

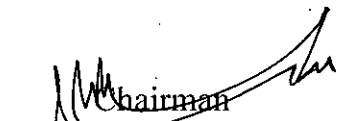
18.09.2017

Appellant *pro se* and Mr. Muhammad Bilal, Deputy District Attorney alongwith Muhammad Zubair, ADO and Malik Muhammad Haroon, ADO for the respondents present.

During the course of arguments, the learned DDA is of the view that in the present appeal the effects of Act, IX of 2012 is also involved. That this Tribunal has already issued notice to the learned Advocate General Khyber Pakhtunkhwa under Order XXVII-A of CPC in other cases fixed for 19.10.2017.

The appellant is of the view that in the present appeal the vires of the said Act is not involved. However after listening to the arguments at some length this Tribunal reaches the conclusion that the interpretation of the said Act is also involved in the present appeal, therefore, this appeal shall also be fixed for arguments on 19.10.2017 before the D.B at camp court, Abbottabad.


Member



Chairman
Camp court, A/Abad.

19.10.2017

Appellant alongwith counsel and Mr. Muhammad Bilal, Deputy District Attorney alongwith Sohail Ahmad Zaib, ADO for the respondents present. Arguments heard and record perused.

Vide our detailed judgment of today in connected service appeal No. 826/2016, entitled "Muhammad Saleem Abbasi Versus Accountant General, Khyber Pakhtunkhwa, Peshawar and 3 others", this appeal is also dismissed. Parties are left to bear their own costs. File be consigned to the record room.



Member


Chairman
Camp Court, A/Abad

ANNOUNCED
19.10.2017


19.12.2016

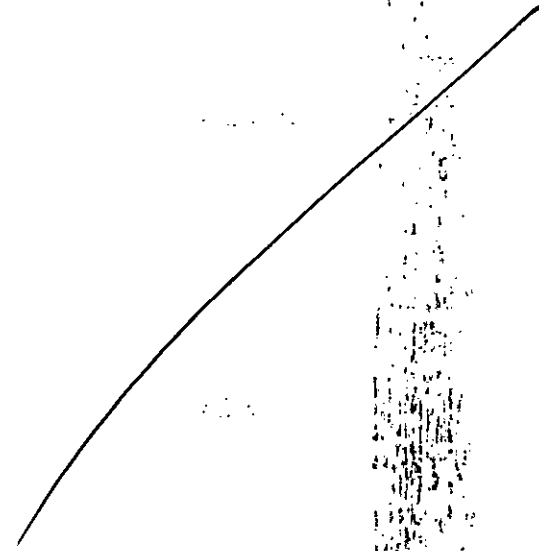
Appellant in person and Mr. Sohail Ahmad Zaib, Assistant and Muhammad Irshad, SO alongwith Mr. Muhammad Siddique, Sr.GP for the respondents present. Due to incomplete bench arguments could not be heard. To come up for final hearing on 19.04.2017 before D.B at camp court, Abbottabad.


Chairman
Camp court, A/Abad

19.04.2017

Appellant in person and Sohail Ahmad Zaib. Assistant alongwith Mr. Muhammad Bilal. Government Pleader for the respondents present. Due to non-availability of D.B arguments could not be heard. To come up for final hearing before the D.B on 18.09.2017 at camp court, Abbottabad.


Chairman
Camp court, A/Abad



15.09.2015

Appellant in person, M/S Haroon Khan, Senior Auditor, Irshad Muhammad, S.O and Sohail Ahmad, Assistant alongwith Mr. Muhammad Tahir Aurangzeb, G.P for respondents present. Requested for adjournment. To come up for written reply/comments on 15.12.2015 before S.B at camp court A/Abad. The restraint order shall continue.


Chairman
Camp Court A/Abad

15.12.2015

Appellant in person, M/S Haroon Khan, Senior Auditor, Irshad Muhammad, S.O and Sohail Ahmad Zeb, Assistant alongwith Mr. Muhammad Siddique, Sr.G.P for respondents present. Written statements by respondents No.1 to 3 submitted. Mr. Sohail Ahmad Zeb, Assistant and learned Sr.G.P rely on the same on behalf of respondent No.4. The appeal is assigned to D.B for rejoinder and final hearing for 19.7.2016 at Camp Court A/Abad. The restraint order shall continue.


Chairman
Camp Court A/Abad

19.07.2016


Appellant in person and M/S Zubair Ali, ADO, Muhammad Irshad, SO, and Malak Haroon, AAO alongwith Mr. Muhammad Siddique, Sr.GP for the respondents present. Rejoinder submitted. Learned Sr.GP requested for adjournment. Adjourned for final hearing before D.B on 19.12.2016 at camp court, Abbottabad.


Member


Chairman
Camp court, A/Abad,

5 18.5.2015

Appellant in person, M/S Haroon Khan, Senior Auditor and Sohail Zeb, Assistant alongwith Mr.Muhammad Tahir Aurangzeb, G. P for respondents present. Written reply not submitted. Requested for further adjournment. To come up for written reply/comments ~~as well as reply to the application~~ on 23.7.2015 at Camp Court A/Abad.


Chairman
Camp Court A/Abad

6 23.7.2015

Appellant in person, M/S Haroon Khan, AAO, Irshad Muhammad, S.O and Sohail Ahmad, Assistant for respondents alongwith Mr.Muhammad Bilal, G.P present. Requested for adjournment. To come up for written reply on 15.9.2015 before S.B at camp court A/Abad. Application for suspension of recovery/deduction of two advance increments out of 4 advance increments submitted, copy whereof supplied to respondents for reply of the said application as well on the said date. Till further orders no recovery be made from the salary of the appellant.


Chairman
Camp Court A/Abad

03.

21.01.2015

Appellant present in person and heard. Contends that the appellant was granted 4 advance increments on the strength of his higher qualification of M.A, M.Sc vide judgment of this Tribunal dated 12.05.2009 (Annexure-C). That the appellant was later on promoted in due course to Grade-16, however, two increments were deducted from the pay of appellant by the office of respondent No. 2 without any lawful justification and contrary to law. That the appellant preferred a writ petition against the said order which was disposed of vide judgment dated 27.02.2014 by Hon'ble Peshawar High Court Abbottabad Bench with the direction to approach the Service Tribunal. That against the said judgment appeal was preferred to the august Supreme Court of Pakistan which was decided vide worthy judgment dated 18.06.2014 with the direction that the appellant shall approach the Service Tribunal for redressal of grievances. That it was also observed that the question of limitation be considered sympathetically by the Service Tribunal. That the appellant is entitled to restoration of the two increments deducted from the pay of appellant at the time of promotion to grade-16.

*Appellant deposited process fee
or security.*

Points urged need consideration. Admit. subject to deposit of security and process fee within 10 days, notices be issued to respondents for written reply for 18.03.2015 at camp court A/Abad.

Chairman
Camp Court A/Abad

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18.3.2015

Appellant in person and Malik Haroon, AAO for respondent No.1 alongwith Mr.Muhammad Tahir Aurangzeb, G.P for respondents present. Requested for adjournment for submission of written reply. To come up for written reply on 18.5.2015 before S.B at camp court A/Abad.



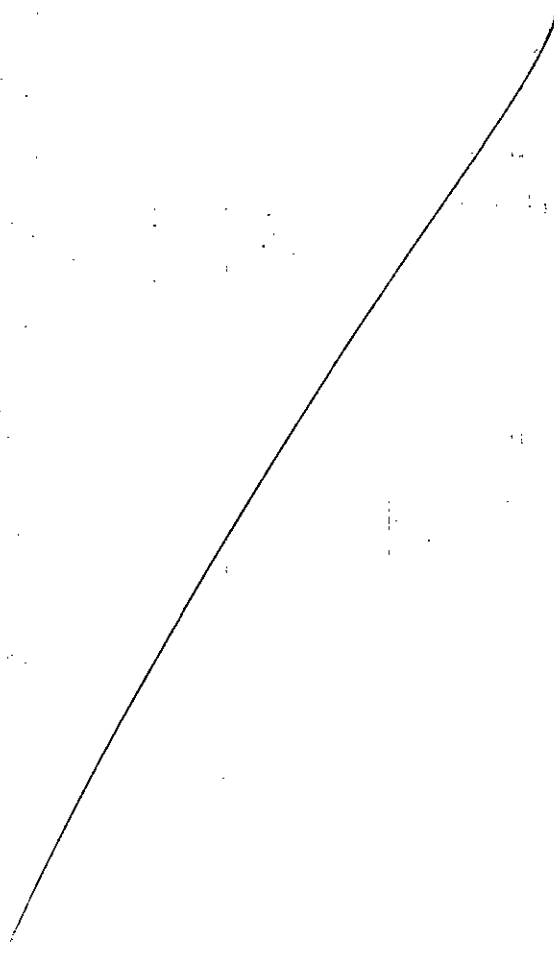
Chairman
Camp Court A/Abad

Form- A

FORM OF ORDER SHEET

Court of _____

Case No. 1305/2014

S.No.	Date of order Proceedings	Order or other proceedings with signature of judge or Magistrate
1	2	3
1	06/11/2014	<p>The appeal of Mr. Wajid Ali Shah presented today by him may be entered in the Institution register and put up to the Worthy Chairman for preliminary hearing.</p> <p style="text-align: right;"> REGISTRAR</p>
2	16-1-15	<p>This case is entrusted to Touring Bench A.Abad for preliminary hearing to be put up there on <u>21-1-15</u>.</p> <p style="text-align: right;"> CHAIRMAN</p> 

**BEFORE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR.**

Service Appeal No: 1305 of 2014

Wajid Ali Shah S/O Muzamal Shah, Senior C.T teacher, Government Higher Secondary School Bandi Dhundan, Abbottabad, R/O: village and Post Office Banda Pir Khan, Abbottabad.

Appellant

Versus

Government of Khyber Pakhtunkhwa through Secretary Finance Department Peshawar and 05 Other.


Respondents

SERVICE APPEAL

INDEX

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1	Memo; of Service Appeal	----	1 to 6
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3	Copy of Service Appeal No 1427 of 2008	B	10 to 13
4	Copy of relevant pages of Judgment Dated 12/05/2009	C	14 to 17
5	Copy of letter dated 15/12/2010 issued by respondent no 03	D	18
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Dated 24/10/2014


(Wajid Ali Shah)
Appellant in person

①

**BEFORE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR.**

Service Appeal No: 1305 of 2014

Wajid Ali Shah S/O Muzamal Shah, Senior C.T teacher, Government Higher Secondary School Bandi Dhundan, Abbottabad, R/O: village and Post Office Banda Pir Khan, Abbottabad.

Appellant

Versus

- ~~1344~~
6-11-2014
1. Accountant General Khyber Pakhtunkhwa Peshawar.
 2. District Comptroller of Accounts, Abbottabad.
 3. Government of Khyber Pakhtunkhwa through Secretary Finance Department Peshawar.
 4. Government of Khyber Pakhtunkhwa through Secretary (Elementary & Secondary Education), Department Peshawar.

Respondents

APPEAL UNDER SECTION 4 OF KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT 1974, AGAINST THE IMPUGNED ACTION OF RESPONDENT NO 2, WHICH IS ALSO WITHOUT ISSUANCE/PASSING OF ANY OFFICIAL ORDER PASSED BY ANY COMPETANT AUTHORITY NOR GIVEN ANY NOTICE TO APPELLANT, IN RESPECT OF DEDUCTION/RECOVERY OF TWO (02) ADVANCE INCREMENTS OUT OF FOUR (04) ADVANCE INCREMENTS FROM THE SALERY OF THE APPELLANT WITH EFFECT FROM 01/04/2013, WHICH (INCREMENTS) WERE GRANTED IN PURSUANCE OF THE JUDGMENT DATED 12/05/2009 PRONOUNCED BY KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR IN APPELLANT'S INDIVIDUAL SERVICE APPEAL WHICH ATTAINED ITS FINALITY TOO. THE IMPUGNED DEDUCTION/RECOVERY IS UNCONSTITUTIONAL, CONTEMPT OF COURT, WITHOUT LAWFUL AUTHORITY, ARBITRARY, PERVERSE, DISCREMINATORY' AGAINST THE PRINCIPAL OF NATURAL JUSTICE AND INEFFECTIVE UPON

6/11/14

THE APPELLANT'S RIGHTS OF ADVANCE INCREMENTS, GRANTED BY COMPETENT COURT OF LAW AND FOR ACCEPTANCE OF DEPARTMENTAL APPEAL WHICH IS STILL PENDING WITH OUT RESPONSE.

PRAER:-

ON ACCEPTANCE OF INSTANT SERVICE APPEAL, IMPUGNED ACTION IN RESPECT OF RECOVERY/DEDUCTION OF 02 ADVANCE INCREMENTS OUT OF 04 MAY PLEASE BE SET-ASIDE AND IN CASE AMOUNT REFUNDED/DEDUCTED FROM THE SALARY OF APPELLANT, MAY BE ORDERED THE REFUND OF SAME AND CONTINUE RECOVERY/DEDUCTION IF ANY MAY ALSO BE SUSPENDED TILL THE FINAL DISPOSAL OF TITLED SERVICE APPEAL AND MAY PLEASE BE IMPOSED HEAVY COST AGAINST THE RESPONSIBLE RESPONDENTS.

Respectfully Sheweth,

FACTS

- 1) That appellant is a school teacher, he is now working as Senior C.T teachers (BPS 16), his service appeal for grant of 04 advance increments of higher qualifications (M.A/M.Sc) over and above prescribed qualification of post held, was accepted on 12/05/2009 by Honourable Khyber Pakhtunkhwa Service Tribunal Peshawar in the light of previously settled law by Supreme Court, whereupon respondents did not file their appeal before Supreme Court yet, and now it attained its finality: Copy of Supreme Court Judgment, Appellant's Service appeal and relevant pages of Judgment of Service Tribunal is annexed as Annexure "A" "B" & "C".
- 2) That according to the Judgment of Service Tribunal dated 12/05/2009 respondents not only granted 04 advance increments of (M.A/M.Sc) and revised the pay of the appellant, but also paid the entire arrears to the appellant. After that respondent no 03 issued a letter dated

15/12/2010 for recovery of 02 advance increments contrary to the judgment of Apex court as well as service Tribunal, Some those teachers who had not challenged their rights of 04 advance increments before Service Tribunal, soliciting the said letter in Writ Petition before Peshawar High Court which was disposed off under the doctrine of locus poenitentiae on 22/12/2011. Copy of letter dated 15/12/2010 and High Court Order dated 22/12/2011 is annexed as Annexure "D" & "E".

3) That appellant was being given/granted his salary with out any deduction/disturbance from the respondents upto 31/03/2013. When appellant promoted from BPS 15 to BPS 16 and his principal fixed/changed his pay in BPS 16 and submitted Pay Amendment Form. to the office of respondent no 02, whereupon respondent no 02 with out any notice given to the appellant or without formal/official written order and under any legal reason deducted/recovered (02) two advance increments out of 04 advance increments with effect from 01/04/2013. In this respect the whole position is shown through table for better consideration.

Pay in March 2013 (BPS 15)	Pay fixed by Principal in (BPS 16)	Fixed by respondent no 03 after deducting 02 increments
Rs 26700/-	Rs.27600/-	Rs 26800/-

Copy of Amendment forms & pay roll register (BPS 16) with effect from 01/04/2013 to 30/04/2013 is annexed as Annexure "F", & "G".

4) That under the severe illegal action of respondent no 02, appellant and others challenged the illegal deduction/recovery of 02 advance increments out of 04 in Writ Petition before Peshawar High Court, which was dismissed and its review petition was also dismissed, while finally Supreme Court disposed off the petition by directing the appellant to approach the service Tribunal for redressal of his grievance. Copy of orders passed in Writ Petition, Review Petition and Supreme Court order is annexed as Annexure "H", "I" & "J".

