

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.



(Fareeha Paul)
Member (E)



(Rashida Bano)
Member (J)

Kaleemullah

SCANNED
K-3T
Peshawar

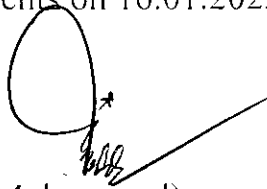
SCANNED
K-3T
Peshawar

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
K.P.S.T
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.

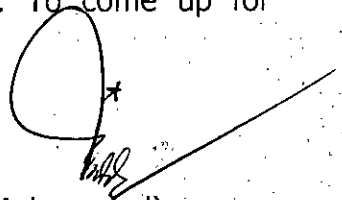


(Rozina Rehman)
Member (J)

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.

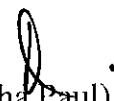
Reply/comments on behalf of respondents not submitted. Representative of the respondents requested for time to submit reply/comments on the next date. Adjourned. To come up for reply/comments on 17.10.2022 before S.B.


(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.


(Farceha 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. J. 09/5/22



(Rozina Rehman)
Member (J)

06th 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.- _____ 496/2022


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. Abdul Sami 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> 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> 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> (MIAN MUHAMMAD) MEMBER(E)</p>

The appeal of Mr. Abdul Sami, Driver, Social Welfare, National Special Education Complex, District Mardan received today i.e. on 18.03.2022 is incomplete on the following score which is returned to the counsel for the appellants 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 appellants is not attached with the appeal which may be placed on it.
8. Copy 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. 692 /S.T,

Dt. 21/03 /2022


REGISTRAR
SERVICE TRIBUNAL
KHYBER PAKHTUNKHWA
PESHAWAR.

Mr. Saad Ullah Khan Marwat Adv. Pesh.

Sr,
Request for further time to remove
the objections.


26-04-22

BEFORE THE KPK SERVICE TRIBUNAL PESHAWAR


S.A. No. 496 /2022

Abdul Sami

versus

Secretary & Others

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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, PESHAWARAppeal No. 496 /2022**Abdul Sami,**

Driver, Social Welfare,

Presently serving as Driver in

National Special Education Complex,

Mardan, Department of Social Welfare,

Special Education and women

Empowerment Department,

Directorate, Peshawar Appellant

Khyber Pakhtunkhwa
Service TribunalBia. 435Dated 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

⇔<=>⇔<=>⇔<=>⇔<=>⇔

Registrar

18/03/2022**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.

Registrar

16/4/2022

Respected Sir:

1. That previously, the appellant was serving against the post of Driver in the defunct Directorate of Social Welfare under the Ministry of Social Welfare and Special Education, Islamabad.
2. That on 25-04-2013, appellant was transferred from Community Development Centre Chakdara Dir Lower to National Special Education Complex Mardan,. (Copy as annex "A")
3. 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 "B" & "B/1")
4. 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 "C" & "C/1")

5. That the appellant was in receipt of Health professional allowance.
6. 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.
7. 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 "D")
8. 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 WP No. 5452-P/2018 wherein comments were filed wherein the respondents out rightly denied the right of appellant regarding the Health Professional allowance. (Copies as annex "E" & "E/1")
9. 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 18th Constitutional amendment. (Copy as annex "F")
10. 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.

11. 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 "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.

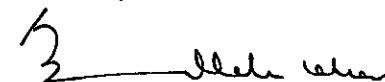
- d. That the appellant was in receipt of the allowance so stopping it and later on allowing to only devolved employees of Special Education is clear cut discrimination on the part of respondents. Besides para No. 12 of the Supreme Court Judgment gives support to the contention of appellant wherein the 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.

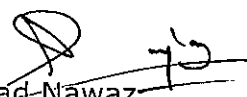


Appellant

Through


Saadullah Khan Marwat


Arbab Saiful Kamal


Amjad Nawaz
Advocates

Dated: 16-03-2022

AFFIDAVIT

I, Abdul Sami, Driver, National Special Education Complex, Mardan, Department of Social Welfare, Special Education and women Empowerment Department, Civil Secretariat, Peshawar, 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



GOVERNMENT OF KHYBER PAKHTUNKHWA
DIRECTORATE OF SOCIAL WELFARE,
SPL: EDU: & WOMEN EMPOWERMENT
JAMRUD ROAD PESHAWAR.

