

**BEFORE THE HON'BLE KHYBER PAKHTUNKHWA SERVICE  
TRIBUNAL, PESHAWAR.**

Service Appeal No. 1532/2022

Next Date: 06/10/2023

Syed Shahin Shah.....(Appellant)

**V E R S U S**


Government of Pakistan through its Secretary and  
others.....(Respondents)

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Appellant (in person)

Dated: 03/10/2023

  
**SYED SHAHIN SHAH**  
(Appellant)  
Cell No. 0334-9006361

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**BEFORE THE HON'BLE KHYBER PAKHTUNKHWA SERVICE**  
**TRIBUNAL, PESHAWAR.**

Service Appeal No. 1532/2022

Next Date: 06/10/2023

Registered No. 3076  
Dated 3/10/23

**SYED SHAHIN SHAH**

Deputy Director (Finance/ Accounts)

Directorate General LG & RDD,

Plot No. 20, Phase-V, Hayatabad, Peshawar.

CNIC # 17301-9406669-3

Cell No. 0333-9006361.....(Appellant)

**V E R S U S**

1. Government of Pakistan through its Secretary, Finance Division Public Secretariat Block Q, Constitutional Avenue, Islamabad, Pakistan.
2. Controller General of Pakistan, Federal Government, Islamabad.
3. Accountant General of Khyber Pakhtunkhwa, Federal Government, Fort Road, Cantt Peshawar (KP).
4. Account Officer (Payrol-V) Office of the Accountant General of Khyber Pakhtunkhwa, Federal Government, Fort Road, Cantt Peshawar (KP).
5. Auditor (Payroll-V) for Local Government and Rural Development Department, KP, Office of the Accountant

General of Khyber Pakhtunkhwa, Federal Government, Fort  
Road, Cantt, Peshawar (KP).....(Respondents)

**REJOINDER IN SERVICE APPEAL NO.**

**1532/2022.**

**Respectfully Sheweth:**

**Reply to preliminary objections:**

All the preliminary objections are wrong regarding limitation C.P. No. 39/2021 decided on 27/04/2021 is attached that in financial matter there is no limitation. Further, a letter of Finance Department dated 09/11/2011 is also submitted in which reference is made to Government of Finance Division, Islamabad, office memorandum F.11 (30) R-2010-1150 dated 05/11/2012 of decision of this case.

**VALIDATION OF FACTS:**

1. As prayed in appeal.

2. That as prayed in appeal. Letter of Establishment Department, KP dated 16/03/2012 is attached regarding service from Worker Welfare Board and Pay Protection from statutory body. The revised pay slip dated 20/07/2023 is also in this regard for calculation of pay allowances.
3. As in Para No. 2 above.
4. As in Para No. 2 above.
5. The respondents themselves confessed that the revised pay slip issued on 20/07/2022. This revised pay slip is for pay protection in a Civil Service for implement earned in statutory body of Worker Welfare Board. It is further submitted that promoting was taken place on 12/10/2018 whereas the revised pay slip of pay protection was issued on 20/07/2022 following the judgment in Service Appeal No. 463/2017 decided on 07/12/2021. These are two different financial rights to same employee. The revised pay slip should be further modified for the premature increment in the same scale.

6. As prayed in appeal the reply is incorrect. The prayer is not for LPR, the amount of LPR mentioned is also wrong which is another blunder of the respondents to decide the learned Service Tribunal.

**GROUND:**


- A. The prayer in appeal is correct. The reply is wrong. The explanation given in Para 5 of this rejoinder is sufficient.
- B. The reply is wrong. The explanation given in Para 5 of this rejoinder is sufficient.
- C. The prayer in appeal is correct while the reply is wrong. The explanation given in Para 5 is sufficient to prove the wrong statement para of the respondents.
- D. The prayer in appeal is correct while the reply is wrong. The explanation given in Para 5 is sufficient to prove the wrong statement para of the respondents.

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- E. The reply is wrong. The respondents did not produce their own comparative statements.
- F. The reply is wrong. The wrong calculation given by the respondents. The explanation given in Para 5 is sufficient to prove the wrong statement para of the respondents.
- G. The respondents admitted the further arguments which being mentioned in this rejoinder.

