

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

Mir Azam

..... Petitioner

**VERSUS**

Government Khyber Pakhtunkhwa

..... Respondent

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Dated 06.10.2023

  
Respondent

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

EP No 340/2021

Service appeal No. 1312/2014

Khyber Pakhtunkhwa  
Service Tribunal

Diary No. 8154

Dated 06-10-23

Mr. Mir Azam .....Appellant

**Versus**

Govt. of Khyber Pakhtunkhwa & others.....Respondents

**Affidavit**

I, **Mr. Amjad Ali** section officer (litigation), Elementary Education department, govt. Khyber Pakhtunkhwa, do hereby declare and affirm on oath, that the contents of the objection petition are correct to the best of my knowledge and belief and that nothing has been concealed from this Hon'ble tribunal. It is further stated on oath that in this appeal. The answering respondents have neither been placed ex-parte nor has their defense been struck off.

Dated: 06-10-2023

  
Section Officer (litigation)


Elementary Education Department  
KP Peshawar

**ATTESTED**



**AUTHORITY LETTER**

It is certified that Mr Fahim Khan Representative of the E&SE is hereby authorized to submit objection petition on behalf of the Secretary Elementary & Secondary Education Department Peshawar in Execution petition No. 340/2021 in Service appeal 1312/2014 case tilted Mir Azam Versus Government of Khyber Pakhtunkhwa.

  
Mr Amjid Ali  
Section Officer  
E&SE Department Peshawar

(1)

**BEFORE THE HONORABLE KHYBER PAKHTUNKHWA SERVICE TRIBINAL**

**E.P No.340/2021 IN SERVICE APPEAL NO.1312/2014**

Mir Azam..... Petitioner

**VERSUS**

Govt of Khyber Pakhtunkhwa .....Respondent

**OBJECTION PETITION UNDER SECTION 47 CPC 1908 AGAISNT THE JUDGEMENT  
DATED 14.10.2021 ON BEHALF OF THE RESPONDENTS/JUDGMENT DEBTORS**

**Respectfully sheweth:**

Respondents through the instant Objection Petition submits as under:-

1. That the instant Execution Petition is pending before this Honorable Service Tribunal.
2. That Service Tribunal accepted the Service Appeal No.1312/2014 vide Judgment dated 14.10.2021.
3. That the Judgment dated 14.10.2021 has been challenged by the respondents in the august Supreme Court of Pakistan which is still pending under adjudication.
4. That the appellant filed Service Appeal No.1312/2014 was instituted on 02.10.2014. The appellant died during the pending of Service Appeal on 11.01.2017.
5. That august Supreme Court of Pakistan in the Judgments PLD 2008 Page 703 and PLC 2009 (CS) 79 that provides the right of appeal to a civil servant and there is no provision in the Khyber Pakhtunkhwa Service Tribunal Act, 1974 to provide any remedy to the successor- in – interest of the Civil Servant.
6. That as per Judgment of Honorable Supreme Court of Pakistan Judgment reported in 2023 SCMR Page-46, there is no scope or prospect for filing of any appeal before the Service Tribunal Other than the Civil Servant himself.

**Prayer**

It is therefore, humbly requested that on the acceptance of this Objection Petition under Section 47-CPC, 1908 the Implementation/Execution of the Judgment dated 14.10.2021 of this Honorable Tribunal in the title appeal may kindly be adjourned till the final decision of the august Supreme Court of Pakistan.

  
(SECRETARY)  
E&SE DEPARTMENT  
KHYBER PAKHTUNKHWA



2

GOVERNMENT OF KHYBER PAKHTUNKHWA  
LAW, PARLIAMENTARY AFFAIRS &  
HUMAN RIGHTS DEPARTMENT

No. SO(OP-I)/LD/5-7/2023/KC **8984-86**  
DATED: PESHAWAR THE 14<sup>TH</sup> JULY, 2023

To

The Secretary,  
Government of Khyber Pakhtunkhwa,  
Elementary & Secondary Education Department.

Attention: Section Officer (Lit-II)

Subject: REQUEST FOR ADVICE FOR APPLICATION FOR THE PURPOSE OF  
PAY W.E.F 18-06-2014 TO 24-05-2015 IN RESPECT OF LATE MIR  
AZAM, EX-DEO DISTRICT LAKKI MARWAT.