5) That appellant under the Supreme Court directions submitted his departmental appeal dated 04/07/2014 through registered post to respondent no 1 which is still pending with out any response after passing the statutory period of 90 days, Copy of departmental appeal and receipt of registered post is annexed as Annexure "K" & "L". Hence this appeal inters – alia on the following ground, and appellant's appeal is within 120 days from the submission of his departmental appeal.

Grounds

- a) That appellant under the law, was entitled to 04 advance increments and the respondents (respondent No 02) was not at all have powers to deduct/recover the 02 advance increments out of 04 Increments, which were granted to the appellant by a competent Court of law (Service Tribunal) while all concerned respondents amongst others were not only arrayed as party in service appeal but they contested the case and they were not filed their CPLA against the Judgment of Service Tribunal dated 12/05/2009 before Apex Court, yet thus it attained its finality.

- b) That if respondents have any objections/reservations on the Judgment of Service Tribunal in respect of number of increments, it was incumbent upon the respondents to have approached Supreme Court by filing Petition against the Judgment of Service Tribunal dated 12/05/2009 but they can not be changed the nature of Judgment as decided by Apex court **2011 PLC (C.S) 590**

- c) That the order dated 12/05/2009 passed by Service Tribunal was implemented by the respondents in letter and spirit, and under the doctrine of locus Poenitentiae the respondents were

not entitled to withdraw benefits, once it was implemented (PLD 1991 Supreme Court 973).

- d) That the appellant while contesting for his right of 04 advance increments before the Service Tribunal, never ever suppressed any fact from the Learned Tribunal and respondents.
- e) That before passing the Impugned action of respondents, no notice whatsoever, was given to the appellant and the appellant is contemned unheard.
- f) That judicial system will be ruined, if respondents would be left free to act upon against the Judgment of Learned Service Tribunal, thus respondent are bound not to change the spirit of the Judgment creating any kinds of self made illegal complications and letter dated 15/12/2010(Annexure D) issued by respondent no 3 is lying under question mark.
- g) That action of respondents is apparent activity of serious contempt of the Judgment of Honourable Tribunal, and tried to reopen the same matters which are finally decided by the Supreme Court of Pakistan.
- h) That the action of respondents is admittedly arbitrary capricious unjust and against all norms of justice and against Tribunal Judgment and order.
- i) That the involved matters in the instant appeal is relating to pay and under the law limitation did not run in such matters
- j) That it is an admitted fact that under question illegal Action is the matter of great public importance.
- k) That appellant, is once again dragged into litigation, that his claim of Advance Increments have been solved completely;

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the conduct of the respondents is contemptuous and as such requires indulgence of this Honourable Court by awarding appropriate Cost to the respondents, as decided in the Judgment dated 12/05/2009 by Honourable Tribunal at Para 07.

It is, therefore, respectfully prayed that on acceptance of instant service appeal, impugned action in respect of recovery/deduction of 02 advance increments out of 04 may please be set-aside and in case amount refunded/deducted from the salary of appellant, may be ordered the refund of same and continue recovery/deduction if any may also be suspended till the final disposal of titled service appeal and may please be imposed heavy cost against the responsible respondents.

Any other relief for which the appellant is entitled, and the same is not asked/prayed specifically, may very kindly be granted in favour of the appellant.

Dated 24/10/2014

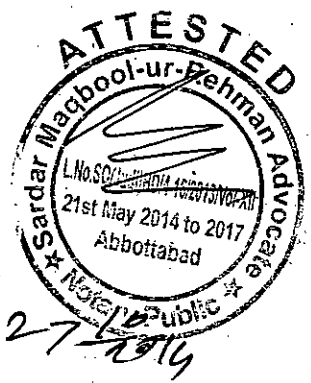
Wajid Ali Shah
(Wajid Ali Shah)
Appellant in person

Affidavit

I, Wajid Ali Shah S/O Muzamal Shah, Senior C.T teacher, Government Higher Secondary School Bandi Dhundan, Abbottabad, R/O: village and Post Office Banda Pir Khan, Abbottabad, do here by affirm on oath that contents of instant appeal is correct and true according to my best knowledge and belief and nothing has been suppressed from this Honourable Tribunal and this instant appeal is first appeal & same nature of any other appeal is not pending before Honourable Tribunal

Dated 24/10/2014

Wajid Ali Shah
(Wajid Ali Shah)
Appellant in person
DEPONENT



Annexure A

7

In the Supreme Court of Pakistan
(Appellate Jurisdiction)

Present:

Mr. Justice Rana Bhagwandas, ACJ
Mr. Justice Sardar Muhammad Raza Khan

C.P.L.A No.525 of 2007

(On appeal from judgment of NWFP Service Tribunal, Peshawar dated 24.4.2007 passed in Service Appeal No.498 of 2006)

OP. 1504 - 1505 / 07

Rashid Iqbal Khan

Petitioner

Versus

District Coordination Officer, Abbottabad & others

Respondents

Petitioner:

Rashid Iqbal Khan, in person

For the respondents:

Sardar Shaukat Hayat Khan,
Additional Advocate General, NWFP

C.P.L.A No.526 of 2007

(On appeal from judgment of NWFP Service Tribunal, Peshawar dated 24.4.2007 passed in Service Appeal No.499 of 2006)

Muhammad Haroon Qureshi

Petitioner

Versus

District Coordination Officer, Abbottabad & others

Respondents

Petitioner:

Muhammad Haroon Qureshi, in person

For the respondents:

Sardar Shaukat Hayat Khan,
Additional Advocate General, NWFP

Date of hearing:

19.7.2007

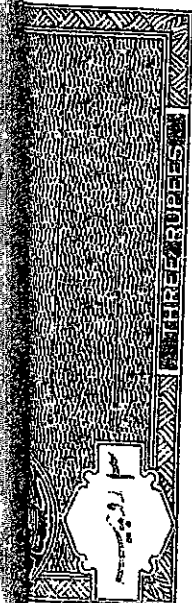
Attested
wajid ul haq

Judgment

Rana Bhagwandas, ACJ – Sole grievance of the petitioners before the NWFP Service Tribunal (hereinafter referred to as the Tribunal) appears to be that after induction in BPS-14 as Elementary School Teachers, in terms of NWFP Government Circular dated 7.8.1991 they are entitled to four advance increments in terms of NWFP Government circular letter No.FD(PRC)11/89 dated 11.8.1991 on acquiring higher qualification MA/MSc. They have been non-suited by the Tribunal vide judgment dated

ATTESTED

Superintendent
Supreme Court of Pakistan



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24.4.2007 on the premise that they had been placed in higher grade i.e. BPS-14 on acquiring BA/BSc Second Division in terms of Finance Division circular letter No.FD(PRC)1-1/89 dated 7.8.1991, therefore, the provisions of circular letter dated 11.8.1991 issued by the Finance Department would not be applicable to teachers. Tribunal has expressed the view that this circular would be applicable only to ministerial staff, as such, the petitioners were not entitled to the relief claimed by them. Petitioners being aggrieved seek leave to appeal.

2. We have heard the petitioners, who argued their case in person whereas learned Additional Advocate General, NWFP has appeared on Court notice issued to the respondents. With the assistance of learned Additional Advocate General, we have examined both the circulars, which do not exclude the teachers in the Education Department from the benefits accruing out of circular letter dated 11.8.1991, as on its plain reading it applies to all civil servants in BPS 1 to 15 serving under the Provincial Government. Para 5 of the said circular provides mechanism for grant of advance increments to officials for possessing/attaining higher educational qualification. Para 5, clause (c) caters for the grant of four advance increments on attaining MA/MSc where prescribed qualification is FA/FSc. It would be seen that the petitioners were placed in BS-14 by reason of having acquired the qualification of BA/BSc, Second Division which is the prescribed qualification for the post of Elementary School Teacher. It is not the case of respondent-Government that the petitioners have already drawn advance increments on acquiring higher qualification of MA/MSc.

*Attested
wajid ali*

3. Learned Additional Advocate General attempted to argue that in view of the higher scale granted to Elementary School Teachers in pursuance of the circular letter dated 7.8.1991, which was personal to them, the

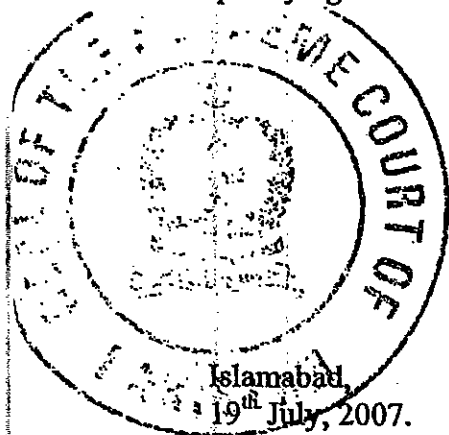
ATTESTED

[Signature]
Superintendent
Supreme Court of Pakistan

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petitioners would not be entitled to the incentive of advance increments contemplated by circular letter dated 11.8.1991 but he is unable to cite any principle of law or authority for placing this interpretation. We find that, while circular letter dated 7.8.1991 exclusively deals with the scales of pay of school teachers in different categories, circular letter dated 11.8.1991 provides for the revision of basic pay scales and grant of annual increments and advance increments for all Provincial civil servants in NWFP without any exception. Since the teachers or the employees in Education Department have never been expressly or impliedly excluded from the operation of the circular letter, view taken by the Tribunal being erroneous cannot be sustained at law. In fact, it suffers from clear misconception of law and misconstruction of the circular letter (supra).

3. For the aforesaid facts, circumstances and reasons, we are of the considered view that the Tribunal committed a serious error of law, therefore, the impugned judgment is liable to be set aside. Consequently, we convert these petitions into appeals and, on acceptance, declare that the petitioners would be entitled to four advance increments with effect from the date of qualifying MA/MSc exam.



Islamabad,
19th July, 2007.
Not approved for reporting.
Riz

10/8/07

*Adv. Rana Khagwandat, New
Adv. Professor Muhammad Raza Khan, J*

Attested
wajidullah
Certified to be true copy
MJ Alam
28/11/2007
Superintendent
Supreme Court of Pakistan
ISLAMABAD

Date of completion of copy: 20.11.07
No. of words: 100
No. of folios: 5
Requisition Fee Rs. 5.00
Copy Fee in: 5.58
Court Fee stamp: 18.52
Date of completion of copy: 28-11-2007
Date of delivery of copy: 8-12-2007
Copy:
Compared by: *Wajidullah Khan*

BEFORE NWFP SERVICE TRIBUNAL PESHAWAR.

10

Annexure B,

Service Appeal No. 427/ of 2008

Wajid Ali Shah S/O Muzamal Shah, C.T teacher, Government Higher Secondary School Bandi Dhundan, Abbottabad. R/O: village and Post Office Banda Pir Khan, Abbottabad.

Appellant

Versus

Diary No. 1936
Dated 25/9/08

- 1 Executive District Officer (Elementary & Secondary Education), Abbottabad.
- 2 District Coordination Officer, Abbottabad.
- 3 District Accounts Officer, Abbottabad.
- 4 Director of (Elementary & Secondary Education), N.W.F.P, Peshawar.
- 5 Secretary to Govt of N.W.F.P (Elementary & Secondary Education), Deptt: Peshawar.

Respondents

Appeal under Section 4 of NWFP Service Tribunal Act 1974, against the impugned Order dated 04/09/2008, issued by respondent no 01 under Endst: No 17901, whereby appellant's representation dated 07/08/2008, For grant of 04 Four advance increments of M.A, with effect from 24/08/1994(date of passing M.A) against C.T post, with all back benefits on the basis of Para 5(i)(c) of the Notification No FD (PRC) 1-1 /89 dated 11-08-1991 issued by (Finance Department N.W.F.P, Peshawar) and in pursuance of Judgments/Law passed by Supreme Court of Pakistan, was refused/dissmised.

PRAYER

It is respectfully prayed before this Honourable Tribunal that the instant appeal may graciously be accepted, impugned order dated 04/09/2008, issued by respondent No 01, under Endst: No 17901, may be set aside and the appellant may be granted 04 advance increments of MA w.e.f. 24/08/1994, with all back benefits

Respectfully Sheweth,

FACTS

- 1) That appellant had appointed against C.T post as an untrained teacher on 06/12/1986, in Education Department, afterthat appellant had also got and passed his professional C.T training/Course during his Service on 17/01/1990, and being C.T trained, his regular Service had also started from the date of his passing professional C.T examination against C.T post in Education Department (17/01/1990), Now a day's appellant is working

TESTED
EXAMINER
NWFP Service Tribunal
Peshawar

25/9/08

Accepted
Wajid Ali Shah

against same C.T post in BPS No 15 as a selection grade w.e.f. 02/12/1998, in the Education Department. A Certificate in this respect, issued by concerned authority is annexed as Annexure A.

- 2) That appellant had passed his B.A examination in 2nd Division before his service, on ~~20/08/1986~~ and being B.A 2nd Division he had also placed in BPS No 14 against C.T post with effect from 01/06/1991, and on 02/12/1998, he had also awarded selection grade in BPS No 15, on the basis of Notification No FD(PRC)1-1/89 dated 07/08/1991, issued by Finance Department, N.W.F.P, Peshawar. Copy of said Notification No FD (PRC)1-1/89 dated 07/08/1991 is Annexure B.
- 3) That appellant during his Service, had also passed his M.A examination on 24/08/1994, and was entitled for Four (04) Advance Increments of M.A, with effect from the said qualifying date i.e. 24/08/1994, in pursuance of Para 5 (i)(c) of the Notification No FD(PRC)1-1/89 dated 11/08/1991, issued by Finance Department, N.W.F.P, Peshawar, but these four (04) advance increments of M.A were not given to the appellant by the respondents in their office routine, until now. Copy of said Notification No FD (PRC) 1-1/89 dated 11/08/1991 is Annexure C.
- 4) That appellant being teacher in Education Department was/is a member of Civil Employees (BPS-1-15) of the Provincial Government of N.W.F.P and was/is entitled advance increments in pursuance of Notification 11/08/1991 referred above, whose Para # 5, Clause(i)(c) caters for the grant of Four Advance Increments M.A/M.Sc against C.T post because Prescribed Qualification of the said post was/is also F.A/F.Sc with C.T Course, So appellant was/is entitled the same and Respondents did not give his Constitutional rights.
- 5) That now, In the Meanwhile, Honourable Supreme Court Of Pakistan has also decided the same matters in CPLA No 525,526 of 2007 on 19/07/2007, and ultimately declared that teachers (appellant) in Education Department is also entitled for their/his Advanced Increments given in Para 5 (1) of Notification No FD(PRC)1-1/89 Dated 11/08/1991 without any change/exception. Copy of Supreme Court judgment is annexed as Annexure D.
- 6) That Honourable Supreme Court of Pakistan has been pleased to dismiss the Civil Review Petitions No 216 & 217 of 2007, filed by Finance Department, N.W.F.P, Peshawar, on 29/01/2008, which were filed against the judgment, dated 19/07/2007, passed in C.P.L.A No 525 & 526 of 2007, and now the matters of Advance Increments attained its finality and there is no way before the respondents to withhold/deny the rights of appellant. Copy of Supreme Court judgment passed in C.R.P No 216 & 217 of 2007 is annexed as Annexure E.

N.W.F.P. PESHAWAR
 EXAMINER
 TRIBUNAL
 PESHAWAR

Attested
 Wajid Ahmad

- 7) That the petitioner of C.P.L.A. No 525 of 2007 (Mr: Rashid Iqbal Khan Jadoon CT, GMS Tarhana, Abbottabad) has now been received his 04 Advance Increments of M.A/M.Sc along with his all arrears with effect from its qualifying date, i.e. 15/09/1997, through an order issued on 26/02/2008, by the Education Department, in compliance of the Judgments of Honourable Supreme Court of Pakistan, dated 19/07/2007 & 29/01/2008, passed in CPLA No 525/2007 & CRP No 216/2007. Copy of Order dated 26/02/2008, of 04 Advance Increments of MA/MSc is annexed as **Annexure F.**

- 8) That when the above Judgments of the Supreme Court dated 19/07/2007, came into the notice of appellant, in the light of the same, he submitted his departmental representation to respondent no 1 on 07/08/2008, which was refused/dismised by the respondent no 01, on 04/09/2008 and final/dissmissal order (Impugned Order) was issued under Endst No 17901. Copy of representation is annexed as **Annexure G,** and Impugned order is annexed as **Annexure H,** Hence this appeal inters - alia on the following ground, and appellant's appeal is within 30 days from the refusal/dissmissal of his departmental representation.

