

26.04.2023

Appellant present through counsel.

Muhammad Jan, learned District Attorney for respondents

present.

SCANNED
KPST
Peshawar

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
KPST
Peshawar



(Fareeha Paul)
Member (E)



(Rashida Bano)
Member (J)

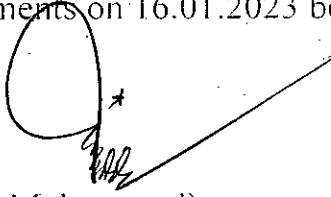
Kaleemullah

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
KPST
Peshawar



(Mian Muhammad)
Member (E)



(Salah-Ud-Din)
Member (J)

16.01.2023

SCANNED
KPST
Peshawar

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.

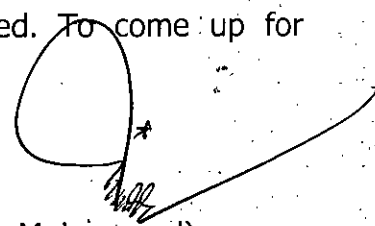


(Rozina Rehman)
Member (J)

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 Shafecq, 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.


(Fareeha 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
Appellant Deposited
Security & Process Fee

A. Uffah
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.

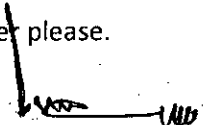

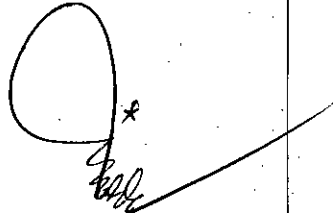
(Kafim Arshad Khan)
Chairman

Form- A

FORM OF ORDER SHEET

Court of _____

Case No.- _____ 492/2022 _____

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 Syed Majid Ali Shah 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> <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>07.04.2022</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>

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

CHECK LIST

Case Title: Syed Majid Ali Shah v/s Secretary & others

S#	CONTENTS	YES	NO
1	This Appeal has been presented by: _____	✓	
2	Whether Counsel/Appellant/Respondent/Deponent have signed the requisite documents?	✓	
3	Whether appeal is within time?	✓	
4	Whether the enactment under which the appeal is filed mentioned?	✓	
5	Whether the enactment under which the appeal is filed is correct?	✓	
6	Whether affidavit is appended?	✓	
7	Whether affidavit is duly attested by competent Oath Commissioner?	✓	
8	Whether appeal/annexures are properly paged?	✓	
9	Whether certificate regarding filing any earlier appeal on the subject, furnished?	x	✓
10	Whether annexures are legible?	✓	
11	Whether annexures are attested?	✓	
12	Whether copies of annexures are readable/clear?	✓	
13	Whether copy of appeal is delivered to AG/DAG?	✓	
14	Whether Power of Attorney of the Counsel engaged is attested and signed by petitioner/appellant/respondents?	✓	
15	Whether numbers of referred cases given are correct?	✓	
16	Whether appeal contains cutting/overwriting?	x	✓
17	Whether list of books has been provided at the end of the appeal?	✓	
18	Whether case relate to this court?	✓	
19	Whether requisite number of spare copies attached?	✓	
20	Whether complete spare copy is filed in separate file cover?	✓	
21	Whether addresses of parties given are complete?	✓	
22	Whether index filed?	✓	
23	Whether index is correct?	✓	
24	Whether Security and Process Fee deposited? On _____	✓	
25	Whether in view of Khyber Pakhtunkhwa Service Tribunal Rules 1974 Rule 11; notice along with copy of appeal and annexures has been sent to respondents? On _____	✓	
26	Whether copies of comments/reply/rejoinder submitted? On _____	✓	
27	Whether copies of comments/reply/rejoinder provided to opposite party? On _____	✓	

It is certified that formalities/documentation as required in the above table have been fulfilled.

Name: Saadullah Khan Marwat

Signature: [Signature]

Dated: 06-01-22

The appeal of Syed Majid Ali Shah, Assistant, 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 appellant for completion and resubmission within 15 days.