Dear Sir,

I am directed to refer to your Department's letter No. SO(Lit-II)E&SED/1-3/EP#/340/2021 SA#613/2012/Mir Azam, dated 30-05-2023, on the subject noted above and to state that Law Department is of the view that it would be appropriate that the Administrative Department may approach to the Law Officer in Khyber Pakhtunkhwa Service Tribunal to file an objection petition in terms of section 47 of the Code of Civil Procedure, 1908, on the principle laid down by the Supreme Court of Pakistan in the judgments vide P L D 2008 Supreme Court 703 and PLC 2009 (CS) 79 that provides the right of appeal to a civil servant and there is no provision in the Khyber Pakhtunkhwa Service Tribunal Act, 1974 to provide any remedy to the successor-in-interest of the civil servant.

Yours Faithfully,

*Azem*

Assistant Law Officer (Opinion-I)

Endst: of even No. & date.

A copy is forwarded to the:-

1. PS to Secretary Law Department.
2. Master File.

*9/17/23*

Assistant Law Officer (Opinion-I)

*AS9*  
*Ali*  
*AM*  
*17/7/23*

SECRETARY DIAR:  
No. 4/31  
Dated 17/7/23

SO(L-II)

*Next date*  
*mentioned*  
*in the letter*  
*of 17/7/23*  
*Jalal*  
*SO(L-II)*

(3)

**P L D 2008 Supreme Court 703****Present: Mian Hamid Farooq and Sheikh Hakim Ali, JJ****MUHAMMAD ASHFAQ---Petitioner****Versus****MEMBER (REVENUE) BOARD OF REVENUE, PUNJAB, LAHORE and another---Respondents**

Civil Petition No.242-L of 2005, decided on 16th July, 2008.

(On appeal from the judgment dated 1-12-2004 of the Punjab Service Tribunal Lahore passed in C.M.No.600 of 2004 in Appeal No.56 of 1991).

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

----S. 4---Civil Servants Act (LXXI of 1973), S.2(b)---Constitution of Pakistan (1973), Art.212(3)---  
 Appeal to Service Tribunal---Right of appeal has been given to a civil servant and there is no provision in  
 Service Tribunals Act, 1973 to provide any remedy to his successors-in-interest.

Muhammad Nawaz, Special Secretary, Cabinet Division, through his Legal Heirs v. Ministry of Finance,  
 Government of Pakistan, through its Secretary, Islamabad 1991 SCMR 1192 ref.

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

----S. 4---Constitution of Pakistan (1973), Art.212(3)---Appeal to Service Tribunal---Limitation---Delay  
 of 13 years---Condonation of---Incumbent upon a litigant to explain the delay of each and every day for  
 not approaching the court of law within the prescribed period of limitation---Application filed by the  
 petitioner, which otherwise, was not maintainable, being barred by 13 years, there was no sufficient cause  
 to condone such delay---Service Tribunal, in circumstances, was right to refuse to condone the delay.

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

----S. 4---Appeal to Service Tribunal--Appellant civil servant, died during pendency of his appeal, which  
 had been filed against the order of his removal/dismissal from service---Service Tribunal was justified in  
 law in passing the order of abatement of appeal in circumstances.

Muhammad Nawaz, Special Secretary, Cabinet Division, through his Legal Heirs v. Ministry of Finance,  
 Government of Pakistan, through its Secretary, Islamabad 1991 SCMR 1192 ref.

**(d) Constitution of Pakistan (1973)---**

----Art. 212(3)---Petition for leave to appeal---No substantial question of law of public importance within  
 the parameters of law being involved in the case and no case for grant of leave having been made out,  
 petition for leave to appeal was declined.

Dr. Akmal Saleemi, Advocate Supreme Court for Petitioner.

Mian Abbas Ahmad, Addl. A.-G. for Respondents

Date of hearing: 16th July, 2008.

(14)

**JUDGMENT**

**MIAN HAMID FARQOOQ, J.**---Shahnaz Kausar, the petitioner, claiming to be the widow of Muhammad Ashfaq (deceased), through the present petition, under Article 212(3) of the Constitution of Islamic Republic of Pakistan, 1973, seeks leave to appeal against the judgment dated 1-12-2004, whereby the Punjab Service Tribunal, Lahore (Tribunal) dismissed her application C.M. No. 600 of 2004 in appeal No.56. of 1991.