Grounds

- a) That the impugned order dated 04/09/2008, passed by respondent no 01 on appellant's representation dated 07/08/2008 is arbitrary, unjust, and against all the norms of justice and equity. Hence liable to be set aside.

- b) That the impugned order dated 04/09/2008, is against law, facts of the case, also against letter and spirit of the Judgments of Honourable Supreme Court of Pakistan dated 19/07/2007 passed in CPLA No 525,526 & 590 of 2007 and also dated 29/01/2008 in Civil Review Petition No 216 & 217 of 2007.

- c) That the Policy contained in Notification/Circular dated 11/08/1991 at its Para 5 was/is passed by N.W.F.P Provincial Assembly in their Budget Session 1991-92 and then Hon, le Governor approved the same and Finance Department issued the said Circular after completing the legal requirements.

- d) That all the Respondents neither have power nor any jurisdiction to change, withheld/deny the Government Policy contained in Circular/Notification dated 11/08/1991 and cannot apply according to their own wishes and whims against the said policy.

- e) That the action of respondents in refusing the grant of advance increments to the appellant on the basis of Circular dard 11/08/1991, violated the Article 25,189 190 of the Constitution, as petitioner of CPLA (Mr: Rashid Iqbal Khan Jadoon) has got his same relief of 04 advance increments of MA/MSc.

ATTESTED
 EXAMINER
 TRIBUNAL
 NWFP
 ISLAMABAD

Attested
 Waqar Ahmad

- f). That the said Circular (Annexure C) was/is issued for Civil Provincial Employees of N.W.F.P (BPS-1-15) and appellant being teacher(Education Department) falls under the same and fully entitled for the relief of Advanced Increments along with back benefits as claimed by him.
- g). That the case of appellant is the same nature in pursuance of Para 5 (i) of Notification, which was decided by Supreme Court of Pakistan on 19/07/2007 passed in CPLA No 525,526 of 2007 (Annexure D).
- h). That there is now no dispute available in the case of appellant as Honorable Supreme Court of Pakistan has decided all the disputed matters involved in the instant appeal on 19/07/2007.
- i). That appellant's service appeal is maintainable and appellant's post was/is C.T and prescribed qualification of the C.T post was F.A plus professional C.T Course and, appellant is now working in BPS # 15 against C.T post, and Instant Case falls under Para 5(1) (c) of the Circular dated 11/08/1991(Annexure C).

It is therefore respectfully prayed that while setting aside impugned order dated 04/09/2008 approved/issued by respondent no 01, and appellant's appeal may kindly be accepted and 04 advance increments of M.A w.e.f. 24/08/1994 (date of passing M.A) against C.T post, along with all back benefits may graciously be granted to the appellant in the interest of justice.

[Handwritten notes and stamps on the left side of the page, including dates like 10-10-00, 10-10-00, and 21/7/09.]

[Signature]
(Wajid Ali Shah)
Appellant in person

[Handwritten signature]
Attested
Wajid Ali Shah

Affidavit

I do here by affirm on oath that contents of instant appeal is correct and true according to my best knowledge and belief and nothing has been suppressed from this Honourable Tribunal and this instant appeal is first appeal & same nature of any other appeal is not pending before

Honourable Tribunal

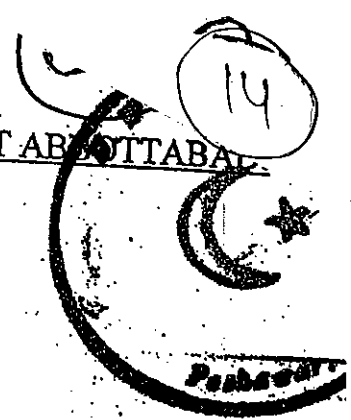
[Signature]

[Circular stamp of the Honourable Tribunal and handwritten date 16.9.2008]

[Signature]
(Wajid Ali Shah)
DEPONENT

Annexure C

BEFORE THE NWFP SERVICE TRIBUNAL, CAMP COURT ABBOTTABAD



Appeal No. 1276/2007

Date of institution - 27.12.2007

Date of decision - 12.05.2009

Muhammad Akram, S/O Sikandar Khan, C.T. Teacher, Government High School, Kuthwal, Abbottabad.....(Appellant)

VERSUS

1. District Coordination Officer, Abbottabad.
2. Executive District officer (S &L) Abbottabad.
3. District Accounts Officer, Abbottabad.
4. Director (S&L) Department, Peshawar.
5. Secretary to Government of NWFP (S&L) Department Peshawar.
6. Accountant General NWFP Peshawar.
7. Secretary to Government of NWFP Finance Department, Peshawar.

Appellant in person present.

Arshad Alam, A.G.P.....

For respondents.

MR. ABDUL JALIL.....

MR. BISMILLAH SHAH.....

MEMBER.

MEMBER.

JUDGMENT.

ABDUL JALIL, MEMBER : This judgment/order will dispose of this Service Appeal No. 1276 of 2007, by Muhammad Akram and the following Service Appeals. The reason is that the broad facts and the legal issues in all the below mentioned appeals are the same, and need consolidated judgment and joint disposal.

<u>Sr. No.</u>	<u>Appeal No.</u>	<u>Name of appellant.</u>
1.	1277/2007	Saidur Rahman,
2.	1278/2007	Munibur Rahman,
3.	1279/2007	Muhammad Siddique,
4.	01/2008	Maroof Khan
5.	02/2008	Amjad Hussain Awan

Attested by
Wajid

ATTESTED

14-a

114.	1135/2008	Muhammad Hamayun,
115.	1136/2008	Shahid Farooq
116.	1137/2008	Abdul Waheed,
117.	1206/2008	Naseem Akhtar,
118.	1207/2008	Syed Arshad Hussain Shah,
119.	1208/2008	Naveed,
120.	1209/2008	Sadaqat Ali,
121.	1234/2008	Saeed Akhtar,
122.	1235/2008	Anwar-ul-Haq,
123.	1236/2008	Syed Husnain Ali Shah,
124.	1242/2008	Muhammad Niaz,
125.	1243/2008	Muhammad Anwar,
126.	1268/2008	Syed Sadaqat Hussain Shah,
127.	1274/2008	Shah Jehan,
128.	1355/2008	Ahmad Farooq,
129.	1356/2008	Muhammad Younas,
130.	1357/2008	Muhammad Shafique,
131.	1379/2008	Tariq Mehmood,
132.	1380/2008	Muhammad Yousaf,
133.	1381/2008	Waqar Ahmad,
134.	1382/2008	Muhammad Azhar,
135.	1383/2008	Muhammad Aftaz Aziz,
136.	1384/2008	Muhammad Assad,
137.	1385/2008	Rashid Khan,
138.	1386/2008	Mirza Yasir Jamil Baig,
139.	1387/2008	Javed Ibrahim,
140.	1388/2008	Muhammad Nawaz,
141.	1402/2008	Fida Muhammad,
142.	1403/2008	Shah Faisal Khan,
143.	1404/2008	Nasir Bakhtiar Khan,
144.	1405/2008	Tahir Mahmood,
145.	1406/2008	Ajmal Nazir,
146.	1407/2008	Uzair Jadoon,
147.	1425/2008	Muhammad Adnan Khan,
148.	1426/2008	Zahoor Khan,
149.	1427/2008	Wajid Ali Shah,

EXAMINER

ATTESTED

Attested
Wajid Ali

257.	504/2009	Muhammad Shamraiz
258.	505/2009	Ali Bahadur
259.	506/2009	Muhammad Haroon
260.	523/2009	Naureena Maqsood
261.	524/2009	Yasmeen Akhtar
262.	525/2009	Shabana Nazir
263.	681/2009	Nighat Bibi
264.	682/2009	Waseem Sultan
265.	683/2009	Bibi Hajra
266.	684/2009	Abdul Razaq
267.	685/2009	Fatiha Gul

2. The appellant of Service Appeal No. 1276 of 2007, contended that he was appointed as untrained P.E.T. Teacher in Education Department on 27.6.1990. The appellant being C.T trained, was adjusted against the C.T post on 06.05.1996 on regular basis. He acquired higher qualification of M.A on 25.08.1999. The appellant was entitled to advance increments in the light of the Finance Department notification dated 11.8.1991. The same was not given to him. Some of the teachers came to this Tribunal whose Service Appeals were dismissed in Service Appeal No. 498 of 2006 decided on 24.4.2007. The August Supreme Court of Pakistan, while deciding C.P.L.A No. 525 of 2007 and CPLA No. 526 of 2007 decided that all the teachers were entitled to the advance increments like all other civil servants. On the request of the appellant, the same benefit was not given to him. Hence, he filed the present Service Appeal. As already mentioned, the broad facts and the legal issues in all other appeals are almost on the same lines.

3. The respondents contested the appeal and contended that either the appellants had not submitted applications or their applications were time-barred. And there was no judgment in favour of the appellants.

4. We heard the arguments and perused the record.

The judgment in CPLA Nos. 525 of 2007 and 526 of 2007 is as under:-

"3. Learned Additional Advocate General attempted to argue that in view of the higher scale granted to Elementary School Teachers in

*Attested
wajid ulish*

EXAMINER
Tribunal

16

pursuance of the circular letter dated 07.8.1991, which was personal to them, the petitioners would not be entitled to the incentive of advance increments contemplated by circular letter dated 11.8.1991 but he is unable to cite any principle of law or authority for placing this interpretation. We find that, while circular letter dated 7.8.1991 exclusively deals with the scales of pay of school teachers in different categories, circular letter dated 11.8.1991, provides for the revision of basic pay scales and grant of annual increments and advance increments for all Provincial civil servants in NWFP without any exception. Since the teachers or the employees in Education Department have never been expressly or impliedly excluded from the operation of the circular letter, view taken by the Tribunal being erroneous cannot be sustained at law. In fact, it suffers from clear misconception of law and misconstruction of the circular letter (supra)."

While disposing of the C.R.P No. 216 and 217 of 2007 in C.P Nos. 525 and 526 of 2007, the August Supreme Court of Pakistan held:-

ATTESTED
 "The learned Addl. Advocate General has contended that this Court while interpreting the circulars in question has taken a view contrary to the correct legal position, according to which private respondents were not entitled to the benefit of advance increments. We are afraid, the learned Addl. A.G instead of pointing out any mistake of law and fact in the judgment made an attempt to re-open the case on merits. The scale of review is very limited and the points already considered in the judgment under review cannot be allowed to be re-agitated in review jurisdiction. These review petitions being without any substance are accordingly dismissed."

While disposing of CrI. O.P. No. 66 & 67 of 2007, it was held by the August Supreme Court of Pakistan:-

Attested
Wajid ul Haq

"The learned Addl. A.G. has given an undertaking for implementation of the judgment of this Court within a period of two weeks and in view thereof, this criminal original is disposed of with the direction that the

judgment should be implemented in letter and spirit within two weeks under intimation to the Registrar of this Court."

6. In the above circumstances, and in view of the judgment in rhyme by the August Supreme Court of Pakistan, and keeping in view the provisions of Article 189 of the Constitution of Islamic Republic of Pakistan, we have no other alternative but to declare that all the appellants, after ascertainment that they are the persons similarly placed with the appellants who had previously litigated and in whose favour the judgment mentioned above was given by the August Supreme Court of Pakistan, are entitled to the same benefits as have been given to the appellants of the judgments quoted above. The appeals of such similarly placed persons, after such ascertainment, stands accepted without costs. Each party will bear the cost of the litigation.

7. The official respondents in the above mentioned appeals as well as the other concerned officers/officials in the province are directed to follow the above quoted judgments in their true letter and spirit and without compelling the respective right holders to enter into litigation with the respective official respondents, otherwise the costs of their litigation shall be recovered from the pay and pension as well as person and property of the defaulting concerned officer; though after fixation of responsibility on them as a result of proper enquiry.

8. The remaining similarly placed persons may submit applications/representations to their concerned authorities directly, who shall have to decide their cases as above within a reasonable time.

ANNOUNCED.
12.05.2009.

(BISMILLAH SHAH)
MEMBER.

(ABDUL JALIL)
MEMBER.

CAMP COURT ABBOTTABAD.

Attested
wajid

02/2/09

Number of pages	24
Number of words	24
Copying fee	24
Urgent	24
Total	24
Date of copy	13/7/09
Date of completion of copy	13/7/09

[Signature]
Registrar
Abbottabad



Annexure (D)
GOVERNMENT OF KHYBER PAKHTUNKHWA
FINANCE DEPARTMENT
(REGULATION WING)

18

No. FD (SR-1) 2-123/2010
Dated Peshawar the: 15-12-2010

To
The Accountant General,
Khyber Pakhtunkhwa, Peshawar.

Subject: GRANT OF ADVANCE INCREMENTS ON THE BASIS OF ACQUIRING HIGHER QUALIFICATION.

Dear Sir,

I am directed to refer to your letter No.H-24(74)/Peshawar/Vol-III/2009-10/68 dated 12/01/2010 on the subject noted above and to say that the matter has thoroughly been examined in consultation with concerned Departments during the meetings held on 10-08-2010, 14-10-2010, 18-10-2010, 15-11-2010, 29-11-2010 and 09-12-2010 towards the queries raised by your office, which are clarified as under-

2. The Supreme Court of Pakistan in its Judgement dated 19-07-2007 vide para No.2 has observed in the following words:-

"It would be seen that the petitioners were placed in BPS-14 by reason of having acquired the qualification of BA / BSc, 2nd division which is the prescribed qualification for the post of Elementary School Teacher".

3. In light of the said observations of the honourable Apex Court, the record of the concerned teacher was gone through, which revealed that the said teacher had already availed the benefit of B-14 from B-9 which is the prescribed qualification for appointment as CT School Teacher. As such in the light of the Judgement of the Apex Court referred to above the said petitioner is entitled to get two increments on the basis of acquiring higher qualification of Master Degree.

- i) Those C.T teachers who are in BPS-9 and possessing higher qualification of MA/MSc but have not been placed in BPS-14, are entitled to 4 advance increments while those who have availed BPS-14 are entitled to 2 advance increments on MA/MSc.
- ii) Advance increments will be allowed from the date of obtaining higher qualification or from the date of appointment which ever is later in term of para 5(ii) of Pay Revision Rules 1991, issued vide Finance Department's letter No.FD(PRC)1-1/89, dated 11th August, 1991.
- iii) Those teachers who had secured their appointment or acquired higher qualification after 01-12-2001 are not entitled for the facility of the advance increments on higher qualification in view of the Pay Revision introduced vide Finance Department's letter No.FD(PRC)1-1/2001, dated October 27, 2001.
- iv) Recovery may be made from those teachers/employees who have availed more advance increments over and above their entitlement on academic qualifications as prescribed in para-5(a,b,c &d) of Revision of Basic Scale 1991.

*Attested
wajid ali*

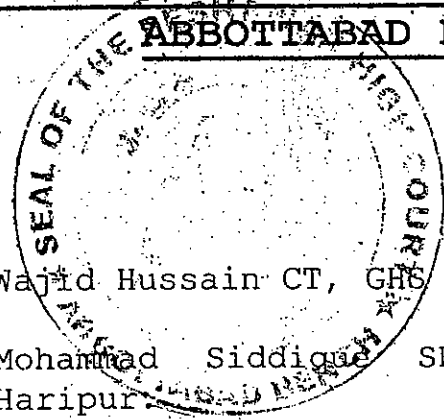
Yours Faithfully,

(KHURSHID ALAM)
Section Officer (SR-1)

Annexure E

19

BEFORE THE HONOURABLE PESHAWAR HIGH COURT
ABBOTTABAD BENCH.