1. Checklist is not attached with the appeal.
2. Appeal has not been flagged/marked with annexure marks.
3. Annexures of the appeal may be attested.
4. Affidavit attached with the appeal may be attested by the Oath Commissioner.
5. Copy of departmental appeal is not attached with the appeal which may be placed on it.
6. Copy of notification dated 31-01-2018 annexed as annexure B-1 is not attached with the appeal which may be placed on it.
7. Copy of FST and Supreme court of Pakistan judgment annexed as C and C-1 respectively not attached with the appeal which may be placed on it.
8. Six more copies/sets of the appeal along with annexures i.e. complete in all respect may also be submitted with the appeal.

No. 690 /S.T, ✓

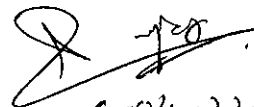
Dt. 21/03 /2022


REGISTRAR,
SERVICE TRIBUNAL
KHYBER PAKHTUNKHWA
PESHAWAR.

Mr. Saad Ullah Khan Marwat Adv. Pesh.

Sir,

Request for further time to remove the objections.


6-04-22.

BEFORE THE KPK SERVICE TRIBUNAL PESHAWAR

S.A. No. 492/2022

Syed Majid Ali Shah

versus

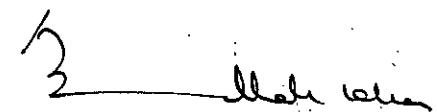
Secretary & Others

INDEX

S. No.	Documents	Annex	P. No.
1.	Memo of Appeal		1-6
2.	Transfer order dated 30-09-2013	"A"	7
3.	Transfer of Centers	"B"	8-9
4.	Notification dated 31-01-2018	"B/1"	10-17
5.	FST judgment dated 18-07-2017	"C"	18-24
6.	Supreme Court Judgment dated 17-01-2018	"C/1"	25-32
7.	Impugned order dated 03-10-2018	"D"	33-34
8.	Writ Petition No. 5454/18	"E"	35-46
9.	Comments	"E/1"	47-50
10.	Notification dated 25-11-19	"F"	51
11.	Minutes of the Meeting dated 29-07-2020	"G"	52-54
10.	HC Judgment dated 16-02-2022	"H"	55-56


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. 492/2022

Syed Majid Ali Shah,
 Assistant, Social Welfare,
 Presently serving as Assistant
 National Special Education Complex,
 Mardan, Department of Social Welfare,
 Special Education and women
 Empowerment Department,
 Directorate, Peshawar Appellant

Khyber Pakhtunkhwa
Service TribunalDiary No. 438Dated 18/03/2022**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,

18/3/2022

Re-submitted to "day"
and filed.

⇔<=>⇔<=>⇔<=>⇔<=>⇔

**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.**

⇔<=>⇔<=>⇔<=>⇔<=>⇔

Registrar
6/14/2022

Respected Sir:

1. That on 27-03-2007, appellant was appointed as Assistant in the defunct Directorate of Social Welfare under the Ministry of Social Welfare and Special Education, Islamabad and posted in the Social Services Medical Project (SSMP) Agency Hqr: Hospital the then Khyber Agency.
2. That the appellant was transferred from Directorate of Social Welfare, Special Education and Women Empowerment KP to Special Education Center Mardan vide order dated 30-09-2013 and since then till date is serving the Special Education Center 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 whereby 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.

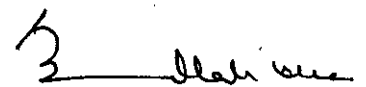
- a. That the respondents has not treated the appellant in accordance with law, rules and policy on the subject and acted in violation of Articles of the Constitutions and unlawfully issued the impugned letter and refused to continue the Health Allowance to the appellant which is unjust unfair and hence 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.

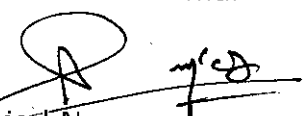
It is, therefore, most humbly prayed that the impugned letter dated 03-10-2018 be set aside, by allowing the appellant Health Allowance since the date of devolution to Provincial Govt. and benefits of Notification dated 25-11-2019 be also extended to appellant being devolved employee in the interest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


Appellant

Through


Saadullah Khan Marwat

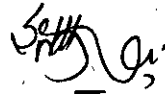

Arbab Saiful Kamal


Amjad Nawaz
Advocates

Dated: 16-03-2022

AFFIDAVIT

I, Syed Majid Ali Shah, Assistant, Social Welfare, Presently serving as Assistant 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

A 7

Government of Khyber Pakhtunkhwa
Directorate of Social Welfare, Special Education and
Women Empowerment Jamrud Road Peshawar.