2. Muhammad Ashfaq, the (deceased) husband of the petitioner, was serving as junior clerk in the office of the defunct Deputy Commissioner Sargodha, when he was dismissed from service, vide order dated 21-6-1986. He challenged his dismissal order before the appellate authority i.e. the Commissioner Sargodha Division, who allowed his appeal and Muhammad Ashfaq was reinstated. The said order was assailed before the Board of Revenue and the Member Board of revenue, vide order dated 29-12-1990, restored the order of Deputy Commissioner. Muhammad Ashfaq, filed the appeal against the order passed by Member Board of Revenue before the Tribunal. During pendency of the appeal Muhammad Ashfaq died and upon the statement of the learned counsel of Muhammad Ashfaq, informing the Tribunal that Muhammad Ashfaq had died, the Chairman of the Tribunal, vide order dated 20-8-1991, disposed of the appeal as having abated.. It appears from the record that on 31-7-2004, the legal heirs of Muhammad Ashfaq filed the application C.M. No.600 of 2004 for restoration of appeal and recalling of order dated 20-9-1991 together with an application for condonation of delay. The learned Chairman of the Tribunal after hearing the parties found that he has no power to review the order and the application has been filed after the lapse of 13 years and dismissed the application, vide judgment dated 1-12-2004, hence the present petition.

3. Learned counsel for the petitioner contended that there was sufficient cause to condone the delay in filing the application before the Tribunal as the petitioner resides in far long of Sargodha, she is a pardanasheen lady and she is supporting the minor children. He has further submitted that notwithstanding the death of Muhammad Ashfaq, it was incumbent upon the Tribunal to decide his appeal on merits, as it entails financial consequences to the family of the deceased. Learned Additional Advocate-General, while relying upon the judgment reported as Muhammad Nawaz, Special Secretary, Cabinet Division,, through his legal heirs v. Ministry of Finance, Government of Pakistan, through its Secretary, Islamabad 1991 SCMR 1192, stated that right of appeal, under the Service Tribunals Act, has been given to a civil' servant and such a right can neither be availed nor the appeal could be continued by the legal heirs of a deceased civil servant.

4. We have heard the learned counsel for the petitioner as well as the learned Additional Advocate General and examined the available record. It is evident from the above narrative that the appeal filed by the deceased civil servant abated on 20-8-1991 and the present petitioner filed the application on 31-7-2004 i.e. after the lapse of 13 years. The reasons, canvassed by the learned counsel, for condonation of delay are not sufficient, within the parameters of law, to condone this inordinate delay of 13 years, while the settled law on the subject, is that it is incumbent upon a litigant to explain the delay of each and everyday for not approaching the Court of law within the prescribed period of limitation. The application filed by the petitioner, which otherwise, was not maintainable, was barred by 13 years, there was no sufficient cause to condone the delay and the learned Tribunal rightly refused to condone the delay for the reasons stated by it.

5. As regard's the merits of the case, admittedly, Muhammad Ashfaq died during pendency of his appeal, which was filed against his order of removal/dismissal from service, thus the then Chairman when informed about the death of Muhammad Ashfaq was justified in law in passing the order of abatement of appeal. Furthermore the case of Muhammad Nawaz (ibid) relied upon by the learned Law Officer is a complete answer to the stance' taken by the learned counsel for the petitioner, in which it has, inter alia, been held that a right of appeal under the Service Tribunals Act, 1973 has been given to a civil servant and there being no provision in Service Tribunals Act, 1973 to provide any remedy to the successors-in-interest. It appears appropriate. to reproduce para 5 from the case of Muhammad Nawaz (ibid), which is

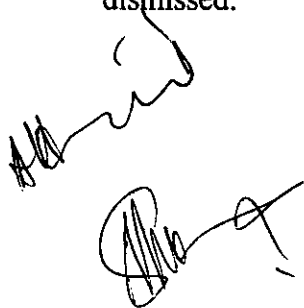
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apt to the facts and, circumstances of the present case and reads as under: -

