the matter at the relevant time.

Announced
Dt:14.06.2023

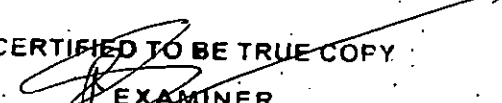

JUDGE


JUDGE

(DB) Hon'ble Mr. Justice Ijaz Anwar and Hon'ble Mr. Justice Syed Muhammad Attique Shah

Mohammadulhaq

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EXAMINER
Peshawar High Court, Peshawar
Authorized Under Article 8, 7 of
the Qanoon-e-Shahadat Act 1984

23 JUN 2023

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