It is, therefore, humbly requested that the prayer in appeal may kindly be accepted.

Appellant (in person)

Dated: 03/10/2023

  
(**SYED SHAHIN SHAH**)  
(Appellant)

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**BEFORE THE HON'BLE KHYBER PAKHTUNKHWA SERVICE  
TRIBUNAL, PESHAWAR.**

Service Appeal No. 1532/2022

Next Date: 06/10/2023

Syed Shahin Shah.....(Appellant)

**V E R S U S**

Government of Pakistan through its Secretary and  
others.....(Respondents)

**AFFIDAVIT**

I, **Syed Shahin Shah** (Deputy Director Finance/  
Accounts) C/O Directorate General LG & RD, Plot No. 20,  
Phase-V, Hayatabad, Peshawar, solemnly affirm and declare  
that the contents of the **Rejoinder** are true and correct to the  
best of my knowledge and belief and nothing has been  
concealed from this Hon'ble Tribunal.



  
**DEPONENT**  
CNIC: 17301-9406669-3  
Cell No. 0334-9006361

Annex C 7

IN THE SUPREME COURT OF PAKISTAN  
(APPELLATE JURISDICTION)

PRESENT:

MR. JUSTICE GULZAR AHMED, CJ  
MR. JUSTICE IJAZ UL AHSAN  
MR. JUSTICE SAYYED MAZAHAR ALI AKBAR NAQVI

CIVIL APPEAL NO. 39 OF 2021

(On appeal against the judgment dated 27.12.2019  
passed by the Khyber Pakhtunkhwa Service Tribunal,  
Peshawar in Service Appeal No. 980/2016)

Government of KPK through Chief Secretary, KPK and others  
...Appellant(s)

VERSUS

Muhammad Ismail and another  
...Respondent(s)

For the Appellant(s): Mr. Atif Ali Khan, Addl. A.G.

For the Respondent: Mr. Muhammad Asif Yousafzai, ASC

Date of Hearing: 27.04.2021

JUDGMENT

SAYYED MAZAHAR ALI AKBAR NAQVI, J. Through this appeal by leave of the Court under Article 212(3) of the Constitution of Islamic Republic of Pakistan, 1973, the appellants have assailed the judgment dated 27.12.2019 passed by the Khyber Pakhtunkhwa Service Tribunal whereby the Service Appeal filed by the respondent No. 1 was accepted and he was allowed pay protection.

2. Succinctly stated the facts of the matter are that on 25.03.2002, the respondent No. 1 was appointed as Master in Pak Studies/Lecturer (BPS-17) in Cadet College Razmak, North Waziristan. Later on, pursuant to the advertisement issued by the Khyber Pakhtunkhwa Public Service Commission for the posts of Subject Specialist (BPS-17), he applied through proper channel for the said post. The appellant passed through the selection criterion as such he was selected vide notification dated 19.09.2006, hence, posted at Government Higher Secondary School, Sheikhan, Peshawar. On 04.06.2011, the Finance Department, Government of KPK, issued a notification whereby it allowed pay protection to the employees of the autonomous bodies who had adopted pay scales of the Provincial Government. To get the benefit, the respondent filed departmental

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appeal but it was rejected vide order dated 20.04.2016. Being aggrieved, he filed Service Appeal before the KPK Service Tribunal, which has been allowed vide impugned judgment. Hence, this appeal by leave of the Court.

3. Learned Additional Advocate General, KPK, *inter alia* contended that the respondent was appointed as Subject Specialist (BPS-17) on 19.09.2006 whereas the notification on the basis of which the respondent claimed pay protection came on 04.06.2011 which was prospective in nature, therefore, the respondent was not entitled for the relief in question; that for the first time, the respondent claimed the relief of pay protection on 05.11.2015 through departmental appeal after more than four years of issuance of notification dated 04.06.2011 and the same was barred by laches; that the learned Tribunal did not take into consideration this aspect of the matter and passed the impugned judgment, which may be set aside.

4. On the other hand, learned counsel for the respondent No. 1 has supported the impugned judgment. He mainly contended that the respondent applied through proper channel after proper departmental permission, therefore, under the law and rules, he is legally entitled to pay protection because the Cadet College Razmak had also adopted the Basic Pay Scale and that if the respondent is deprived of the benefit in question, it would be against the principles of justice and fair play.

