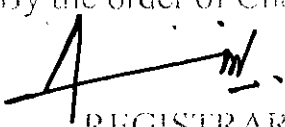


# FORM OF ORDER SHEET

Court of \_\_\_\_\_

**Appeal No.** \_\_\_\_\_

**1714/2023**

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1-	15/08/2023	<p>The appeal of Mst. Alia Ghafoor is presented today by Mr. Amjad Ali (Mardan). It is fixed for preliminary hearing before Single Bench at Peshawar on</p> <p>By the order of Chairman</p>  <p>REGISTRAR</p>

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

CHECK LIST

Case Title:

ALIA GHAFOR VS GOVT of KPK

S#	CONTENTS	YES	NO
1	This Appeal has been presented by:		
2	Whether Counsel/Appellant/Respondent/Deponent have signed the requisite documents?	✓	
3	Whether appeal is within time?	✓	
4	Whether the enactment under which the appeal is filed mentioned?	✓	
5	Whether the enactment under which the appeal is filed is correct?	✓	
6	Whether affidavit is appended?	✓	
7	Whether affidavit is duly attested by competent Oath Commissioner?	✓	
8	Whether appeal/annexures are properly paged?	✓	
9	Whether certificate regarding filing any earlier appeal on the subject, furnished?	✓	
10	Whether annexures are legible?	✓	
11	Whether annexures are attested?		
12	Whether copies of annexures are readable/clear?		
13	Whether copy of appeal is delivered to AG/DAG?		
14	Whether Power of Attorney of the Counsel engaged is attested and signed by petitioner/appellant/respondents?	✓	
15	Whether numbers of referred cases given are correct?	✓	
16	Whether appeal contains cutting/overwriting?		
17	Whether list of books has been provided at the end of the appeal?	✓	
18	Whether case relate to this court?		
19	Whether requisite number of spare copies attached?	✓	
20	Whether complete spare copy is filed in separate file cover?	✓	
21	Whether addresses of parties given are complete?		
22	Whether index filed?	✓	
23	Whether index is correct?	✓	
24	Whether Security and Process Fee deposited? On	✓	
25	Whether in view of Khyber Pakhtunkhwa Service Tribunal Rules 1974 Rule 11, notice along with copy of appeal and annexures has been sent to respondents? On	✓	
26	Whether copies of comments/reply/rejoinder submitted? On	✓	
27	Whether copies of comments/reply/rejoinder provided to opposite party? On	✓	

It is certified that formalities/documentation as required in the above table have been fulfilled.

Name:

Amjad Ali

Signature:

[Signature]

Dated:

15-08-2023

**BEFORE THE KHYBER PAKHTUNKHWA**  
**SERVICE TRIBUNAL PESHAWAR**

Service Appeal No 1714 /2023

Alia Ghafoor D/O Ghafoor Gul R/O Mohallah Gojaran,  
Bazargai Tehsil Lahor District Swabi

.....Appellant

**VERSUS**

Govt of KPK through Secretary Elementary and  
Secondary Education, Civil Secretariate Peshawar and  
others

..... Respondents

**INDEX**

S.No	Description of Documents	Annexure	Pages
1	Service appeal along with affidavit		1-6
2	Copy of the CNIC & domicile	A	7-9
3	Copies of academic documents	B	10-13
4	Copy of the appointment order dated 31/07/2009	C	14
5	Copy of the office order dated 19/10/2011	D	15
6	Copy of the office order dated 22/10/2015	E	16
7	Copy of the judgment dated 13/12/2017	<del>F</del>	17-19
8	Copy of the office order dated 28/08/2019	G	20
9	Copy of the office order dated 18/09/2018	H	21
10	Copy of the order dated 02/09/2019	I	22
11	Copy of the order dated 04/09/2019	J	23
12	Copy of the judgment dated 22/11/2022	K	24-28
13	Copy of the departmental appeals dated 13/03/2023 along with post office receipts	L	29-39
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17	Copy of judgment reported in 2009 SCMR 1	P	59-61
18	Copy of the judgment reported in 2007 SCMR 855	Q	62-67
19	Copy of judgment reported in 2015 SCMR 7	R	68-78
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*Ali*

Dated. 15 /08/2023

Appellant

Through

*Ali*  
**Amjad Ali (Mardan)**

Advocate

Supreme Court of Pakistan

Office at Distt: Courts Mardan

*Amjad Ali*  
ADVOCATE

SUPREME COURT

①

**BEFORE THE KHYBER PAKHTUNKHWA**  
**SERVICE TRIBUNAL PESHAWAR**

Service Appeal No 1714 /2023

Alia Ghafoor D/O Ghafoor Gul R/O Mohallah Gojaran,  
Bazargai Tehsil Lahor District Swabi

.....Appellant Khyber Pakhtunkhwa  
Service Tribunal

**VERSUS**

Diary No. 7008

Dated 15/8/2023

1. Govt of KPK through Secretary Elementary and Secondary Education, Civil Secretariat Peshawar.
2. Secretary Elementary and Secondary Education, Civil Secretariat Peshawar
3. Director of Elementary & Secondary Education KP at Hashtangari Chowk, Near Qila Bala Hisar Peshawar.
4. Deputy Director (Female), Elementary & Secondary Education Khyber Pakhtunkhwa
5. District Education Officer (female) Swabi
6. District Accounts Officer Swabi

.....Respondents

***Appeal under section 4 of Service Tribunal Act against the order dated 28.08.2019 passed by respondent no 3 (i.e Director E&SED) and order dated 04.09.2019 passed by respondent no 5 (i.e DEO (F) Swabi) wherein the intervening period is treated as extraordinary leave without pay instead of extending benefit of judgment dated 22.11.2022 passed by the Honorable KP Service Tribunal Peshawar in service appeal no 209/2020 whereafter appellant preferred departmental appeals dated 13.03.2023 and filed writ petition no 1402-P/2023 before Honorable Peshawar High Court Peshawar wherein respondents are directed vide order dated 26.04.2023 to decide the departmental appeals of the appellant within 90 days which remained un-responded after lapse of 90 days which is illegal against law and facts and liable to be set aside.***

Filed to-day

Registrar

Respected Sir,

**Appellant humbly submits as under:**

1. That appellant is residing in District Swabi as evident from her CNIC and domicile (**Copy of the CNIC & domicile is attached as Annexure A**)
2. That appellant is equipped with qualification such as BA, Masters in Islamiyat along with PTC certificate (**Copies of academic documents are attached as Annexure B**)
3. That being fully qualified and fulfilling all the formalities and the recommendations of the Departmental Selection Committee, the appellant was appointed vide appointment order dated 31/07/2009 as PST (BPS-7) along with others such as Ruqia Begum etc (**Copy of the appointment order dated 31/07/2009 is attached as Annexure C**)
4. That appellant along with Ruqia Begum is transferred from Kohistan to Swabi vide office order dated 19/10/2011 (**Copy of the office order dated 19/10/2011 is attached as Annexure D**)
5. That right from the taking over of charge, the appellant performed her duties whole heartedly and to the entire satisfaction of her superiors.
6. That despite performance of duties to the entire satisfaction of superiors, the appellant was deeply shocked to receive office order dated 22/10/2015 wherein the appellant along with others such as Ruqia PST is removed from service (**Copy of the office order dated 22/10/2015 is attached as Annexure E**)
7. That appellant along with Ruqia Begum filed service appeal no 252/2016 & 253/2016 against removal order dated 22/10/2015 before the Honorable KP Service Tribunal Peshawar which were accepted vide consolidated judgment dated 13/12/2017 in the following terms: (**Copy of the judgment dated 13/12/2017 is attached as Annexure F**)

“7. Consequently, the present appeals are accepted and the department is directed to hold regular inquiry against the appellants within a period of 90 days from the date of receipt of this judgment, failing which the appellants shall be reinstated in service.....”

8. That vide order dated 28/08/2019, the worthy Director set aside the transfer cancellation/removal order dated 22/10/2015 but the intervening period is treated as leave without pay which is illegal against law and facts **(Copy of the office order dated 28/08/2019 is attached as Annexure G)**
9. That Ruqia Begum was reinstated for the purpose of denovo inquiry vide office order dated 18/09/2018 by the DEO(F) Kohistan **(Copy of the office order dated 18/09/2018 is attached as Annexure H)**
10. That department failed to hold de-novo inquiry within 90 days and Ruqia Begum (PST) is reinstated in service with immediate effect and has been adjusted at GGPS Muslim Abad Razzar District Swabi vide adjustment order dated 02/09/2019 issued by DEO(F) Swabi and the intervening period of 22/10/2015 to 01/09/2019 is treated as extra-ordinary leave without pay **(Copy of the order dated 02/09/2019 is attached as Annexure I)**
11. That in the case of appellant, the Department also failed to hold de-novo inquiry within a period of 90 days and appellant is also reinstated in service with immediate effect and adjusted at GGPS Muslim Abad Razzar District Swabi vide adjustment order dated 04/09/2019 issued by DEO(F) Swabi and the intervening period of 22/10/2015 to 01/09/2019 is treated as extra-ordinary leave without pay which is illegal against law and facts **(Copy of the order dated 04/09/2019 is attached as Annexure J)**
12. That one Ruqia Begum (PST) filed service appeal no 409/2020 against order dated 28/08/2019 as well as 02/09/2019 before the Honorable KP Service Tribunal Peshawar which is allowed vide judgment dated 22/11/2022 in the following terms: **(Copy of the judgment dated 22/11/2022 is attached as Annexure K)**
  - “9. Consequently, the appeal in hand is allowed by modifying the impugned orders dated 28/08/2019 as well as 02/09/2019 and the appellant stands reinstated in service with effect from 22/10/2015 with all back benefits....”
13. That being aggrieved from the order dated 28/08/2019 passed by respondent no 3 and adjustment order dated 04/09/2019 passed by respondent no 5, appellant filed two departmental appeals dated 13/03/2023 one

addressed to Secretary E&SED and the other addressed to Director E&SED duly dispatched through registered post by claiming the benefit of judgment dated 22/11/2022, but the departmental appeals remained unresponded (**Copy of the departmental appeals dated 13/03/2023 along with post office receipts are attached as Annexure L**)

3

14. That feeling aggrieved, appellant filed writ petition no 1402-P/2023 before the Honorable Peshawar High Court Peshawar which is disposed of vide order dated 26.04.2023 in the following terms: (**Copy of the writ petition and order dated 26.04.2023 is attached as Annexure M**)

"2. In view of the above, we dispose of this writ petition and directed the respondent no 3 to decide the departmental appeal of the petitioner strictly in accordance with law and also in the light of the judgment of the Khyber Pakhtunkhwa Service Tribunal, provided that in case, the appeal of the petitioner is not decided within 90 days, the petitioner shall be at liberty to approach the Khyber Pakhtunkhwa Service Tribunal for redressal of her grievance."

15. That despite order dated 26.04.2023 passed by the Honorable Peshawar High Court Peshawar, the departmental appeals remained undecided despite lapse of 90 days which is illegal against law and facts on the following grounds:

### **GROUND**

- A. Because when admittedly, appellant performed duty till 22/10/2015 and admitted by the Department from their own record as well as certificate, then removal order on the basis of said absence was unwarranted and uncalled for.
- B. Because, when removal order dated 22/10/2015 is illegal and set aside and appellant is reinstated into service, reinstatement means, appellant is to be replanted from where evicted.
- C. Because in the inquiry report, there is no evidence that appellant was performing other duty during the period of removal.
- D. Because appellant cannot be penalized for the fault of the Department.



- E. Because, it was department, who stopped appellant from performing duty.
- F. Because in the case of other similarly placed PST i.e Ruqia Begum, the intervening period from 22/10/2015 to 01/09/2019 which was earlier treated as extraordinary leave without pay is set aside and held entitled for all back benefits vide judgment dated 22/11/2022 passed by the Honorable KP Service Tribunal Peshawar.
- G. Because when one Ruqia Begum is held entitled for all back benefits of the intervening period, then the appellant is also entitled for same treatment.
- H. Because appellant is entitled for the benefit of judgment judgment dated 22/11/2022 passed by the Honorable KP Service Tribunal Peshawar as per Article 4, 25 and 27 of the Constitution of Pakistan 1973.
- I. Because all citizens are equal before the law and entitled for equal protection and treatment as per Article 25 of the Constitution of Pakistan 1973.
- J. Because as per fundamental rule 54, a civil servant who is removed or dismissed is reinstated in service is entitled to full pay and other allowances. FR 54 reads as under: **(Copy of FR-54 is attached as Annexure N)**

[F. R. 54.—Where a Government Servant has been dismissed or removed is reinstated, the revising or appellate authority may grant to him for the period of his absence from duty:—

(a) if he is honourably acquitted, the full pay to which he would have been entitled if he had not been dismissed or removed and, by an order to be separately recorded, any allowance of which he was in receipt prior to his dismissal or removal; or

(b) if otherwise, such portion of such pay and allowances as the revising or appellate authority may prescribe.

In a case falling under clause (a), the period of absence from duty will be treated as a period spent on duty.

In a case falling under clause (b), it will not be treated as a period spent on duty unless the revising or appellate authority so direct."

- (3)
- K.** Because as per 1996 SCMR 1185 and 2009 SCMR 1, if a Tribunal or the Supreme Court decides a point of law relating to the terms and conditions of a civil servant who litigated, and there were other civil servants, who may not have taken any legal proceedings, in such a case, the dictates of justice and rule of good governance demand that the benefit of the said decision be extended to other civil servants also, who may, not be parties to that litigation, instead of compelling them to approach the Tribunal or any other legal forum. All citizens are equal before the law and entitled to equal protection of law as per Article 25 of the Constitution (**Copy of the judgment reported in 1996 SCMR 1185 is attached as Annexure O & Copy of judgment reported in 2009 SCMR 1 is attached as Annexure P**)
- L.** Because as per 2007 SCMR 855 and 2015 SCMR 7, the Honorable Supreme Court of Pakistan held that a reinstated civil servant is entitled for back benefits as it was the Department which on basis of wrong opinion kept the civil servant away from performing duty (**Copy of the judgment reported in 2007 SCMR 855 is attached as Annexure Q & Copy of judgment reported in 2015 SCMR 7 is attached as Annexure R**)
- M.** Because appellant remained jobless from 22/10/2015 (removal) till 04/09/2019 (reinstatement).
- N.** Because as per Article 25 and 27 of the Constitution of Pakistan 1973, there should be no discrimination in services whereas appellant has been discriminated as against Ruqia Begum who is allowed all back benefits for the intervening period from removal to reinstatement.
- 

**PRAYER:**

**It is therefore humbly prayed that on acceptance of this service appeal;**

- I.** Appellant may please be extended the benefit of judgment dated 22/11/2022 passed by the Honorable Khyber Pakhtunkhwa Service Tribunal Peshawar in service appeal no 209/2020 whereby order dated 28/08/2019 passed by respondent no 3 (i.e Director E&SED) and order dated 02/09/2019 passed by respondent no 5 (i.e DEO (F) Swabi) has been modified and identically placed Primary

6

School Teacher, Ruqia Begum, has been reinstated w.e.f 22/10/2015 with all back benefits as per 1996 SCMR 1185 and 2009 SCMR 1.

II. Impugned order dated 28/08/2019 passed by respondent no 3 (i.e Director E&SED) and order dated 04/09/2019 passed by respondent no 5 (i.e DEO (F) Swabi) may please be modified as reinstatement in service w.e.f 22/10/2015 with all back benefits instead of treating intervening period as extra ordinary leave without pay as appellant was jobless during said period and was pursuing the remedy in the Court like Ruqia Begum.

III. Any other relief deemed fit in the circumstances of the post case and not specifically asked for may also be graciously granted.

Dated. \_\_\_/08/2023

*Ali*  
Appellant

Through

*Amjad Ali*  
Amjad Ali (Mardan)

Advocate

Supreme Court of Pakistan

Office at Distt: Courts Mardan

*Amjad Ali*  
SUPREME COURT  
ADVOCATE

### AFFIDAVIT

I, Alia Ghafoor D/O Ghafoor Gul R/O Mohallah Gojaran, Bazargai Tehsil Lahor District Swabi (appellant) do solemnly declare and verify on oath that the contents of the **accompanying service appeal** are true and correct to the best of my knowledge and belief and nothing has been concealed from this Honorable Court.

*Alia*  
Deponent



~~Aux-A~~ (10)  
Aux (A)  
(7)



حکومت پاکستان  
قومی شناختی کارڈ  
16201-0678275-8



نام: عالیہ حفیظ  
نسب: عورت  
پولہ کا نام: حفیظہ کمالی  
شناختی علامت: کوئی نہیں  
تاریخ پیدائش: 02/04/1981

امتیاز ناچر

دستخط

دستخط



شناختی نمبر: 16201-0678275-8 نام: امجد علی

موجودہ پتہ: کوہراں، بازار کئی تحصیل لاہور ضلع صوبائی

13081850208



سنگل پتہ ایسا

تاریخ اجراء: 13/06/2014 تاریخ منسوخ: 13/06/2024  
گمشدہ کارڈ ملنے پر قریبی کسٹمر سروس ڈال کریں



Attest  
*Amjad Ali*  
ADVOCATE  
SUPREME COURT

# DOMICILE CERTIFICATE

S. No: 0112429

(P)

I, Alia Ghofoor S/D/W of Ghaffar Ghaf

(8)

declare that I was born of parents who are permanently domiciled in North West Frontier Province

having belonged to it by birth/settled in it. I was born in Village Bazugai

Mohallah Gujran Tehsil Lahore (Chatter) of District SWABI.

Alia

Signature of the Applicant

Dated \_\_\_ / \_\_\_ / 2008

Pursuant to the declaration filed by \_\_\_\_\_

S/D/W of \_\_\_\_\_ domiciled in the North West Frontier Province

it is hereby certified that the said Alia Ghofoor

is born of parents who are permanent residents of North, West, Frontier, Province, having belonged to it by birth / settled in it

I have satisfied myself from personal knowledge / verification that the above declaration is true and certify accordingly.

