

26.04.2023

Appellant present through counsel.

Muhammad Jan, learned District Attorney for respondents present.

Learned Member Executive (Mr. Muhammad Akbar Khan) is on leave, therefore, case is adjourned. To come up for arguments on 27.06.2023 before D.B. Parcha Peshi given to the parties.



(Rozina Rehman)  
Member (J)


\*Mutazem Shah\*

27.06.2023

1. Junior to counsel for the appellant present. Mr. Asad Ali Khan, learned Assistant Advocate General for the respondents present.


2. Former requested for adjournment due to engagement of learned senior counsel for the appellant before the Hon'ble Peshawar High Court, Peshawar. Granted. To come up for arguments on 25.10.2023 before the D.B. Parcha Peshi given to the parties.

SCANNED  
AT  
Peshawar



(Fareeha Paul)  
Member (E)

\*Kaleemullah\*



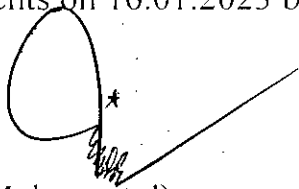
(Rashida Bano)  
Member (J)

21.11.2022

Clerk of learned counsel for the appellant present. Mr. Muhammad Adeel Butt, Additional Advocate General for the respondents present.

Clerk of learned counsel for the appellant requested for adjournment on the ground that learned counsel for the appellant is not available today due to strike of lawyers. Adjourned. To come up for arguments on 16.01.2023 before the D.B.

SCANNED  
KPOT  
Peshawar



(Mian Muhammad)  
Member (E)



(Salah-Ud-Din)  
Member (J)

16.01.2023

Counsel for the appellant present. Muhammad Jan learned District Attorney for the respondents present.

Miss Fareeha Paul, learned Member (Executive) is on leave today, therefore, case is adjourned to 26.04.2023 for arguments before the D.B.




(Rozina Rehman)  
Member (J)

02.09.2022

Learned counsel for the appellant present. Mr. Naseer-Ud-Din Shah, Assistant Advocate General alongwith Mr. Sajid Khan, Section Officer for the respondents present.


Reply/comments on behalf of respondents not submitted. Representative of the respondents requested for time to submit reply/comments on the next date. Adjourned. To come up for reply/comments on 17.10.2022 before S.B.

  
(Mian Muhammad)  
Member (E)

17.10.2022

Junior to counsel for the appellant present. Mr. Kabir Ullah Khattak, Additional Advocate General alongwith Nabi Gul, AD and Muhammad Shafceq, Assistant for respondents present.

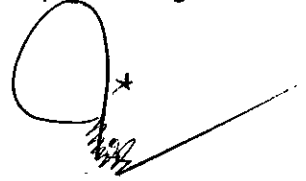
Written reply on behalf of respondents submitted which is placed on file. A copy of the same is handed over to the junior counsel for the appellant. To come up for rejoinder/argument on 21.11.2022 before D.B.

  
(Farecha Paul)  
Member (E)

26.04.2022

Counsel for the appellant present.

Preliminary arguments could not be heard due to paucity of time. Adjourned. To come up for preliminary hearing on 27.04.2022 before S.B.



(MIAN MUHAMMAD)  
MEMBER(E)

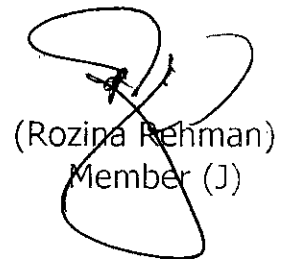
27.04.2021

Appellant present through counsel. Preliminary arguments heard. Record perused.

Points raised need consideration. Instant appeal is admitted for regular hearing subject to all legal objections. The appellant is directed to deposit security and process fee within 10 days. Thereafter, notice be issued to respondents for submission of written reply/comments. To come up for reply/comments on 06.07.2022 before S.B.

Rs-600/-  
Appellant Deposited  
Security & Process Fee

*A. Jaffar*  
09/5/22

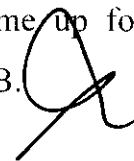


(Rozina Rehman)  
Member (J)

06<sup>th</sup> July, 2022

Counsel for the appellant present. Mr. Kabir Ullah Khattak, Additional AG for respondents present.

Respondents have not submitted written reply/comments. Learned AAG seeks time for submission of written reply/comments. Adjourned. To come up for written reply/comments on 02.09.2022 before S.B.