W.P NO. 72/2011.

1. Wajid Hussain CT, GHS No.1, Haripur.
2. Mohammad Siddique SET (EX-CT), GHS No.2, Haripur.
3. Khursheed Qamar CT, GHS No.2, Haripur.
4. Khalid Mehmood SET (Ex-CT) Kangra High School Haripur.
5. Muhammad Anwar Adil CT (Ex-CT) Kangra High School Haripur.
6. Rasheed Ahmed SET, (EX-CT) KTS GHS No.1, Haripur.
7. Aurangzeb CT, (EX-CT) GHS No.1, Haripur.
8. Amjid Khan CT, (EX-CT) KTS GHS No.1, Haripur.
9. Ayaz-ur-Rehman CT (EX-CT) KTS GHS No.1, Haripur.
10. Malik Muhammad Hafeez CT (EX-DM) GHS No.2, Haripur.
11. Shamroz Khan PT (EX-DM) GHS No.2, Haripur.
12. Muhammad Asif Awan CT (EX-DM) GHS No.2, Haripur.
13. Nadeem Ahmed Qureshi CT (EX-DM) GHS No.2, Haripur.
14. Muhammad Ilyas CT (EX-DM) GHS No.2, Haripur.
15. Arshad Habib CT (EX-DM) GHS No.2, Haripur.
16. Saif-ur-Rehman HM GHS Dhenda Haripur.
17. Muhammad Sajid Saleem PT GHS Dhenda Haripur.
18. Muhammad Hanif CT (EX-DM) GHS Jabri.
19. Muhammad Rafique CT HR GMS Bajeeda.

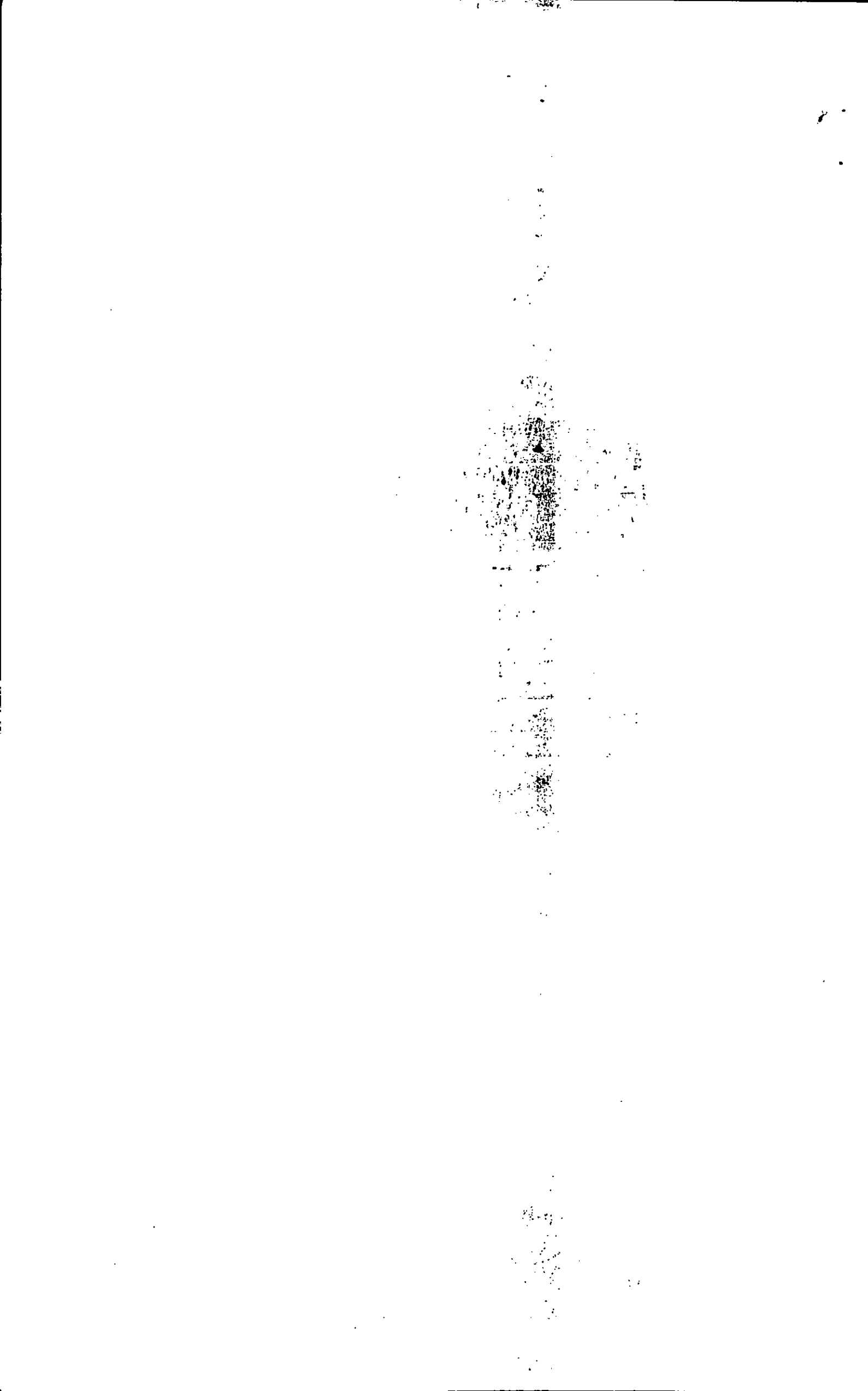
no 824
4.2.11

Additional Registrar
Peshawar High Court
Abbottabad Bench
14.2.11

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Ex. Secy
Peshawar High Court
Abbottabad Bench
Authorized Under Sec 75 of its Ordns

Attested
Wajid Hussain



20. Nisar Ahmed Shaker CT GHS Seria.
21. Sajjad Ahmed CT TT ship, Haripur.
22. Zulfiqar Ahmed son of Noor Ahmed SET (EX-CT) GHSS Buffa.
23. Syed Alimgir Shah son of Said Alam Shah CT GMS Tambri.
24. Munir Hussain son of Habib ur Rehman CT GHS Dherian.
25. Sajjad Hussain Shah son of Syed Nawab Shah, CT GHS Dadar.
26. Muhammad Ashraf son of Suleman CT GHS Sum.
27. Muhammad Ishtiaq son of Muhammad Ayub CT GHS Sum.
28. Iltaf Qadir son of Saien Khan, CT GHS Dherian.
29. Ghulam Khan son of Hajit Khan CT GHSS Buffa.
30. Muhammad Riaz son of Shah Jehan CT GHSS Buffa.
31. Mazher Hussain son of Muhammad Maroof, CT GHSS Buffa.
32. Umer Farooq son of Taj Muhammad Khan, CT GHS Bajna.
33. Rafaqat Naveed son of Aurangzeb, CT GHS Bajna.
34. Iftikhar Ahmed son of Muhammad Irfan PET GHS Bajna.
35. Muhammad Naeem son of Fazal ur Rehman PET GHS Tarangri Bala.
36. Muhammad Miskeen son of Alif Khan, CT GHS Klokeria.
37. Raja Muhammad Khalid Hussain son of Raja Gul Muhammad Shah JC GHS Dherian.

PETITIONERS

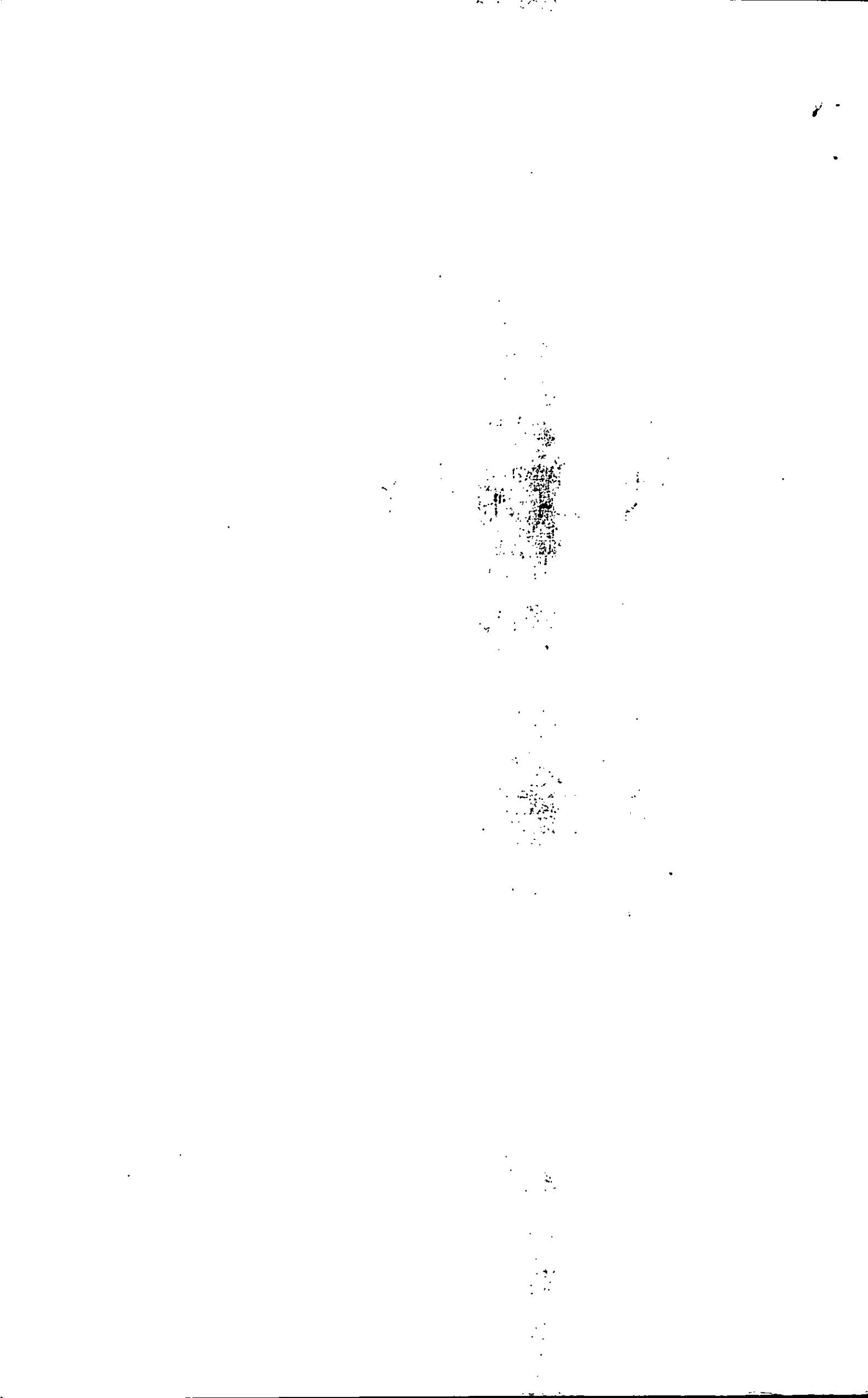
VERSUS

- 1) Government of Khyber Pakhtunkhwa
Finance Department through Secretary
Finance Department Peshawar.

Attested
wajidullah

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1/12
Peshawar Court
Abbottabad Bench
Authorized Under Sec 75 A of Ordns





- 2). Accountant General
Khyber Pakhtunkhwa Peshawar.
- 3). Secretary to Government,
Elementary and Secondary Education, Peshawar.
- 4). District Accounts Officer, Haripur.
- 5). District Accounts Officer, Mansehra.
- 6). Executive District Officer, Elementary &
Secondary Education, Haripur.
- 7). Executive District Officer, Elementary &
Secondary Education, Mansehra.

RESPONDENTS

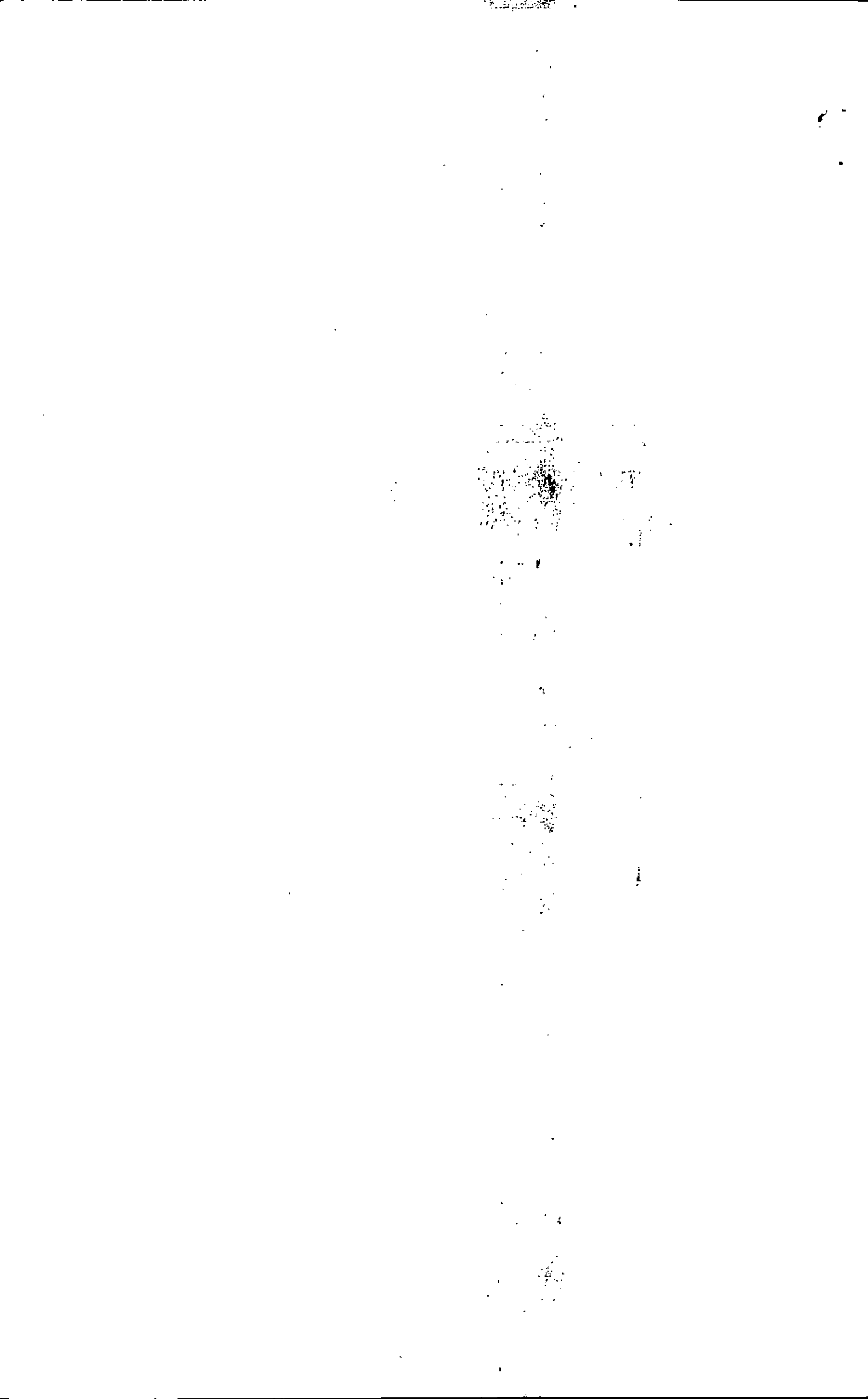
CONSTITUTION PETITION UNDER ARTICLE
199 OF CONSTITUTION OF ISLAMIC
REPUBLIC OF PAKISTAN 1973

It is respectfully submitted as under:-

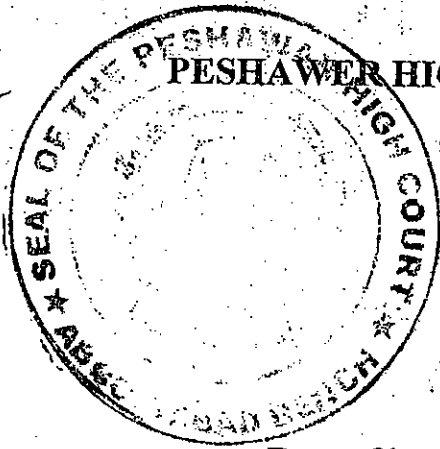
- I. That, petitioners above named in this constitution petition are aggrieved from the decision of respondent No.1, whereby, it has directed to respondent No. 2 vide its letter No. FD (SR-1) 2-123/2010 Peshawar dated 15/12/2010 for recovery of the payment of 2 advance increments. Which were awarded to the petitioners under the judgment of Supreme Court of Pakistan passed in CPLAs No.525, & 526 of 2007 on 19/07/2007 in cases of Rashid Iqbal Khan and Muhammad Haroon Qureshi.