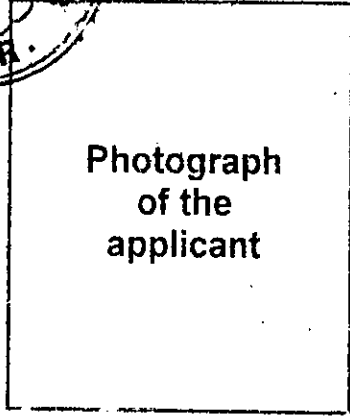
Given, this 23 day of 2 / 2008

COUNTERSIGNED

[Signature]

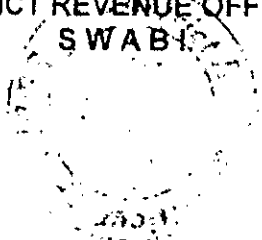


[Signature]



Photograph of the applicant

DISTRICT REVENUE OFFICER, SWABI



No 2239 / DOR(S).

Datd 26 / 02 / 2008

[Handwritten notes]

9

(1)

عالمی عقور

تصدیق کی جاتی ہے کہ سہی اسماہ

نارنگی

ساکن

عقور گل

ولد اختران

ضلع صوابی کا کی رہائشی و پیدائشی باشندہ ہے

تحصیل ایلو

گوجران

محلہ

اور اس کے والدین شہر بھی علاقہ مذکورہ کے رہائشی و پیدائشی باشندگان ہے۔ حقیقی پاکستانی ہیں۔

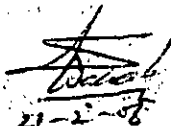
اور میں ان کو ذاتی طور پر جانتا ہوں۔

نوٹ: ناظم نائب ناظم یونین کونسل، کونسلر تصدیق کے مجاز ہیں۔

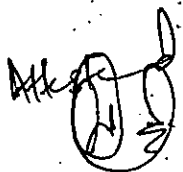
نام تصدیق کنندہ

بھیس الوہا نائب ناظم

دستخط مہر



21-2-56  
SHAMSUL WAHAB  
NAIB NAZIM  
U/C Sard China (Swabi)



Amjad Ali  
ADVOCATE  
SUPREME COURT

Roll No. 2939

Serial No. 404053

Board of Intermediate and Secondary Education  
Peshawar  
Khyber Pakhtunkhwa Pakistan



Handwritten marks: (B), (B), (10)

Secondary School Certificate Examination

SESSION 1997 - SUPPLEMENTARY

(HUMANITIES GROUP)

Certified that Alia Son/Daughter Of Ghafoor Gul  
Resident of District Swabi

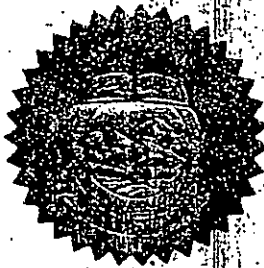
has qualified for award of Secondary School Certificate in the Examination held in September, 1997  
as a Private student and obtained 472 marks out of 850 and has been placed in Grade C

Representing Good The Candidate passed in the following subjects:

1. English
2. Urdu
3. Islamiyat (comp)
4. Pakistan Studies
5. Gen: Maths
6. General Science
7. Islamic Studies
8. Pashto

His/her date of birth according to Admission Form is April 02, 1981

In Words (Second April One Thousand Nine Hundred Eighty-One)



Handwritten signature: Amjad Ali  
ADVOCATE  
SUPREME COURT

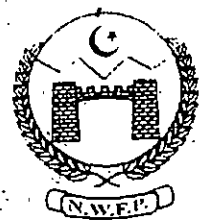
Asstt. Secretary  
Handwritten signature

Printed Date & Time: November 2, 2021 1:57:29 PM

This certificate is issued without alteration or erasure

Handwritten signature  
Secretary

Govt. College of Education For Elementary Teachers (Female)



SWABI AT AMBAR  
PROVISIONAL CERTIFICATE

Certified that Miss Alia D/o Ghafoor Gul

Roll No. 2524 Distt: Swabi Remained under pre-Services Training.

Of P.T.C./C.T/D.M. for the Session 2000-2001

As per result Gazette issued by the Dy. Director of Examination Education Deptt.

N.W.F.P. Peshawar. She has passed obtaining 586 Marks out of

1200 and has been placed in 2nd Division

The Result was declared on

Prepared by

Principal  
Govt Elementary College,  
(Female) Swabi at Ambar.

ADVOCATE  
SUPREME COURT

11



S. No. 22813  
Roll No. 36355  
Group. Humanities



Attest  
Secretary  
SUPREME COURT

12/13

# Board of Intermediate and Secondary Education

Mardan N.W.F.P. Pakistan

## INTERMEDIATE EXAMINATION

SESSION 2005 - ANNUAL

This is to certify that ALIA GHAFOOR Daughter of GHAFOOR GUL  
and a resident of District Swabi Registered No. 1029-B/MP-04 has passed the  
Intermediate Examination of the Board of Intermediate & Secondary Education, Mardan held in  
May/June - 2005 as a Private candidate She obtained 610 Marks out of 1100  
and has been placed in Grade C Representing Good

Rashidul.

Asstt. Secretary

Rashidul

Secretary

This certificate is issued without alteration or erasure

Annex-C

(10)

(14)

**OFFICE OF THE EXECUTIVE DISTRICT OFFICER ELEMENTARY &  
SECONDARY EDUCATION KOHISTAN**

**APPOINTMENT**

Consequent upon approval of District Departmental Selection Committee of Elementary & Secondary Education Department Kohistan the competent authority is pleased to appoint the following (Female) candidates against the post of PST in BPS-7 in the schools noted against each according to the Policy issued by the Government of NWFP Elementary & Secondary Education Department in the interest of public service with immediate effect.

S.#.	Name of Candidate	Father Name	R/O	Name of School where appointed	Remarks
1	Alia Ghafoor	Ghafoor Gul	Sawabi	GGPS Kass Banda	Agst V.Post
2	Ruqia Begum	Mustafa Gul	-do-	GGPS Kass Banda	-do-
3	Nuzhat Begum	Sher Afsar	-do-	GGPS Yazai	-do-
4	Rashida	Javid Khan	Abbottabad	GGPS Chiragh Abad	-do-
5	Aafia Bibi	Qazi Abdur Rahim	-do-	GGPS Chiragh Abad	-do-
6	Naila Bibi	Sumandur Khan	Mansehra	GGPS Harban Kot	-do-

**CONDITIONS**

1. No TA/ DA is allowed to any one
2. Charge report should be submitted to all concerned
3. Their appointment is purely on temporary basis and liable to termination at any time with out assigning any reason/ notice
4. They will be governed by such rules & regulation enforced and as prescribed by the Government from time to time for the category of the Government Servants to which they belong
5. In case the above candidates failed to assume the charge of his post with in fifteen days of the issuance of this Order their appointment will automatically stand cancelled.
6. They should produced Age & Health Certificate from EDO Health Kohistan.
7. They should not be allowed to take over charge if their age is less than 18-years & above 35-years.
8. Their original certificates/ Degrees should be verified by Dy: District Officer (Female) E&SE Kohistan from the concerned board/ University/ Institution before drawl of their pay

Executive District Officer  
E&SE Kohistan

Encl: No. 3188-9/4

Dated Kohistan the

21/7/2009

Copy of the above is forwarded to the

1. PS to Secretary Elementary & Secondary Education Department NWFP Peshawar
2. PA to Director Elementary & Secondary Education NWFP Peshawar
3. District Coordination Officer Kohistan
4. District Accounts Officer Kohistan
5. Dy: DO (F) E&SE Kohistan
6. Candidates concerned

*Jussis*  
Executive District Officer  
E&SE Kohistan

*Amjad Ali*  
ADVOCATE

SUPREME COURT

Ann-D (10) (15)

**DIRECTORATE OF ELEMENTARY & SECONDARY EDUCATION KHYBER  
PAKHTUNKHWA, PESHAWAR.**

OFFICE ORDER.

Consequent upon the ban relaxation by the competent authority, the following PST (Female) are hereby transferred/adjusted against the vacant post of PST at the schools noted against in their own pay & BPS in the interest of public service with immediate effect

No	Name Designation	Present School	Transfer to	Remarks
1	Mst Alia Ghalfoor PST	GGPS; Banjar Yanjoal Kohistan	GGPS No.2, Batty Swabi. ✓	Against V/Post
2	Mst Ruqia Begum PST	GGPS Mada Khail Kohistan	GGPS; Haryan Swabi ✓	-do-

Note

- a. Charge report should be sent to all concerned.
- a. No TA/DA etc are allowed
- b. The EDOs (E&SE) concerned are directed to check their original service documents before making payment of salaries.
- c. Their Seniority will be determined under the rules.

Case No. 2511-15 F.No.167/Vol-IV/Transfer (F) K.P. Dated Peshr the 19/10/2011  
**DIRECTOR**

Copy of the above is to the:-

1. Executive District Officers (E&SE) Kohistan & Swabi.
2. District Accounts Officers Kohistan & Swabi.
3. Teachers concerned.
4. PA to Director (E&SE) Khyber Pakhtunkhwa, Peshawar.
5. Master File.

*Azizullah Khan*  
 Deputy Directress (Estab)  
 Elementary & Secondary Education  
 Khyber Pakhtunkhwa, Peshawar

*Amjad Ali*  
 ADVOCATE

SUPREME COURT



Annex - E

**OFFICE OF THE DISTRICT EDUCATION OFFICER, (F) KOHISTAN.**

Ph: & Fax No. 0998407225

**OFFICE ORDER..**

In compliance with the Director, Elementary & Secondary Education Khyber Pakhtunkhwa Peshawar letter No.3081/F.No.20 (F) enquiry dated 16/03/2015, Reminder No. 2200/F No.20/(F) enquiry dated 20/04/2015/, No. 3530/ F No.20/(F) enquiry dated 22/05/2015, and No.3696/F No.20/(F) enquiry Dated 24/08/2015. and In light of recommendation of enquiry officer, the following PST teachers are hereby removed from service with immediate effect.

S/NO	Name	School
1 ✓	Nuzhat PST	GGPS Kas banda
2	Nazia Qazi PST	GGPS Bar komila
3 ✓	Alia Ghafoor	GGPS Kas banda
4 ✓	Rugia PST	GGPS Kas banda
5	Sara PST	GGPS Kundal
6	Khushnuma PST	GGPS Dubair
7	Mussarat bibi PST	GGPS Badar shaha

District Education Officer  
(Female) Kohistan

E/No. /Estab: 7/05-10 /DEO (F) KH: dated 22-10/2015.

Copy of the above is forwarded to:

1. The Director, Elementary & Secondary Education, Khyber Pakhtunkhwa Peshawar.
2. The District Education Officer (F) District Swabi, for necessary action at her end as the above teachers are now posted in District Swabi.
3. The District Accounts Officer, Swabi.
4. The District Accounts Officer, Kohistan.
5. The Sub Divisional Education Officer (F) Kohistan.
6. Office record.

Received today  
on 24/11/2015

District Education Officer  
(Female) Kohistan

Amjad Ali  
ADVOCATE  
SUPREME COURT

1

Ann-F

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL  
PESHAWAR

Appeal No. 252/2016

Date of Institution ... 14.03.2016

Date of Decision ... 13.12.2017

Mst. Alia Ghafoor D/O Ghafoor Gul, R/O Bazargi Mohallah Gujjarn, Tehsil Lahore  
District Swabi. (Appellant)

VERSUS

1. Government of Khyber Pakhtunkhwa through Secretary Education, Peshawar  
and 5 others. (Respondents)

MR. HIDAYATULLAH KHATTAK,  
Advocate

For appellant

MR. MUHAMMAD JAN,  
Deputy District Attorney,

For respondents.

MR. NIAZ MUHAMMAD KHAN,  
MR. MUHAMMAD AMIN KHAN KUNDI,

CHAIRMAN  
MEMBER

ATTESTED

JUDGMENT

NIAZ MUHAMMAD KHAN, CHAIRMAN:- This judgment shall also  
dispose of connected service appeal No. 253/2016 of Mst. Rujia Begum W/O Niaz  
Mohallah, as in both the appeals common questions of law and facts are involved.

2. Arguments of the learned counsel for the parties heard and record perused.

FACTS

3. The appellants were removed from service on 22.10.2015. The order was  
communicated to the appellants on 24.11.2015, against which the appellants filed

*Amjad Ali*  
ADVOCATE  
SUPREME COURT

*Amjad Ali*  
ADVOCATE  
SUPREME COURT

Handwritten marks: a large 'U' shape, a circled '18', and a circled signature.

departmental appeals on 01.12.2015, which were not responded to and thereafter, the appellants filed the present service appeals on 14.03.2016.

ARGUMENTS.

4. The learned counsel for the appellants argued that the appellants were appointed as PTC Teachers in 2009. That they have been performing their duties and suddenly they received the impugned order. That on the same day a transfer order was also received by the appellants. That in the impugned original order there is mention of an enquiry but the appellants are unaware about any enquiry. That no notice was served upon the appellants. That in view of the judgment reported as 2008-SCMR-1369, no civil servant can be condemned without service of notice and affording opportunity of hearing.

5. On the other hand, the learned Deputy District Attorney argued that an enquiry was conducted. That the enquiry report is available on the file. That in the said enquiry report, the enquiry officer recommended the removal of the appellants alongwith 6 other PTC Teachers. That the enquiry officer reported that the appointments were made in violation of law and rules. That the enquiry officer had also recommended disciplinary action against the appointing authority. The learned Deputy District Attorney relied upon a judgment reported as 2005-SCMR-1040 in order to support his argument that illegal appointments can be withdrawn after conducting enquiry.

CONCLUSION.

Amjad Ali  
ADVOCATE  
SUPREME COURT

Amjad Ali  
ADVOCATE  
SUPREME COURT

ATTESTED  
[Signature]

(22)

(19)

Attorney deals with an enquiry under the disciplinary rules wherein proper opportunity of hearing was afforded to the civil servant and thereafter the order was passed. But in the present case no disciplinary proceedings <sup>ere</sup> ~~was~~ initiated against the appellants. No notice, at all, was served upon the appellants. This judgment is therefore, irrelevant to the present appeals. Under the settled jurisprudential principle no civil servant can be condemned unheard. No order can be passed at the back of a civil servant and the impugned order has got no legal sanctity.

7. Consequently, the present appeals are accepted and the department is directed to hold regular enquiry against the appellants within a period of 90 days from the date of receipt of this judgment, failing which the appellants shall be reinstated in service. Parties are left to bear their own costs. File be consigned to the record room.

Announced  
13.12.2017

Sd/- Niaz Muhammad Khan  
Chairman

Sd/- M. Amin Khan Kundi  
Member

Certified true copy  
Khyber Pakhtunkhwa  
Service Tribunal,  
Kashawar

Amjad Ali  
ADVOCATE  
SUPREME COURT

Date of Presentation of Application 14-12-2017  
 Number of Pages 1600  
 Copying Fee 10.00  
 Urgent -  
 Total 10.00  
 Name of Applicant  
 Date of Filing 15-12-2017  
 Date 15-12-2017

Amjad Ali  
ADVOCATE  
SUPREME COURT

DIRECTORATE OF ELEMENTARY & SECONDARY EDUCATION KHYBER PAKHTUNKHWA  
PESHAWAR

OFFICE ORDER

28  
Amr (9) 20

Consequent upon Judgment of the Honourable: Khyber Pakhtunkhwa Service Tribunal announced on dated 27/12/2018 in the Service Appeal No.253/2016, the transfer cancellation in respect of Mst. Ruqia Begum PST BS-12 GGPS Tarkha Banda Swabi issued vide this office Endst: No.3887-89 dated 22/10/2015 (copy attached) is hereby set aside in the light of the said judgment.

Note:- 1. The intervening period of the teacher concerned will be treated as leave without pay.

DIRECTOR  
Elementary & Secondary  
Education Khyber Pakhtunkhwa

Endst: No. ~~366~~ 66/F.No.20/F/Inquiry Dated Peshawar the 28/8/2019  
Copy forwarded for information to the:-

1. District Education Officer (Female) Swabi with the remarks that if the post at the station where the teacher was working filled, she may be adjusted against any vacant post of PST BS-12 in District Swabi.
2. District Education Officer (F) Kohistan.
3. District Account Officer Swabi & Kohistan
4. Sub Divisional Education Officer (Female) concerned.
5. Teacher concerned.
6. PA to Director Elementary & Secondary Education Khyber Pakhtunkhwa.

*H.A.S.*  
Deputy Director (Female)  
Elementary & Secondary Education  
Khyber Pakhtunkhwa,

M.Zahir

*Amjad Ali*  
ADVOCATE  
SUPREME COURT

*Amjad Ali*  
ADVOCATE  
SUPREME COURT

27/8/19



(201) Annex (H) 21

OFFICE OF THE DISTRICT EDUCATION OFFICER (F) KOSHISTAN

Office Order

Whereas Mrs. Ruqia, PST GGPS Mada Khel, District Koshistan submitted her service appeal No. 253/2016 before Honorable Service Tribunal Khyber Pakhtunkhwa Peshawar. The Honorable service tribunal Peshawar accepted her appeal, the appellant was re-instated into service and the case was returned to department for denovo proceeding/inquiry in according to rules as per judgment announced on 13-12-2017.

In view of the above facts, Mrs. Ruqia, PST GGPS Mada Khel, District Koshistan is hereby re-instated into service, on her own pay and grade, with immediate effect for the purpose of denovo inquiry as per directions of Honorable Service Tribunal Khyber Pakhtunkhwa Peshawar.

Note:

- 1- No TA/DA is allowed.
- 2- Charge Report should be submitted to all concerned.

*District Education Officer  
(Female) Koshistan*

Endstt : No. 1699-1707 DEO (F)-KH Dated Dassu the 18/09/2018

Copy of the above is forwarded to the

- 1- Director Elementary & secondary Education Khyber Pakhtunkhwa Peshawar.
- 2- Registrar Khyber Pakhtunkhwa Peshawar.
- 3- District Education Officer Female Swabi.
- 4- Advocate General Khyber Pakhtunkhwa Peshawar.
- 5- Deputy District Education Officer (F) Koshistan.
- 6- District Account Officer, Swabi.
- 7- ADEO (Litigation) local office.
- 8- PA to district Education Officer Female Koshistan.
- 9- Official concerned.