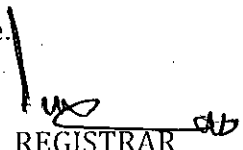


(Kalim Arshad Khan)  
Chairman

Form- A

FORM OF ORDER SHEET

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

Case No.- 498/2022


S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1-	06/04/2022	<p>The appeal of Mr. Zawar Ali resubmitted today by Mr. Saadullah Khan Marwat Advocate may be entered in the Institution Register and put up to the Worthy Chairman for proper order please.</p> <p style="text-align: right;"> REGISTRAR</p>
2-	07.04.2022	<p>This case is entrusted to S. Bench at Peshawar for preliminary hearing to be put there on <u>07-04-2022</u></p> <p style="text-align: right;"> CHAIRMAN</p> <p>Counsel for the appellant present.</p> <p>Learned counsel for the appellant seeks adjournment. Adjourned. To come up for preliminary hearing on 26.04.2022 before S.B.</p> <p style="text-align: right;"> (MIAN MUHAMMAD) MEMBER(E)</p>

The appeal of Mr. Zawar Ali, Senior Clerk, Special Education Center, Social Welfare, District Mardan received today i.e. on 18.03.2022 is incomplete on the following score which is returned to the counsel for the appellant for completion and resubmission within 15 days.

1. Every memorandum of appeal shall be presented in approved file covers.
2. Checklist is not attached with the appeal.
3. Appeal has not been flagged/marked with annexure marks.
4. Annexures of the appeal may be attested.
5. Affidavit attached with the appeal may be attested by the Oath Commissioner.
6. Copy of impugned order is not attached with the appeal which may be placed on it.
7. Copy of departmental appeal in respect of appellant is not attached with the appeal which may be placed on it.
8. Copies of annexures A to H referred to in the memo of appeal are not attached with the appeal.
9. Six more copies/sets of the appeal along with annexures i.e. complete in all respect may also be submitted with the appeal.

No. 696 /S.T,

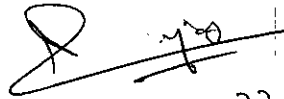
Dt. 21/03 /2022

  
REGISTRAR  
SERVICE TRIBUNAL  
KHYBER PAKHTUNKHWA  
PESHAWAR.

Mr. Saad Ullah Khan Marwat Adv. Pesh.

Sir,

Request for further time to remove the objections.

  
06-04-22 -

**BEFORE THE KPK SERVICE TRIBUNAL PESHAWAR**

S.A. No. \_\_\_\_\_ /2022

Zawar Ali

versus

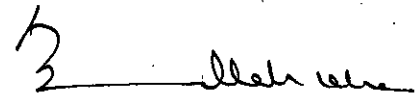
Secretary & Others

**I N D E X**

S. No.	Documents	Annex	P. No.
1.	Memo of Appeal		1-6
2.	Transfer of Centers	"A"	7-8
3.	Notification dated 31-01-2018	"A/1"	9-16
4.	FST judgment dated 18-07-2017	"B"	17-23
5.	Supreme Court Judgment dated 17-01-2018	"B/1"	24-31
6.	Impugned order dated 03-10-2018	"C"	32-33
7.	Writ Petition No. 5664/18	"D"	34-35
8.	Comments	"D/1"	36-39
9.	Notification dated 25-11-19	"E"	40
10.	Minutes of the Meeting dated 29-07-2020	"F"	41-43
11.	Transfer order dated 10-12-2020	"G"	44
10.	HC Judgment dated 16-02-2022	"H"	45-47

Appellant

Through



Saadullah Khan Marwat  
Advocate  
21-A, Nasir Mansion,  
Shoba Bazaar, Peshawar

Dated 16-03-2022

Ph: 0300-5872676

**BEFORE THE KP SERVICE TRIBUNAL, PESHAWAR**

Appeal No. \_\_\_\_\_/2022

**Zawar Ali,**

Senior Clerk, Social Welfare,  
Presently serving as Vocational  
Teacher in Special Education Centre,  
Mardan, Department of Social Welfare,  
Special Education and women  
Empowerment Department,  
Directorate, Peshawar . . . . . Appellant

Khyber Pakhtunkhwa  
Service Tribunal

Diary No. 432

Dated 18/3/2022

**VERSUS**

1. Secretary, Govt. of KP, Zakat,  
Usher, Social Welfare, Special  
Education & Women  
Empowerment Department,  
Peshawar.
2. Chief Secretary, Govt. of KP,  
Peshawar.
3. Secretary, Govt. of KP,  
Finance Department,  
Peshawar.
4. Director, Social Welfare and  
Special Education, Directorate,  
KP, Opposite to Islamia College,  
University Road, Peshawar. . . . . Respondents