Dated Peshawar the 30/9/2013

ORDER

No. E-21/08/DSW/ 270-77 The following posting / transfers are made with immediate effect in the best public interest:

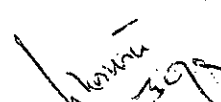
S.No	Name & designation of official	From	To
1	Mr. Majid Ali Shah, Assistant (B-14)	Directorate of Social Welfare, SE & WE Khyber Pakhtunkhwa	Special Education Center, Mardan
2	Mr. Ishtiaq Ahmed, Assistant (B-14)	Special Education Center, Mardan (Presently on attachment at SEC Charsadda)	Directorate of Social Welfare, SE & WE Khyber Pakhtunkhwa

This office earlier Order bearing No. E-12/08/DSW/3034-38, dated 19.09.2013 is hereby withdrawn.

Sd/---
Director
Social Welfare, SE & WE
Khyber Pakhtunkhwa

Copy forwarded to:

- 1- The Accountant General, Khyber Pakhtunkhwa Peshawar.
- 2- The District Accounts Officer, Mardan.
- 3- The District Officer, Social Welfare Mardan & Charsadda.
- 4- Incharge, Special Education Center Mardan & Charsadda.
- 5- The Assistant Director (B&A) Directorate of Social Welfare Khyber Pakhtunkhwa.
- 6- PA to Director Social Welfare Khyber Pakhtunkhwa.
- 7- The officials concerned.


Assistant Director
(Establishment)

ATTESTED



TO BE PUBLISHED IN THE NEXT ISSUE
OF GAZETTE OF PAKISTAN PART-I

No.F. 11-19/2011-Coord (Pt)
GOVERNMENT OF PAKISTAN
MINISTRY OF Social Welfare & Special Education

Islamabad, the 1st April 2011

NOTIFICATION

On reorganization of Federal Secretariat in pursuance of Constitution (Eighteenth Amendment) Act, 2010 (Act No.X of 2010) the following Centres under the Ministry of Social Welfare & Special Education are transferred to the Social Welfare & Special Education Department Government of Khyber Pakhtoon Khawa.

1. Special Education Centre for Mentally Retarded Children, D.I. Khan
2. Special Education Centre for Hearing Impaired Children, Swat
3. National Special Education Complex Mardan
4. Vocational Training Centre, for Disabled Person, Mardan
5. Special Education Centre for Visually Handicapped Children, Kohat
6. National Special Education Complex (PHC, MRC, VHC & HIC) Peshawar
7. Hostel Facilities National Special Education Complex Peshawar
8. Vocational Training Centre for Disabled Person Peshawar
9. Special Education Centre for Visually Handicapped Children Charsada
10. Special Education Centre for Physical Handicapped Children, Abbottabad

Muhammad Altaf
(Muhammad Altaf)
Section Officer (Admin)

The Manager,
Printing Corporation Pakistan Press,
Islamabad.

CC:-

1. Secretary, Inter Provincial Coordination Division, Islamabad.
2. Secretary, Finance Division, Islamabad.
3. Secretary, Cabinet Division, Islamabad.
4. Secretary, Establishment Division, Islamabad.
5. Chief Secretary, Government of KPK Peshawar.
6. Mr. M. Feroz Khan, Director General M.S Wing, Establishment Division, Islamabad.
7. Mr. Muhammad Shahid Siddiqui, Director General, M.S Wing, Establishment Division, Islamabad.
8. Secretary, Social Welfare & Special Education Department Government of KPK, Peshawar
9. Concerned Centre
10. Office Copy.