*District Education Officer  
(Female) Koshistan*

*Anjad Ali*  
ADVOCATE  
SUPREME COURT



Amr (I) 22

**DISTRICT EDUCATION OFFICE (FEMALE) SWABI**

(Office phone Fax No 0938280339, [emisfswabi@yahoo.com](mailto:emisfswabi@yahoo.com))

**ADJUSTMENT ORDER.**

Consequent upon approval of the competent authority i.e. Director E&SE Khyber Pakhtunkhwa Peshawar vide Endst. Numbers & Date noted against each, the following PST (BPS-12) Teachers are hereby re-instated in service and adjusted against the vacant PST posts in the schools noted against each in the best interest of public service with immediate effect.

**Note:** The intervening period of each one is hereby converted into Extra Ordinary leave without pay as per the given detail.

S.No	Name with Designation	School where adjusted	The intervening period which is converted into EOL without pay	Directorate Letter No & Date
1.	Ruqia Begum PST	GGPS. Muslim Abad (Razzar)	22-10-2015 to 01-09-2019	No.3662-66/F.No.20/ Inquiry Dated: Peshawar the 28-8-2019
2	Musarrat Begum PST	GGPS. Kadi Dagai (Razzar)	22-10-2015 to 01-09-2019	No.3657-61/F.No.20/ Inquiry Dated: Peshawar the 28-8-2019
3	Anila Iqbal PST	GGPS. No.3 Swabi	22-10-2015 to 01-09-2019	No.3653-56/F.No.20/ Inquiry Dated: Peshawar the 28-8-2019

(DILSHAD BEGUM)  
DISTRICT EDUCATION OFFICER  
(FEMALE) SWABI

Endst: No., 4404 / DA-I/Adjustment/PST, Dated Swabi the 02/9 /2019

Forwarded to the: -

1. Director E&SE Khyber Pakhtunkhwa Peshawar.
2. District Accounts Officer Swabi.
3. DEO (Female) District Kohistan.
4. S.D.E.O (Female) Concerned.
5. ADEO Primary Local Office.
3. Officials concerned.

*Amjad Ali*  
ADVOCATE  
SUPREME COURT

*[Signature]*  
DISTRICT EDUCATION OFFICER  
(FEMALE) SWABI

*Amjad Ali*  
ADVOCATE  
SUPREME COURT



Ann-J

DISTRICT EDUCATION OFFICE (FEMALE) SWABI  
(Office phone Fax No 0938280339, [emisfswabi@yahoo.com](mailto:emisfswabi@yahoo.com))

(78)  
23

ADJUSTMENT ORDER.

Consequent upon approval of the competent authority i.e. Director E&SE Khyber Pakhtunkhwa Peshawar vide Endst. Numbers & Date noted against each, the following PST (BPS-12) Teachers are hereby re-instated in service and adjusted against the vacant PST posts in the schools noted against each in the best interest of public service with immediate effect.

Note: The intervening period of each one is hereby converted into Extra Ordinary leave without pay as per the given detail.

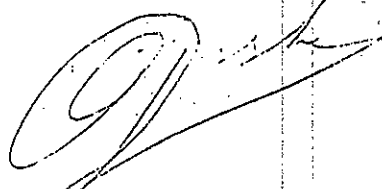
S.No	Name with Designation	School where adjusted	The intervening period which is converted into EOL without pay	Directorate Letter No & Date
1.	Alia Ghafoor PST	GGPS. Muslim Abad (Razzar)	22-10-2013 to 01-09-2019	No.3667-71/F.No.20/ Inquiry Dated Peshawar the 28-8-2019

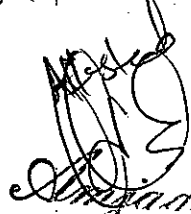
(DILSHAD BEGUM)  
DISTRICT EDUCATION OFFICER  
(FEMALE) SWABI

Endst. No., 4451-7 DA-1/Adjustment/PST. Dated Swabi the 04 / 09 / 2019

- Forwarded to the: -
1. Director E&SE Khyber Pakhtunkhwa Peshawar.
  2. District Accounts Officer Swabi.
  3. DEO (Female) District Kohistan.
  4. S.D.E.O (Female) Concerned.
  5. ADIO Primary Local Office
  3. Officials concerned.

S.D.E.O (F)  
LAHOR (SWABI)

  
DISTRICT EDUCATION OFFICER  
(FEMALE) SWABI

  
Arshad Ali  
ADVOCATE  
SUPREME COURT

Max (K)

BEFORE THE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL PESHAWAR.

Service Appeal No. 409/2020

Date of Institution ... 17.01.2020

Date of Decision ... 22.11.2022



(247)  
24

Mst. Rujia Begum, Ex-Primary School Teacher, Village & P.O Bazargai  
Tehsil Razzar, District Swabi.

... (Appellant)

VERSUS

Government of Khyber Pakhtunkhwa through Secretary (E&S), Civil  
Secretariat, Peshawar and 03 others.

... (Respondents)

MR. AMJAD ALI,  
Advocate

For appellant.

MR. MUHAMMAD RIAZ KHAN PAINDAKHEL,  
Assistant Advocate General

For respondents.

SALAH-UD-DIN  
MIAN MUHAMMAD

MEMBER (JUDICIAL)  
MEMBER (EXECUTIVE)

JUDGMENT:

SALAH-UD-DIN, MEMBER:- Precisely stated the facts surrounding the instant appeal are that the appellant was appointed as PST (BPS-07) vide appointment order dated 31.07.2009. The appellant took the charge of her post and performed her duty with zeal and zest. During the course of her service, the appellant was transferred from District Kohistan to District Swabi and she then performed her duty in District Swabi. Vide order dated 22.10.2015, the transfer order of the appellant from District Kohistan to District Swabi was withdrawn and vide office order dated

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TESTED  
Khyber Pakhtunkhwa  
Services Tribunal  
Peshawar

ATTESTED

FRANANER  
Khyber Pakhtunkhwa  
Services Tribunal  
Peshawar

Amjad Ali  
ADVOCATE

SUPREME COURT

22.10.2015, the appellant was removed from service; however her service appeal No. 253/2016 was accepted by this Tribunal vide judgment dated 13.12.2017 and the department was directed to hold regular inquiry against the appellant within a period of 90 days from receipt of the judgment, failing which the appellant was ordered to be reinstated in service. Vide order dated 28.08.2019 passed by Director Elementary & Secondary Education Khyber Pakhtunkhwa, the order of cancellation of transfer of the appellant from District Kohistan to District Swabi was cancelled, however the intervening period was ordered to be treated as leave without pay. Similarly, vide order dated 02.09.2019 passed by District Education Officer (Female) Swabi, the appellant was reinstated in service, however the intervening period with effect from 22.10.2015 to 01.09.2019 was ordered to be treated as extra ordinary leave without pay. The appellant filed departmental appeal, challenging the aforementioned order to the extent of treating the intervening period as leave without pay, however the same was not responded within the statutory period, hence the instant service appeal.

2. Notices were issued to the respondents, who submitted their comments, wherein they denied the assertions raised by the appellant in her appeal.

3. Learned counsel for the appellant has argued that the appellant was wrongly and illegally removed from service and upon her reinstatement vide order dated 02.09.2019 she was entitled to her reinstatement in service with effect from 22.10.2015 instated of

WITNESSED

EXAMINER  
Khyber Pakhtunkhwa  
Service Tribunal

Amjad Ali  
ADVOCATE

SUPREME COURT

immediate effect. He next contended that the appellant remained out of service on account of her wrong and illegal removal from service vide order dated 22.10.2015, which has already been set-aside by this Tribunal vide judgment dated 13.12.2017. He further argued that as no fault existed on the part of the appellant in non-performing of her duty during the intervening period, therefore, competent Authority was not justified in treating the same as extra ordinary leave without pay. He also argued that during the intervening period, the appellant had not remained gainfully employed in any service. Reliance was placed on 2021 SCMR 962, 2015 SCMR 77 and 2007 SCMR 855.

4. On the other hand, learned Assistant Advocate General for the respondents has argued that the very order of appointment of the appellant was fake and as she has been reinstated on technical ground, therefore, she is not entitled to any back benefits. He next contended that the appellant did not perform any duty during the intervening period, therefore, competent Authority has rightly treated the same as extra ordinary leave without pay. Reliance was placed on 2017 PLC (C.S) 177, judgment dated 18.02.2020 passed by this Tribunal in Service Appeal No. 803/2018 and judgment dated 18.01.2021 passed by this Tribunal in Service Appeal No. 603/2018.

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

6. A perusal of the record would show that vide order dated 22.10.2015, the appellant was removed from service on the allegations that her appointment was illegal and irregular. The

ATTESTED

*[Signature]*  
EXAMINER  
SAYYED BAKHTUDDIN  
Service Tribunal  
Faisalabad

*[Signature]*  
Attested


*[Signature]*  
Amjad Ali  
ADVOCATE  
SUPREME COURT

appellant approached this Tribunal through filing of Service Appeal No. 253/2016 against the order of her removal, which was allowed vide judgment dated 13.12.2017 and the department was directed to hold regular inquiry against the appellant within a period of 90 days from the date of receipt of the judgment, failing which the appellant shall be reinstated in service. It appears from the record that the departmental Authority did not take any step for implementation of the judgment dated 13.12.2017 passed by this Tribunal, constraining the appellant to file Execution Petition No. 100/2018 before this Tribunal. It was during the proceedings on execution petition on 27.12.2018 that the respondents submitted order dated 18.09.2018, whereby the appellant was reinstated for the purpose of de-novo inquiry. Vide order dated 27.12.2018, the execution petition was disposed of in the terms reproduced as below:-

*"In view of above, when the petitioner has been reinstated though for the purpose of de-novo inquiry, the present execution petition be consigned to the record room. In case of grievance of the petitioner against the outcome of de-novo inquiry, she may approach proper forum in accordance with law and rules on the subject."*

7. It is thus evident that while disposing of the execution petition of the appellant vide order dated 27.12.2018, respondent-department was afforded an opportunity of conducting de-novo inquiry against the appellant despite lapse of 90 days as mentioned in the judgment dated 13.12.2017 but even then no de-novo inquiry was conducted in the matter for reasons best known to the departmental Authority. It is an admitted fact that the order of transfer of the appellant from

ATTESTED

  
EXAMINER  
Chief of Department  
Service Tribunal  
Bhubaneswar

  
Amjad Ali  
ADVOCATE  
SUPREME COURT

27

District Kohistan to District Swabi has been cancelled and she has been reinstated in service by the competent Authority. In these circumstances, the assertion of the respondents that the appointment of the appellatant was fake, appears to be quite intriguing.

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8. The appellatant was removed from service vide order dated 22.10.2015, which order has already been set-aside by this Tribunal, therefore, she was entitled to have been reinstated in service with effect from 22.10.2015. Nothing is available on the record, which could show that the appellatant had remained gainfully employed in any service during the intervening period, therefore, she is entitled to all back benefits.

9. Consequently, the appeal in hand is allowed by modifying the impugned orders dated 28.08.2019, as well as 02.09.2019 and the appellatant stands reinstated in service with effect from 22.10.2015 with all back benefits. Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCED

22.11.2022

*[Handwritten signature]*

(SALAH-UD-DIN)  
MEMBER (JUDICIAL)

(MIAN MUHAMMAD)  
MEMBER (EXECUTIVE)

**Certified to be true copy**

*[Handwritten signature]*  
Khyber Pakhtunkhwa  
Service Tribunal  
Peshawar

Date of Presentation of Application 17-01-2023  
Number of Page 5-P  
Copying Fee 25/-  
Stamp 25/-  
Date 20-01-2023

*[Handwritten signature]*  
**Amjad Ali**  
ADVOCATE  
SUPREME COURT



To

The Director,  
Elementary & Secondary Education,  
Khyber Pakhtunkhwa.

(72)   
Max (L)   
29

**Subject:** Departmental appeal for modification of order dated 28/08/2019 passed by Director E&SED and order dated 04/09/2019 passed by DEO (F) Swabi wherein intervening period is treated as extra ordinary leave without pay which is illegal against law and facts and appellant is entitled for the benefit of judgment dated 22/11/2022 passed by the Honorable Khyber Pakhtunkhwa Service Tribunal Peshawar in service appeal no 209/2020 wherein identically placed Primary School Teacher, Ruqia Begum, is reinstated in service w.e.f 22/10/2015 with all back benefits.

Respected Sir,

Appellant humbly submits as under:

1. That appellant is residing in District Swabi as evident from her CNIC and domicile (Copy of the CNIC & domicile is attached as Annexure A)
2. That appellant is equipped with qualification such as BA, Masters in Islamiyat along with PTC certificate (Copies of academic documents are attached as Annexure B)
3. That being fully qualified and fulfilling all the formalities and the recommendations of the Departmental Selection Committee, the appellant was appointed vide appointment order dated 31/07/2009 as PST (BPS-7) along with others such as Ruqia Begum etc (Copy of the appointment order dated 31/07/2009 is attached as Annexure C)
4. That appellant along with Ruqia Begum is transferred from Kohistan to Swabi vide office order dated 19/10/2011 (Copy of the office order dated 19/10/2011 is attached as Annexure D)
5. That right from the taking over of charge, the appellant performed her duties whole heartedly and to the entire satisfaction of her superiors.
6. That despite performance of duties to the entire satisfaction of superiors, the appellant was deeply shocked to receive office order dated 22/10/2015 wherein the appellant along with others such as Ruqia PST is removed from service (Copy of the office order dated 22/10/2015 is attached as Annexure E)

*Amjad Ali*  
ADVOCATE  
SUPREME COURT

- 30
7. That appellant along with Ruqia Begum filed service appeal no 252/2016 & 253/2016 against removal order dated 22/10/2015 before the Honorable KP Service Tribunal Peshawar which were accepted vide consolidated judgment dated 13/12/2017 in the following terms: (Copy of the judgment dated 13/12/2017 is attached as Annexure F)
- “7. Consequently, the present appeals are accepted and the department is directed to hold regular inquiry against the appellants within a period of 90 days from the date of receipt of this judgment, failing which the appellants shall be reinstated in service.....”
8. That vide order dated 28/08/2019, the worthy Director set aside the transfer cancellation/removal order dated 22/10/2015 but the intervening period is treated as leave without pay which is illegal against law and facts (Copy of the office order dated 28/08/2019 is attached as Annexure G)
9. That Ruqia Begum was reinstated for the purpose of de-novo inquiry vide office order dated 18/09/2018 by the DEO(F) Kohistan (Copy of the office order dated 18/09/2018 is attached as Annexure H)
10. That department failed to hold de-novo inquiry within 90 days and Ruqia Begum (PST) is reinstated in service with immediate effect and has been adjusted at GGPS Muslim Abad Razzar District Swabi vide adjustment order dated 02/09/2019 issued by DEO(F) Swabi and the intervening period of 22/10/2016 to 01/09/2019 is treated as extra-ordinary leave without pay (Copy of the order dated 02/09/2019 is attached as Annexure I)
11. That in the case of appellant, the Department also failed to hold de-novo inquiry within a period of 90 days and appellant is also reinstated in service with immediate effect and adjusted at GGPS Muslim Abad Razzar District Swabi vide adjustment order dated 04/09/2019 issued by DEO(F) Swabi and the intervening period of 22/10/2016 to 01/09/2019 is treated as extra-ordinary leave without pay which is illegal against law and facts (Copy of the order dated 04/09/2019 is attached as Annexure J)
12. That one Ruqia Begum (PST) filed service appeal no 409/2020 against order dated 28/08/2019 as well as 02/09/2019 before the Honorable KP Service Tribunal Peshawar which is allowed vide judgment dated 22/11/2022 in the following terms: (Copy of the judgment dated 22/11/2022 is attached as Annexure K)

“9. Consequently, the appeal in hand is allowed by modifying the impugned orders dated

*Amjad Iqbal*  
ADVOCATE  
SUPREME COURT

28/08/2019 as well as 02/09/2019 and the appellant stands reinstated in service with effect from 22/10/2015 with all back benefits....”

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13. That being aggrieved from the order dated 28/08/2019 passed by Director E&SED and adjustment order dated 04/09/2019 passed by DEO(F) Swabi, appellant approaches this appellate authority on the following grounds:

**GROUND**

- A. Because when admittedly, appellant performed duty till 22/10/2015 and admitted by the Department from their own record as well as certificate, then removal order on the basis of said absence was unwarranted and uncalled for.
- B. Because, when removal order dated 22/10/2015 is illegal and set aside and appellant is reinstated into service, reinstatement means, appellant is to be replanted from where evicted.
- C. Because in the inquiry report, there is no evidence that appellant was performing other duty during the period of removal.
- D. Because appellant cannot be penalized for the fault of the Department.
- E. Because, it was department, who stopped appellant from performing duty.
- F. Because in the case of other similarly placed PST i.e Ruqia Begum, the intervening period from 22/10/2015 to 01/09/2019 which was earlier treated as extra-ordinary leave without pay is set aside and held entitled for all back benefits vide judgment dated 22/11/2022 passed by the Honorable KP Service Tribunal Peshawar.
- G. Because when one Ruqia Begum is held entitled for all back benefits of the intervening period, then the appellant is also entitled for same treatment.
- H. Because appellant is entitled for the benefit of judgment judgment dated 22/11/2022 passed by the Honorable KP Service Tribunal Peshawar as per Article 4, 25 and 27 of the Constitution of Pakistan 1973.
- I. Because all citizens are equal before the law and entitled for equal protection and treatment as per Article 25 of the Constitution of Pakistan 1973.
- J. Because as per fundamental rule 54, a civil servant who is removed or dismissed is reinstated in service is entitled to full

*Amjad Ali*  
ADVOCATE  
SUPREME COURT

pay and other allowances. FR 54 reads as under: (Copy of FR-54 is attached as Annexure M)

(B/S)

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[F. R. 54.—Where a Government Servant has been dismissed or removed is reinstated, the revising or appellate authority may grant to him for the period of his absence from duty—

(a) if he is honourably acquitted, the full pay to which he would have been entitled if he had not been dismissed or removed and, by an order to be separately recorded, any allowance of which he was in receipt prior to his dismissal or removal; or

(b) if otherwise, such portion of such pay and allowances as the revising or appellate authority may prescribe.