**Filed to-day**

*[Signature]*  
**Registrar**  
18/3/2022

⇔<=>⇔<=>⇔<=>⇔<=>⇔

**APPEAL UNDER SECTION 4 OF THE SERVICE  
TRIBUNAL ACT, 1974 AGAINST THE ORDER  
DATED 3-10-2018 OF RESPONDENT NO. 1  
WHEREBY THE HEALTH PROFESSIONAL  
ALLOWANCE WAS STOPPED TO THE APPELLANTS  
WITHOUT ANY LAWFUL JUSTIFICATION.**

Re-submitted to -day  
and filed

*[Signature]*  
**Registrar**  
6/4/2022

⇔<=>⇔<=>⇔<=>⇔<=>⇔



**Respected Sir:**

1. That on 14-04-2007, appellant was appointed as Senior Clerk in the defunct Directorate of Social Welfare under the Ministry of Social Welfare and Special Education, Islamabad.
2. That pursuant to the Constitution (Eighteen Amendment) Act, 2010 (Act No X of 2010) various Special Education and Social Welfare Centers Ministry of Social Welfare and Special Education Islamabad were transferred to Social Welfare and Special Education Department and Women Empowerment Govt. of KP. The appellant was also transferred initially on deputation basis and later on permanently transferred to the Province of KP on his existing terms and conditions of service and accordingly the Govt. of KP, Directorate of Social Welfare and Special Education and Women Empowerment vide Notification dated 31-01-2018, absorbed the appellant in the provincial civil service. (Copies as annex "A" & "A/1")
3. That while serving the Federal Govt. the colleagues of appellant serving in Directorate of Special Education were allowed Health Professional Allowance as the task and role assigned to the colleagues of appellant was not less than the professionals of Health Department. Subsequently, the allowance were stopped which was called in question by the colleagues of the appellant before the Federal Service Tribunal and were allowed vide consolidated judgment dated 18-07-2017, 11-01-2016 and 05-01-2015, taking support of the ordinance VI 2011 namely "career structure for Health Personnel Scheme Ordinance 2011" wherein definition of Health Personnel has been given and also the incumbents qualified / eligible for receiving the health allowance has been mentioned clearly. The Federal Govt. being aggrieved of the judgments ibid, filed CPLA before the August Supreme Court of Pakistan which was upheld vide judgment dated 17-01-2018. (Copies as annex "B" & "B/1")
4. That the appellant was in receipt of Health professional allowance.

5. That it is pertinent to add that the Govt. of KP vide Notification dated 23-02-2017 and 15-04-2016 also allowed Health Professional allowance on various rates to the Doctors, Paramedics and Nursing Staff of Health Department.
6. That vide impugned letter dated 03-10-2018, R. No 01 stopped the Health Professional allowance to the appellant in utter violation of the law and rules. Appellant agitated the matter before R. No. 02 but no positive result. (Copy as Annex "C")
7. That the appellant being aggrieved from the impugned letter dated 03-10-2018 filed Writ Petition before the Hon'ble Peshawar High Court, Peshawar in W.P No. 5664-P/2018 whereby comments were filed wherein the respondents out rightly denied the right of appellant regarding the Health Professional allowance. (Copies as annex "D" & "D/1")
8. That during the pendency of the Writ Petition, the respondent issued notification dated 25-11-2019, wherein Health Allowance @ of one running pay was allowed to devolved employees working in the Special Education Institutions from the date of their devolution to Provincial Govt. of KP and also mentioning that the allowance will be admissible only to the employees of Special Education Institutions in KP, devolved under 18<sup>th</sup> Constitutional amendment. (Copy as annex "E")
9. That on the issuance of Notification dated 25-11-2019, the colleagues of appellant serving on Special Education side withdrew from the W.P as their grievance was redressed by the respondents by issuing the Notification but at the same time, the appellant was discriminated as the appellant was also a devolved employee and serving in the same Directorate i.e. Directorate of Social Welfare, Social Education and Women Empowerment KP, the Administrative Secretary of both wings is the same, a good number of institutions of Social Welfare are also giving services of the same nature as that of Special Education, both are serving under the same roof, both are inter transferable, so both are at par with each other.

10. That vide minutes of the meeting dated 29-07-2020, issued vide covering letter dated 19-08-2020, the respondents took a decision that the department will move a summary to Finance Department to allow one running basic pay as Health Allowance to all the employees of Special Education and Directorate of Social Welfare, Special Education and women empowerment on the analogy of previous Notification issued by Finance Department but till date, no action on the same. (Copies as annex "F")
11. That on 10-12-2020, appellant was transferred from D. I. Khan to Special Education Center Mardan and now serving in the same Centre till date. (Copy as annex "G")
12. That the Writ Petition came up for hearing on 16-02-2022, whereby the same was dismissed on the ground of jurisdiction being one of terms and conditions of service and not on merits. (Copy as annex "H")
13. That the respondents has refused the claim of appellant through their comments, so the same can safely be considered as final order for the purpose of appeal in the Hon'ble Tribunal.