Op. No. 2011
Date-14/4

ATTESTED

ATTESTED

TO BE PUBLISHED IN THE NEXT PART OF GAZETTE OF PAKISTAN PART I

GOVERNMENT OF PAKISTAN
MINISTRY OF HEALTH
ISLAMABAD

19th April 2010

Under the provisions of Section 2 of the Social Welfare & Special Education Act, 2010 (Act No. X of 2010), the following Centres under the jurisdiction of the Government of Khyber Pakhtoon Khawan:

1
2
3
4
5
6

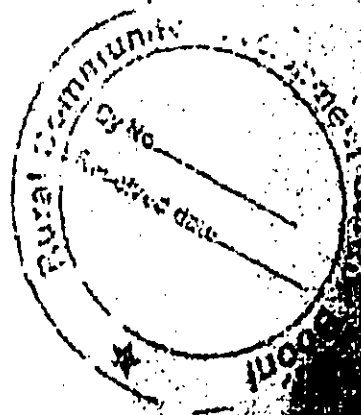
- 1. Integrated Social Development Centre, Chitral
- 2. Social Services Medical Centre District Headquarter Hospital, Chitral
- 3. Rural Community Development Centre, District Chitral
- 4. Community Development Centre, Chakdara (Dir Lower)
- 5. Social Services Medical Centre, Tehsil Headquarter Hospital, Chakdara (Dir Lower)

Muhammad Arif
Muhammad Arif
Section Officer (Admin)

The Manager,
Printing Corporation Pakistan Press,
Islamabad

- CC:-
1. Secretary, Inter Provincial Coordination Division, Islamabad.
 2. Secretary, Finance Division, Islamabad.
 3. Secretary, Capital Division, Islamabad.
 4. Secretary, Establishment Division, Islamabad.
 5. Chief Secretary, Government of KPK, Peshawar.
 6. Mr. M. Feroz Khan, Director General M.S. Wing, Establishment Division, Islamabad.
 7. Mr. Muhammad Shahid Siddiqui, Director General M.S. Wing, Establishment Division, Islamabad.
 8. Secretary, Social Welfare & Special Education Department, Government of KPK, Chitral.
 9. Copy

ATTESTED



19th April 2010

B/2 -

10

Government of Khyber Pakhtunkhwa
Directorate of Social Welfare, Special Education &
Women Empowerment Jamrud Road,

Dated Peshawar the 31 / 01 / 2018**NOTIFICATION**

No. DI/Absorption/Dev-Emp/DSW/ 3331-40 In pursuance of Section II-B of the Khyber Pakhtunkhwa Civil Servants (Amendment) Act, 1973, (Khyber Pakhtunkhwa Act No. XVIII of 1973) the following devolved employees of the Federal Government holding various posts in Federal Government entities, on regular basis before the commencement of the 18th constitutional (amendment) Act 2010 (Act No. X of 2010) shall be deemed to be civil servants of the Province for all intents and purposes under the Act ibid. 000

S.#	Name	Designation	BPS
1	2	3	4
1	Mr. Nasir Khan Lodhi	Admin Officer	16
2	Mr. Muhammad Rauf	- do -	16
3	Mr. Daud Khan	S/S Stenographer	16
4	Mr. Noor Wahid	Office Assistant	16
5	Mr. Behmat Ullah	- do -	16
6	Mr. Hidayat Ullah	- do -	16
7	Mr. Abid Ali Shah	- do -	16
8	Mr. Javed Iqbal Naseem	- do -	16
9	Mr. Munir Khan	- do -	16
10	Mr. Ishtiaq Ahmad	- do -	16
11	Mr. Muhammad Munir	- do -	16
12	Mr. Muhammad Sharif	- do -	16
13	Mr. Majid Ali Shah ✓	- do -	16
14	Mr. Muhsin Ali	Computer Operator	16
15	Mr. Tehmasab Khalid	- do -	16
16	Mr. Wajid Maqsood	- do -	16
17	Mr. Jawad Ali	- do -	16
18	Mr. Adnan Ali	- do -	16
19	Mr. Muhammad Asif	- do -	16
20	Mrs. Amina Shafiq	- do -	16
21	Mr. Khalid Mehmood	- do -	16
22	Mr. Rambail Khan	J/Scale Stenographer	14
23	Mr. Sardar Ullah Shah	- do -	14
24	Mr. Hayat Zada	- do -	14
25	Mr. Fazal Wahab	- do -	14
26	Mr. Asif Iqbal	- do -	14
27	Mr. Naimat Ullah	- do -	14
28	Mr. Fazal Rehman	- do -	14