14/12/11
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07-1-12
Peshawar Bench
75 Acts Ordms

Selected
Wajid



22

JUDGMENT SHEET

PESHAWAR HIGH COURT ABBOTTABAD BENCH

JUDGMENTWP No. 72 of 2011Date of hearing: 22-12-2011.Petitioners (Wajid Hussain & others) by Mr. Abdul
Shakoor Khan AdvocateRespondents (Govt of K.P.K. & others) by Mr.
Muhammad Nawaz Khan ADL.

YAHYA AFRIDI, J.

Wajid Hussain alongwith 36

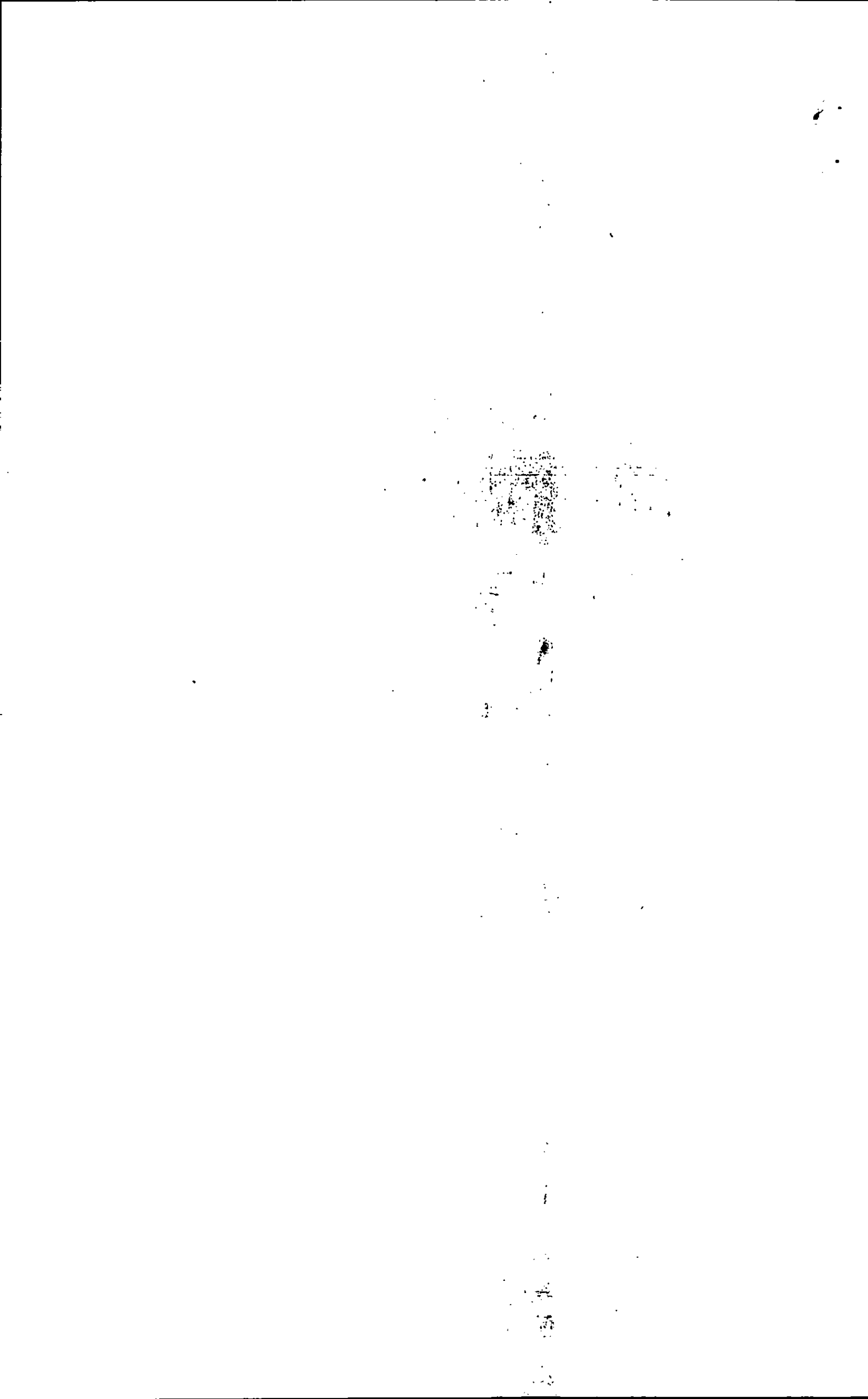
others have sought the constitutional jurisdiction of this Court seeking :-

"declaration to the effect that respondent No.1 has got no lawful authority to act contrary to the judgment of Supreme Court of Pakistan dated 19.07.2007 and as such respondent No.2 in view of his direction contained in impugned circular letter dated 15.12.2010 cannot recover the money paid to the petitioners in terms of 2 advance increments under the said judgment of Supreme Court of Pakistan through respondents No.4 and 5".

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27.1.12
EX
Peshawar Court
Abbottabad Bench
Authorized under Sec 75 Act Ordms

Attested
Wajid Hussain

2- The brief facts of the present case are that the petitioners are Classified Teachers ("C.T.") in the Education Department of Government of Khyber Pukhtoonkhwa and performing their duties in Hazara Division.



3- In view of the judgment passed by the apex Court in CPLA No.525 & 526 of 2007 decided on 19.07.2007, the petitioners were granted advance increments. The said benefit was later on withdrawn and vide order dated 15.12.2010 ordered to be recovered from them. They now seek the constitutional jurisdiction of this Court refraining the respondents to recover the said advance increments already received by them.

4- The valuable arguments of the learned counsel for the parties heard and record perused.

5- It is settled by the apex Court in its authoritative judgment titled "Pakistan v. Muhammad Himayatullah Farukhi" (PLD 1969 SC 407) and thereafter consistently followed and recently in "Chief Secretary, Government of Sindh and another Vs. Sher Muhammad Makhdoom and 2 others" (PLD 1991 Supreme Court 973), wherein it has been held that :-

"It is quite apparent that restrictions imposed in para. 4 of the Revenue department's Notification mentioned above, pertain to the appointment as Mukhtiarkar and in the cases under consideration will have no bearing for the reason that respondents were granted exemptions in accordance with circulars, requirements of which were duly fulfilled by them and not only that but exemptions were implemented and they received necessary training, as such valuable rights had accrued to them which could not be interfered with. In this context, reference can be made to section 20 of General Clauses Act and guidelines laid down in the case of Pakistan v. Muhammad

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07.12
Peshawar Bench
Authorized Under Sec. 75 of the
Peshawar Bench
Authorized Under Sec. 75 of the

Attested
Wajid

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Himayatullah Farukhi (PLD 1969 Supreme Court 407), in which it is held that principle of locus poenitentiae is available to the Government or relevant authorities and further authority which is competent to make order has power to undo it, but such order cannot be withdrawn or rescinded once it has taken legal effect and created certain rights in favour of any individual". (emphasis provided).

In view of the 'ratio decidendi' of the aforementioned judgments, it is but clear that in case any benefit has accrued to a person, without him committing any fraud or misrepresentation, the same cannot be withdrawn or recalled.

6- The petitioners undertake that they do not claim any future advance increments on the basis of judgment of the apex Court and the notification issued by the Government.

7- Before parting with the judgment, this Court wants to reiterate that the present judgment should in no way be interpreted to advance the case of any person, not a party before us.

8- Accordingly, for the reasons stated hereinabove, this Court directs that :-

"I- The recovery of the advance increments already received by the petitioners should not be recovered from the petitioners unless the Secretary, Government of Khyber Pukhtoonkhwa, Elementary & Secondary Education Department, Peshawar finds that the said petitioners had obtained the said relief on

Attested
Wajid Ali

Certified to be true Copy
Peshawar Bench
Abbottabad Bench
Authorized Under Sec 5 (5) Acts Ordms

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the basis of fraud, misrepresentation or any forged documents.

II- The said decision of the worthy Secretary shall be in writing with reasons for the same.

III- The needful exercise be carried out within a period of 60 days, if not earlier, from the date of receipt of this order".

9- This petition is disposed of in the above terms.

Announced.
22.12.2011

SD: YAHYA AFRIDI

SD: KHALID MEAMOOD

JUDGES

Certified to be True Copy
Peshawar High Court
Abbottabad Bench
Authorized Under Section 75 Acts Ordms

Attested
wajid ali



PAYROLL SYSTEM
AMENDMENT FORM
SINGLE EMPLOYEE ENTRY

OFFICE OF THE *Prm*

FOR THE MONTH OF *MO*

DDO Code * *D.D.O. 0000*
(Cost Center) *CLASS 0000*

Personnel
Number *0000*

Grade (Pay
Scale Group) *16*

26

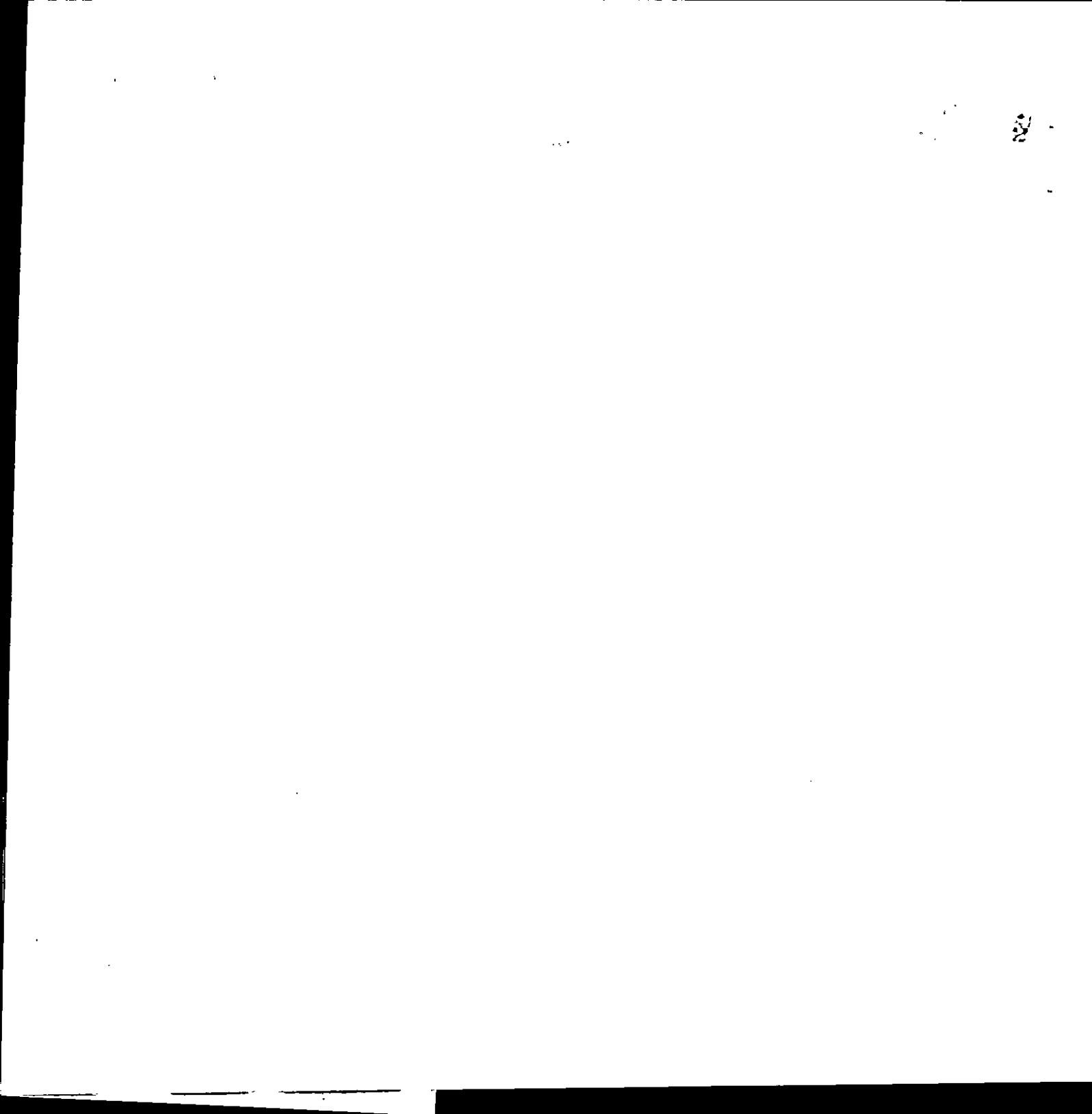
GENERAL DATA CHANGE

Info ¹⁴ Type	Field ID ¹⁵	New Contents ¹⁶
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		<i>Admin Relief 2-012</i>
		<i>Deductions</i>
		<i>GPA</i>
		<i>B/I</i>
		<i>Adell - G - Ins -</i>
		<i>Group - Insurance</i>
		<i>EEF -</i>

*Attested
w/ signature*

G.I.S.

Prepared By *21*



PAYMENTS		AMOUNT	DEDUCTIONS	Payroll Section
21	Basic Pay	23,600.00	3016 GPF Subscription - Rs	
20	House Rent Allowance	1,818.00	3501 Benevolent Fund	
47	Medical Allow 15% (1	1,966.00	3511 Addl Group Insurance	
48	Adhoc Allowance 2010	6,555.00	3604 Group Insurance	
20	Adhoc Relief Allow 2	1,966.00	3990 Emp. Edu. Fund KPK	
18	Adhoc Relief Allow (4,720.00	3609 Income Tax	

PAYMENTS 40,625.00 DEDUCTIONS
 Branch Code: 231470 HIRPUR VILLAGE National Bank of

06871 MUHAMMAD ASGHAR. Prev Pers No: 99990256973 Desig: S. E. T.
 PAYMENTS AMOUNT DEDUCTIONS

21	Basic Pay	28,000.00	3017 GPF Subscription - Rs
20	House Rent Allowance	2,955.00	4200 Professional Tax
30	Science Teaching All	200.00	3501 Benevolent Fund
47	Medical Allow 15% (1	2,365.00	3511 Addl Group Insurance
48	Adhoc Allowance 2010	7,885.00	3604 Group Insurance
20	Adhoc Relief Allow 2	2,365.00	3990 Emp. Edu. Fund KPK
18	Adhoc Relief Allow (5,600.00	3609 Income Tax

PAYMENTS 49,370.00 DEDUCTIONS
 Branch Code: 230301 MAIN BRANCH, ABBOTABAD. National Bank of

07443 WAJID ALI SHAH. Prev Pers No: 99990281925 Desig: SR. CERTIF
 P. A. M. E. N. T. S. AMOUNT DEDUCTIONS

21	Basic Pay	26,800.00	3016 GPF Subscription - Rs
20	House Rent Allowance	1,818.00	3501 Benevolent Fund
47	Medical Allow 15% (1	2,043.00	3511 Addl Group Insurance
48	Adhoc Allowance 2010	7,020.00	3604 Group Insurance
20	Adhoc Relief Allow 2	2,043.00	3990 Emp. Edu. Fund KPK
18	Adhoc Relief Allow (5,360.00	3609 Income Tax

PAYMENTS 45,084.00 DEDUCTIONS
 Branch Code: 231470 HIRPUR VILLAGE National Bank of P

07444 NIAZ AHMED. Prev Pers No: 99990281936 Desig: SR. CERTIF
 PAYMENTS AMOUNT DEDUCTIONS

21	Basic Pay	27,600.00	3016 GPF Subscription - Rs
20	House Rent Allowance	1,818.00	3501 Benevolent Fund
47	Medical Allow 15% (1	2,232.00	3511 Addl Group Insurance
48	Adhoc Allowance 2010	7,860.00	3604 Group Insurance
20	Adhoc Relief Allow 2	2,232.00	3990 Emp. Edu. Fund KPK
18	Adhoc Relief Allow (5,520.00	3609 Income Tax

PAYMENTS 47,262.00 DEDUCTIONS
 Branch Code: 240643 GALANDER ABAD Muslim Commercial

07456 ABDUL HAKEED LOOHI Prev Pers No: 99990282075 Desig: S. E. T.
 PAYMENTS AMOUNT DEDUCTIONS

21	Basic Pay	32,800.00	3017 GPF Subscription - Rs
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*Attested
 wajid ali*

27

Annexure H

1171
28

THE PESHAWAR HIGH COURT, ABBOTTABAD BENCH

Writ Petition No 447-A of 2013.