Hence, this appeal, inter alia on the following grounds:

### **GROUND S.**

- a. That the respondents has not treated the appellant in accordance with law, rules and policy on the subject and acted in violation of Articles of the Constitutions and unlawfully issued the impugned letter and refused to continue the Health Allowance to the appellant which is unjust unfair and hence not sustainable in the eyes of law.
- b. That the matter has already been clarified by the Hon'ble Supreme Court in its judgments by declaring that whoever false within the definition of "Health Personal" has a right to receive the said allowance, the duties of appellant is not different from the duties of colleagues of appellant serving on Special Education side, so also has a right to receive the Health Allowance from the date from which appellant was devolved to the provincial Govt.

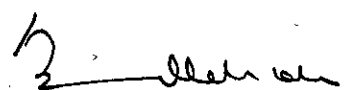
- c. That a good number of Institutions on Social Welfare site works on Health site just like that of Special Education, moreover the appellant is also a devolved employee from the Federal Govt. so Notification dated 25-11-2019 allowing Health Allowance to employees of Special Education from the date of devolution is also applicable to the appellant.
- d. That the appellant was in receipt of the allowance so stopping it and later on allowing to only devolved employees of Special Education is clear cut discrimination on the part of respondents. Besides para No. 12 of the Supreme Court Judgment gives support to the contention of appellant wherein the Supreme Court allowed the said allowance to allied Institutions / centre's, NCRDP (PCRDP) at Provincial level a centre of Social Welfare so the appellant has the right to receive the allowance.
- e. That by not allowing the Health Allowance to appellant being also a devolved employee is against the spirit of Constitution as both are serving under one Directorate, the Administrative Secretary of both the wings is the same, both are inter-transferable and even now the appellant is serving in Special Education Complex, Mardan since 2013.
- f. That allowing the Health Allowance to devolved employees of Special Education depriving the appellant from the same being also devolved employees of Social Welfare is violation of the provision of the constitutions.

It is, therefore, most humbly prayed that the impugned letter dated 03-10-2018 be set aside, by allowing the appellant Health Allowance since the date of devolution to Provincial Govt. and benefits of Notification dated 25-11-2019 be also extended to appellant being devolved employee in the interest of justice.



Appellant

Through



Saadullah Khan Marwat



Arbab Saiful Kamal



Amjad Nawaz

Advocates

Dated: 16-03-2022

**AFFIDAVIT**

I, **Zawar Ali**, Senior Clerk, Social Welfare, Presently serving as Vocational Teacher in Special Education Centre, Mardan, Department of Social Welfare, Special Education and women Empowerment Department, Directorate, Peshawar (Appellant), do hereby solemnly affirm and declare that contents of **Service Appeal** are true and correct to the best of my knowledge and belief



DEPONENT

**CERTIFICATE:**

As per instructions of my client, no such like Service Appeal has earlier been filed by the appellant before this Hon'ble Tribunal.



ADVOCATE



مسئول علیہاں کو نوٹس کرتے ہوئے سائیلان کو انٹرم ریٹیف کی سہولت دی ہے۔

### فوری داد رسی:

مندرجہ بالا گزارشات کو مد نظر رکھتے ہوئے عدالت حضور سے درخواست ہے کہ مورخہ 103 اکتوبر 2018 کی جاری کردہ چٹھی No. So-VI(SWD)1-21/-D.E کو تا تصفیہ رٹ پیشین ہذا، معطل کیا جائے تاکہ سائیلان کو جاری ہیلتھ الاؤنس باقاعدگی سے ملتا رہے۔ دیگر داد رسی جو قرین انصاف ہو بھی عطاء کی جائے۔

سائیلان ذوار علی وغیرہ

بذریعہ  
محمد خورشید خان ایڈووکیٹ  
سپریم کورٹ آف پاکستان

فہرست کتب: آئین پاکستان 1973

ایڈووکیٹ محمد خورشید خان

سند: تصدیق کی جاتی ہے کہ سائیلان نے اس موضوع پر کسی دوسری عدالت یا اس عدالت حضور میں کوئی درخواست نہ دی ہے۔

