


FORM OF ORDER SHEET

Court of _____

Restoration Application No. 471/2023

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. 1328/2018 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**

APPLICATION NO. Restoration Application no 471/2023

IN

SERVICE APPEAL NO. 1328/2018
~~632/2019~~

**Khyber Pakhtunkhwa
Service Tribunal**

Case No. 6381

Dated 07/07/23

WAKIL ZADA (SST) AND OTHERS

APPELLANTS

VERSUS

**THE SECRETARY FINANCE DEPARTMENT, GOVERNMENT OF
KHYBER PAKHTUNKHWA**

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.

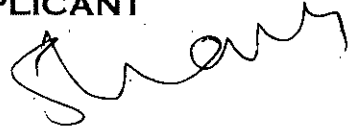
Copy of judgment is attached as Annexure B

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

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

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

APPLICANT



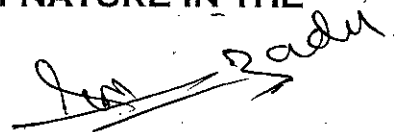
THROUGH

SHAMS UL HADI
ADVOCATE HIGH COURT (S)

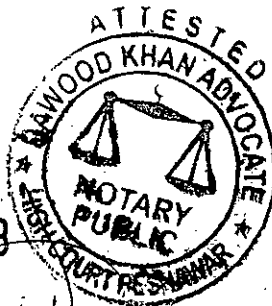
DATED: 23-06-2023

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.



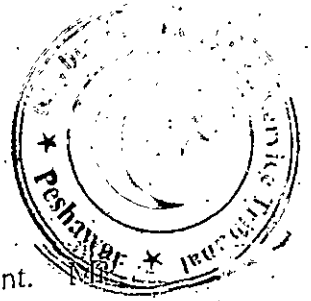
DEPONENT



23 JUN 2023



Appeal No. 1328/2018
Wakil Rada vs Govt




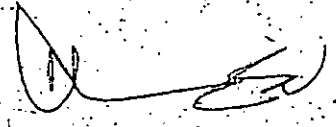
7th Nov, 2022

1. Learned counsel for the appellant present.
Muhammad Riaz Khan Pindakhel, 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-R/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.


(Salak Ud Din)
Member(J)


(Kalim Arshad Khan)
Chairman
Camp Court Swat.

Original to be ture copy
23/6/22
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

Date of Presentation of Application 23-6-23
Number of words Page 2
Copying Fee - 10/-
Urgent - 5/-
Total - 15/-
Name Shafiq
Date of Copy 23-6-23
Date of Delivery of Copy 23-6-23

① [Signature] Annexure B
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IN THE PESHAWAR HIGH COURT PESHAWAR

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

12110 3328117



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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 Peshawar High Court

(2)

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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Peshawar High Court

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:-

GROUND:

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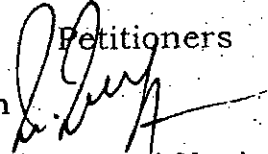
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In view of submissions above, the Impugned Act, qua rights of petitioners may graciously be declared as without jurisdiction and without lawful authority, hence ultra-vires of provisions of the Constitution of Pakistan, 1973 and law.

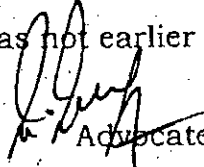
Any other relief as deemed appropriate in the circumstances of the case may also be granted.

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

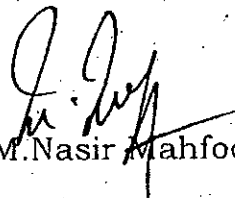
Versus

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

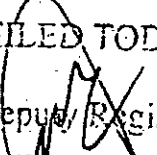
Advocate, Peshawar


DEPONENT

17301-7828012-1

9416
I identified that the above was verified on solemnly affirmation before me in office, this.....19th..... day of.....March.....2014.....at.....Peshawar..... who was identified by.....M. Nasir Mahfooz..... who is personally known to me:
Oath Commissioner
Peshawar High Court Peshawar

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

Muhammadiqbal

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

23 JUN 2023

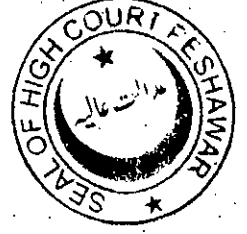
JUDGMENT SHEET
PESHAWAR HIGH COURT, PESHAWAR
JUDICIAL DEPARTMENT

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 be 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

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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

Mokhammadullah

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

23 JUN 2023

90613
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