Devolved
Employees of
Federal Govt
under 18th
Amendment

Spl.
Edn

ATTESTED

29	Mr. Khan Rehman	- do -	14
30	Mr. Ahmad Ali	- do -	14
31	Mr. Salah Ud Din	- do -	14
32	Mr. Muhammad Faizan	- do -	14
33	Mr. Khalid Khan	Senior Clerk	14
34	Mr. Gul Sher	- do -	14
35	Mr. Ajab Khan	- do -	14
36	Mr. Jafar Shah	- do -	14
37	Mr. Habib Ullah	- do -	14
38	Mr. M. Afzal Khan	- do -	14
39	Mr. Muhammad Nauman	- do -	14
40	Mr. Nizam-Ud-Din	- do -	14
41	Mr. Zawar Ali	- do -	14
42	Mr. Sher Azim	- do -	14
43	Mr. Said Alam	Junior Clerk	11
44	Mr. Furqan Jamil	- do -	11
45	Mr. Haroon Rashid	- do -	11
46	Mr. Imran Khan	- do -	11
47	Mr. Muhammad Ayaz	- do -	11
48	Mr. Siraj Ud Din	- do -	11
49	Mr. M. Saeed Khan	- do -	11
50	Mr. Imran Khan	- do -	11
51	Mrs. Seema Anjum	Nursery Teacher	15
52	Mrs. Hina Rehman	- do -	15
53	Mr. Kamal Yousaf	Music Teacher	15
54	Mr. M. Iqbal Khan	Junior Instructor	15
55	Mr. Amjad Ali	- do -	15
56	Mr. Tanveer Ahmed	- do -	15
57	Mrs. Farwa Rubab	- do -	15
58	Mr. Kamran Yousafzai	J. Computer Instructor	15
59	Mr. Mehmood Alam	- do -	15
60	Mr. Rahmat Nabi	- do -	15
61	Mr. Zulfiqar Wazir	- do -	15
62	Mr. Muhammad Younas	- do -	15
63	Mr. Rizwan Qayum	- do -	15
64	Ms. Amina Mushtaq	Vocational Instructor	15
65	Mrs. Anwar Sabih	- do -	15
66	Mrs. Shagufta Nasren	- do -	15
67	Mrs. Shabana Tabassum	- do -	15
68	Mrs. Nasreen Begum	Vocational Teacher	12
69	Mrs. Talat Gul Farin	- do -	12
70	Mrs. Shazia Parveen	- do -	12
71	Mr. Muhammad Siddique	- do -	12
72	Mr. Wajid Ali	- do -	12

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73	Mrs. Nazia Parveen	- do -	12
74	Mrs. Sabra Gul	- do -	12
75	Mrs. Robeena Mughal	- do -	12
76	Mr. Amjad Hussain	- do -	12
77	Mr. Qamar Nazir	- do -	12
78	Mrs. Amraiz Begum	- do -	12
79	Mrs. Yasmin	- do -	12
80	Mrs. Fehmeeda Syed	- do -	12
81	Mrs. Shaheen Begum	- do -	12
82	Mrs. Fakhri	- do -	12
83	Ms. Faryal Afridi	- do -	12
84	Ms. Waheeda Gul	- do -	12
85	Mrs. Nuzhat Rehman	- do -	12
86	Mr. Wali Marjan	Workshop Technician	12
87	Mr. Asif Khan	- do -	12
88	Mrs. Riffat Jabeen	- do -	12
89	Mr. Irfan Ullah	Brail Teacher	12
90	Mr. Abdul Hai	- do -	12
91	Mr. Habib Ullah	- do -	12
92	Mr. Muhammad Ishaq	- do -	12
93	Mrs. Uzma Naeem	- do -	12
94	Mr. Asif Mehmood	- do -	12
95	Mr. Tauheed Ali Raza	- do -	12
96	Mrs. Zarbeena	- do -	12
97	Mr. Tajammul Hussain	- do -	12
98	Mr. Rafi Ullah	Qari	10
99	Mr. Masoud Jan	PTI	10
100	Mr. Muhammad Nauman	- do -	10
101	Mrs. Feroza Bibi	Voc Training Instructor	08
102	Mr. Zahid Ali	- do -	08
103	Mr. Sultan Wali Khan	- do -	08
104	Mrs. Nasima Zulfiqar Ali	- do -	08
105	Mrs. Shazia Bibi	- do -	08
106	Mrs. Sumayya	- do -	08
107	Mr. Alamgir Khan	- do -	08
108	Mrs. Nasira Bibi	LHV	09
109	Mrs. Nasreen	- do -	09
110	Mrs. Bibi Rani	- do -	09
111	Mrs. Bulbul Jamal	Adult Literacy Worker	08
112	Mrs. Farida Bibi	- do -	08
113	Mr. Yousaf Ali Khan	- do -	08
114	Mr. Ali Zeb Khan	Recreation Youth Worker	07
115	Mr. Sharif Khan	- do -	07
116	Mr. Mir Afzal Khan	- do -	07