ایڈووکیٹ محمد خورشید خان

بیان حلفی: میں ذوار علی ولد زرتاج خان، سینئر کلرک انٹی گریڈ سوشل ڈویلپمنٹ سنٹر، پشاور حلفاً بیان کرتا ہوں کہ جملہ مراتب پیشین ہذا میرے علم و یقین کے مطابق درست ہیں اور کوئی امر عدالت حضور سے مخفی نہ ہے۔

العبد

ذوار علی

شناختی کارڈ نمبر: 16101-7302832-5  
موبائل نمبر: 0300-5497383

تصدیق کنندہ:

محمد خورشید خان ایڈووکیٹ  
سپریم کورٹ آف پاکستان

No. 11345  
Certified that the above was verified on solemnly affirmation before me in office this 16th day of Nov 18 by Jawad Ali who was identified by Muhammad Ali who is personally known to me.  
Peshawar High Court, Peshawar.

FILED TODAY  
Deputy Registrar  
16 NOV 2018

ATTESTED  
EXAMINER  
Peshawar High Court

①

ISDC

BEFORE THE HONOURABLE PESHAWAR HIGH COURT PESHAWAR

Writ Petition No. 5654-P/2018

Zawar Ali & Other..... (Petitioners)

VERSUS

1. Govt. of Khyber Pakhtunkhwa through chief Secretary Civil Secretariat Peshawar.
2. Secretary Finance, Govt. of Khyber Pakhtunkhwa, Civil Secretariat, Peshawar.
3. Accountant General, Khyber Pakhtunkhwa Peshawar.
4. Secretary to Govt. of Khyber Pakhtunkhwa Zakat, Ushr, Social Welfare, Special Education & Women Empowerment Peshawar.
5. Deputy Commissioner Peshawar..... (Respondents)

PARA-WISE COMMENTS/ REPLY ON BEHALF OF RESPONDENTS NO. 2 & 4

Respectfully Sheweth:

PRE-LIMINARY OBJECTIONS:

1. The Petitioners has got no cause of action to file present Writ Petition.
2. That the petition is not maintainable in its present form being service matter.
3. That the petitioners/plaintiff has no locus standi or cause of action to file the present writ petition.
4. That the jurisdiction of this Honorable Court is specifically barred by the provisions contained in Article-212 of the constitution.
5. That the petition is bad for mis-joinder and non-joinder of necessary parties.

FACTS:

1. Correct
2. Correct.
3. Correct to the extent that the services of the petitioners were transferred to the Province of Khyber Pakhtunkhwa on deputation basis, later on their

FILED TODAY

Deputy Registrar  
January 2018.

25 JUN 2019

Q



4. The relevant facts are that, the Federal Service Tribunal Islamabad on 18-07-2017 and Supreme Court of Pakistan on 17-01-2018, Allowed Health Allowance not Health Professional Allowance to the employees of Directorate General of Special Education (DGSE), with effect from 01-01-2012, and the Accountant General Khyber Pakhtunkhwa released the said allowance under the head of Health Professional Allowance without any consultation with Finance Department with effect from 01-01-2012. Grant of Health Professional Allowance to the employees of Special Education is illegal and unlawful. Fact of the case is that Government of Khyber Pakhtunkhwa, vide notification No. FD(SOSR-II)8-18/2011, dated Peshawar 6<sup>th</sup> of August, 2011, accorded approval of Health Professional Allowance to the professional doctors in the civil service of the Government of Khyber Pakhtunkhwa, in the manner that doctors in BS-17 (all cadres) would receive the same at the rate of RS 15,000/- P.M. while doctors in BS-18 to BS-20 (all cadres) would receive at the rate of Rs 10,000/- P.M. (Annex-I), while the present petitioners are receiving the said allowance equal to one month running basic pay. On 07-01-2016, in continuation of above referred notification, the Provincial Government of Khyber Pakhtunkhwa, accorded approval to the incentive for doctors excluding MTIs on the basis of territory (Districts declared as Category A, B, C) unattractive/ attractive and enhanced the Health Professional Allowance, category wise, on the basis of hard area, geographic terrain, security situation and lack of development and infrastructure, but applicability was subject to the following conditions;

- i. The existing allowance for doctors (Anesthesia allowance in district hospital hard and hardest. Special package/ incentives at Civil Hospital (Gari Habib Ullah Manshra Incentives allowance to Gynecologist and Lady Doctors all districts Battagram, Kohistan, Hangu, Tank, Buner, Dir Upper, Dir Lower, Shingla, and Chitral) shall be discontinued except non-practicing allowance.

ii. Will be admissible only during their period of posting against the sanctioned posts at Health Department.