In a case falling under clause (a), the period of absence from duty will be treated as a period spent on duty.

In a case falling under clause (b), it will not be treated as a period spent on duty unless the revising or appellate authority so direct."

- K. Because as per 1996 SCMR 1185 and 2009 SCMR 1, if a Tribunal or the Supreme Court decides a point of law relating to the terms and conditions of a civil servant who litigated, and there were other civil servants, who may not have taken any legal proceedings, in such a case, the dictates of justice and rule of good governance demand that the benefit of the said decision be extended to other civil servants also, who may, not be parties to that litigation, instead of compelling them to approach the Tribunal or any other legal forum. All citizens are equal before the law and entitled to equal protection of law as per Article 25 of the Constitution (Copy of the judgment reported in 1996 SCMR 1185 is attached as Annexure N & Copy of judgment reported in 2009 SCMR 1 is attached as Annexure O)
- L. Because as per 2007 SCMR 855 and 2015 SCMR 7, the Honorable Supreme Court of Pakistan held that a reinstated civil servant is entitled for back benefits as it was the Department which on basis of wrong opinion kept the civil servant away from performing duty (Copy of the judgment reported in 2007 SCMR 855 is attached as Annexure P & Copy of judgment reported in 2015 SCMR 7 is attached as Annexure Q)
- M. Because appellant remained jobless from 22/10/2015 (removal) till 04/09/2019 (reinstatement).
- N. Because as per Article 25 and 27 of the Constitution of Pakistan 1973, there should be no discrimination in services whereas appellant has been discriminated as against Ruqia Begum who is allowed all back benefits for the intervening period from removal to reinstatement.

Alex  
Amjad Ali  
ADVOCATE  
SUPREME COURT

PRAYER:

(50)

33

It is therefore humbly prayed that on acceptance of this departmental appeal;

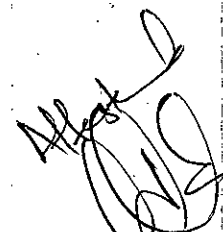
- I. Appellant may please be extended the benefit of judgment dated 22/11/2022 passed by the Honorable Khyber Pakhtunkhwa Service Tribunal Peshawar in service appeal no 209/2020 as per 1996 SCMR 1185 and 2009 SCMR 1 whereby order dated 28/08/2019 passed by Director E&SED and order dated 02/09/2019 passed by DEO (F) Swabi has been modified and identically placed Primary School Teacher, Ruqia Begum, has been reinstated w.e.f 22/10/2015 with all back benefits.
- II. The impugned order dated 28/08/2019 passed by Director E&SED and order dated 04/09/2019 passed by DEO (F) Swabi may please be modified as reinstatement in service w.e.f 22/10/2015 with all back benefits instead of treating intervening period as extra ordinary leave without pay as appellant was jobless during said period and was pursuing the remedy in the Court like Ruqia Begum.
- III. Any other relief deemed fit in the circumstances of the post case and not specifically asked for may also be graciously granted.

Yours' faithfully,



Appellant  
Alia Ghafoor D/O Ghafoor  
Gul R/O Mohallah Gojaran,  
Bazargai Tehsil Lahor  
District Swabi

Dated: 13/03/2023



Amjad Ali  
ADVOCATE  
SUPREME COURT

To

The Secretary,  
Elementary & Secondary Education,  
Khyber Pakhtunkhwa.

(34)

**Subject:** Departmental appeal for modification of order dated 28/08/2019 passed by Director E&SED and order dated 04/09/2019 passed by DEO (F) Swabi wherein intervening period is treated as extra ordinary leave without pay which is illegal against law and facts and appellant is entitled for the benefit of judgment dated 22/11/2022 passed by the Honorable Khyber Pakhtunkhwa Service Tribunal Peshawar in service appeal no 209/2020 wherein identically placed Primary School Teacher, Ruqia Begum, is reinstated in service w.e.f 22/10/2015 with all back benefits.

Respected Sir,

Appellant humbly submits as under:

1. That appellant is residing in District Swabi as evident from her CNIC and domicile (Copy of the CNIC & domicile is attached as Annexure A)
2. That appellant is equipped with qualification such as BA, Masters in Islamiyat along with PTC certificate (Copies of academic documents are attached as Annexure B)
3. That being fully qualified and fulfilling all the formalities and the recommendations of the Departmental Selection Committee, the appellant was appointed vide appointment order dated 31/07/2009 as PST (BPS-7) along with others such as Ruqia Begum etc (Copy of the appointment order dated 31/07/2009 is attached as Annexure C)
4. That appellant along with Ruqia Begum is transferred from Kohistan to Swabi vide office order dated 19/10/2011 (Copy of the office order dated 19/10/2011 is attached as Annexure D)
5. That right from the taking over of charge, the appellant performed her duties whole heartedly and to the entire satisfaction of her superiors.
6. That despite performance of duties to the entire satisfaction of superiors, the appellant was deeply shocked to receive office order dated 22/10/2015 wherein the appellant along with others such as Ruqia PST is removed from service (Copy of the office order dated 22/10/2015 is attached as Annexure E)

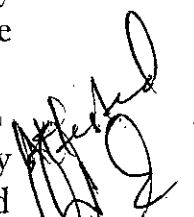
*Amjad Ali*  
ADVOCATE  
SUPREME COURT

7. That appellant along with Ruqia Begum filed service appeal no 252/2016- & 253/2016 against removal order dated 22/10/2015 before the Honorable KP Service Tribunal Peshawar which were accepted vide consolidated judgment dated 13/12/2017 in the following terms: (Copy of the judgment dated 13/12/2017 is attached as Annexure F)

“7. Consequently, the present appeals are accepted and the department is directed to hold regular inquiry against the appellants within a period of 90 days from the date of receipt of this judgment, failing which the appellants shall be reinstated in service.....”

8. That vide order dated 28/08/2019, the worthy Director set aside the transfer cancellation/removal order dated 22/10/2015 but the intervening period is treated as leave without pay which is illegal against law and facts (Copy of the office order dated 28/08/2019 is attached as Annexure G)
9. That Ruqia Begum was reinstated for the purpose of denovo inquiry vide office order dated 18/09/2018 by the DEO(F) Kohistan (Copy of the office order dated 18/09/2018 is attached as Annexure H)
10. That department failed to hold de-novo inquiry within 90 days and Ruqia Begum (PST) is reinstated in service with immediate effect and has been adjusted at GGPS Muslim Abad Razzar District Swabi vide adjustment order dated 02/09/2019 issued by DEO(F) Swabi and the intervening period of 22/10/2016 to 01/09/2019 is treated as extra-ordinary leave without pay (Copy of the order dated 02/09/2019 is attached as Annexure I)
11. That in the case of appellant, the Department also failed to hold de-novo inquiry within a period of 90 days and appellant is also reinstated in service with immediate effect and adjusted at GGPS Muslim Abad Razzar District Swabi vide adjustment order dated 04/09/2019 issued by DEO(F) Swabi and the intervening period of 22/10/2016 to 01/09/2019 is treated as extra-ordinary leave without pay which is illegal against law and facts (Copy of the order dated 04/09/2019 is attached as Annexure J)
12. That one Ruqia Begum (PST) filed service appeal no 409/2020 against order dated 28/08/2019 as well as 02/09/2019 before the Honorable KP Service Tribunal Peshawar which is allowed vide judgment dated 22/11/2022 in the following terms: (Copy of the judgment dated 22/11/2022 is attached as Annexure K)

“9. Consequently, the appeal in hand is allowed by modifying the impugned orders dated

  
Amjan Ali  
ADVOCATE  
SUPREME COURT

28/08/2019 as well as 02/09/2019 and the appellant stands reinstated in service with effect from 22/10/2015 with all back benefits....”

(36)

13. That being aggrieved from the order dated 28/08/2019 passed by Director E&SED and adjustment order dated 04/09/2019 passed by DEO(F) Swabi, appellant approaches this appellate authority on the following grounds:

**GROUND**S

- A. Because when admittedly, appellant performed duty till 22/10/2015 and admitted by the Department from their own record as well as certificate, then removal order on the basis of said absence was unwarranted and uncalled for.
- B. Because, when removal order dated 22/10/2015 is illegal and set aside and appellant is reinstated into service, reinstatement means, appellant is to be replanted from where evicted.
- C. Because in the inquiry report, there is no evidence that appellant was performing other duty during the period of removal.
- D. Because appellant cannot be penalized for the fault of the Department.
- E. Because, it was department, who stopped appellant from performing duty.
- F. Because in the case of other similarly placed PST i.e Ruqia Begum, the intervening period from 22/10/2015 to 01/09/2019 which was earlier treated as extra-ordinary leave without pay is set aside and held entitled for all back benefits vide judgment dated 22/11/2022 passed by the Honorable KP Service Tribunal Peshawar.
- G. Because when one Ruqia Begum is held entitled for all back benefits of the intervening period, then the appellant is also entitled for same treatment.
- H. Because appellant is entitled for the benefit of judgment judgment dated 22/11/2022 passed by the Honorable KP Service Tribunal Peshawar as per Article 4, 25 and 27 of the Constitution of Pakistan 1973.
- I. Because all citizens are equal before the law and entitled for equal protection and treatment as per Article 25 of the Constitution of Pakistan 1973.
- J. Because as per fundamental rule 54, a civil servant who is removed or dismissed is reinstated in service is entitled to full

*Advocate*  
ADVOCATE  
SUPREME COURT



pay and other allowances. FR 54 reads as under: (Copy of FR-54 is attached as Annexure M)

[F. R. 54.—Where a Government Servant has been dismissed or removed is reinstated; the revising or appellate authority may grant to him for the period of his absence from duty:—

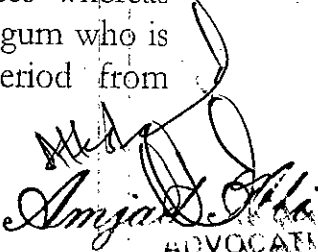
(a) if he is honourably acquitted, the full pay to which he would have been entitled if he had not been dismissed or removed and, by an order to be separately recorded, any allowance of which he was in receipt prior to his dismissal or removal; or

(b) if otherwise, such portion of such pay and allowances as the revising or appellate authority may prescribe.

In a case falling under clause (a), the period of absence from duty will be treated as a period spent on duty.

In a case falling under clause (b), it will not be treated as a period spent on duty unless the revising or appellate authority so direct."

- K. Because as per 1996 SCMR 1185 and 2009 SCMR 1, if a Tribunal or the Supreme Court decides a point of law relating to the terms and conditions of a civil servant who litigated, and there were other civil servants, who may not have taken any legal proceedings, in such a case, the dictates of justice and rule of good governance demand that the benefit of the said decision be extended to other civil servants also, who may, not be parties to that litigation, instead of compelling them to approach the Tribunal or any other legal forum. All citizens are equal before the law and entitled to equal protection of law as per Article 25 of the Constitution (Copy of the judgment reported in 1996 SCMR 1185 is attached as Annexure N & Copy of judgment reported in 2009 SCMR 1 is attached as Annexure O)
- L. Because as per 2007 SCMR 855 and 2015 SCMR 7, the Honorable Supreme Court of Pakistan held that a reinstated civil servant is entitled for back benefits as it was the Department which on basis of wrong opinion kept the civil servant away from performing duty (Copy of the judgment reported in 2007 SCMR 855 is attached as Annexure P & Copy of judgment reported in 2015 SCMR 7 is attached as Annexure Q)
- M. Because appellant remained jobless from 22/10/2015 (removal) till 04/09/2019 (reinstatement).
- N. Because as per Article 25 and 27 of the Constitution of Pakistan 1973, there should be no discrimination in services whereas appellant has been discriminated as against Ruqia Begum who is allowed all back benefits for the intervening period from removal to reinstatement.

  
Anjad Ali  
ADVOCATE  
SUPREME COURT

PRAYER:

It is therefore humbly prayed that on acceptance of this departmental appeal;

- I. Appellant may please be extended the benefit of judgment dated 22/11/2022 passed by the Honorable Khyber Pakhtunkhwa Service Tribunal Peshawar in service appeal no 209/2020 as per 1996 SCMR 1185 and 2009 SCMR 1 whereby order dated 28/08/2019 passed by Director E&SED and order dated 02/09/2019 passed by DEO (F) Swabi has been modified and identically placed Primary School Teacher, Ruqia Begum, has been reinstated w.e.f 22/10/2015 with all back benefits.
- II. The impugned order dated 28/08/2019 passed by Director E&SED and order dated 04/09/2019 passed by DEO (F) Swabi may please be modified as reinstatement in service w.e.f 22/10/2015 with all back benefits instead of treating intervening period as extra ordinary leave without pay as appellant was jobless during said period and was pursuing the remedy in the Court like Ruqia Begum.
- III. Any other relief deemed fit in the circumstances of the post case and not specifically asked for may also be graciously granted.

Yours' faithfully,

*Alia*

Appellant

Alia Ghafoor D/O Ghafoor  
Gul R/O Mohallah Gojaran,  
Bazargai Tehsil Lahor  
District Swabi

Dated: 13/03/2023

*Amjad Ali*  
ADVOCATE  
SUPREME COURT

No. 377

RGL105687632

70 Ps.

For Insurance Notices  
Stamps affixed except in case of  
uninsured letters of not more than  
the initial weight prescribed in the  
Post Office Guide upon which no  
acknowledgment is affixed.

Received a registered\* addressed to \_\_\_\_\_

Initials of Receiving Officer \_\_\_\_\_

Insured for Rs. (in figures) \_\_\_\_\_

Insurance fee Rs. \_\_\_\_\_ Ps. \_\_\_\_\_

Name and address of sender \_\_\_\_\_

Weight \_\_\_\_\_ Kilo \_\_\_\_\_ Grams \_\_\_\_\_

Date Stamp \_\_\_\_\_

\*Write here "letter", "postcard", "packet" or "parcel" with the word "insured" before it when necessary.

60  
39

No. 376

RGL105687631

70 Ps.

For Insurance Notices  
Stamps affixed except in case of  
uninsured letters of not more than  
the initial weight prescribed in the  
Post Office Guide or on which no  
acknowledgment is affixed.

Received a registered\* addressed to \_\_\_\_\_

Initials of Receiving Officer \_\_\_\_\_

Insured for Rs. (in figures) \_\_\_\_\_

Insurance fee Rs. \_\_\_\_\_ Ps. \_\_\_\_\_

Name and address of sender \_\_\_\_\_

Weight \_\_\_\_\_ Kilo \_\_\_\_\_ Grams \_\_\_\_\_

Date Stamp \_\_\_\_\_

\*Write here "letter", "postcard", "packet" or "parcel" with the word "insured" before it when necessary.

Amjad Ali  
ADVOCATE  
SUPREME COURT

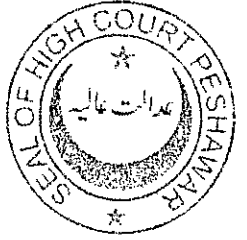
Aux (M) 40

**BEFORE THE PESHAWAR HIGH COURT**  
**PESHAWAR**

Writ Petition No \_\_\_\_\_ /2023

Alia Ghafoor D/O Ghafoor Gul R/O Mohallah Gojaran,  
Bazargai Tehsil Lahor District Swabi

.....Petitioner



**VERSUS**

1. Govt of KPK through Secretary Elementary and Secondary Education, Civil Secretariat Peshawar.
2. Secretary Elementary and Secondary Education, Civil Secretariat Peshawar
3. Director of Elementary & Secondary Education KP at Hashtangari Chowk, Near Qila Bala Hisar Peshawar.
4. Deputy Director (Female), Elementary & Secondary Education Khyber Pakhtunkhwa
5. District Education Officer (female) Swabi


.....Respondents

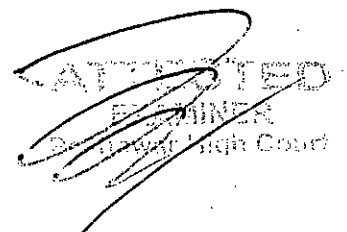
**SUBJECT: WRIT PETITION UNDER ARTICLE 199 OF  
THE CONSTITUTION OF ISLAMIC  
REPUBLIC OF PAKISTAN - 1973**

Respected Sir,

**Petitioner humbly submits as under:**

1. That petitioner is residing in District Swabi as evident from her CNIC and domicile (**Copy of the CNIC & domicile is attached as Annexure A**)
2. That petitioner is equipped with qualification such as BA, Masters in Islamiyat along with PTC certificate (**Copies of academic documents are attached as Annexure B**)
3. That being fully qualified and fulfilling all the formalities and the recommendations of the Departmental Selection Committee, the petitioner was appointed vide appointment order dated 31/07/2009 as PST (BPS-7) along with others such as Ruqia Begum etc (**Copy of the appointment order dated 31/07/2009 is attached as Annexure C**)

  
**Amjad Ali**  
ADVOCATE  
SUPREME COURT

  
PETITIONER  
Peshawar High Court

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4. That petitioner along with Ruqia Begum is transferred from Kohistan to Swabi vide office order dated 19/10/2011 (Copy of the office order dated 19/10/2011 is attached as Annexure D)
5. That right from the taking over of charge, the petitioner performed her duties whole heartedly and to the entire satisfaction of her superiors.
6. That despite performance of duties to the entire satisfaction of superiors, the petitioner was deeply shocked to receive office order dated 22/10/2015 wherein the petitioner along with others such as Ruqia PST is removed from service (Copy of the office order dated 22/10/2015 is attached as Annexure E)
7. That petitioner along with Ruqia Begum filed service appeal no 252/2016 & 253/2016 against removal order dated 22/10/2015 before the Honorable KP Service Tribunal Peshawar which were accepted vide consolidated judgment dated 13/12/2017 in the following terms: (Copy of the judgment dated 13/12/2017 is attached as Annexure F)

**"7. Consequently, the present appeals are accepted and the department is directed to hold regular inquiry against the appellants within a period of 90 days from the date of receipt of this judgment, failing which the appellants shall be reinstated in service....."**

8. That vide order dated 28/08/2019, the worthy Director set aside the transfer cancellation/removal order dated 22/10/2015 but the intervening period is treated as leave without pay which is illegal against law and facts (Copy of the office order dated 28/08/2019 is attached as Annexure G)
9. That Ruqia Begum was reinstated for the purpose of denovo inquiry vide office order dated 18/09/2018 by the DEO(F) Kohistan (Copy of the office order dated 18/09/2018 is attached as Annexure H)
10. That department failed to hold de-novo inquiry within 90 days and Ruqia Begum (PST) is reinstated in service with immediate effect and has been adjusted at GGPS Muslim Abad Razzar District Swabi vide adjustment order dated 02/09/2019 issued by DEO(F) Swabi and the intervening period of 22/10/2016 to 01/09/2019 is

Attended  
Amjad Ali  
ADVOCATE  
SUPREME COURT

2023  
JANER  
High Court

treated as extra-ordinary leave without pay (Copy of the order dated 02/09/2019 is attached as Annexure I)

11. That in the case of petitioner, the Department also failed to hold de-novo inquiry within a period of 90 days and petitioner is also reinstated in service with immediate effect and adjusted at GGPS Muslim Abad Razzar District Swabi vide adjustment order dated 04/09/2019 issued by DEO(F) Swabi and the intervening period of 22/10/2016 to 01/09/2019 is treated as extra-ordinary leave without pay which is illegal against law and facts(Copy of the order dated 04/09/2019 is attached as Annexure J)

12. That one Ruqia Begum (PST) filed service appeal no 409/2020 against order dated 28/08/2019 as well as 02/09/2019 before the Honorable KP Service Tribunal Peshawar which is allowed vide judgment dated 22/11/2022 in the following terms: (Copy of the judgment dated 22/11/2022 is attached as Annexure K)

“9. Consequently, the appeal in hand is allowed by modifying the impugned orders dated 28/08/2019 as well as 02/09/2019 and the appellant stands reinstated in service with effect from 22/10/2015 with all back benefits....”