- "5. We have heard Mr. Muhammad Bilal, Advocate for the appellants and Hafiz S. A. Rehman, Advocate for the respondent. The learned counsel for the appellants contended that the question involved in this is one of refund of salary in connection with the re-fixation of pay in service, therefore, the proceedings for the recovery of the emoluments alleged to be recoverable, initiated by the predecessor-in-interest of the appellants did not abate. The Service Tribunal, therefore, was fully competent to adjudicate upon the matter. This contention has, however, no merit. A 'civil servant' has been defined in section 2(b) of the Civil Servants Act, 1973. A right of appeal under the Service Tribunals Act of 1973 has been given to a civil servant aggrieved by any final order whether original or appellate made by a departmental authority in respect of any of the terms and conditions of his service. The appellants admittedly are the legal heirs of the deceased civil servant and there being no provision in the Service Tribunals Act, 1973 to provide any remedy to the successors-in-interest of a civil servant, the learned Tribunal, in our view, was correct in holding that the appeal before it stood abated and the same is hereby maintained.
6. We are not satisfied that any substantial question of law of public importance within the parameters of law is involved in this case. Thus no case for grant of leave is made out under Article 212(3) of the Constitution of the Islamic Republic of Pakistan.
7. In the above perspective, we have examined the judgment of the Tribunal and find that the Chairman of the Tribunal rightly dismissed petitioner's application on the ground of limitation as well as on merits. We see no ground/reason to interfere in the said judgment, which is hereby maintained.
8. For the foregoing reasons, the present petition is devoid of merits, hence stands dismissed and leave to appeal is refused.

M.B.A./M-50/S  
dismissed.

Petition





⑥

2009 P L C (C.S.) 79

[Supreme Court of Pakistan]

Present: Mian Hamid Farooq and Sheikh Hakim Ali, JJ

MUHAMMAD ASHFAQ

Versus

MEMBER (REVENUE) BOARD OF REVENUE, PUNJAB; LAHORE and another

Civil Petition No.242-L of 2005, decided on 16th July, 2008.

(On appeal from the judgment dated 1-12-2004 of the Punjab Service Tribunal Lahore passed in C.M.No.600 of 2004 in Appeal No.56 of 1991).

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

----S. 4---Civil Servants Act (LXXI of 1973), S.2(b)---Constitution of Pakistan (1973), Art.212(3)---Appeal to Service Tribunal---Right of appeal has been given to a civil servant and there is no provision in Service Tribunals Act, 1973 to provide any remedy to his successors-in-interest.

Muhammad Nawaz, Special Secretary, Cabinet Division, through his Legal Heirs v. Ministry of Finance, Government of Pakistan, through its Secretary, Islamabad 1991 SCMR 1192 ref.

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

----S. 4---Constitution of Pakistan (1973), Art.212(3)---Appeal to Service Tribunal---Limitation---Delay of 13 years---Condonation of---Incumbent upon a litigant to explain the delay of each and every day for not approaching the court of law within the prescribed period of limitation---Application filed by the petitioner, which otherwise, was not maintainable, being barred by 13 years, there was no sufficient cause to condone such delay---Service Tribunal, in circumstances, was right to refuse to condone the delay.

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

----S. 4---Appeal to Service Tribunal---Appellant civil servant, died during pendency of his appeal, which had been filed against the order of his removal/dismissal from service---Service Tribunal was justified in law in passing the order of abatement of appeal in circumstances.

Muhammad Nawaz, Special Secretary, Cabinet Division, through his Legal Heirs v. Ministry of Finance, Government of Pakistan, through its Secretary, Islamabad 1991 SCMR 1192 ref.

**(d) Constitution of Pakistan (1973)---**

----Art. 212(3)---Petition for leave to appeal---No substantial question of law of public importance within the parameters of law being involved in the case and no case for grant of leave having been made out, petition for leave to appeal was declined.

Dr. Akmal Saleemi, Advocate Supreme Court for Petitioner.

Mian Abbas Ahmad, Addl. A.-G. for Respondents.

⑦

Date of hearing: 16th July, 2008.