FILED TODAY  
Deputy Registrar  
25 JUN 2019

(10)

- iii. Will not be admissible only during earned leave, study leave and extra ordinary leave except casual leave.
- iv. Shall not be treated as part of emoluments for the purpose of calculation of pension and recovery of House Rent etc.
- v. Shall not be admissible to the employees posted/ deputed outside the Health Department (Annex-II).

Wherein condition No. V is, not admissible to the employees posted/ deputed outside the Health Department. Thereafter, notification issued vide No. FD/SOSR-II 8-18/2017 dated 23-02-2017, by including Institutional Employees (MTIs) with the same condition that HPA shall not be admissible to the employees posted outside MTIs and Health Department (Annex-III), whereas in earlier notification dated 06-08-2011, no such condition was imposed. Similarly on 15-04-2016 vide notification No. FD (SOSR-II) 8-18/2015-16 dated 15-04-2016, HPA was allowed to Paramedic and Nursing staff of Health Department at a flat rate of Rs. 10,000/- per month (Annex-IV). From the above details/ notifications it is crystal clear that HPA is allowed only to employees of Health Department and employees of Special Education are providing Educational Services, not Health Services to Special Persons, hence not entitled for Health Professional Allowance.

5. Correct to the extent that the Accountant General informed the Deputy Commissioner Peshawar after release of HPA along-with arrears. Finance Department was not taken into confidence regarding release of HPA to employees of Special Education. The release was made by AG from one line budget. When it was brought to the knowledge of Finance Department, the Finance Department vide letter No. SO (Lit-I)FD/3-2521/2018, dated 01-10-2018 asked the Administrative Department for moving a summary after thorough analysis of the case. Similarly the Administrative Department was also requested for inquiry regarding payment of HPA without prior approval / information of Finance Department.

*Then why  
Allowed  
Health  
allowance  
to employees  
of Special  
Education  
(devoled)*

FILED TODAY

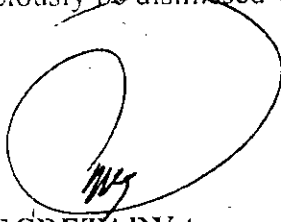
Deputy Registrar

25 JUN 2019

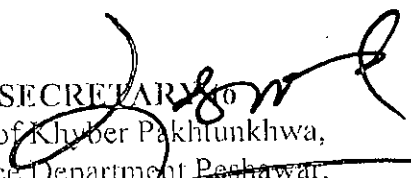
②

6. Incorrect. There is no tussle between the two departments. Finance Department is still of the view that HPA WAS granted to the Health Professionals as an incentive to improve the delivery of Health Services in far flung areas of the province. The extension of HPA to employees of Special Education will be against cardinal principle of good Governance and will result in wrong precedents. Similarly, it will be difficult for the Provincial Exchequer to bear the financial implication involved in this regards.
7. Factual position has been explained in the preceding paras.

It is therefore humbly prayed that in view of the submission narrated above the instant petition may graciously be dismissed with cost.



SECRETARY to  
Govt. of Khyber Pakhtunkhwa,  
Zakat, Ushr, Social Welfare, Special Education &  
Women Empowerment Department Peshawar.  
(Respondent No. 4)



SECRETARY to  
Govt. of Khyber Pakhtunkhwa,  
Finance Department Peshawar,  
(Respondent No. 2)

FILED TODAY  
Deputy Registrar  
25 JUN 2019



16

**GOVERNMENT OF KHYBER PAKHTUNKHWA**  
DIRECTORATE OF SOCIAL WELFARE, SPECIAL EDUCATION  
& WOMEN EMPOWERMENT, KHYBER PAKHTUNKHWA,  
OPP: ISLAMIA COLLEGE GATE, JAMRUD ROAD, PESHAWAR.

DATED PESHAWAR THE 10-12 2020

**ORDER:**

No. DSW/ 808-12 Mr. Zawar Ali, Senior Clerk (BPS-14) GIB, DI Khan is hereby transferred and posted against the vacant post of Vocational Teacher (BPS-14) in Special Education Center Mardan in his own pay and scale.

Rest of the terms and conditions will remain the same against which he was initially recruited.

No TA/DA is allowed.