5. We have heard learned Law Officer as well as learned counsel for the respondent No. 1 and have perused the record.

6. On our specific query, learned Additional Advocate General conceded that the Cadet College Razmak where the respondent was earlier working as Master in Pak Studies/Lecturer (BPS-17) had adopted the Basic Pay Scales and the respondent had applied through proper channel after getting permission from the department for the post of Subject Specialist. The only point on which he emphasized is that the notification dated 04.06.2011 on the basis of which the respondent claimed pay protection is prospective in nature and it does not allow retrospective claims. However, we do not tend to agree with the learned Law Officer. While passing the impugned judgment, the learned Service Tribunal has relied upon a judgment of this Court dated 27.1.2019 passed in Civil Appeal No. 1308/2019. In that case the respondent was appointed as Lecturer in the University of Engineering and Technology, Peshawar on 03.12.1986. Later on he applied for the post of Inspector in

the Mines Department through proper channel and was not selected vide order dated 21.06.1989. On the basis of the notification dated 04.06.2011 referred above, he claimed pay protection which was ultimately granted by the Service Tribunal and appeal against the order of the Tribunal was dismissed by this Court. It would be advantageous to refer to the relevant portion of the order dated 27.11.2019 passed by this Court, which reads as under:-

2. Learned Additional Advocate General has stated that the respondent was appointed as a Lecturer in the University of Engineering and Technology, Peshawar on 03.12.1986. The respondent applied for being appointed as Inspector Mines through proper channel in the Mines Department and ultimately, succeeded in the same and was appointed as an Inspector Mines vide order dated 21.06.1989. Learned Addl. AG further contends that by virtue of the letter dated 04.06.2011, as reproduced above, the respondent was not entitled to pay protection. This letter has been considered by the Service Tribunal in its impugned judgment and even on our own reading, we are unable to agree with the learned Addl. AG that this has affected the case of the respondent, for that, the very letter used the word "henceforth" and provides to discontinue the benefit of pay protection of the employees of autonomous bodies. However in the last line it gives such benefit of pay protection to the employees of such autonomous organizations who have adopted the Scheme of Basic Pay Scale in toto on their appointment in Government Offices. In the first place, the very letter shows that it will apply from 04.06.2011 and will not affect the employees who have already been employed in Government service from the autonomous organizations and the case of the respondent being that of appointed on 21.06.1989, the same is not affected. Further, it is also an admitted fact that the University, in which the respondent was working, has adopted the Scheme of Basic Pay Scale in toto in the Government service. Besides, the respondent has applied for the post through proper channel, therefore, the condition of applying through proper channel has been satisfied."

7. In the above referred case, almost in similar circumstances as in the present case, the benefit of pay protection was given retrospectively, therefore, the respondent being standing on the same pedestal also deserves the same treatment to be meted out in the spirit of Article 25 of the Constitution of Islamic Republic of Pakistan, 1973. So far as the issue of laches is concerned, this point was specifically taken by the appellants before the learned Service Tribunal and the same was rightly discarded by the Tribunal in paragraph No. 5 of the impugned judgment by holding that being a financial matter, limitation will not have any adverse implication on respondent's claim.

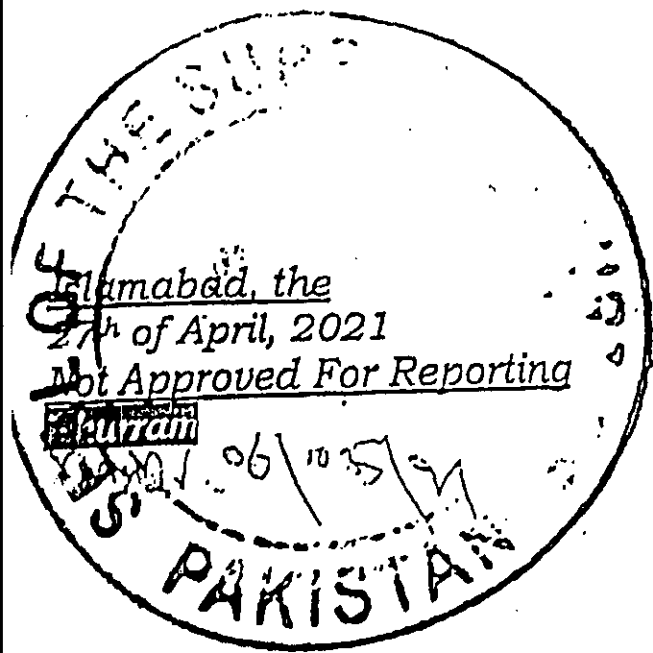
8. For what has been discussed above, we are of the candid view that the learned Service Tribunal has passed a well reasoned