13. That being aggrieved from the order dated 28/08/2019 passed by respondent no 3 and adjustment order dated 04/09/2019 passed by respondent no 5, petitioner filed two departmental appeals dated 13/03/2023 one addressed to Secretary E&SED and the other addressed to Director E&SED duly dispatched through registered post by claiming the benefit of judgment dated 22/11/2022, but the departmental appeals have not been decided (Copy of the departmental appeals dated 13/03/2023 along with post office receipts are attached as Annexure L)

Amjad Ali  
ADVOCATE  
SUPREME COURT

14. That being aggrieved and having no other efficacious alternate remedy, petitioner approaches this Honorable Court on following grounds:

**GROUND**

A. Because when admittedly, petitioner performed duty till 22/10/2015 and admitted by the Department from

their own record as well as certificate, then removal order on the basis of said absence was unwarranted and uncalled for.

B. Because, when removal order dated 22/10/2015 is illegal and set aside and petitioner is reinstated into service, reinstatement means, petitioner is to be replanted from where evicted.

C. Because in the inquiry report, there is no evidence that petitioner was performing other duty during the period of removal.

D. Because petitioner cannot be penalized for the fault of the Department.

E. Because, it was department, who stopped petitioner from performing duty.

F. Because in the case of other similarly placed PST i.e Ruqia Begum, the intervening period from 22/10/2015 to 01/09/2019 which was earlier treated as extraordinary leave without pay is set aside and held entitled for all back benefits vide judgment dated 22/11/2022 passed by the Honorable KP Service Tribunal Peshawar.

G. Because when one Ruqia Begum is held entitled for all back benefits of the intervening period, then the petitioner is also entitled for same treatment.

H. Because petitioner is entitled for the benefit of judgment dated 22/11/2022 passed by the Honorable KP Service Tribunal Peshawar as per Article 4, 25 and 27 of the Constitution of Pakistan 1973.

I. Because all citizens are equal before the law and entitled for equal protection and treatment as per Article 25 of the Constitution of Pakistan 1973.

J. Because as per fundamental rule 54, a civil servant who is removed or dismissed is reinstated in service is entitled to full pay and other allowances. FR 54 reads as under: **(Copy of FR-54 is attached as Annexure M)**

[F. R. 54.—Where a Government Servant has been dismissed or removed is reinstated, the revising or appellate authority may grant to him for the period of his absence from duty:—

*Amjad Ali*  
ADVOCATE  
SUPREME COURT

~~REGISTERED~~  
~~EXHIBIT~~  
Peshawar High Court

(a) if he is honourably acquitted, the full pay to which he would have been entitled if he had not been dismissed or removed and, by an order to be separately recorded, any allowance of which he was in receipt prior to his dismissal or removal; or

(b) if otherwise, such portion of such pay and allowances as the revising or appellate authority may prescribe.

In a case falling under clause (a), the period of absence from duty will be treated as a period spent on duty.

In a case falling under clause (b), it will not be treated as a period spent on duty unless the revising or appellate authority so direct."

K. Because as per 1996 SCMR 1185 and 2009 SCMR 1, if a Tribunal or the Supreme Court decides a point of law relating to the terms and conditions of a civil servant who litigated, and there were other civil servants, who may not have taken any legal proceedings, in such a case, the dictates of justice and rule of good governance demand that the benefit of the said decision be extended to other civil servants also, who may, not be parties to that litigation, instead of compelling them to approach the Tribunal or any other legal forum. All citizens are equal before the law and entitled to equal protection of law as per Article 25 of the Constitution (Copy of the judgment reported in 1996 SCMR 1185 is attached as Annexure N & Copy of judgment reported in 2009 SCMR 1 is attached as Annexure O)

L. Because as per 2007 SCMR 855 and 2015 SCMR 7, the Honorable Supreme Court of Pakistan held that a reinstated civil servant is entitled for back benefits as it was the Department which on basis of wrong opinion kept the civil servant away from performing duty (Copy of the judgment reported in 2007 SCMR 855 is attached as Annexure P & Copy of judgment reported in 2015 SCMR 7 is attached as Annexure Q)

*Attested*  
*[Signature]*  
**Amjad Ali**  
ADVOCATE  
SUPREME COURT

M. Because petitioner remained jobless from 22/10/2015 (removal) till 04/09/2019 (reinstatement).

N. Because as per Article 25 and 27 of the Constitution of Pakistan 1973, there should be no discrimination in services whereas petitioner has been discriminated as against Ruqia Begum who is allowed all back benefits

*[Signature]*



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for the intervening period from removal to reinstatement.

**PRAYER:**

**It is therefore humbly prayed that on acceptance of this writ petition;**

- I. Respondents may please be directed to extend the benefit of judgment dated 22/11/2022 passed by the Honorable Khyber Pakhtunkhwa Service Tribunal Peshawar in service appeal no 209/2020 whereby order dated 28/08/2019 passed by respondent no 3 (i.e Director E&SED) and order dated 02/09/2019 passed by respondent no 5 (i.e DEO (F) Swabi) has been modified and identically placed Primary School Teacher, Ruqia Begum, has been reinstated w.e.f 22/10/2015 with all back benefits as per 1996 SCMR 1185 and 2009 SCMR 1.**
  
- II. Respondents may please be directed to modify impugned order dated 28/08/2019 passed by respondent no 3 (i.e Director E&SED) and order dated 04/09/2019 passed by respondent no 5 (i.e DEO (F) Swabi) as reinstatement in service w.e.f 22/10/2015 with all back benefits instead of treating intervening period as extra ordinary leave without pay as petitioner was jobless during said period and was pursuing the remedy in the Court like Ruqia Begum.**
  
- III. Any other relief deemed fit in the circumstances of the post case and not specifically asked for may also be graciously granted.**

**OR IN ALTERNATIVE**

**It is humbly prayed in alternative that on acceptance of this writ petition, respondents no 2 & 3 may please be directed to decide the departmental appeals dated 13/03/2023 filed by the petitioner in the light of judgment dated 22/11/2022 passed by the Honorable Khyber Pakhtunkhwa Service Tribunal Peshawar in service appeal no 209/2020.**

*Attested*  
*Amjad Ali*  
ADVOCATE  
SUPREME COURT

*Attested*  
EXAMINER  
Peshawar High Court

**INTERIM RELIEF**

46

**No adverse action detrimental to the service of the petitioner be taken till final decision of the instant writ petition.**

Dated. 7/04/2023

Petitioner

Through

**Amjad Ali (Mardan)**

Advocate

Supreme Court of Pakistan

Office at Distt: Courts Mardan

**CERTIFICATE**

It is therefore certified that no writ petition has been filed earlier on the instant subject matter.

Advocate

**LIST OF BOOKS**

1. CONSTITUTION OF PAKISTAN 1973
2. OTHER AS PER NEED.

ATTESTED  
EXAMINED  
Peshawar High Court

*Amjad Ali*  
ADVOCATE  
SUPREME COURT

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**BEFORE THE PESHAWAR HIGH COURT**  
**PESHAWAR**

Writ Petition No \_\_\_\_\_ /2023

Alia Ghafoor D/O Ghafoor Gul R/O Mohallah Gojaran,  
Bazargai Tehsil Lahor District Swabi  
.....Petitioner

**VERSUS**

Govt of KPK through Secretary Elementary and  
Secondary Education, Civil Secretariate Peshawar and  
others  
..... Respondents

**AFFIDAVIT**

I, Alia Ghafoor D/O Ghafoor Gul R/O Mohallah Gojaran,  
Bazargai Tehsil Lahor District Swabi (petitioner) do solemnly  
declare and verify on oath that the contents of the accompanying  
writ petition are true and correct to the best of my knowledge and  
belief and nothing has been concealed from this Honorable Court.

*Alia\**

**Deponent**  
**CNIC: 16201-0678275-8**  
**Cell: 0315-0272494**

Identified by:  
*Amjad Ali*  
ADVOCATE  
SUPREME COURT  
**Amjad Ali (Mardan)**  
Advocate  
Supreme Court of Pakistan

*Amjad Ali*  
ADVOCATE  
SUPREME COURT

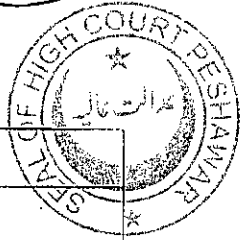
No:.....*204*.....  
Certified that the above was verified on solemnly  
affirmation before me in office, this.....*21*.....*5<sup>th</sup>*.....  
day of.....*March*.....*2007* by.....*Alia Ghafoor*.....  
s/o.....*Ghafoor Gul*.....r/o.....*Mohallah Gojaran*.....  
Who was identified by.....*Amjad Ali*.....  
Who is personally known to me.....  
*Amjad Ali*  
Oath commissioner  
Peshawar High Court, Sub-Registry, Mardan

CERTIFIED TO BE TRUE COPY  
Peshawar High Court Peshawar  
APR 2023

**PESHAWAR HIGH COURT, PESHAWAR**

**ORDER SHEET**

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Date of Order of Proceedings	Order or other Proceedings with Signature of Judge(s).
1	2
26.04.2023	<p><b><u>W.P. No.1402-P/2023 with IR</u></b></p> <p>Present: Mr. Amjad Ali, Advocate, for the petitioner.</p> <p>*****</p> <p><b><u>IJAZ ANWAR, J.</u></b> Learned counsel for the petitioner stated that similar relief, sought by the petitioner, has already been granted by the Khyber Pakhtunkhwa Service Tribunal vide judgment dated 22.11.2022 and to this effect, she has already filed a departmental appeal to respondent No.3 on 13.03.2023 which is still pending. He further stated that he will not press this petition if direction is issued to respondent No.3 for decision of the application of the petitioner in the light of the judgment of the Khyber Pakhtunkhwa Service Tribunal.</p> <p>2. In view of the above, we dispose of this writ petition and direct the respondent No.3 to decide the departmental appeal of the petitioner strictly in accordance with law and also in the light of the judgment of the Khyber Pakhtunkhwa Service Tribunal, provided that in case, the appeal of the petitioner is not decided within 90 days, the petitioner shall be at liberty to approach the Khyber Pakhtunkhwa Service Tribunal for the redressal of her grievance.</p> <p><b><u>Announced</u></b> <b>Dt:26.04.2023</b></p> <p><i>[Signature]</i> <b>JUDGE</b></p> <p><i>[Signature]</i> <b>JUDGE</b></p>

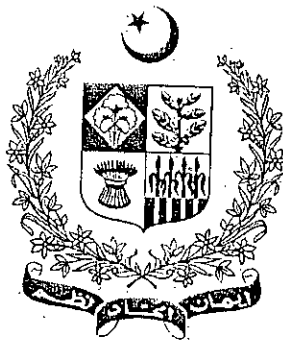
*[Signature]*  
**Amjad Ali**  
ADVOCATE  
SUPREME COURT

(Muhammadullah)\*

(DB) Hon'ble Mr. Justice Ijaz Anwar and Hon'ble Mr. Justice Syed Arshad Ali

*[Signature]*  
27 APR 2023

GOVERNMENT OF PAKISTAN  
FINANCE DIVISION



COMPILATION  
OF THE  
FUNDAMENTAL RULES  
AND  
SUPPLEMENTARY RULES  
MADE BY

The President including Orders etc.  
issued by the Federal Government, Auditor General, etc.

VOLUME I.  
UPDATED EDITION  
2018

*Amjad Ali*  
ADVOCATE  
SUPREME COURT

Handwritten notes in the top right corner: a circled 'A', a circled 'N', a circled '49', and the text 'Tax N' next to the circled 'N'.

50 (10)

*Government decision.—*

<sup>68</sup>X    X    X    X    X    X    X    X

A doubt has been raised as to whether, in the case of a Government servant who has been suspended while on leave, the subsistence grant should be calculated with reference to his leave salary or with reference to his pay. Attention in this connection is invited to F.R. 55, which prohibits grant of leave to Government servants under suspension. Such a Government servant, therefore, ceases to be on leave as soon as he is placed under suspension, and the subsistence grant in his case also has to be calculated with reference to the pay which was admissible to him on the eve of the commencement of the leave.

These orders take effect from the 1<sup>st</sup> of December, 1969.

[G.P., M.F., O.M. No.F.12(32)-R3/70, dated the 14<sup>th</sup> February, 1970.]

<sup>69</sup>[F. R. 54.—Where a Government Servant has been dismissed or removed is reinstated, the revising or appellate authority may grant to him for the period of his absence from duty:—

- (a) if he is honourably acquitted, the full pay to which he would have been entitled if he had not been dismissed or removed and, by an order to be separately recorded, any allowance of which he was in receipt prior to his dismissal or removal; or
- (b) if otherwise, such portion of such pay and allowances as the revising or appellate authority may prescribe.

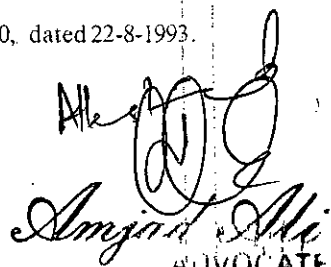
In a case falling under clause (a), the period of absence from duty will be treated as a period spent on duty.

In a case falling under clause (b), it will not be treated as a period spent on duty unless the revising or appellate authority so directs.

*Explanation:—*In this rule, "revising authority" means the "authority" or "authorised Officer" as defined in the Government Servants (Efficiency and Discipline) Rules, 1973, who passes the final order on the case and not the authority who passes an order on appeal.]

<sup>68</sup>Para omitted in terms of S.R.O.1173(1)/94 [F.1(6)R.4/93-(1)], dated 21-9-1994.

<sup>69</sup>Substituted vide S.R.O.718(1)/93, dated 2-8-1993, Gaz. of Pak., Extr., Page No.1340, dated 22-8-1993.

  
Amjad Ali  
ADVOCATE  
SUPREME COURT

[Supreme Court of Pakistan]

Before Ajmal Mian, Saibuzzaman Siddiqui and Mukhtar Ahmad Jumejo, JJ

HAMEED AKHTAR NIAZI—Appellant

versus

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

Civil Appeal No. 342 of 1987, decided on 24th April, 1988.

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

Per Ajmal Mian, J.; Saibuzzaman Siddiqui, J. agreeing—

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

---2. 8(A)—Constitution of Pakistan (1973), Art. 212(3)—Establishment Secretary's D.O. Letter No. 2/472-AV, dated 2-10-1972—Seniority—Mergers of four occupational groups of civil servants—Leave to appeal was granted to consider the questions as to whether the seniority list of 1979 was properly prepared in accordance with law and what was the effect of the reliance from the Government side in the Supreme Court in another appeal on the list of 1976; whether when preparing the list of 1979, 2. 8(A) of the Civil Servants Act, 1973 and other related provisions of law had been kept in view; whether a civil servant could be allowed to count his seniority in a post from a date earlier than the one of his actual regular continuous officiation in that post; if not whether the fact that the respondents in appeal belonged to the different civil services of Pakistan would make any difference; whether one uniform principle of seniority would apply to all members of the Secretariat Group or the officers joining the Group from different sources; Cadres would have to be treated differently; if so, whether such treatment with or without the support of statutory rules or directions would not be in contravention of the relevant provisions of Civil Servants Act, 1973 and in that context what was the effect of the abolition of C.S.P. Cadres; whether the eligibility of civil servant for appointment to a selection post conferred any right of seniority in that post and cadre without issuance of a formal promotion/appointment order in accordance with the prescribed procedure and whether in that context a civil servant belonging to ex C.S.P. Cadre was entitled to 'automatic promotion to the post of Deputy Secretary after he had completed eight years of service but without the requirement of being actually selected/promoted or appointed; and what was the effect of the Supreme Court judgment in Khizar Haider Malik and others v Muhammad Rafiq Malik and another 1987 SC MR 78 on the case.

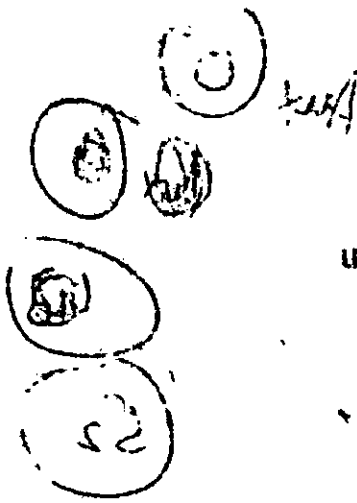
(b) Civil Servants Act, (LXXI of 1973)—

---2. 8 & 23—Seniority—Mergers of C.S.P. and P.S.P. cadres and creation of APUG—Seniority of such an officer, who was working in province or elsewhere, could not be distorted/disturbed to his detriment on account of the merger of said groups and creation of APUG and junior of such civil servant could not be made senior to him nor a junior to his junior could be made senior to him but this has to be done within the framework of the rules of re-organization of services—If the case of any civil servant does not fall within the ambit of said re-organization rules, 2. 23 of the Civil Servants Act, 1973 can be pressed into service by the President of Pakistan to obliterate the inequitable and unjust result arising out of the merger of the two cadres in respect of seniority of any of the civil servants.