1. Maroof Khan S/O Mir Zaman Khan Senior C.T teacher, Government Centennial Model Secondary School (Boys) English Medium Abbottabad.
2. Wajid Ali Shah S/O Muzamal Shah, Senior C.T teacher, Government Higher Secondary School Bandi Dhundan, Abbottabad.
3. Mazhar-Ul-Haq S/O Abdul Aziz, Senior C.T teacher, Government High School Jhangra, Abbottabad.
4. Muhammad Sarwar Khan S/O Mahabat Zaman Khan Senior C.T teacher, G.C.M.S.S (Boys) English Medium Abbottabad.
5. Syed Arif Hussain Shah S/O Syed Makhdoom Shah, Senior C.T teacher, G.C.M.S.S (Boys) English Medium Abbottabad.

Petitioners

Versus

1. Government of Khyber Pakhtunkhwa through. Secretary Finance Department Peshawar.
2. Accountant General Khyber Pakhtunkhwa Peshawar.
3. District Comptroller of Accounts, Abbottabad.
4. District Officer (Elementary & Secondary Education), Abbottabad.
5. Government of Khyber Pakhtunkhwa through Secretary Elementary & Secondary Education Department Peshawar.

Attested
Wajid Ali Shah

Respondents

WRIT PETITION UNDER ARTICLE 199 OF THE CONSTITUTION OF ISLAMIC REPUBLIC OF PAKISTAN 1973, FOR DECLARATION, THAT PETITIONERS HAVE ACCRUED LEGAL RIGHTS FOR (04) FOUR ADVANCE INCREMENTS OF MAM/MSO IN PURSUANCE OF THE JUDGMENT DATED 12/05/2009 PRONOUNCED BY KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR IN THEIR INDIVIDUAL SERVICE APPEALS WHICH ATTAINED ITS FINALITY. AFTER ITS IMPLEMENTATION IN LETTER AND SPIRIT, RESPONDENTS WITHOUT SETTING ASIDE THE SAID JUDGMENT FROM APEX COURT, HAVE NO LEGAL RIGHTS TO DEDUCT/RECOVER TWO (02) ADVANCE INCREMENTS OUT OF FOUR (04) ADVANCE INCREMENTS FROM THE SALERIES OF THE PETITIONERS.

THREE RUPEES

TO
High Court
Abbottabad Bench

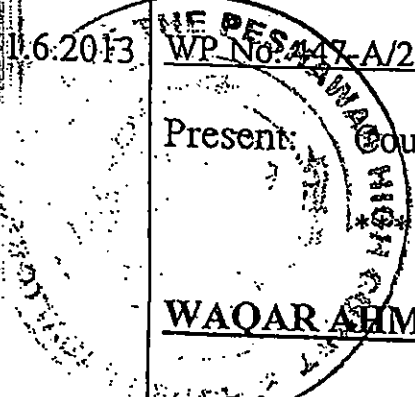
3

29 (15)

PESHAWAR HIGH COURT ABBOTTABAD BENCH
FORM 'A'
FORM OF ORDER SHEET

Date Order of the Court with signature of Honourable Judge (s)
II 2

11.6.2013 WP No: 447-A/2013



Present: Counsel for the petitioner.

WAQAR AHMED SETH J. Since, through an amendment in the legislation, the Provincial Service Tribunal has been delegated the powers of implementation, therefore, the present writ petition is not maintainable and the petitioners are advised to approach the KPK Service Tribunal in this respect.

2. Office is directed to return all the original documents to the petitioners to enable them to present the same before the service tribunal.

3. The instant writ petition is disposed of in the above terms.

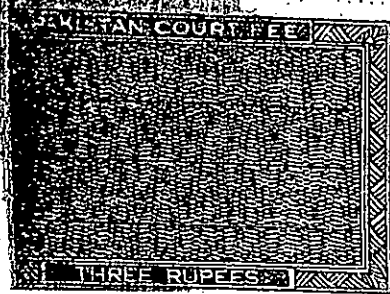
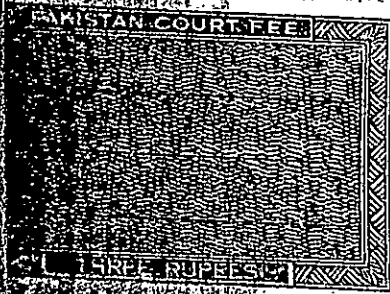
Attested
Wajid Ali Khan

Certified to be True Copy.

Examiner
Peshawar High Court
Abbottabad Bench
174-A-16 Ordina

[Signature]
JUDGE

[Signature]
JUDGE



Annexure I,

30

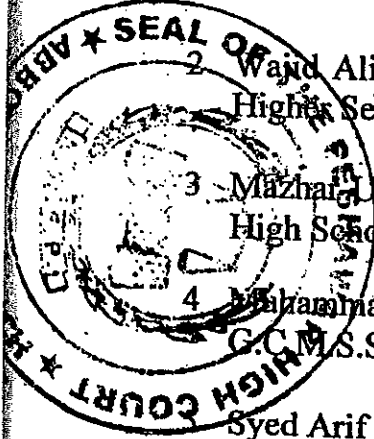
BEFORE THE PESHAWAR HIGH COURT, ABBOTTABAD BENCH

Review Petition No: 34-A of 2013.

IN

Writ Petition No 447-A of 2013.

1 Maroof Khan S/O Mir Zaman Khan Senior C.T teacher, Government Centennial Model Secondary School (Boys) English Medium Abbottabad.



2 Wajid Ali Shah S/O Muzamal Shah, Senior C.T teacher, Government Higher Secondary School Bandi Dhundan, Abbottabad.

3 Mazhar Ul-Haq S/O Abdul Aziz, Senior C.T teacher, Government High School Jhangra, Abbottabad.

4 Muhammad Sarwar Khan S/O Mahabat Khan Senior C.T teacher, G.C.M.S.S (Boys) English Medium Abbottabad.

Syed Arif Hussain Shah S/O Syed Makhdoom Shah, Senior C.T teacher, G.C.M.S.S (Boys) English Medium Abbottabad.

Petitioners

Versus

Attested
Wajid Ali Shah

24/1/13

1 Government of Khyber Pakhtunkhwa through Secretary Finance Department Peshawar.

2 Accountant General Khyber Pakhtunkhwa Peshawar.

3 District Comptroller of Accounts, Abbottabad.

4 District Officer (Elementary & Secondary Education), Abbottabad.

5 Government of Khyber Pakhtunkhwa through Secretary Elementary & Secondary Education Department Peshawar.

Respondents

**REVIEW PETITION AGAINST THE
JUDGMENT/ORDER DATED 11/06/2013 PRONOUNCED
BY THIS HONOURABLE COURT IN WRIT PETITION
NO 447-A OF 2013,**

certified to be True Copy

Examiner
Peshawar High Court
Abbottabad Bench
Under Sec 75 Act Ord 1973

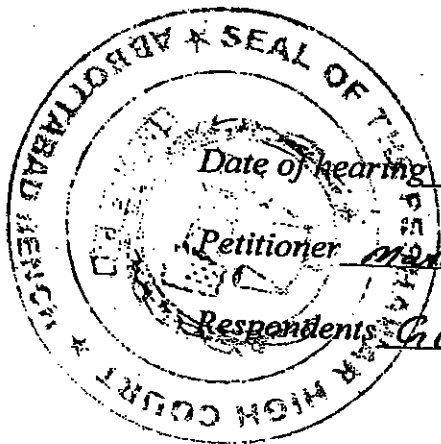
31

PESHAWAR HIGH COURT ABBOTTABAD BENCH

JUDICIAL DEPARTMENT

JUDGMENT SHEET

Review Petition No.34-A of 2013



Date of hearing 27-02-2014

Petitioner Maroof Khan by Mr. Rafiqul Abbas Thangiri
Respondents Govt. of KPK.
Advocate.

WAQAR AHMAD SETH, J. Maroof Khan and four other petitioners seek review of judgment dated 11.06.2013 passed by this Court in Writ Petition No.447-A of 2013.

- 2- Arguments heard and record perused.
- 3- The petitioners are senior C.T. Teachers and through the impugned order they were advised to approach the Services Tribunal for the redress of their grievances, if so desired, and they instead of approaching the competent authority have filed this review petition, which in any manner is not maintainable.
- 4- Consequently, this review petition being without substance is dismissed in limine.

Announced.
27.02.2014.

Attested
witness
SO. JUDGES

Certified to be True Copy

13/3/14
Premier
Peshawar High Court
Abbottabad Bench
Authorized Under Sec 75 Acts Ord 1973

Annexure I

IN THE SUPREME COURT OF PAKISTAN

(Appellate jurisdiction)

C.P.L.A NO 40 OF 2014.

32

Presented today by Peshawar
Please Check and report.
25-4-14
Institution Officer

Mr. Asghar

Residence

5-4-14

S.O

25-4-14
Mr. Asghar

Maroof Khan S/O Mir Zaman Khan Senior C.T teacher, Government Centennial Model Secondary School (Boys) English Medium Abbottabad R/O Village Mera Mandrochh (Nawan Shehr) P.O Nawan Shehr Tehsil & District Abbottabad. Phone No 0323-9823136.

Petitioner.

VERSUS

- 1 Government of Khyber Pakhtunkhwa through Secretary Finance Department Peshawar.
- 2 Accountant General Khyber Pakhtunkhwa Peshawar.
- 3 District Comptroller of Accounts, Abbottabad.
- 4 District Officer (Elementary & Secondary Education), Abbottabad.
- 5 Government of Khyber Pakhtunkhwa through Secretary Elementary & Secondary Education Department Peshawar.

Real Respondents.

- 6 Wajid Ali Shah S/O Muzamal Shah, Senior C.T teacher, Government Higher Secondary School Bandi Dhundan, Abbottabad.
- 7 Mazhar-Ul-Haq S/O Abdul Aziz, Senior C.T teacher, Government High School Jhangra, Abbottabad.
- 8 Muhammad Sarwar Khan S/O Mahabat Khan Senior C.T teacher, G.C.M.S.S (Boys) English Medium Abbottabad.
- 9 Syed Arif Hussain Shah S/O Syed Makhdoom Shah, Senior C.T teacher, G.C.M.S.S (Boys) English Medium Abbottabad R/O Village and P.O Kakul Tehsil & District Abbottabad.

Proforma Respondents.

Attested
Wajid Ali Shah

CIVIL PETITION FOR LEAVE TO APPEAL UNDER ARTICLE 185 (3) OF THE CONSTITUTION OF ISLAMIC REPUBLIC OF PAKISTAN 1973, FOR GRANT OF LEAVE TO APPEAL AGAINST THE JUDGMENT/ORDER DATED 27/02/2014 PASSED IN REVIEW PETITION NO 34 - A OF 2014 BY THE HONOURABLE PESHAWAR HIGH COURT, ABBOTTABAD BENCH.

ATTESTED

Superintendent
Supreme Court of Pakistan
Islamabad

33

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

PRESENT:

MR. JUSTICE NASIR-UL-MULK
MR. JUSTICE MIAN SAQIB NISAR
MR. JUSTICE ASIF SAEED KHAN KHOSA

CIVIL PETITION NO. 640 OF 2014

(on appeal from the order of the Peshawar High Court,
Abbottabad Bench dated 27.02.2014 passed in Review
Petition No.34-AQ of 2013)

AND

C.M.A. NO. 2280 OF 2014

(applicant for transposition as petitioner)

Maroof Khan

...Petitioner

VERSUS

Government of KPK through Secretary
Finance Department, Peshawar & others

...Respondents

For the Petitioner: In-person.

For the Applicants:

(in CMA 2280/14)

Wajid Ali, In-person.

(in CMA 3300/14)

Muhammad Sarwar Khan, In-person.

(in CMA 3301/14)

Mazhar-ul-Haq, In-person.

(in CMA 3302/14)

Syed Arif Hussain Shah, In-person.

For Respondents 1-5: Mr. Abdul Latif Yousafzai, AG, KPK.

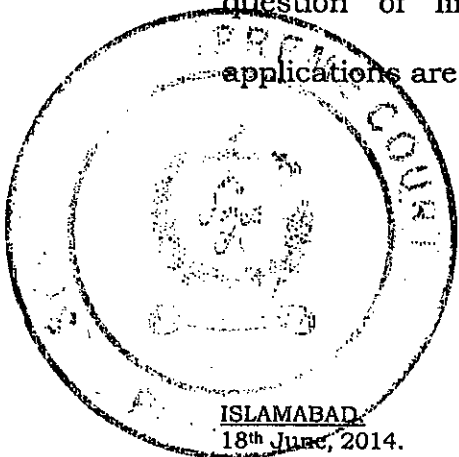
Date of Hearing: 18.06.2014

*Attested
Wajid Ali*

ORDER

NASIR-UL-MULK, J.— After arguing the case at some length, the petitioner/applicants decided to approach the Service Tribunal for redressal of their grievance. In case they do so, we are sanguine that the Service Tribunal may sympathetically consider the question of limitation. With this observation, the petition and applications are disposed of.

Sd/- Nasir-ul-Mulk, J
Sd/- Mian Saqib Nisar, J
Sd/- Asif Saeed Khan Khosa, J



ISLAMABAD
18th June, 2014.
Mudassar

*Mudassar
24/6/14*

"Not approved for reporting."

Certified to be True Copy

[Signature]
26/6/14
Superintendent
Supreme Court of Pakistan
Islamabad

To,

Annexure 1K,

34

The Accountant General
Khyber Pakhtunkhwa Peshawar.

SUBJECT

DEPARTMENTAL APPEAL AGAINST THE DEDUCTION/RECOVERY OF TWO (02) ADVANCE INCREMENTS OUT OF FOUR (04) ADVANCE INCREMENTS FROM THE SALERIES OF THE APPELLANT WITH EFFECT FROM 01/04/2013, THESE (04) FOUR ADVANCE INCREMENTS OF M.A/M.SC WERE GRANTED IN PURSUANCE OF THE JUDGMENT DATED 12/05/2009 PRONOUNCED BY KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR IN APPELLANT'S INDIVIDUAL SERVICE APPEAL WHICH ATTAINED ITS FINALITY, AND SAME IS IMPLEMENTED IN LETTER AND SPIRIT.