Sd/-  
DIRECTOR  
(SW, SE & WE)

**ENDST EVEN NO AND DATE.**

1. The District Accounts Officer, DI Khan & Mardan
2. District Officer, Social Welfare DI Khan & Mardan
3. Superintendent, GIB, DI Khan
4. Director, SEC Mardan
5. PA to Director Social Welfare Peshawar.
6. Official concerned

ASST. DIRECTOR (ESTAB-I)

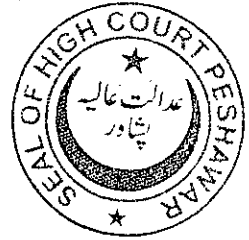
**JUDGMENT SHEET  
PESHAWAR HIGH COURT, PESHAWAR  
JUDICIAL DEPARTMENT**

WP No. 5664-P/2018

Zawar Ali and others

Vs

**Government of Khyber Pakhtunkhwa through Chief  
Secretary, Peshawar and others.**



Date of hearing 16.02.2022

Petitioner (by) M/S Saadullah Khan Marwat and Arbab Saiful  
Kamal, Advocates

Respondents (by) Mr. Rab Nawaz Khan, AAG


**JUDGMENT**

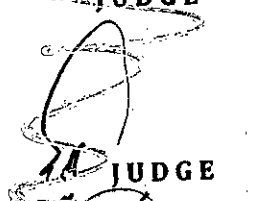
MUSARRAT HILALI, J.- Same order as in connected  
Writ Petition No. 5452-P/2018 (Majid Ali Shah and  
others Vs. Government of Khyber Pakhtunkhwa through  
Chief Secretary, Peshawar and others).

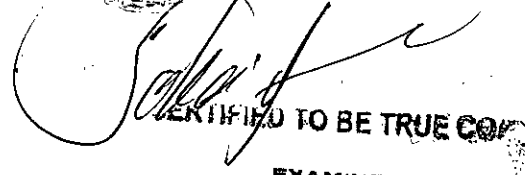
**Announced  
16.02.2022**

**(DB) Hon'ble Justice Musarrat Hilali  
Hon'ble Mr. Justice Ijaz Anwar**

Noor Shah

  
JUDGE

  
JUDGE

  
CERTIFIED TO BE TRUE COPY

EXAMINER  
Peshawar High Court, Peshawar  
Authorised Under Article 27 of  
The Governance-Shahadaat Order, 1995

22 FEB 2022

**JUDGMENT SHEET  
PESHAWAR HIGH COURT, PESHAWAR  
JUDICIAL DEPARTMENT**

**WP No. 5452-P/2018 with IR  
With CM Nos. 2178-P/2018, No. 624-P/2021  
and No. 1881-P/2021**

**Majid Ali Shah and others**

**Vs**

**Government of Khyber Pakhtunkhwa through Chief  
Secretary, Peshawar and others.**

Date of hearing 16.02.2022

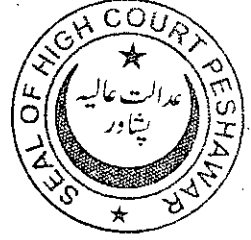
Petitioner (by) M/S Saadullah Khan Marwat and Arbab Saiful  
Kamal, Advocates

Respondents (by) Mr. Rab Nawaz Khan, AAG

**JUDGMENT**

MUSARRAT HILALI, J.- Through this single judgment, we propose to decide two connected Writ Petitions bearing No. 5452-P/2018 (Majid Ali Shah and others Vs. Government of Khyber Pakhtunkhwa through Chief Secretary and others) and No. 5664-P/2018 (Zawar Ali Vs. Government of Khyber Pakhtunkhwa through Chief Secretary and others), as both the matters have common questions of law and facts involved therein.

2. Petitioners in both the petitions seek similar prayer in terms that the impugned letter dated 03.10.2018,



**ATTESTED**

**EXAMINER  
Peshawar High Court**

whereby the petitioners were refused to continue Health Professional Allowance, may be set aside, and they may be continued the said Allowance with all back benefits.

3. We have heard arguments of learned counsel for the parties and have perused the documents available on the file.

4. Admittedly, the petitioners are civil servants and their grievance relate to the terms and conditions of service, so it exclusively falls within the jurisdiction of the Service Tribunal. Constitutional jurisdiction of this Court is expressly barred under Article 212(2) of the Constitution of Islamic Republic of Pakistan, 1973.