## JUDGMENT

**MIAN HAMID FAROOQ, J.**---Shahnaz Kausar, the petitioner, claiming to be the widow of Muhammad Ashfaq (deceased), through the present petition, under Article 212(3) of the Constitution of Islamic Republic of Pakistan, 1973, seeks leave to appeal against the judgment dated 1-12-2004, whereby the Punjab Service Tribunal, Lahore (Tribunal) dismissed her application C.M. No. 600 of 2004 in appeal No.56 of 1991.

2. Muhammad Ashfaq, the (deceased) husband of the petitioner, was serving as junior clerk in the office of the defunct Deputy Commissioner Sargodha, when he was dismissed from service, vide order dated 21-6-1986. He challenged his dismissal order before the appellate authority i.e. the Commissioner Sargodha Division, who allowed his appeal and Muhammad Ashfaq was reinstated. The said order was assailed before the Board of Revenue and the Member Board of revenue, vide order dated 29-12-1990, restored the order of Deputy Commissioner. Muhammad Ashfaq, filed the appeal against the order passed by Member Board of Revenue before the Tribunal. During pendency of the appeal Muhammad Ashfaq died and upon the statement of the learned counsel of Muhammad Ashfaq, informing the Tribunal that Muhammad Ashfaq had died, the Chairman of the Tribunal, vide order dated 20-8-1991, disposed of the appeal as having abated. It appears from the record that on 31-7-2004, the legal heirs of Muhammad Ashfaq filed the application C.M. No.600 of 2004 for restoration of appeal and recalling of order dated 20-9-1991 together with an application for condonation of delay. The learned Chairman of the Tribunal after hearing the parties found that he has no power to review the order and the application has been filed after the lapse of 13 years and dismissed the application, vide judgment dated 1-12-2004, hence the present petition.

3. Learned counsel for the petitioner contended that there was sufficient cause to condone the delay in filing the application before the Tribunal as the petitioner resides in far long of Sargodha, she is a Pardanasheen lady and she is supporting the minor children. He has further submitted that notwithstanding the death of Muhammad Ashfaq, it was incumbent upon the Tribunal to decide his appeal on merits, as it entails financial consequences to the family of the deceased. Learned Additional Advocate-General, while relying upon the judgment reported as Muhammad Nawaz, Special Secretary, Cabinet Division, through his legal heirs v. Ministry of Finance, Government of Pakistan, through its Secretary, Islamabad 1991 SCMR 1192, stated that right of appeal, under the Service Tribunals Act, has been given to a civil servant and such a right can neither be availed nor the appeal could be continued by the legal heirs of a deceased civil servant.

4. We have heard the learned counsel for the petitioner as well as the learned Additional Advocate General and examined the available record. It is evident from the above narrative that the appeal filed by the deceased civil servant abated on 20-8-1991 and the present petitioner filed the application on 31-7-2004 i.e. after the lapse of 13 years. The reasons, canvassed by the learned counsel, for condonation of delay are not sufficient, within the parameters of law, to condone this inordinate delay of 13 years, while the settled law on the subject is that it is incumbent upon a litigant to explain the delay of each and everyday for not approaching the Court of law within the prescribed period of limitation. The application filed by the petitioner, which otherwise, was not maintainable, was barred by 13 years, there was no sufficient cause to condone the delay and the learned Tribunal rightly refused to condone the delay for the reasons stated by it.

5. As regards the merits of the case, admittedly, Muhammad Ashfaq died during pendency of his appeal, which was filed against his order of removal/dismissal from service, thus the then Chairman when informed about the death of Muhammad Ashfaq was justified in law in passing the order of abatement of appeal. Furthermore the case of Muhammad Nawaz (ibid) relied upon by the learned Law Officer is a complete answer to the stance taken by the learned counsel for the petitioner, in which it has, inter alia,



been held that a right of appeal under the Service Tribunals Act, 1973 has been given to a civil servant and there being no provision in Service Tribunals Act, 1973 to provide any remedy to the successors-in-interest. It appears appropriate to reproduce para. 5 from the case of Muhammad Nawaz (ibid), which is apt to the facts and circumstances of the present case and reads as under:--