Sir,

The submissions of the appellant are as under;

The submissions of the appellant are as under;

- 1) That the appellant is a school teacher in Elementary and Secondary Education Department Abbottabad and presently working in the capacity of Senior C.T teacher in BPS No 16.
- 2) That appellant was granted 04 Advance Increments of M.A/M.Sc in pursuance of the judgment dated 12/05/2009 pronounced by Khyber Pakhtunkhwa Service Tribunal Peshawar in appellant's individual service appeal, the said judgment was not only attained its finality but implemented letter and spirit in the year 2010, and since then appellant was being granted/taken his 04 Advance Increments of M.A/M.Sc regularly.
- 3) That in the meanwhile appellant was promoted from BPS 15 to BPS 16 under Notification dated 28/02/2013 and his respective principal fixed/changed his pay from BPS 15 to BPS 16 under the law as (From Rs 26700/-PM BPS 15 in Rs 27600/-PM BPS 16) and submitted Pay Amendment Form to the office of District Comptroller of Account Abbottabad.
- 4) That utmost surprisingly, District Comptroller of Account Abbottabad with out any notice given to the appellant or without formal/official written order or any legal and factual reason, deducted/recovered (02) two advance increments out of 04 advance increments with effect from 01/04/2013 and fixed his pay in BPS 16 as Rs 26800/-PM.
- 5) That appellant challenged the illegality of impugned action taken by District Comptroller of Account Abbottabad in Constitutional Petition before Peshawar High Court, the same matter is now disposed off by the Supreme Court of Pakistan on the basis of Jurisdictional bar

Attested
Wajid Ali

contained in Article 212 of the Constitution of Pakistan and under the such legal position and in pursuance of Order passed by Supreme Court, instant departmental Appeal is being filed by the appellant.

- 6) That in the above circumstances, when law point already decided by KPK Service Tribunal and Supreme Court of Pakistan and that is final too, and implemented letter and spirit, later on, it could not be changed/disturbed/reversed by specially those respondents (District Comptroller of Account Abbottabad) who were party in the decided settled previous final litigation.
- 7) That It is also submitted the very legal position that the letter No. FD (SR-1) 2-123/2010 dated 15/12/2010 issued by Secretary Finance Department Khyber Pakhtunkhwa Peshawar is directly against the clearly decided case of Supreme Court of Pakistan, as referred portion taken from the Para no 02 of judgment dated 19/07/2007 is not the observations of Supreme Court, it is the arguments of Additional Advocate General KPK and next relevant portion of the same Para no 2 of the judgment is left and not taken / mentioned in the under-questioned letter and this situation creates confusion which is not only against the operative part of the Judgment dated 19/07/2007 but against the letter and spirit of Supreme Court Judgment, and admittedly contempt of Court.

In the light of above mentioned very serious circumstances and Law, it is therefore, requested that on acceptance of this departmental appeal the impugned action deduction/recovery of 02 advance increments out of 04 in respect of M.A/M.Sc taken by District Comptroller of Account Abbottabad with effect from 01/04/2013 be set-aside (cancelled) and all amount which is refunded or the amount is deducted from the salary of the appellant may be ordered the refund of same.

Attested
Wajid Ali Shah

Dated 04/07/2014

Wajid Ali Shah

Wajid Ali Shah S/O Muzamal Shah,
Senior C.T teacher, Government Higher
Secondary School Bandi, Dhundan,
Abbottabad, R/O: village and Post Office
Banda Pir Khan, Abbottabad

36

Annexure IL,

No. 1442

For Insurance Notices see reverse. Stamps affixed except in case of uninsured letters of not more than the initial weight prescribed in the Post Office Guide on which acknowledgement is due.

Rs. Ps.

28

Handwritten signature

Received a registered* addressed to _____

Initials of Receiving Office _____ *Write here "letter", "card", "packet" or "parcel" with the words "insured" if necessary

Insured for Rs. (in figures) _____

If insured.

Insurance fee Rs. _____ Ps. _____

Name and address of sender _____

Post Office stamp and handwritten number 9

**BEFORE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR.**

Civil Miscellaneous Application No _____ of 2015.

IN

Service Appeal No: 1305 of 2014

Wajid Ali Shah S/O Muzamal Shah, Senior C.T teacher, Government
Higher Secondary School Bandi Dhundan, Abbottabad, R/O: village and
Post Office Banda Pir Khan, Abbottabad.

Appellant

Versus

Accountant General Khyber Pakhtunkhwa Peshawar and 03 Other.

Respondents

APPLICATION FOR SUSPENSION OF RECOVERY/
DEDUCTION OF 02 ADVANCE INCREMENTS OUT OF 04
ADVANCE INCREMENTS WHICH IS BEING RECOVERED/
DEDUCTED BY THE RESPONDENTS AND REFRAIN THEM
NOT TO FURTHER CHANGE IN THE MATTERS ALREADY
SUBJUDICE BEFORE THIS HONOURABLE TRIBUNAL TILL
THE FINAL DISPOSAL OF TITLED SERVICE APPEAL.

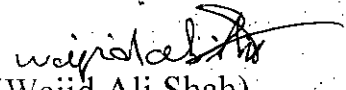
Respectfully Sheweth,

- 1) That this Honourable Tribunal had been pleased to decide the case on 12/05/2009, regarding for grant of 04 advance increments of MA/MSc, and the said Judgment was passed in favour of appellant, which was never, ever challenged by respondents before Supreme Court of Pakistan, and after that respondents implemented the said Judgment dated 12/05/2009 in letter and spirit, in all respect.
- 2) That surprisingly respondent no 02, with out any notice and legal and factual reason, started deduction of 02 advance increments out of 04 from the salary of appellant with effect from 01/04/2013.
- 3) That this Honourable Tribunal has been pleased to admit the titled service appeal in February 2015, but respondents did not file their

comments/reply and using delaying tactics, while impugned action of respondents is totally illegal and without Jurisdiction as well as they challenged the authority of this Honourable Tribunal for which they are liable to be dealt with, under criminal proceedings too.

It is therefore prayed that impugned action i.e. deduction of 02 advance increments out of 04 advance increments may please be suspended and respondents may please be directed not to further change in the matters already subjudice before this Honourable Tribunal till the final disposal of titled service appeal.

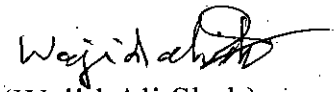
Dated 23/07/2015

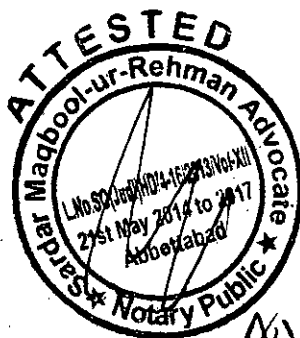

(Wajid Ali Shah)
Appellant Inperson

Affidavit

I, Wajid Ali Shah S/O Muzamal Shah, Senior C.T teacher, Government Higher Secondary School Bandi Dhundan, Abbottabad, R/O: village and Post Office Banda Pir Khan, Abbottabad, do here by affirm on oath that contents of instant application (CMA) is correct and true according to my best knowledge and belief and nothing has been suppressed from this Honourable Tribunal and this instant application is first & same nature of any other application is not pending before Honourable Tribunal.

Dated 23/07/2015


(Wajid Ali Shah)
DEPONENT



23/7/15

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR.

Service Appeal No.1305/2014
Wajid Ali Shah (CT), Abbottabad.

...Appellant

VERSUS

1. Accountant General, Khyber Pakhtunkhwa, Peshawar.
2. District Comptroller of Accounts, Abbottabad.
3. Government of Khyber Pakhtunkhwa through Secretary, Finance Department, Peshawar.
4. Government of Khyber Pakhtunkhwa through Secretary (Elementary & Secondary Education Department), Peshawar.

...Respondents

PARAWISE COMMENTS ON BEHALF OF RESPONDENT NO.03

Respectfully Sheweth

Preliminary Objections:

- i) That the appellant has no cause of action.
- ii) That the appellant has no locus standi.
- iii) That the appeal in hand having no merits is not maintainable.
- iv) That appeal is time barred.
- v) This Honourable Tribunal lacks jurisdiction to entertain the appeal.
- vi) That the appeal is bad for mis-joinder and non-joinder of necessary parties.
- vii) That under the cessation of advance increment on higher educational qualification Act No.IX of 2012, claim of the Appellant stood abated.

Facts:

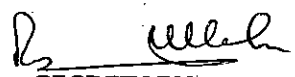
1. Relates to Service/Court record, hence need not comments.
2. Correct to the extent that Respondent No.3 issued, letter dated 15.12.2010 containing direction that recovery may be made from those teachers/ employees who have availed extra advance increments over and above their entitlement on academic qualification.
3. Incorrect. In the light of Finance Department letter dated 15.12.2010; Respondent No.2 has rightly deducted/recovered 02 advance increments out of 04 erroneously allowed to the appellant as he has availed the benefit of BPS-14 on qualification of BA/BSc.
4. Needs no comments by Respondent No.3, being related to courts record.
5. Do not relate to Respondent No.3.

Cont'd Next Page-(2)

Grounds:

- (a) Incorrect: The issue of availing extra advance increments over & above the entitlement was agitated and examined thoroughly by the Accountant General Office (Pay Fixation Party) vide letter No.PFP/ R.B.S.2011/DIK/2014-15/248 dated 10.12.2014(Annex-I). The position emerged therein was also shared with Law Department vide Finance Department letter No.FD(SOSR-D)2-123/2015 dated 01.09.2015(Annex-II) with the request for their views on legal position of the case. Thereafter, Law Department vide letter No.SO(OP-II)/LD/5-7/2012-Vol-II/21708-09 dated 16.09.2015 (Annex-III) has confirmed that Finance Department letter dated 15.12.2010 with regard to the recovery of extra advance increments/invalid implementation is correct and such implementation was declared invalid. Hence recovery was ordered to be effected from those teachers/employees who have availed more advance increments over and above their entitlement on academic qualification (Annex-IV).
- (b) Incorrect: Respondent No.3 has committed no irregularity/illegality.
- (c) Incorrect: As explained vide Para 2 & 3 of Facts and (a) of "Grounds".
- (d) Incorrect: As explained above.
- (e) Incorrect: Action of Respondent No.3 is as per rules.
- (f) Incorrect: Action taken by Respondent No.3 is not against the Judgement of any Court/Service Tribunal, but as per Judgement of august Supreme Court of Pakistan and in the interest of justice & public exchequer.
- (g) Incorrect: As explained in preceding paras. Respondent No.3 can even not think of contempt of any court.
- (h) Incorrect: As explained in preceding paras.
- (i) Incorrect: Appeal of the appellant is time barred.
- (j) Incorrect: Action of Respondent No.3 is legal.
- (k) Incorrect. Action taken by Respondent No.3 is in accordance with the Judgement of august Supreme Court.

It is therefore, humbly prayed that appeal of the appellant being devoid of merit may be dismissed.


SECRETARY
GOVERNMENT OF KHYBER PAKHTUNKHWA,
FINANCE DEPARTMENT
(RESPONDENT NO.3)
For
Solih

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR.

Service Appeal No.1305/2014
Wajid Ali Shah (CT), Abbottabad.

.....

Appellant

VERSUS

1. Accountant General, Khyber Pakhtunkhwa, Peshawar.
2. District Comptroller of Accounts, Abbottabad.
3. Government of Khyber Pakhtunkhwa through Secretary,
Finance Department, Peshawar.
4. Government of Khyber Pakhtunkhwa through Secretary
(Elementary & Secondary Education Department), Peshawar.

.....

Respondents

AFFIDAVIT

I, Irshad Muhammad, Section Officer(Litigation-II) do hereby solemnly affirm and declare that the contents of accompanying Parawise Comments are true and correct to the best of my knowledge and belief and that nothing has been concealed from this Honorable Tribunal.



DEPONENT
SECTION OFFICER(LIT-II)
Govt. of Khyber of Pakhtunkhwa
FINANCE DEPARTMENT



Office of the
Accountant General

Khyber Pakhtunkhwa Peshawar

Phone: 091 9211250-53

No. PFP/R.B.S.2011/DIK/2014-15/248

Dated 10.12.2014

To,

The Accounts Officer,
HAD Section.

Subject: **STOPPAGE OF RECOVERY AS WELL AS ALLOWING ADVANCE INCREMENTS ON MA/MSC.** P-239c

Please refer to your Memo No.HAD-24(76)Swat/Vol-X/2014-15 dated 16.1.2015 on the subject noted above.

2. As you are aware of the facts that appointment to the post of CT made through different method of recruitment (i) from PTC (Now PST) being FA/FSc/D.com and (ii) directly on the basis of FA/ FSc/D.com qualification in BPS-09. Before 16.1991 those PST teachers whose appointment were made on the basis of Metric Plus existing professional qualification granted 02 and 03 advance increments on possessing or acquiring higher qualification i.e. FA,FSc/D Com and BA/BSc/B.com respectively while in the case of CT whose appointment were made on basis of FA plus prescribed professional qualification granted 03 advance increments on possessing or acquiring BA/BSc/B.com vide Finance Deptt: letter No.FD(SR-I)1-67/82 dated 24.8.1983.

3. After introduction of RBPS-1/6/1991, those PTC teachers who have passed FA/FSc/D.com in the Second Division were allowed BPS-09 and BPS-14 to those CT teachers who have passed BA/BSc/B.com in the Second Division. In this way the CT teachers who joined the Education Deptt: in the capacity of PTC and later on appointed to the post of CT already drawn 05 advance increments on basis of FA/FSc/D.com plus BA/BSc.B.com and CT, teacher whose appointment made on the basis of FA/FSc/D.com achieved 03 advance increments (on basis of BA/BSc.B.com) in light of Finance Deptt: letter dated 24.08.1983 therefore, those CT teachers who have already availed 05 increments (as PST) and 03 increments

are entitled only for one increment on possessing or acquiring ~~MA/MSc~~ /M.com qualification as regards those employees whose appointment ~~was~~ made on the basis of BA/BSc.B.com in BPS-14 and not availed any advance increments are entitled only for 02 advance increments on MA in light of Finance Deptt: letter No.(PRC)1-1/89 dated 07.08.1991.

4. As regards Arabic teacher whose appointed made on the basis of honor in Arabic and granted BPS-14 on BA/BSc.B.com Second Division are entitled for two advance increments on possessing or acquiring MA/MSc/M.com while those teacher whose appointment made on the basis of MA Arabic or Shahadatul Alamia from the recognized Madaris are not entitled for any advance increments on MA/ MSc/M.com but the Education Deptt: granted 04 advance increments to the CT and Arabic teacher on acquiring MA/MSc/M.com qualification which are over and above of the entitlement in light of the Finance Deptt: letter dated 11.8.1991 as well as judgment made by the honorable Supreme Court of Pakistan in Civil Petition No.1425 of 2011.(copy enclosed).

5. The subject issue referred to the Pay Fixation Party has been examined and reached to the conclusion that as per contents of Para 2 (2) of the ~~Khyber Pakhtunkhwa Cessation Of Payment Of Arrears On Advance Increments On Higher Education Qualification Act 2012~~ clearly indicate that recovery of ~~advance increments paid to the Govt employees on acquiring higher qualification~~ in light of any order made, instruction issued decision, Judgment or orders of any courts or tribunal, including High Court or the Supreme Court, may not be recovered from the recipients Govt: employees as these were paid validly. The Pay Fixation Party is of the view that the advance increments availed over and above their entitlement as explained in the preceding Paras has to be reduced & brought to the actual pay in light of Finance Deptt: letter dated 15.12.2010.

6. It is requested that Finance Deptt: may also be advised to share the view of the Pay Fixation Party with the law Deptt: for their opinion and issue clear instruction so that the doors of litigation closed for ever.


ACCOUNTS OFFICER (PFP)

Annex-II



GOVERNMENT OF KHYBER PAKHTUNKHWA
FINANCE DEPARTMENT
(REGULATION WING)

NO. FD (SOSR-1) 2-123/2015
Dated Peshawar the: 01-09-2015

To:

The Secretary to Govt. of Khyber Pakhtunkhwa,
Law, Parliamentary Affairs & Human Rights Deptt,
Peshawar.