5. In view of the above, this and the connected writ petition are dismissed, being not maintainable.

*[Signature]*  
CERTIFIED TO BE TRUE COPY  
EXAMINER  
Peshawar High Court, Peshawar  
Authorized Under Article 87 of  
The Constitution of the Islamic Republic of Pakistan, 1973  
22 FEB 2022

*[Signature]*  
JUDGE  
*[Signature]*  
JUDGE

**Announced**  
16.02.2022

(DB) Hon'ble Justice Musarrat Hilal  
Hon'ble Mr. Justice Ijaz Anwar  
Noor Shah

No. 25770  
Date of Presentation of Application 19/2/2022  
No of Pages 5  
Copying fee 20/-  
Total 20/-  
Date of Preparation of Copy 22/2/2022  
Date of Delivery of copy 22/2/2022  
Received by [Signature]

**BEFORE THE KPK SERVICE TRIBUNAL, PESHAWAR**

CM. No. \_\_\_\_\_ /2022

Zawar Ali

versus

Secretary &amp; Others

**APPLICATION FOR ALLOWING HEALTH ALLOWANCE  
TO THE APPELLANT TILL FINAL DECISION OF THE  
APPEAL:****Respectfully Sheweth:**


1. That applicant filed the subject Appeal before this hon'ble Tribunal today wherein no date of hearing has been fixed.
2. That the applicant is serving in Special Education wherein Health Allowance has been allowed to the employees, so the applicant also has the right to receive the same allowance as per law and rules on the subject.
3. That prima facie case exists, balance of convenience lies in favor of applicant and is hopeful of the success of the appeal.
4. That facts and grounds of the appeal be treated as integral part of this application for grant of Interim relief.

It is, therefore, requested that on acceptance of the application the respondents be directed to allow the Health Allowance to the appellant, so for he is serving the Special Education or till the final decision of the case.



Applicant

Through



(Saadullah Khan Marwat)

Advocate

21-A Nasir Mension,

Shoba Bazar, Peshawar.

Dated: 16-03-2022

Ph: 0300-5872676



**BEFORE THE KPK SERVICE TRIBUNAL, PESHAWAR**

C.M. No. \_\_\_\_\_ /2022

Zawar Ali

versus

Secretary &amp; Others

**AFFIDAVIT**

I, Zawar Ali, Applicant, do hereby solemnly affirm and declare that contents of **Application** are true and correct to the best of my knowledge and belief.

**DEPONENT**

یعدالت چٹا چٹا سرسٹریٹ ٹریڈنگ کمپنی پشاور

منجانب ایڈووکیٹ

زوار علی نام محمد سوشل ویلفیئر دعویٰ ایڈووکیٹ

باعتبار سرسٹریٹ ٹریڈنگ

میں نے مندرجہ عنوان بالا میں اپنی طرف سے واسطے پیروی و جواب دہی و عمل کاروائی متعلقہ آل مقام پشاور کیسٹم اسٹیشن انڈسٹریل سٹریٹ ایڈووکیٹ، ہائی کورٹ کو وکیل مقرر کر کے اقرار کیا جاتا ہے کہ صاحبہ نے صرف کو مقصد کے عمل کاروائی کا کابل اختیار ہوگا نیز وکیل صاحبہ کو کرنے و دہنی نامہ و اقرار نامہ و فیصلہ و تحلف دینے جواب دہی اور قابل دعویٰ اور لٹریچر کرنے اجراء اور وصولی چیک و روپیہ اور دعویٰ اور درخواست ہر قسم کے تصدیق انڈسٹری اس پر دستخط کرنے کا اختیار ہوگا نیز لٹریچر عدم پیروی یا ڈگری کی طرف یا اپیل کی برآمدگی اور دستخطی نیز دائر کرنے اپیل ٹرانسپلر و نظر ثانی و پیروی کرنے کا اختیار ہوگا اور بصورت ضرورت مقدمہ منظر کے عمل یا تجزیوں کاروائی کے واسطے اور وکیل یا مشاور قانونی کو اپنے ہمراہ یا اپنی بجائے لٹریچر کا اختیار ہوگا اور اس میں مقرر شدہ کو بھی وہی حوالہ مذکورہ بالا اختیارات حاصل ہوں گے اور اس کا سامنے پروا اختیار متنازعہ قبول ہوگا و دوران مقدمہ میں جو خرچہ و تر جانہ التوا مقدمہ کے سبب ہوگا اس کے مستحق وکیل صاحبہ کو صرف ہوں گے نیز لٹریچر و فرجیہ کی وصولی کرنے کا بھی اختیار ہوگا اگر کوئی نامہ یا دستخط پیشی متنازعہ روبرو پر ہو یا عدالت سے باہر ہو تو وکیل صاحبہ پابند نہ ہوں گے کہ پیروی مذکور کریں۔ لہذا اراکالت نامہ رکھ دیا کہ سند ہے۔

16-03-22 رقم

التعبید التعبید التعبید

ارباب نیف انکمال ایڈووکیٹ

محمد انور عثمان مراد ایڈووکیٹ

زوار علی

محمد نواز ایڈووکیٹ