judgment to which no exception can be taken. This appeal having no merit is accordingly dismissed.

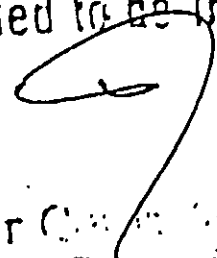
Sd/CJ

Sd/J

Sd/J



Certified to be True Copy

  
 Senior Counselor Associate  
 Supreme Court of Pakistan  
 Islamabad

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Amex B 11  
**GOVERNMENT OF KHYBER PAKHTUNKHWA  
FINANCE DEPARTMENT**

Finance Department Civil Secretariat Peshawar

<http://www.finance.gkp.pk>

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[twitter.com/GoKPFD](https://twitter.com/GoKPFD)

NO. FD(SCSR-1)2-123/2021

Dated Peshawar the: 09-11-2021

To

*7*  
*11.11.2021*  
The Secretary to Govt. of Khyber Pakhtunkhwa,  
Local Govt., Elections & Rural Development Department

Subject: - GRANT OF PREMATURE INCREMENT ON PROMOTION WITHIN THE SAME SCALE

Dear Sir,

I am directed to refer to your Department letter No. SOG/LG/7-1/Misc./2020 dated 09-11-2021 on the above noted subject and to state that the case may be decided in light of Government of Pakistan, Finance Division, Islamabad office Memorandum No. F.11 (30) R-2010-1150 dated 05-11-2012

(copy enclosed)

Yours faithfully,

*OR*  
SECTION OFFICER (SR-1)

FMH-C 19  
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*(Handwritten mark)*



GOVERNMENT OF KHYBER PAKHTUNKHWA  
ESTABLISHMENT DEPARTMENT

NO.SOE-V (E&AD)/1-10/2009  
Dated Peshawar, the 16<sup>th</sup> March, 2012

To \*

District Coordination Officer,  
Mardan,

Subject:

**REGULARIZATION OF SERVICE THROUGH PROPER CHANNEL VIA PUBLIC SERVICE COMMISSION**

*Page-1/c*

Dear Sir,

I am directed to refer to your letter No.8791-92/DCO(M)/EA-01-A dated 03-08-2011 on the subject and to enclose herewith copy of Finance Department letter No.K/F(SR-I)12-1/2011 dated 29-11-2011 with its enclosures and to request to process the case of pay protection of Syed Shahinshah, Deputy District Officer (Finance & Planning) Mardan, in consultation with Local Govt. Rural Development Department (parent department of applicant) and Labour Department (Administrative Department of Workers Welfare Board) in light of the following provision contained in Finance Department letter referred to above.

*However, the benefit of Pay protection will be admissible to employees of such autonomous organizations who have adopted scheme of basic Pay Scale in to-to, on their appointment in Govt. offices, provided they have applied for the post through proper channel."*

Yours faithfully,

*(Signature)*  
[Ghazi Khan]  
SECTION OFFICER (E-V)

**Endst: No. & Date Even:-**

Copy forwarded for information to:-

1. Section Officer (SR-I) Finance Department w/r to his letter quoted above.
2. Section Officer (Estt) Local Govt. & Rural Dev: Department w/r to this letter No.SO(LG-I)10-458/2008 dated 05-03-3012.
3. Syed Shahinshah, Deputy District Officer (Finance & Planning) Mardan.

*(Handwritten signature and date)*  
3-12

*(Signature)*  
SECTION OFFICER (E-V)

ATTESTED