ESTACODE, 1989 Edn., pp. 1014, 1026 and 1027 ref.

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

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

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Per Mukhtac Ahmad Junejo, J.---

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

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

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

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

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

**JUDGMENT**

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

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

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

dismissing the same for the reasons recorded in Appeal NO. 116(R) of 1981, filed by one M. Ramizul Haq.

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

(a) Whether the seniority list of 1979 was properly prepared in accordance with law and what is the effect of the reliance from the Government side in the Supreme Court in another appeal on the list of 1976?

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

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

(d) Whether one uniform principle of seniority will apply to all members of the Secretariat Group or the officers joining the Group from different source/cadres would have to be treated differently; if so, whether such treatment whether with or without the support of statutory rules or directions would not be in contravention of the relevant provisions of the Civil

*M. Bilal*  
ADVOCATE  
SUPREME COURT



Servants Act, 1973, and in this context what is that effect of the abolition of the C.S.P. Cadre?  
and

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

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

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

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

**"OFFICE ORDER**

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

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

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

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

6. It may be pertinent to observe that in the above appeal, besides the Federation, 14 civil servants were arrayed as respondents. It may further be observed that, in addition to the above respondents, 7 other civil servants were impleaded pursuant to an application dated 4-1-1988. Dr. Sh. Aleem Mehmood was impleaded as a respondent (respondent No. 23 in the present appeal) on his own application, whereas the applications of Muhammad Aslam and

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*Hameed Akhtar*

*Amjad Ali*  
ADVOCATE  
SUPREME COURT

Tariq Junejo for being impleaded, remained pending till today: However, they were heard. One, Malik Zahoor Akhtar, has also appeared though he had not filed any application for getting himself impleaded in the aforesaid appeal.

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

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

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

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

"It appears that the question of seniority was not examined when persons not being Members of the Service were appointed to APU J with the approval of the President vide Notification No.1/1/73-ARC, dated 14-9-1973. Nevertheless, the seniority lists were prepared of the Deputy Secretaries and Joint Secretaries, etc. and they included only those officers of the former C.S.P. who at the relevant time were serving against these posts. At that time, the Rule for appointment of the Deputy Secretaries was that a C.S.P. Officer who had completed 8 years' service could be appointed as Deputy Secretary. No doubt, subsequently by Office Memo. No.3/7/74-AR.II, dated the 20th May, 1974, 12 years period was provided for Grade-19 and for horizontal movement of Grade-18 Officers to the post of Deputy Secretary vide para. 3 of Office Memo. No. 2/2/75-ARC, dated 21-2-1975, but this deviation in the length of service is immaterial as far as C.S.P. Officers are concerned. Their names already existed as Members of C.S.P. and subsequently of APUG. Their seniority was to be changed in accordance with some principle and not by making any, rule affecting their vested right. All Rules made under the Civil Servants Act or the Civil Servants Ordinance have to be construed with prospective operation and not with retrospective operation. All those Rules which affect the former Officers of the C.S.P. have to be applied for the situations existing after the enactment of the Civil Servants Ordinance, 1973, and the Rules made thereunder. The seniority of the C.S.P. Officers in APUG could not, therefore, be distorted. Any seniority to which a Member of the Cadre was entitled before the constitution of Secretariat Group, could not be affected by the provisions of section 8(4) of the Civil Servants Act, 1973. In other words, the seniority of such, a person cannot be destroyed by any subsequent change in the principles of seniority. By making a provision in the relevant Officer Memorandum that seniority shall count from the date when an officer becomes Deputy Secretary or is promoted to Grade-19, whichever is earlier, the distortion in the seniority of other Federal Services was removed, but in case of C.S.P. Officers this formula could not work as there was no scale comparable to Grade-19 (Junior Administrative Grade) and the C.S.P. Officers used to be promoted to the Joint Secretary's grade from Senior C.S.P. Scale which is comparable with Grade-18, and the post of Deputy Secretary was never a promotion post in the cadre. Thus, in our opinion, if after the coming into force of the Civil Servants Act, an officer of former C.S.P. who was senior to his colleagues working as Deputy Secretary in the Secretariat, but an officer who was working, in the Province or elsewhere would, when brought to the Secretariat later, retain his seniority vis-a-vis his own colleagues. In other words, if an officer of the former C.S.P. is appointed as Deputy Secretary in the Secretariat Sub-Group, within APUG, he would count his seniority

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Anjad Ali  
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from the date he completes 8 years of service if any of his colleagues junior to him had already been promoted. It is this principle, which the Establishment Division has applied and we think that this is a proper course by which the distortion in the seniority can be removed."

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

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Amjad Ali  
ADVOCATE  
SUPREME COURT

"Sl. No. 17:

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

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

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

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

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

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

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

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

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

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

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

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

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

13. The Tribunal has not taken into consideration that above relevant provisions of the ESTACODE while dilating upon the controversy in issue. It should have decided, whether the respondents had exercised the options in terms of aforesaid para. 4 of the above ESTACODE at page 1014, by 31-10-1975 and whether the seniority list was prepared as per aforequoted para. 8 of the ESTACODE, i.e. from the date of continuous regular officiation as Deputy Secretary or in a post in Grade-19, whichever is earlier.

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

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

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

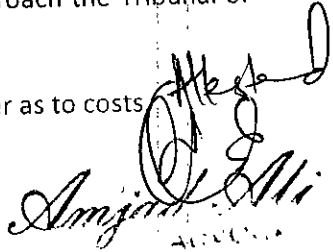
17. The above appeal stands disposed of in the above terms, with no order as to costs.

(Sd.)

Ajmal Mian, J.

(Sd.)

Saiduzzaman Siddiqui, J.

  
AMJAD ALI  
SUPREME COURT

**MUKHATAR AHMAD JUNEJO, J.**--My learned brother Ajmal Mian, J. was kind enough to send me draft of the judgment proposed to be delivered by him in Civil Appeal No.345 of 1987 (Hameed Akhtar Niazi v. The Secretary, Establishment Division, Government of Pakistan etc.)

With due respects to my learned brother, I am unable to agree with him that this matter be remanded to the Federal Service Tribunal with some directions including the direction to re-decide the case.

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

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

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

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

(Sd.)

Mukhtar Ahmad Junejo, J.

#### ORDER OF THE COURT

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

(Sd.)

Ajmal Mian, J.

(Sd.)


Saiduzzaman Siddiqui, J.

(Sd.)

Mukhtar Ahmad Junejo, J.

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

Appeal allowed

  
Ajmal Mian  
ADVOCATE  
SUPREME COURT

[Supreme Court of Pakistan]

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

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

Versus

SAMEENA PARVEEN and others----Respondents

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

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

Civil service---

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

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

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

AGG (10)

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Aux P

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*Amjad Ali*  
ADVOCATE  
SUPREME COURT

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

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

Nemo for other Respondents.

*Mst. Ali*  
*Amjad Ali*  
ADVOCATE  
SUPREME COURT

#### ORDER

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

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

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

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

in Civil Petition No.1960-L of 2006 vide judgment, dated 2-11-2006. On 26-9-2007 once again the services of respondents were terminated. Feeling aggrieved they filed above mentioned petitions before the learned Lahore High Court, Lahore which were allowed vide impugned judgment as stated above.

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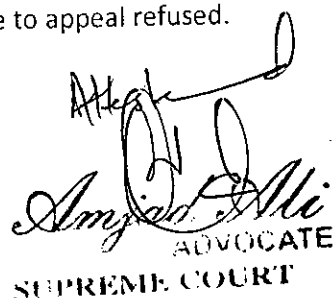
3. It is mainly contended by learned A.A.-G. Punjab appearing on behalf of petitioners that the jurisdiction of the learned High Court is barred under Article 212 of the Constitution of Islamic Republic of Pakistan, 1973 in matters involving determination of terms and conditions of civil servants. She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

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

5. We have considered the arguments of both the parties and have gone through the record and proceedings of the case in minute particulars. The matter has already been decided by this Court in the case of Mst. Naseem Akhtar (supra), and it has been held that the appointment orders of the respondents as PTC Teachers were genuine. It was held by this Court in the case of Hameed Akhtar Niazi v. The Secretary, Establishment Division, Government of Pakistan and others 1996 SCMR 1185 that if a Tribunal or this Court decides a point of law relating to the terms and conditions of a civil servant who litigated, and there were other civil servants, who may not have taken any legal proceedings, in such a case, the dictates of justice and rule of good governance demand that the benefit of the said decision be extended to other civil servants also, who may not be parties to that litigation instead of compelling them to approach the Tribunal or any other legal forum. This view was reiterated by this Court in the case of Tara Chand and others v. Karachi Water and Sewerage Board, Karachi and others 2005 SCMR 499 and it was held that according to Article 25 of the Constitution of Islamic Republic of Pakistan, 1973 all citizens are equal before law and entitled to equal protection of law.

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

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

  
Amjad Ali  
ADVOCATE  
SUPREME COURT

Petitions dismissed



[Supreme Court of Pakistan]

Before Falak Sher and Ch. Ijaz Ahmed, JJ

MUHAMMAD HUSSAIN and others---Petitioners

Versus

E.D.O. (EDUCATION) and others---Respondents

C.P.L.As. Nos.1348-L to 1355-L of 2006, decided on 8th March, 2007.

(On appeal from the judgment/order dated 25-5-2006 passed by the Lahore High Court, Lahore in Appeals Nos.1736 to 1743 of 2004).

(a) Punjab Civil Servants (Efficiency and Disciplinary) Rules, 1999---

---Rr. 3(b) & 4(1)(b)(iii)---Punjab Service Tribunals Act (IX of 1974), S.4---Appeal---Misconduct, charge of---Compulsory retirement, penalty of---Civil servant not found guilty of charge during several inquiries---Reinstatement in service, but refusal of Service Tribunal to grant back-benefits to civil servant---Validity---Authority had not denied plea of civil servant raised in appeal as to non-remaining gainfully employed during relevant period---Civil servant had not been found gainfully employed anywhere during relevant period---Depriving civil servant from back-benefits for the period for which he remained out of job without any fault of his, would be unjust and harsh---Tribunal had decided controversy between parties without judicial application of mind---Impugned judgment was not sustainable in eyes of law---Supreme Court accepted appeal of civil servant.

Mansoor-ul-Haq's case 2004 SCMR 1308; Sher Muhammad Shahzad's case 2006 SCMR 421; Binyamin Masih's case 2005 SCMR 1032; Mehmood Ahmad Butt's case 2002 SCMR 1064 and Mrs. A.V. Issac's case PLD 1970 SC 415 rel.

(b) Civil service---

---Reinstatement in service---Back-benefits, grant of---Principle stated.

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*Amjad Ali*  
SOLICITATOR  
SUPREME COURT

Grant of service back-benefits to an employee, who has been illegally kept away from employment is the rule and denial of such benefits to such a reinstated employee is an exception on the proof of such a person having remained gainfully employed during such a period.

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Mansoor-ul-Haq's case 2004 SCMR 1308; Sher Muhammad Shahzad's case 2006 SCMR 421; Binyamin Masih's case 2005 SCMR 1032; Mehmood Ahmad Butt's case 2002 SCMR 1064 and Mrs. A.V. Issac's case PLD 1970 SC 415 rel.

**(c) Precedent---**

---Each and every case would be decided on its own peculiar circumstances and facts.

Muhammad Saleem's case 1994 SCMR 2213 rel.

*Amjad Ali*  
ADVOCATE  
SUPREME COURT

**(d) Punjab Service Tribunals Act (IX of 1974)---**

---S. 4---Civil Procedure Code (V of 1908), Preamble---Appeal---Tribunal would be deemed to be civil court, thus, could take benefit of principles of C.P.C. while deciding appeal---Principles.

**(e) Appeal (Civil)---**

---Evasive reply to averments made in appeal would not be considered denial in law.

Sardar Muhammad Arshad Khan's case 1998 PLC (C.S.) 217; Ali Muhammad's case 1994 CLC 173 and National Bank of Pakistan's case 1996 CLC 79 rel.

**(f) Punjab Service Tribunals Act (IX of 1974)---**

---Ss. 4 & 5(2)---Constitution of Pakistan (1973), Art.4---Appeal---Duty of Tribunal to decide controversy between parties after judicial application of mind.

Gouranga Mohan Sikdar's case. PLD 1970 SC 158; Mollah Ejahar Ali's case PLD 1970 SC 173 and Messrs Airport Support Service's case 1998 SCMR 2268 rel.

Ghulam Nabi Bhatti, Advocate Supreme Court for Petitioners (in all petitions.)

Akhtar Ali Kureshi, A.A.-G. Pb., M. Gaiz-ud-Din, Acting D.E.O., MEE, Faisalabad for Respondents  
(in all petitions).

Date of hearing; 8th March, 2007.

## JUDGMENT

*Akhtar Ali*  
*Akhtar Ali*  
ADVOCATE  
SUPREME COURT

**CH. IJAZ AHMED, J.**---We intend to decide the captioned petitions by one consolidated judgment having similar facts and law arising out of the same common impugned judgment, dated 25-5-2006 wherein the orders of the respondents dated 30-3-2004 were upheld.

2. Detailed facts have already been mentioned in the impugned judgment. However, necessary facts out of which the present petitions arise are that petitioners were appointed as PTC Teachers. The competent authority had initiated disciplinary proceedings against the petitioners and finally the competent authority awarded major punishment of compulsorily retirements to the petitioners. Petitioners challenged the orders of their compulsorily retirements by filing representations before the respondents, approaching the learned High Court wherein learned High Court directed the respondents to reinstate them. Respondents were allowed to initiate fresh inquiry proceedings against the petitioners. Respondents reinstated them without back-benefits vide order, dated 30-3-2004 after conducting fresh inquiry in view of the recommendations of the Enquiry Officer. Petitioners being aggrieved filed representations before the competent authority against the said order. The respondents failed to decide their representations. Petitioners filed appeals before the Service Tribunal which were dismissed vide consolidated judgment dated 4-5-2005 as time-barred. Petitioners being aggrieved filed C.Ps. 1186 to 1193-L of 2005 which were converted into appeals and allowed. The impugned consolidated judgment, dated 4-5-2005 was set aside. The appeals filed by the petitioners are pending before the Punjab Service Tribunal. The learned Service Tribunal after remand dismissed their appeals vide impugned judgment, dated 25-5-2006. Hence, these petitions.

3. The learned counsel for the petitioners submits as under:

"Grudging against refusal of the back-benefits, consequent upon reinstatement in service by the Punjab Service Tribunal inherently for the reason that the factum of having not remained gainfully employed during the interregnum has remained unspelt out in the memo. of appeal, captioned petitions have been re-coursed contending that the same was specifically asserted in para.15 thereof, which has escaped notice of the Tribunal."

4. The said petitions were fixed before this Court on 2-11-2008. In view of aforesaid contents of the learned counsel for the petitioners, notice was sent to the respondents. Thereafter the petitions were fixed before this Court on 2-3-2007 which were adjourned on the request of Law Officer who sought adjournment to secure instructions from the department which was allowed and office was directed to re-list the petitions in the next week with a right to the parties to supplement the record with further documents if they deem appropriate. It is treatment to mention here that both the parties have not supplemented their petition with further documents.

5. The learned Law Officer has supported the impugned judgment. He maintains that learned Justice Tribunal was justified to dismiss the appeals as the petitioners had not attached documents with their appeals to who that they were out of job. In support of his contention he relied upon Mr. Anwar-ul-Haq's case 2004 SCMR 1308.

6. We have considered the submissions made by learned counsel for the parties and have perused the record. It is better and appropriate to reproduce order of reinstatement of the petitioners para 12 of the appeal before the Service Tribunal to resolve the controversy between the parties.

"Consequent upon the recommendation of the Enquiry Officer in enquiry against them ordered to be conducted under the E&D Rules, 1999, the following PTC Teachers are hereby reinstated with effect from the dates as mentioned against each:-

Sl. No.	Name with parentage and designation.	Date of reinstatement
1.	Basfar Ahmed son of Ghulam Muhammad Ex-CP2-176B-12-2003 GB Now PTC 176 GB	
2.	Abdul Majeed son of Rustam Ali Ex PTC, CP2 38 GB 17-2-2004 Now PTC, CP2 40 GB	
3.	Mukhtar Ahmad son of Shah Muhammad, Ex-PTC-1-2004 GI-2417GB now PTC CP2 417 GB	
4.	Rashid Ahmad son of Lal Din, Ex PTC CP2 174 GB, 1-2-2004 Now PTC CP2 174 GB	
5.	Muhammad Hussain son of Abdul Sattar, Ex PTC CP2 17-2-2004 165 GB Now CP2 166 GB	
6.	Eulidar Ali son of Shah Muhammad, Ex CP2 418 GB-12-2003 Now PTC CP2 418 GB	
7.	Arbab Ali son of Muhammad Shah Ex PTC CP2 455 GB 13-3-2004 Now PTC CP2 456 GB	
8.	Muhammad Hussain son of Ghulam Din Ex PTC CP2 413-1-2004 GB Now PTC CP2 413 GB	
9.	Basfar Ali son of Shah Muhammad Ex PTC CP2 417-3-2004	

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	GB Now PTC GPS417GB	
10.	Akbar Ali son of Muhammad Shafi, Ex PTC GPS 427 GB Now PTC GPS 427 GB	13-3-2004

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The intervening period from the date of imposition of penalty i.e. compulsory retirement to date of reinstatement will be considered on leave of the kind due to them under Revised Leave Rules, 1981. However, the break in service for the period of EOL, if fallen in respect of any above said teacher, is hereby condoned as provided in letter No. SOR (S&GAD) 16-15/90 dated 17-5-1990."

(It is pertinent to mention here that Bashir Ahmad at serial No.1 and Akbar Ali at serial No.10 are not before this-Court.)