Dated Peshawar the 25/4 /2013

ORDER

No. DSW/ 2645-51. Mr. Abdul Sami, Driver, Community Development Centre, Chakdara, Dir (Lower) is hereby transferred & posted against the vacant post of Driver (BPS-04) in National Special Education Complex, Mardan, in the best public interest.

Sd/--

Director,
Social Welfare, Spl: Edu: & WE
Khyber Pakhtunkhwa

Copy to:-

1. The District Accounts Officers, Dir (Lower) & Mardan.
2. The District Officers Social Welfare, Dir (Lower) & Mardan.
3. The Deputy Director, NSEC, Mardan.
4. The Social Welfare Officer, Community Development Centre, Chakdara, Dir (Lower).
5. The official concerned.

Asst. Director (D.I.)
Social Welfare, Spl: Edu: & WE
Khyber Pakhtunkhwa

BEFORE THE KPK SERVICE TRIBUNAL, PESHAWAR

CM. No. _____ /2022

Abdul Sami

versus

Secretary & 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

Abdul Sami

versus

Secretary & Others

AFFIDAVIT

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



DEPONENT

بعد الت جناب سرسٹریٹ ٹریبیونل صوبہ سندھ پشاور

متجناب ایڈووکیٹ

عبدالمصعب
دعویٰ اپیل
بنام محکمہ سوشل ویلفیئر

باعضویت شریکہ اینٹیکہ

مستندہ سند جو عنوان بالا میں اپنی طرف سے واسطے پیروی و جواب دہی وکل کاروائی متعلقہ آن مقام پشاور کیسٹم اسٹیشن اڈاسا خان سرورڈس ایڈووکیٹ ہائی کورٹ کو وکیل مقرر کر کے اقرار کیا جاتا ہے کہ صاحب موصوف کو مقدمہ کی کل کاروائی کا کامل اختیار ہوگا نیز وکیل صاحب کو کرنے راضی نامہ و آڈیٹر ثالث و انیسٹھ برٹلف لینے جواب دہی اور اقبال دعویٰ اور بصورت ڈگری کرنے اجراء اور وصولی چیک و روپیہ اور مرضی دعویٰ اور درخواست ہر قسم کا تعلیق اور اس پر دستخط کرنے کا اختیار ہوگا نیز بصورت عدم پیروی یا ڈگری کیسٹم یا اپیل کی برآمدگی اور مسموعی یا نیز دائر کرنے اپیل نگران و نظر ثانی و پیروی کرنے کا اختیار ہوگا اور بصورت ضرورت مقدمہ بند کر کے کل یا جزوی کاروائی سے واسطے اور وکیل یا مشاور قانونی کو اپنے ہمراہ یا اپنی بجائے تفرز کا اختیار ہوگا اور اس پر مقرر شدہ کو بھی وہی جملہ مذکورہ بالا اختیارات حاصل ہوں گے اور اس کا ساختہ پرواختہ منطوق و قبول ہوگا و دوران مقدمہ میں جو خرچہ دہر جائز التوا مقدمہ کے سبب سے ہوگا اس کے مستحق وکیل صاحب موصوف ہوں گے نیز بقایا خرچہ کی وصولی کرنے کا بھی اختیار ہوگا اگر کوئی تاریخ پیشی بقایا درجہ پر ہو یا عدسے باہر ہو تو وکیل صاحب پابند نہ ہوں گے کہ پیروی مذکور کریں۔ لہذا وکالت نامہ رکھ دیا کہ سند ہے۔

16-03-22 المرقوم

القید القید

القید

Asari
عبدالمصعب

سندہ التماس خان مرقدت
ایڈووکیٹ

ارباب ایڈووکیٹ

احمد لغوار
ایڈووکیٹ