"5. We have heard Mr. Muhammad Bilal, Advocate for the appellants and Hafiz S. A. Rehman, Advocate for the respondent. The learned counsel for the appellants contended that the question involved in this is one of refund of salary in connection with the re-fixation of pay in service, therefore, the proceedings for the recovery of the emoluments alleged to be recoverable, initiated by the predecessor-in-interest of the appellants did not abate. The Service Tribunal, therefore, was fully competent to adjudicate upon the matter. This contention has, however, no merit. A 'civil servant' has been defined in section 2(b) of the Civil Servants Act, 1973. A right of appeal under the Service Tribunals Act of 1973 has been given to a civil servant aggrieved by any final order whether original or appellate made by a departmental authority in respect of any of the terms and conditions of his service. The appellants admittedly are the legal heirs of the deceased civil servant and there being no provision in the Service Tribunals Act, 1973 to provide any remedy to the successors-in-interest of a civil servant, the learned Tribunal, in our view, was correct in holding that the appeal before it stood abated and the same is hereby maintained."

6. We are not satisfied that any substantial question of law of public importance within the parameters of law is involved in this case. Thus no case for grant of leave is made out under Article 212(3) of the Constitution of the Islamic Republic of Pakistan.

7. In the above perspective, we have examined the judgment of the Tribunal and find that the Chairman of the Tribunal rightly dismissed petitioner's application on the ground of limitation as well as on merits. We see no ground/reason to interfere in the said judgment, which is hereby maintained.

8. For the foregoing reasons, the present petition is devoid of merits, hence stands dismissed and leave to appeal is refused.

M.B.A./M-50/SC  
dismissed.

Petition



GOVERNMENT OF KHYBER PAKHTUNKHWA  
LAW, PARLIAMENTARY AFFAIRS &  
HUMAN RIGHTS DEPARTMENT

No. ALO(OP-I)/LD/5-7/2023/KC  
DATED: PESHAWAR THE 02<sup>ND</sup> OCTOBER, 2023

14182-84  
w.e

To

✓ The Secretary,  
Government of Khyber Pakhtunkhwa,  
Elementary & Secondary Education Department.

Attention: Section Officer (Lit-IV)

Subject: REQUEST FOR ADVICE FOR APPLICATION FOR THE PURPOSE OF  
PAY W.E.F 18-06-2014 TO 24-05-2015 IN RESPECT OF LATE MIR  
AZAM, EX-DEO DISTRICT LAKKI MARWAT.

Dear Sir,

I am directed to refer to your Department's letter No. SO(Lit-IV)/E&SED/1-3/EP#340/2021 SA# 613/2012/Mir Azam, dated 14.09.2023, on the subject noted above and to enclose herewith copy of views of Advocate General Khyber Pakhtunkhwa received vide No. 46287 dated 23.09.2023 for further necessary action, please.

Yours Faithfully,

*Azam*  
Assistant Law Officer (Opinion-I)

Endst: of even No. & date.

A copy is forwarded to the:-

1. PS to Secretary Law Department.
2. Master File.

Assistant Law Officer (Opinion-I)

Diary Number 2301  
Date of Diary 3/10/23  
Secretary Elementary & Secondary  
Education Peshawar

*ASG*  
*3/10*

*(*  
*Azam*  
*(Signature)*

SO (L-IV)

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(10)

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In term of the judgment of Honorable Supreme Court of Pakistan reported in 2021 SCMR Page 702, all Legal Rights do not terminate with death. A Claim by the civil servant for his Promotion is better terms and conditions or for reinstatement in service is survivable claim and passed on the legal heirs. However in term of the judgment reported in 2023 SCMR page 46, there is no Scope or prospect for filling of any appeal before the Services Tribunal other than the civil servant himself.

Keeping in view the law laid down in the above refer judgment, the undersigned is of the view that objection petition could be filed by the government servant in the circumstances of the present case.

*cel*  
Additional Advocate General  
Khyber Pakhtunkhwa  
Service Tribunal Peshawar  
21-9-23

*cel* Views endorsed.  
Additional Advocate General  
Khyber Pakhtunkhwa

Secretary Law!