Para.15 of the appeal before Service Tribunal

*Amjad Ali*  
ADVOCATE  
SUPREME COURT

"That the appellant has been jobless during this period."

7. Mere reading of the order of the reinstatement of the petitioners clearly shows that petitioners were not found guilty of any misconduct and charges against them were not proved. The detailed litigation and facts are noted by the Service Tribunal in paragraphs 2 to 5 which depict that petitioners were not found guilty in spite of various inquiries conducted against them by the respondents. It is pertinent to mention here that fresh inquiry was ordered into appointments of the petitioners as the appointments of the petitioners were declared genuine by the new Inquiry officer and petitioners were reinstated. This fact was not considered in its true perspective by the learned Service Tribunal in para. 6 of the impugned judgment. It is an admitted fact that there is nothing on record that the petitioners were gainfully employed anywhere during the relevant period and this fact was also not considered by the learned Service Tribunal in para. 6 of the impugned judgment. Therefore, it would be very unjust and harsh to deprive the petitioners of back-benefits for the period for which they remained out of job without any fault from their side. It is a settled law that back-benefits in such situation cannot be withheld by the respondents or by the learned Service Tribunal. It is a settled law that grant of service back-benefits to an employee who had been illegally kept away from employment was the rule and denial of such benefits to such a reinstated employee was an exception on the proof of such a person having remained gainfully employed during such a period. There are various pronouncements of this Court qua aforesaid proposition of law. See Sher Muhammad Shahzad's case 2006 SCMR 421, Binyamin Masih's case 2005 SCMR 1032, Mehmood Ahmad Butt's case 2002 SCMR 1064, Mrs. A.V. Issac's case PLD 1970 SC 415. The learned Service Tribunal has refused back-benefits to the petitioners in view of law laid down by this Court in Mansoor-ul-Haq's case 2004 SCMR 1308 which is distinguished on facts and law wherein PIDC vide order dated 23-6-1986 terminated Mansoor-ul-Haq's lien by stating that the same will be maintained by PACO, a borrowing organization and not in the PIDC and the said proposal was accepted by the PACO, therefore, the judgment relied by the Law Officer and learned Service Tribunal is distinguished on facts and law. It is a settled law that each and every case is to be decided on its own peculiar circumstances and facts as law laid down by this Court Muhammad Saleem's case 1994 SCMR 2213. The respondents were allowed vide order, dated 2-3-2007 to supplement the petitions with

further documents. As mentioned above, respondents had not supplemented the petitions. The assertions laid down by the petitioners in their appeals in para.15 were not denied by the respondents specifically as depicted from para.5 of the impugned judgment. The Service Tribunal is deemed to be Civil Court and shall have the same powers as are vested in such Court under the Code of Civil Procedure including the following powers in view of section 5(2) of Punjab Service Tribunals Act, 1974:--

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(a) Enforcing the attendance of any person and examining him on oath.

(b) Compelling the production of documents, and

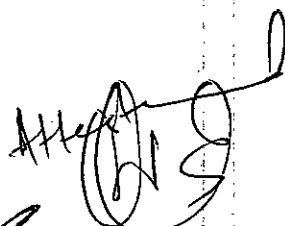
(c) Issuing commission for the examination of witnesses and documents.

8. The aforesaid provision clearly shows that C.P.C. is not applicable in stricto sensu. However, at the time of deciding the appeals, the learned Service Tribunal may take benefit of principles of C.P.C. As mentioned above the petitioners had taken definite stand in their appeals vide para.15 but the respondents failed to deny the same. It is a settled law that even evasive reply to averment made in the appeal by the respondents would not be considered denial in law. See Sardar Muhammad Arshad Khan's case 1998 PLC (C.S.) 217, Ali Muhammad's case 1994 CLC 173 and National Bank of Pakistan's case 1996 CLC 79. It is a settled law that learned Service Tribunal is duty bound to decide the controversy between the parties after judicial application of mind in view of Article 4 read with 5(2) of the Constitution and law laid down by this Court in Gouranga Mohan Sikdar's case PLD 1970 SC 158, Mollah Ejahar Ali's case PLD 1970 SC 173 and Messrs Airport Support Services's case 1998 SCMR 2268. The learned Service Tribunal has decided the controversy between the parties without judicial application of mind and even without perusing the para.15 of the appeals of the petitioners, therefore, impugned judgment is not sustainable in the eyes of law as the same was decided by the learned Service Tribunal in violation of the law laid down by this Court in various pronouncements as mentioned above.

9. For what has been discussed above, these petitions are converted into appeals and are allowed with no order as to costs.

S.A.K./M-29/SC

Appeals accepted.

  
Amjad Ali  
ADVOCATE  
SUPREME COURT

2015 S C M R 77

[Supreme Court of Pakistan]

Present: Iftikhar Muhammad Chaudhry, C.J., Tassaduq Hussain Jilani, Amir Hani Muslim,  
Gulzar Ahmed and Sh. Azmat Saeed, JJ

INSPECTOR-GENERAL OF POLICE, PUNJAB---Appellant

Versus

TARIQ MAHMOOD---Respondent

Civil Appeal No. 52 of 2012, decided on 25th April, 2013.

(On appeal from the judgment dated 20-10-2011 of the Punjab Service Tribunal, Lahore  
passed in Appeal No.3039 of 2010)

Civil Service Rules (Punjab)---

---R. 7.3---Fundamental Rules, R. 54---Reinstatement in service---Back benefits, entitlement to--- Payment of back benefits on reinstatement in service---Scope---Police official was dismissed from service due to registration of F.I.R. and civil suit filed against him---Police official filed revision petition before the Inspector General of Police, which was kept pending till the decision of F.I.R. case and civil suit by the court---Subsequently police official was acquitted from the F.I.R. case and as a result his revision petition was allowed and he was reinstated in service---Service Tribunal allowed payment of back benefits to the police official for the period during which he remained out of service---Validity---Grant of back benefits to an employee who was reinstated by a Court/Tribunal or the department was a rule and denial of such benefits was an exception on the proof that such person had remained gainfully employed during such period---Entitlement of back benefits of a person had to be determined on the basis of facts of each case independently---Police official could not be held responsible for the period during which his revision petition was kept pending due to the F.I.R. and civil suit, because such pendency was on account of the act of the police department---Revision petition filed by police official was kept pending till the decision of the criminal as well as civil case, which had no relevance because unless he had been found guilty by the Court, he was not debarred from performing his duty---Police official was entitled to back benefits, as it was the police department, which on basis of a wrong opinion kept him away from performing his duty---Police official was entitled to back benefits from the date of filing revision petition till his reinstatement in service---Appeal was dismissed accordingly.

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Signature of Amjad Ali  
ADVOCATE  
SUPREME COURT

Muhammad Hussain and others v. EDO (Education) and others 2007 SCMR 855; Federation of Pakistan through Secretary, Ministry of Education and others v. Naheed Naushahi 2010 SCMR 11; Sher Muhammad Shahzad v. District Health Officer 2006 SCMR 421; Binyamin Masih v. Government of Punjab through Secretary Education, Lahore 2005 SCMR 1032; General Manager/Circle Executive Muslim Commercial Bank Limited v. Mehmood Ahmed Butt 2002 SCMR 1064; Pakistan through General Manager, P.W.R., v. Mrs. A.V. Issacs PLD 1970 SC 415; Muhammad Bashir v. Secretary to the Government of Pakistan 1994 SCMR 1801 and Trustees of the Port of Karachi v. Muhammad Saleem 1994 SCMR 2213 ref.

Jawwad Hassan, Additional A.-G. for Appellant.

Aftab Alam, Advocate Supreme Court for Respondent.

Date of hearing: 25th April, 2013.

*Aftab Alam*  
*Amjad Ali*  
ADVOCATE  
SUPREME COURT

#### JUDGMENT

**IFTIKHAR MUHAMMAD CHAUDHRY, C.J.**---Leave to appeal has been granted by this Court vide order dated 1st March, 2012, to examine the following question:--

"Inter alia contends that the learned Service Tribunal could not have exercised discretion to modify the quantum of punishment. Relies on IG (Prisons) N.-W.F.P., etc. v. Syed Jaffar Shah (2009 PLC (C.S.) 47). Leave is granted inter alia to consider the issue raised.

2. On 13th March, 2012, the learned Bench, seized of the matter, was required to examine the provisions of rule 7.3 of the Civil Service Rules (Punjab) in the context of the payment of the entire back benefits for a period of 17 years, 8 months and 29 days during which the respondent stood removed from service and in this behalf, two judgments, titled as Muhammad Hussain and others v. EDO (Education) and others (2007 SCMR 855) and Federation of Pakistan through Secretary Ministry of Education and others v. Naheed Naushahi, (2010 SCMR 11) were cited. The learned Bench noted that some principles had been laid down in both the above-mentioned judgments but not in a definite way, particularly, when examined in the light of the circumstances of this case, therefore, it was considered appropriate that a rule be enunciated, after considering all the relevant aspects, arising in this and similar cases with further observation that it be placed before a Bench of five learned Judges of this Court for resolving the conflicting judgments.

3. A brief account of the facts of the instant case is that upon a written complaint submitted by one Mst. Sakina Bibi through her husband, a case was registered against the respondent, Constable Tariq Mehmood (No.7607) and others, vide F.I.R. No.52/1992 under sections 109/419/420/468/471, P.P.C. at Police Station Lower Mall, Lahore. Due to registration of the criminal case he was placed under suspension on 6-7-1992 w.e.f. 29-6-1992. Incidentally, the respondent had also been found absent from duty for a period of three



months and 26 days w.e.f. 29-6-1992 to 28-7-1992 and 30-8-1992 up till the passing of order dated 26-11-1992, when in pursuance of departmental proceedings, he was dismissed from service under Punjab Police Rules, 1975. Against the order of dismissal from service, respondent preferred an appeal which was dismissed on 21-4-1993.

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4. The respondent had been facing trial before the learned Magistrate in pursuance of the above-referred F.I.R. In the meanwhile, he also filed a Revision Petition before the Inspector General of Police. Revision petition so filed by him was entertained but it was kept pending till the decision of the case arising out of the F.I.R. noted hereinabove, as well as adjudication of a civil suit. It may also be noted that in respect of the same subject matter, a civil suit was also pending in which the respondent was not a party. However, in the criminal case noted hereinabove, the respondent was ultimately acquitted from the criminal charge by the learned Magistrate Section-30, Lahore vide order dated 1-3-2010 not on merits but while disposing of application under section 249-A, Cr.P.C.

*Anjan Ali*  
ADVOCATE  
SUPREME COURT

5. It may be observed that this Court in the case of Dr. Muhammad Islam v. Govt. of N.-W.F.P. through Secondary Food, Agriculture Live Stock and Cooperative Department Peshawar and 2 others (1998 SCMR 1993) had declared that all acquittals are certainly honourable. There can be no acquittal which may be said to be dis-honourable and the law has not drawn any distinction between these two types of acquittals. Thus, after recording of acquittal, the revision petition so preferred by him was allowed on 13-8-2010. The relevant paras therefrom are reproduced herein below:--

"This order shall dispose of a revision petition preferred by Ex-Constable Tariq Mehmood No.7607 of Lahore district against the punishment of "dismissal from service" awarded by the SP Headquarters, Lahore vide order No. 5575-80/ST, dated 26-11-1992 on the charge of his involvement in case F.I.R. No.52/92 under sections 419/420/468/471, P.P.C., Police Station Lower Mall, Lahore and absence from duty for a period of about 4 months. His appeal was rejected by the appellate authority vide order No.16150-51/AC, dated 21-4-1993.

(2) The undersigned has gone through the revision petition, parawise comments thereon offered by the punishing as well as appellate authorities and other relevant papers minutely. The petitioner has also been heard in person in the Orderly Room on 11-5-2010.

(3) Upon perusal of the case file it has transpired that on receipt of instant appeal the case was referred to AIG Legal for opinion as the criminal case is under trial who opined that the innocence of the appellant can not be established prior to the decision of the criminal case, which will be however, decided by the court after the disposal of civil suit, In the light of legal opinion the then competent authority directed on 13-2-1994 to pend the case till the decision of the court."

(4) The petitioner in his revision petition as well as during the course of personal hearing denied the allegations levelled against him and stated that he was falsely implicated in the above said criminal case. During personal appearance he has adduced a copy of order dated 1-3-2010 by Magistrate Section-30, Lahore, vide which he has been acquitted in case F.I.R.

No.52/92 under sections 419/420/468/471, P.P.C., Police Station Lower Mall, Lahore under section 249-A, Cr.P.C. When asked about his absence from duty, the petitioner stated that he remained absent due to registration of said criminal (case) against him. Now the case has been decided by the competent court of law and there is no reason to keep it pending further.

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(5) In the light of his acquittal in the criminal case, a lenient view is taken. The petitioner is reinstated in service with immediate effect and the period of absence/out of service will be treated as leave without pay. No emolument will be paid to him for the period of his absence/out of service."

6. In the opinion of the AIG, back benefits of the period during which the respondent could not join his service could not be established because of the pendency of the decision of the criminal case, which was to be decided by the Court after disposal of the civil suit case to determine the innocence of the respondent. We may observe, at this stage, that this opinion was against the law because the proposition of the law is that a person is innocent unless he is proven guilty by a competent Court of law. Reference may be made to the case of MUHAMMAD ASGHAR alias NANNAH v. State (2010 SCMR 1706).

Heard

M. I. Ali  
ADVOCATE  
SUPREME COURT

However, for the redressal of his grievance in respect of grant of back benefits, he approached the Service Tribunal and succeeded in getting the back benefits as prayed for vide impugned judgment dated 20-10-2011. Concluding para therefrom is reproduced herein below:--

"5. The departmental view that according to rule 7.3 of CSR it is discretion of the competent authority to treat the period of absence either on duty or otherwise. But the discretion has to be used judiciously. After acquittal in the criminal case and his reinstatement by the departmental authority there is no justification for depriving him of the benefits of the period that he remained out of service. Appeal is, therefore, accepted and the impugned orders are set aside. He be paid benefits of the period that he remained out of service."

7. The learned Additional Advocate-General, Punjab, in support of his arguments stated that as this Court in the, judgment reported as Naheed Naushahi (Supra) had observed that the question of grant of back benefits in terms of monetary benefits has to be decided by the Department keeping in view the facts whether civil servant had been engaged in any job during the period when he was subjected to departmental proceedings or otherwise. Therefore, the Tribunal could not have passed an order in his favour without determining this aspect of the case. Reliance has also been placed by him on the case of Muhammad Bashir v. Secretary to the Government of the Punjab, Education Department, Lahore and 2 others (1994 SCMR 1801).

Whereas on the other hand in the case of Muhammad Hussain (ibid) it has been held that grant of service back-benefits to an employee who had been illegally kept away from employment was the rule and denial of such benefits to such a reinstated employee was an exception on the proof of such a person having remained gainfully employed during such a

period. Therefore, he prayed that under Rule 7.3 of CSR, Service Tribunal may have not allowed him back benefits in view of the judgment which has been relied upon.

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8. Learned counsel for the respondent stated that in view of the facts and circumstances of the case, Service Tribunal had given relief which is in accordance with the law laid down in the case of Muhammad Hussain (ibid).

9. We have carefully examined arguments put forward by both the learned counsel for the parties. It would be appropriate to note that a Full Bench of this Court in the case of Muhammad Bashir (ibid), while taking into consideration facts of the case, namely, the appellant therein was compulsorily retired on 26-6-1986 after completing 25 years of service under section 12(ii) of Punjab Civil Servants Act, 1974. After having failed to get his grievance redressed from the departmental authorities, he challenged the order of his retirement before Punjab Service Tribunal on two grounds, firstly, that he had not completed 25 years' service qualifying for pension and secondly, that the order of reinstatement had not been made in accordance with public interest. The Tribunal did not attend to the first ground but allowed appeal on the ground that the record of appellant was satisfactory and good. The Tribunal also held that the intervening period during which he remained out of service would be treated as leave without pay and on having taken into consideration section 16 of Punjab Civil Servants Act, 1974 read with FR 54 held as under:--

*Heard*  
*Amjad Ali*  
 ADVOCATE  
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"In the present case clause (b) would attract. The Committee shall also take into consideration whether a civil servant has earned any amount by way of salary or as profit on account of his having accepted some employment or been engaged in some profitable business during the intervening period. Similarly, according to proviso (ii) of section 16 of the Punjab Civil Servants Act, 1974, where an order of removal of a civil servant has been set aside, he shall be entitled to such arrears of pay as the authority setting aside the order may determine, In the instant case, the Tribunal has not allowed the arrears of pay without assigning any reason. The learned counsel appearing on behalf of the respondents has referred to comments of the Punjab Service Tribunal, which state as under:--

"While hearing the case the appellant Muhammad Bashir had given his comment to forego arrears in case of his re-instatement in service. Consequently in the last para. of the judgment dated 28-3-1992 it is observed that the intervening period during which the appellant remained out of service shall be treated as leave without pay."

At this stage it would be appropriate to place in juxtaposition FR 54 and CSR 7.3 as under:--

F.R. 54	7.3 Civil Service Rules (Punjab)
When the suspension of a Government servant is held to have been unjustifiable or not wholly justifiable; or when a Government servant who has been dismissed, removed or suspended is reinstated, the revising or appellate authority may grant to him for the	When a Government Servant who has been dismissed or removed from service, is reinstated, the revising or appellate authority may grant to him for the period of his absence from duty:

period of his absence from duty...

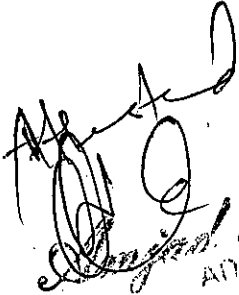
(a) if he is honourably acquitted, the full pay to which he would have been entitled if he had not been dismissed, removed or suspended and, by an order to be separately recorded any allowance of which he was in receipt prior to his dismissal, removal or suspension; and

(b) if otherwise, such proportion of such pay and allowances as the revising or appellate authority may prescribe. It further provides that in a case falling under clause (a), the period of absence from duty will be treated as a period spent on duty.