Subject:

APPEAL OF CT TEACHERS FOR STOPPING RECOVERIES BEING
MADE ON ACCOUNT OF ADVANCE INCREMENTS GRANTED ON
HIGHER EDUCATIONAL QUALIFICATION.

Dear Sir,

I am directed to enclose herewith a self-explanatory application alongwith its enclosures received from certain teachers of Khyber Pakhtunkhwa as well as reply / comments of AG Office (communicated through their letter No.HAD-24(76)/Vol-X/Swat/2014-15/3391 dated 07-04-2015) thereon regarding the subject cited above and to state that sub-section (2) of section 2 of the Khyber Pakhtunkhwa Cessation of Payment of Arrears on advance Increments on Higher Educational Qualification Act, 2012, states "Any order made, instructions issued, decision, judgment or order o any Court or Tribunal including a High Court or the Supreme Court, implemented immediately before the commencement of this Act, shall be deemed to have been validly made, issued and implemented by the date of commencement of this Act, and any amount already paid there under on account of advance increments or arrears thereof shall be deemed to have been validly paid and shall not be recoverable from the recipient Government employees". As against this, the AG Office has opined with reference to the Pay Fixation Party that advance increments availed of over and above the entitlement are to be brought to the actual limit in light of Finance Department's letter dated 15-12-2010 (copy enclosed). The said two point of views are mutually contradictory.

2. In light of above, your valuable comments with regard to legal position between the two opposing views is solicited; please.

of

SECTION OFFICER (SR-I)

*Copy
2/9/15*



GOVERNMENT OF KHYBER PAKHTUNKHWA

LAW, PARLIAMENTARY AFFAIRS &
HUMAN RIGHTS DEPARTMENT

No. SO(OP-II)/LD/5-7/2012-VOL-II
DATED: PESHAWAR THE 16 SEPT, 2015.

Annex = III

121708-09

To

The Secretary to Govt: of Khyber Pakhtunkhwa,
Finance Department, Peshawar.

Subject: APPEAL OF CT TEACHERS FOR STOPPING RECOVERIES
BEING MADE ON ACCOUNT OF ADVANCE INCREMENTS
GRANTED ON HIGHER EDUCATIONAL QUALIFICATION.

Dear Sir,

I am directed to refer to your Department's letter No. FD(SOSR-1)2-123/2015 dated 01.09.2015 on the subject noted above and to state that Section-2 (2) of Khyber Pakhtunkhwa Cessation of Payment of arrears on advance increments on Higher Educational Qualification Act, 2012 and views of Accountant General with regard to Finance Department letter No.FD(SR-1)/2-123/2010 dated 15-12-2010 are not mutually contradictory.

The savings given to the implemented instructions or orders in Section-2(2) of the Act *ibid* is with regard to valid implementation till or before the commencement of the Act *ibid*. Finance Department letter dated 15-12-2010 was with regard to the recovery of invalid implementation and such implementation was declared invalid *vide para-iv* of the said letter. Recovery was ordered to be effected from those teachers/ employees who have availed more advance increments over and above their entitlement on academic qualifications, of the commencement of the Act *ibid*, therefore it cannot be said that legislature, attributed savings to invalid acts.

Hence, this Department is in league with the Pay Fixation Committee on the point that the advance increments availed over and above the entitlement has to be reduced and brought to the actual pay in light of Finance Department letter dated 15-12-2010 mentioned above.

Yours Faithfully,

Section Officer (Opinion-II)

Endst: of even No. & date.

A copy is forwarded to the PS to Secretary Law Department.

Secretary Finance
Khyber Pakhtunkhwa

Diary No. 15519

Date 16/9/15

Section Officer (Opinion-II)

APR 1, 2015

SR-1/79
Date-18.9.

P-18/10



GOVERNMENT OF KHYBER PAKHTUNKHWA
FINANCE DEPARTMENT
(REGULATION WING)

Annex-IV

NO. FD (SOSR-1) 2-123/2015
Dated Peshawar the: 21-09-2015

To:

1. The Secretary to Govt. of Khyber Pakhtunkhwa,
Elementary & Secondary Education Deptt.
Peshawar.
2. The Accountant General, Khyber Pakhtunkhwa,
Peshawar.

Subject: APPEAL OF CT TEACHERS FOR STOPPING RECOVERIES
BEING MADE ON ACCOUNT OF ADVANCE INCREMENTS
GRANTED ON HIGHER EDUCATIONAL QUALIFICATION

Dear Sir,

I am directed to refer to the subject noted above and to state that the matter has been examined in consultation with Law, Parliamentary Affairs & Human Rights Department. Copy of the advice of that Department contained in their letter No.SO (OP-II)/LD/5-7/2012-VOL-II/21708-09 dated 16th Sep, 2015 is sent herewith for further necessary action accordingly, please.

Encl: (As above)


SECTION OFFICER (SR-I)

Copy for information is forwarded to the following Teachers with reference to their joint application addressed to the Chief Secretary Khyber Pakhtunkhwa:-

1. Mr. Hidayatullah, CT, Govt. Higher Secondary School, Mingora.
2. Mr. Muhammad Ghafoor, CT, GHSS, Sajban Swat.
3. Mr. Muhammad Nabi, SCT, GHSS, Sajban Swat.


SECTION OFFICER (SR-I)

**BEFORE THE HONORABLE KHYBER PAKHTUNKHWA SERVICE
TRIBUNAL PESHAWAR CAMP COURT ABBOTTABAD.**

Appeal No. 1305/14

WAJID ALI SHAHAppellant


VERSUS

Accountant General Khyber Pakhtunkhwa & Others.....Respondents

Para wise Comments on behalf of Respondents

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2	Copy of judgment.	4 to 6	"A"


District Comptroller of Accounts.
Abbottabad.
(Respondent No.2)

**BEFORE THE HONORABLE KHYBER PAKHTUNKHWA SERVICE
TRIBUNAL PESHAWAR CAMP COURT ABBOTTABAD.**

Appeal No. 1305/14

WAJID ALI SHAHAppellant

VERSUS

Accountant General Khyber Pakhtunkhwa & Others.....Respondents

Para wise Comments on behalf of Respondents

Respectfully Sheweth:-

Comments on behalf of respondents are submitted as under:-

PRELIMINARY OBJECTION:-

1. That the appellant has no cause of action to file the instant appeal.
2. That the appeal of the appellant is time barred. Hence liable to be dismissed.
3. That the instant appeal is not maintainable as there is no final order.
4. That the appellant has filed the present appeal to pressurize the respondents.
5. That the appellant has not come to this Honorable tribunal with clean hands.
6. That the appellant is estopped to sue due to his own conduct.
7. That the instant appeal is not maintainable due to non-joinder and mis-joinder of necessary parties.
8. That this Honorable Tribunal hasn't got jurisdiction to entertain the present petition/appeal as this Honorable Tribunal is not a Constitutional Court, hence this appeal is liable to be dismissed.
9. That the vires of Act were challenged in the appeal, the Act was promulgated in the best public interest & the advance increments were not settled to be paid at the time of joining of service.
10. That the legislator has authority to legislate as they have mandate to do so by a recognize process and services law do not provides the provision of judicial review, hence appeal is not tenable.
11. That the appellant is at liberty to join service after due process of law equivalent to his qualification & the Government is not bound to pay advance increment.

Factual objections:-

1. In reply to Para No.1 of the appeal it is submitted that judgment of Honorable Tribunal has lost its efficacy for the purpose of implementation by clear Intendment through sections 1 & 2 of Khyber Pakhtunkhwa cessation of payment arrears on advance increments on higher education qualification Act No. IX of 2012.
2. No comment.
3. That para No.3 of the appeal is incorrect as composed hence, denied. The Act was Passed by the Provincial Assembly and assented by the Governor KPK who isn't party in the present appeal. The respondents are bound to obey & implement the will of the legislature & cannot deviate from any provision of enactment.

**BEFORE THE HONORABLE KHYBER PAKHTUNKHWA SERVICE
TRIBUNAL PESHAWAR CAMP COURT ABBOTTABAD.**

Appeal No. 1305/14

WAJID ALI SHAHAppellant

VERSUS

Accountant General Khyber Pakhtunkhwa & Others.....Respondents

Para wise Comments on behalf of Respondents

AFFIDAVIT

I, Mr. Atiq ur Rehman Lodhi, District Accounts Officer Abbottabad, do hereby affirm and declare that contents of forgoing comments are correct and true according to the best of my knowledge and belief and nothing has been suppressed from this Honorable Court.


DEPONENT

**BEFORE THE HONORABLE KHYBER PAKHTUNKHWA SERVICE
TRIBUNAL PESHAWAR CAMP COURT ABBOTTABAD.**

CM.NO. of 2015

IN

Appeal No. 1306/14

MAZHAR UL HAQAppellant

VERSUS

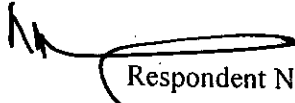
Accountant General Khyber Pakhtunkhwa & Others.....Respondents

Replication to application dated 15.06.2015 on behalf respondents.

Respectfully Sheweth:

1. In reply to Para No.1of the application it is submitted that judgment of Honorable Tribunal has lost its efficacy for the purpose of implementation by clear Intendment through sections 1 & 2 of Khyber Pakhtunkhwa cessation of payment arrears on advance increments on higher education qualification Act No. IX of 2012.
2. Correct.
3. That para No. 3 of the application as composed is incorrect hence, denied. It would not be impertinent to state that the applicant suppressed/ concealed his service book from the pay fixation party then visited respective District Education Office Abbottabad after Pay Revision of 01.07.2011, & as such the operation of the party was carried out by this office. However, in the light of this Honorable Tribunal order dated 15.06.2015 the operation is underway as the fixation is an intricate & cumbersome process, arduous assignment the applicant may kindly be directed to collect his revised salary slip from the office of the respondent No. 2 in due course.
4. That para No. 4, of the instant application is incorrect hence, denied.

It is therefore, respectfully prayed that the instant application may kindly be dismissed by cost.


Respondent No. 2

District Account Officer

Abbottabad.

Annexure

In the Supreme Court of Pakistan
(Appellate Jurisdiction)

Present:

Mr. Justice Anwar Zaheer Jamali
Mr. Justice Khilji Arif Hussain
Mr. Justice Ijaz Ahmed Chaudhry

Civil Petition No. 360 of 2013.

(on appeal from judgment of KPK Service Tribunal, Peshawar dated 30.1.2013, passed in Implementation Petition No.49/2012)

Muhammad Haroon

...Petitioner

Versus

Executive District Officer, Elementary & Secondary Education Dept. Haripur, etc

... Respondents

Petitioner: In person.

For official respondents: Mr. Naveed Akhtar Khan, Addl.A.G. KPK.
Mr. Saeed-ur-Rehman, ADO (Edu.), Haripur.

Date of hearing: 29.8.2013

JUDGMENT

Anwar Zaheer Jamali, J.- By this petition under Article 212(3) of the Constitution of Islamic Republic of Pakistan, 1973, leave to appeal is sought by petitioner Muhammad Haroon against the order dated 30.1.2013, passed by the Khyber Pakhtunkhwa Service Tribunal, Peshawar (in short "the Tribunal"), whereby his implementation application No.49/2012. In service Appeal No.506/2009, was dismissed in view of sections-1 & 2 of Khyber Pakhtunkhwa Cessation of Payment of Arrears on Advance Increments on Higher Educational Qualification Act, 2012 (Khyber Pakhtunkhwa Act No.IX of 2012).

We have heard the arguments of petitioner. He has placed reliance on the earlier judgment of the Tribunal dated 12.5.2009, whereby he was held entitled for the benefit of advance increments on the basis of higher qualification. For this purpose, he has also placed reliance upon the judgment of this Court, reported as PfA Corporation v. Aziz-ur-Rehman Chaudhry (2011 SCMR 219).

As against it, learned Additional Advocate General KPK, Mr. Naveed Akhtar Khan, strongly contends that benefit of earlier judgment dated 12.5.2009,

ATTESTED

Superintendent
Supreme Court Pakistan
ISLAMABAD

C.P-160 of 2013

through implementation application No.49/2012 filed before the Tribunal, cannot be allowed to the petitioner in view of the clear language of section-1 of Khyber Pakhtunkhwa Act No.IX of 2012, which has made its section-2 applicable with retrospective effect from 01.12.2001 and, thus, made the said judgment unimplementable.

4. We have considered the above noted submissions made before us by the petitioner and the learned Addl. A.G KPK and seen that indeed as per judgment of the Tribunal dated 12.5.2009, the petitioner was held entitled for the benefit of advance increments on the basis of his higher qualification, but such judgment has lost its efficacy for the purpose of implementation by clear intendment through sections 1 and 2 of Khyber Pakhtunkhwa Act No.IX of 2012, which read as under:-

1. Short-title, application and commencement. - (1) This Act may be called the Khyber Pakhtunkhwa Cessation of Payment of Arrears on Advance Increments on Higher Educational Qualification Act, 2012.

(2) It shall apply to all the employees of the Provincial Government, who were entitled to receive advance increments on higher educational qualification.

(3) It shall come into force at once and shall be deemed to have taken effect on and from 1st day of December, 2001.

2. Cessation of payment of arrears on advance increments on higher educational qualification. - (1) Notwithstanding anything contained in any decision, judgment and order of any Tribunal or Court including High Court or Supreme Court of Pakistan, for the purpose of any claim for payment of arrears on account of advance increments on higher educational qualification sanctioned in pursuance of any order, letter, office memoranda, notification, instructions and other instruments issued before 1.12.2001, such orders, letters, office memoranda, notifications, instructions and other instruments shall be deemed to be non-existent, ceased or revoked and no further claim whatsoever on the basis of these instruments shall be entertained and all cases in respect of such claims pending in any Court or Tribunal including High Court and Supreme Court of Pakistan shall stand abated.

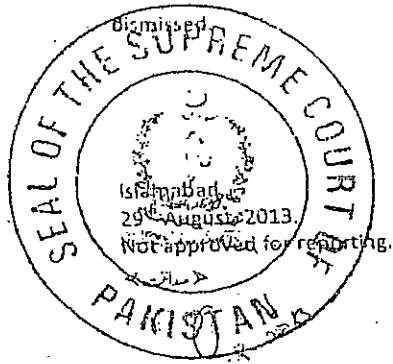
(2) Any order made, instruction issued, decision, judgment or order of any Court or Tribunal including a High Court or the Supreme Court, implemented immediately before the commencement of this Act, shall be deemed to have been validly made, issued and implemented by the date of commencement of this Act, and any amount already paid there-under on account of advance increments or arrears thereof shall be deemed to have been validly paid and shall not be recoverable from the recipient Government employees."

ATTESTED

Sub-Registrar
Supreme Court
ISLAMABAD

5. A bare reading of the above sections from Khyber Pakhtunkhwa Act No.IX of 2012 makes it crystal clear that whatever benefit the petitioner was claiming through the judgment dated 12.5.2009, has been nullified by the legislature through clear intendment in unequivocal terms, while vires of the said Act have not been challenged before any forum.

6. This being the position, leave to appeal is refused and this petition is



Sd/- Anwar Zaheer Jamali, J.
Sd/- Khilji Arif Hussain, J.
Sd/- Ijaz Ahmed Chaudhry, J.
Certified to be True Copy

[Signature]
Superintendent
Supreme Court of Pakistan
ISLAMABAD

10565/13

Case No:	Civil/Criminal
Date of Presentation:	28.8.13
No. of Writs:	9/0
No. of Petitions:	5/05
Registration Fee Rs:	5.10
Case Fee Rs:	10.50
Case Fee on Appeal:	4791/0
Name of Counsel:	5-9-13
Name of Counsel:	5-9-13
Received by:	<i>[Signature]</i>