No-46889- dt: 23-9-2023

*gpc*  
Solicitor.  
25/9/23

Law Officer  
*[Signature]*  
26.9.2023

has been  
mandate  
question remain  
could be filed  
remains on  
PI address



GOVERNMENT OF KHYBER PAKHTUNKHWA  
LAW, PARLIAMENTARY AFFAIRS &  
HUMAN RIGHTS DEPARTMENT

No. SO(OP-1)/LD/5-7/2023/KC  
DATED: PESHAWAR THE 31<sup>ST</sup> AUGUST, 2023

11962-84  
w e

To  
The Advocate General,  
Khyber Pakhtunkhwa,

Subject: REQUEST FOR ADVICE FOR APPLIGATION FOR THE PURPOSE OF  
PAY W.E.F 18-06-2014 TO 24-05-2015 IN RESPECT OF LATE MIR  
AZAM, EX-DEO DISTRICT LAKKI MARWAT

Dear Sir,

I am directed to refer to Elementary and Secondary Education Department's letter No. SO(Lit-IV)/E&SED/1-3/EP#613/2012/Mir Azam, dated 21.08.2023 (copy enclosed) and enclose herewith Law Department's letter No. SO(OP-1)/LD/5-7/2023/KC/8984-86, dated 14.07.2023 whereby this Department tendered advice that it would be appropriate that the Administrative Department may approach to the Law Officer in Khyber Pakhtunkhwa Service Tribunal to file an objection petition in terms of section 47 of the Code of Civil Procedure, 1908, on the principle laid down by the Supreme Court of Pakistan in the judgments vide PLD 2008 Supreme Court 703 and PLC 2009 (CS) 79 that provides the right of appeal to a civil servant and there is no provision in the Khyber Pakhtunkhwa Service Tribunal Act, 1974 to provide any remedy to the successor-in-interest of the civil servant.

2. The Administrative Department has informed vide letter dated 21.08.2023 ibid that the Law Officer, Khyber Pakhtunkhwa Service Tribunal was approached for filing of objection petition in light of the ibid judgments. The Law Officer pointed out that the Supreme Court of Pakistan in recent Judgment dated 23.12.2020 in CP 2717-L of 2015 has taken different view from its earlier judgments quoted above.

3. After Supreme Court of Pakistan recent Judgment in CP 2717-L of 2015, whether the Administrative Department can still file objection petition in light of Supreme Court of Pakistan judgments PLD 2008 Supreme Court 703 and PLC 2009 (SC) 79 or otherwise.

Yours Faithfully,

Assistant Law Officer (Opinion-I)

Endst. of even No. & date.

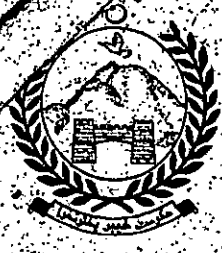
A copy is forwarded to the-

1. PS to Secretary Law Department.
2. Master File

*Handwritten notes:*  
Fazal Shah SBI  
No doubt the law viz 47 of Civil Servant  
has recently been changed through the  
objection petition.  
This aspect  
is addressed in  
address in advice



(12)



**OFFICE OF ADVOCATE-GENERAL, KHYBER PAKHTUNKHWA, PESHAWAR**

No. 41243/JAG

Dated 02/9 /2023

Address: High Court Building, Peshawar.  
Tel. No. 091-9210631

Exchange No 9213833  
Fax No. 091-9210270

Mr. Fazal Shah  
Additional Advocate General,  
Khyber Pakhtunkhwa Service Tribunal,  
Peshawar.

*Handwritten initials and date:*  
FF  
4-9-23

Subject: **REQUEST FOR ADVICE FOR APPLICATION FOR THE PURPOSE OF PAY W.E.F 18.06.2014 TO 24.05.2015 IN RESPECT OF LAT MIR AZAM, EX-DEO DISTRICT LAKKI MARWAT**

With reference to Law, Parliamentary Affairs & Human Rights Department letter No. SO(OP-I)/LD/5-7 dated 31-08-2023

Please be clear and categorize on the subject, no doubt the law viz legal heirs of civil servant has recently been changed through the mandate of judgment 2021 SCMR 702 and 2023 SCMR 46, however the moot question remains whether objection petition could be filed by Government. This aspect remains unaddressed.

Please address and advice on the point.

*Handwritten signature:*  
(AMIR JAVED)  
ADVOCATE-GENERAL,  
KHYBER PAKHTUNKHWA,  
PESHAWAR