In a case falling under clause (b) it will not be treated as a period spent on duty unless the revising or appellate authority so directs. Provided that the amount of arrears payable to the government servants concerned, whether he is re-instated as a result of a Court judgment or acceptance of his appeal by the departmental authority, shall be reduced by the amount earned by way of salary or as profit on account of his having accepted some employment or been engaged in some profitable business during the period he remained dismissed, removed or suspended, and for the determination of the said amount a committee shall be constituted consisting of two officers of the Administrative Division and a representative of the Finance Division.

(a) "if he is honourably acquitted, the full pay to which he would have been entitled if he had not been dismissed or removed and by an order to be separately recorded and allowances of which he was in receipt prior to his dismissal or removal; or

(b) "if otherwise, such proportion of such pay and allowances as the revising or appellate authority may prescribe". In a case falling under clause (a), the period of absence from duty will be treated as a period spent on duty. In a case falling under Clause (b), it will not be treated as a period spent on duty unless the revising or appellate authority so directs.

  
ADVOCATE  
SUPREME COURT

In the provisions quoted above, one thing is common namely that on re-instatement either by Court order or by the departmental authority, after acceptance of appeal, the employee would be entitled to back benefits, if it is established that he had not been engaged gainfully during the period when he was out of job.

10. There is yet another provision on this subject i.e. Sl.No.155, Vol-II, Esta Code, 2007 Edition, the contents whereof are reproduced hereinbelow:--

Reinstatement of Government Servants on Court decision and Functions of Enquiry Committee.

A. reference is invited to the O.M from the Law Division No.F.7(8)-70-Sol(1), dated 12th August, 1970 (SL No.154), which states, inter alias; that, in accordance with the Supreme Court's judgment in C.A. No.28 of 1969 (West Pakistan v. Mrs. A. V. Issacs), if the dismissal of a government servant is held to be unlawful, he has to be allowed salary for the period he was kept out of service, reduced by the amount, if any, that he might have earned by way of salary, or as profits, on account of having accepted some employment, or having been engaged in some profitable business, during the above period. Thus, the legal status of Governments' claims for arrears of pay and allowances is no longer the same as had been indicated in para.3 of this Ministry's Circular D.O. No.F.9(15)-RI (Rwp.)/61 dated 23rd December, 1961 (Annex). Consequently, it is no longer appropriate for the enquiry committee referred to in para.4 of that circular D.O. to consider on merits, in cases in which government servants are restored to their posts as a result of Court's decisions, as to whether or not, and not to what extent, pay and allowance for the period of their absence from duty should be restored.

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(2) It has accordingly been decided that, in cases where a government servant is reinstated retrospectively as a result of a Court's decision, the functions of the enquiry committee to be set up under para.4 of this Ministry's Circular D.O.No.F.9(15)-RI(RHT)/61 dated 23rd December, 1961 (Annex) would henceforth be as follows:-

(a) The Ministry/Division/Department, as the case may be, may obtain from the government servant concerned, a solemn declaration, supported by an affidavit, as to the particulars of his employment, or engagement in profitable business, during the period of his absence from duty, and the amount earned by him by way of salary from such employment, or as profits in such business.

(b) After examining such evidence as might be available, and cross-examining, if necessary, the government servant, the Ministry/ Division/Department, as the case may be, may give their findings as to whether or not the above declaration is, 'prima facie' acceptable and on what grounds.

(c) If the declaration is found to be, 'prima facie' unacceptable, the Ministry/Division/Department, as the case may be, should refer the case to the committee, which, before giving their finding as to the amount earned by the government servant during the period of absence from duty, may get the declaration properly verified/scrutinized by any agency they consider appropriate. For example, if the case had been dealt with by the Special Police Establishment at any earlier stage in any connection, this verification/scrutiny may be arranged to be carried out by that Establishment. For purpose of this verification/scrutiny, assistance of the relevant Income-tax authorities may also be sought, if the government servant concerned be an Income-tax payer.

(d) In case the reinstatement of the government servant has been ordered by the Court on account of the relevant administrative action having been found to be defective, the committee should also give their findings:

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ADVOCATE  
SUPREME COURT

(i) As to which officers were responsible for that defectiveness of an administrative action;  
and

(ii) As to whether any, and what part, of the amount payable to the government servant by way of net salary for the period of his absence from duty, might justifiably be recovered from such officers. The recovery from such officers will, of course, follow departmental proceedings under the Government Servants (Efficiency and Discipline) Rules.

(3) The above instructions do not apply to cases in which government servants are reinstated as a result of acceptance of appeals by departmental appellate authorities, which will continue to be regulated by provisions of FR-54 as hitherto

(Annex)

(Extract of paras,4 and 5 of the Finance Division letter No.F.1(15)RI (Rwp)/61, dated 23rd December, 1961 as amended).

(4) If as a result of Court decision, a government servant restored to his post, the question whether pay and allowances for the period he was under suspension or was removed from service should be decided on merit of each case. For this purpose, it is suggested that in all cases the Ministry or Department concerned should order a departmental enquiry headed by the representative of the Ministry/Department Administratively concerned with their Financial Adviser/Deputy Financial Adviser as a member of the committee. This committee should consider whether, on the merits of the case, Government would be justified in restoring the official concerned, the pay and allowances for the period involved and, if so, whether in full or in part. In coming to a conclusion whether pay and allowances to the individual should or should not be restored, following considerations will have to kept in view:--

(a) Whether the person concerned was acquitted on a purely technical or procedural grounds or whether the actual allegations against him had been gone into and were found to be incorrect;

(b) Whether the individual during the period he was away from active duty and other sources of income; and so on.

(5) It has further been decided that in cases where the total period involved does not exceed 12 months from the time the individual was suspended or removed from service, the final decision should be taken by the Ministry concerned at the level of Secretary and in all other cases the matter should be referred to the Ministry of Finance for prior concurrence."

In view of the above provisions of F.R. and CSR as well as Esta Code, this Court had been expressing its opinion with regards to the settled law in various pronouncements. Reference

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SUPREME COURT

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may be made to judgments in the cases of Muhammad Hussain (ibid); Naheed Naushahi's case (supra); Sher Muhammad Shahzad v. District Health Officer (2006 SCMR 421); Binyamin Masih v. Government of Punjab through Secretary Education, Lahore (2005 SCMR 1032); General Manager/Circle Executive Muslim Commercial Bank Limited v. Mehmood Ahmed Butt (2002 SCMR 1064); Pakistan through General Manager, P.W.R., v. Mrs. A. V. Issacs (PLD 1970 SC 415).

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In the case of Muhammad Hussain (ibid), this Court has clearly settled the law stating that:--

"It is a settled law that grant of service back-benefits to an employee who had been illegally kept away from employment was the rule and denial of such benefits to such a reinstated employee was an exception on the proof of such a person having remained gainfully employed during such a period."

And further that:-

"It is an admitted fact that there is nothing on record that the petitioners were gainfully employed anywhere during the relevant period and this fact was also not considered by the learned Service Tribunal in para 6 of the impugned judgment. Therefore, it would be very unjust and harsh to deprive the petitioners of back-benefits for the period for which they remained out of job without any fault from their side. It is a settled law that back benefits in such situation cannot be withheld by the respondents or by the learned Service Tribunal."

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ADVOCATE  
SUPREME COURT

In the same case, the Supreme Court also distinguished the judgment of this Court in Mansoor-ul-Haq's case, cited above:--

"The learned Service Tribunal has refused back-benefits to the petitioners in view of law laid down by this Court in Mansoor-ul-Haq's case 2004 SCMR 1308 which is distinguished on facts and law wherein PIDC vide order dated 23-6-1986 terminated Mansoor-ul-Haq's lien by stating that the same will be maintained by PACO, a borrowing organization and not in the PIDC and the said proposal was accepted by the PACO, therefore, the judgment relied by the Law Officer and learned Service Tribunal is distinguished on facts and law."

In the case of Sher Muhammad (supra) it was held:--

"...there is nothing on record that the petitioners were gainfully employed anywhere during the relevant period. It would be very unjust and harsh to deprive them of back-benefits for the period for which they remained out of job without any fault from their side. At the cost of repetition they were proceeded under (Efficiency and Discipline) Rules for no fault on their part and their services were terminated in an arbitrary manner without providing any reason. The departmental authority rejected their appeals simply on the ground that they were appointed against the post of Medical Technician in an erratic manner without noticing that they were selected as Dispensers in BS-6 and the competent authority of its own adjusted

them as Medical Technicians in their own pay and scale. It was not their fault that they held the post of Medical Technician, All these aspects have not been considered and the petitioners were made to suffer throughout this period for no fault of their own. In these circumstances we fail to understand how their salary can be withheld for the said period when they remained out of service due to whimsical and arbitrary actions of the functionaries. The petitioners have got every right to recover their arrears. Reliance in this respect is placed on Pakistan through General Manager, P.W.R., Lahore v. Mrs. A.V. Issacs (PLD 1970 SC 415). Accordingly, keeping in view all the aforesaid features of the cases, we convert these petitions into appeals and allow the petitioners all the back-benefits."

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In the case of Binyamin Masih (supra), the Service Tribunal accepted the appeal preferred on behalf of the petitioner therein. However, it refused to grant back-benefits for the period during which the petitioner remained out of service. It was ordered by this Court that the intervening period be treated as leave of the kind due to him. The Supreme Court converted the petition into appeal and accepted the same while modifying the judgment of the Tribunal to the extent that the salary concerning the period from 24-1-1996 to 11-2-2000 would be paid to the petitioner within a period of four weeks under intimation to the Assistant Registrar of this Court at Lahore.

This Court ruled in the Mehmood Ahmed Butt case (supra) that:--

*Mehmood Ahmed Butt*  
*Mehmood Ahmed Butt*  
ADVOCATE  
SUPREME COURT

"It may be added that grant of service benefits to an employee who had been illegally kept away from his employment was the rule and denial of service benefits to such a reinstated employee was an exception on the proof of such a person having remained gainfully employed during such a period. The mere fact that the respondent had left the country and had gone abroad without any proof of his being gainfully employed during the period in question, was not sufficient to deprive him of the benefits in issue. Needless also to add that nothing is available with us to hold that the respondent had remained gainfully employed somewhere during the said period."

The Supreme Court directed in its judgment in the Naheed Naushahi case (supra):--

"Thus we are of the considered opinion that the Service Tribunal instead of granting relief as it is evident from the concluding paras with regard to the financial back-benefits may have referred the case to the department for establishing a Committee for the purpose as noted above. Before parting with this order it is to be noted that the department shall refer the case of the respondent to the Committee, which will be constituted in view of the above instructions contained in Sl.No.151 of the Code for determining whether she is entitled for the claimed financial benefits or not. However, the department is directed to dispose of the matter in respect of her back-benefits expeditiously but not beyond the period of two months on receipt of this order."

In the case of Muhammad Bashir v. Secretary to the Government of Pakistan (1994 SCMR 1801), leave to appeal was granted to the appellant to consider whether the Service Tribunal was justified in refusing back benefits. The brief facts of the case were that:--



"...the appellant was serving as Subject Specialist in Government Comprehensive School, Faisalabad, when he was retired from service under section 12(ii) of Punjab Civil Servants Act, 1974, after having completed 25 years' service, on 26-6-1986. The appellant having failed to get his grievance redressed from the Departmental authorities, approached the Punjab Service Tribunal. He challenged the order of his retirement on two grounds; firstly, the appellant had not completed 25 years' service qualifying for pension, and secondly that the order of retirement had not been made in the public interest, The learned Service Tribunal had not attended to ground No. 1 but allowed the appeal on the ground that the record of the appellant was satisfactory and good. The Character Roll presented in the Court depicts that his service record was quite satisfactory/good. While allowing the appeal the Service Tribunal held that the intervening period, during which the appellant remained out of service, shall be treated as leave without pay."

Citing the provisions of F.R. 54, the Supreme Court held that:--

"In the present case clause (b) would attract. The Committee shall also take into consideration whether a civil servant has earned any amount by way of salary or as profit on account of his having accepted some employment or been engaged in some profitable business during the intervening period. Similarly, according to proviso (ii) of section 16 of the Punjab Civil Servants Act, 1974, where an order of removal of a civil servant has been set aside, he shall be entitled to such arrears of pay as the authority setting aside the 'order may determine. In the instant case the Tribunal has not allowed the arrears of pay without assigning any reason."

In the case of Trustees of The Port of Karachi v. Muhammad Saleem (1994 SCMR 2213) the Court has held that the while the entitlement of a reinstated employee to get the back benefits is to be determined on the basis of the facts of each case independently.

In the impugned judgment in this case, the Service Tribunal had held that the appellant had given his comment to forego arrears (back benefits) in case of his re-instatement in service. Consequently, it was observed by the tribunal that the intervening period during which the appellant remained out of service shall be treated as leave without pay. However, the Supreme Court held that this concession of the appellant had not been incorporated in the impugned judgment of the Service Tribunal and that there was also no reference to that back benefits are not allowed in view of the concession of the appellant. Therefore, it was held that these comments cannot be taken into consideration. In view of these facts and circumstances, the appeal was accepted, and the case remanded to the official respondents for deciding the matter in accordance with law. The Committee was ordered to decide the appellant's entitlement of arrears of pay and adjustment, if any, in accordance with Rule F.R. 54 and Civil Services Laws.

11. The crux of the above case-law is that the grant of back benefits to an employee who was reinstated by a Court/Tribunal or the department is a rule and denial of such benefit is an exception on the proof of that such a person had remained gainfully employed during such period. The entitlement of back benefits of a person has to be determined on the basis of facts

Attested  
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ADVOCATE  
SUPREME COURT

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of each case independently. There would be cases at times when no difficulty is felt by the Court or Tribunal to grant the back benefits when there are admitted facts between the parties but when there is a dispute in respect of the facts then of course, the matter had to be referred to the Department.

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12. In the instant case the respondent was dismissed from service was awarded to him vide order dated 26-11-1992 but later on reinstated on 13-8-2010, however, the back benefits were not awarded to him as the intervening period was considered as absence/out of service. The case of the respondent is to be considered at the touchstone of the principles of granting back benefits as deduced from the judgments cited above. It is to be observed that as far as the question of granting back benefits to the respondent with regard to the period during which he remained absent from duty i.e. period of about 4 months could be based on a disputed fact but as far as the period during which his Revision Petition was kept pending for decision of the criminal as well as civil cases are concerned, the respondent cannot be held responsible for the same because it was on account of the act of the Department for which he cannot be held responsible in any manner, therefore, in view of such admitted facts and following the principles as laid down in both the above said judgments as well as in the case of Muhammad Basher (supra), we are of the opinion that minus the period during which he remained absent from duty i.e. four months, he is entitled to back benefits subject to establishing before the department in terms of Rule 7.3 of CSR that he was not gainfully employed during this period. As far as rest of the period is concerned, he is entitled for back benefits, as it was the Department, which on the basis of a wrong opinion kept him away from performing his duty, as it is evident from the order dated 13-8-2010 passed by the Revisional Authority, which has already been reproduced hereinabove.

12(sic.) For the foregoing reasons, we are of the opinion that there is no conflict in the judgments, which has been cited in the subsequent leave granting order dated 13-3-2012, the principles of both the cases are common, as it has been observed hereinabove. In the cases of such like nature, the Department should have decided the cases, depending upon the facts of each case and as far as the instant case is concerned, the respondent is entitled to get back benefits during the period when he had instituted a revision petition, which was kept pending till the decision of the criminal as well as civil cases, which have no relevance as unless he had been found guilty by the Court, he was not debarred from performing his duty. Therefore, from the date of filing of the revision petition and till its decision he is entitled for back benefits as far as the question of giving him back benefits during the period when he remained absent, it is for the Department to conduct an inquiry and independently decide whether he is entitled for the same or not.

13. Thus, the appeal is dismissed with costs.

MWA/I-18/SC

Appeal dismissed.

Attested  
  
Anjir Ali  
ADVOCATE  
SUPREME COURT

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بعدالت  
حسب عنوان خواہ سرسری ٹریسول سپاؤر

Appellant 2023

بنام حکومت و غیرہ

مورخہ: 10/8/2023

مقدمہ: عالم غفور

دعویٰ: Service appeal

جرم:

باجت نہر ر آنکہ

مقدمہ مندرجہ عنوان بالا اپنی طرف سے واسطے بیرونی و جواب دہی وکل کاروائی متعلقہ

آن مقام ساؤر کیلئے امجد علی ایڈووکیٹ سپریم کورٹ آف پاکستان

مقرر کر کے اقرار کیا جاتا ہے۔ کہ صاحب موصوف کو مقدمہ کی کل کاروائی کا کمال اختیار ہوگا، نیز وکیل صاحب کو راضی نامہ کرنے و تقرر ثالث و فیصلہ برحلف دیئے جواب دہی اور اقبال دعویٰ اور بصورت ڈگری کرنے اجراء وصولی چیک دروینیہ عرضی دعویٰ اور درخواست ہر قسم کی تصدیق زاریں پر دستخط کرانے کا اختیار ہوگا۔ نیز صورت عدم بیرونی یا ڈگری یکطرفہ یا ایسٹ کی برآمدگی اور منسوخی نیز دائر کرنے اپیل گزارانی و نظر ثانی و بیرونی کرنے کا اختیار ہوگا۔ از بصورت ضرورت مقدمہ مذکور کے کل یا جزوی کاروائی کے واسطے اور وکیل یا مختیار قانونی کو اپنے ہمراہ یا اپنے بجائے تقرر کا اختیار ہوگا۔ اور صاحب مقرر شدہ کو بھی وہی جملہ مذکورہ با اختیارات حاصل ہوں گے اور اس کا ساختہ پرواختہ منظور و قبول ہوگا دوران مقدمہ میں جو خرچہ و جان التوائے مقدمہ کے سبب سے ہوگا۔ کوئی تاریخ پیشی مقام دورہ پر ہو یا حد سے باہر ہو تو وکیل صاحب پابند ہوں گے۔ کہ بیرونی مذکور کریں۔ لہذا وکالت نامہ لکو دیا کہ سنڈرھے۔

2023

10/8/2023

المرقوم: 10

Accept by

Amjad Ali  
ADVOCATE  
SUPREME COURT

کے لیے منظور ہے۔

مقام ساؤر

Ali

(Appellant) عالم غفور