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117	Mrs. Hameeda Bibi	- do -	07
118	Mr. Mukhtar Khan	- do -	07
119	Mr. Bakht Amir Shah	Driver	07
120	Mr. Aslam Perwaiz	- do -	07
121	Mr. Sher Umer	- do -	07
122	Mr. Muhammad Riaz	- do -	07
123	Mr. Ameer Muhammad	- do -	07
124	Mr. Ahmad Noor	- do -	07
125	Mr. Naveed Ahmad	- do -	07
126	Mr. Naveed Muhammad	- do -	07
127	Mr. Abdul Sami	- do -	07
128	Mr. Muhammad Bashir	- do -	07
129	Mr. Adnan	- do -	07
130	Mr. Wilayat Ali	- do -	07
131	Mr. Himayat Ullah	- do -	07
132	Mr. Muhammad Sulman	- do -	07
133	Mr. Muhammad Ramzan	- do -	07
134	Mr. Rehman Ullah	- do -	07
135	Mr. Aown Abbas	- do -	07
136	Mr. Sikandar Khan	- do -	07
137	Mr. Khalid	- do -	07
138	Mr. Ahmad Bilal	- do -	07
139	Mr. Maqsood Ahmad Baig	- do -	07
140	Mr. Karim Panah	Attendant	05
141	Mr. Ahmad Ali	- do -	05
142	Mr. Siraj Ahmad	- do -	05
143	Mr. Syed Ali Khan	- do -	05
144	Mr. Waqas Hussain	- do -	05
145	Mr. Sajjad Ahmad	- do -	05
146	Mr. Shabbir Ali	- do -	05
147	Mr. Asfandiar	- do -	05
148	Mr. Shah Jehan	- do -	05
149	Mr. Naik Amal Khan	- do -	05
150	Mr. Shah Nawaz	- do -	05
151	Mr. Irfanullah	- do -	05
152	Mr. Zahid Ali	- do -	05
153	Mr. Farhan Ali	- do -	05
154	Mr. Asad Mehmood	- do -	05
155	Mr. Ismail Khan	- do -	05
156	Mr. Siraj Ahmad	- do -	05
157	Mr. Malik Riaz	- do -	05
158	Mr. Shakir Ullah	- do -	05
159	Muhammad Safeer	- do -	05
160	Mr. Abdul Wahab	- do -	05

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161	Mr. Johar Ali	- do -	05
162	S. Amjad Ali Shah	- do -	05
163	Mr. Siraj Khan	- do -	05
164	Mr. Muhammad Wisal	- do -	05
165	Mr. Misal Khan	- do -	05
166	Mr. Tariq Zada	- do -	05
167	Mr. Zahid Shah	- do -	05
168	Mr. Sajjad Ali	- do -	05
169	Mr. Muhammad Ishaq	- do -	05
170	Mr. Akhtar Ali	- do -	05
171	Mr. Muhammad Daud	- do -	05
172	Mr. Askar Khan	- do -	05
173	Mr. Waheed Jan	- do -	05
174	Mr. Asmat Gul	- do -	05
175	Mr. Iftikhar Khan	- do -	05
176	Mr. Waqas Rashid	- do -	05
177	Mr. Lal Muhammad	- do -	05
178	Mr. Hanif Khan	- do -	05
179	Mr. Pir Madar	- do -	05
180	Mr. Hazrat Bilal	- do -	05
181	Mr. Nawab Zada	- do -	05
182	Mr. Rahman Ali	- do -	05
183	Mr. Fazal Amin	- do -	05
184	Mr. Humair Inayat Malik	- do -	05
185	Mst. Mahajireen Bibi	Aya	05
186	Mrs. Tahira Naqvi	- do -	05
187	Mrs. Azra Bukhari	- do -	05
188	Mrs. Ulfat Begum	- do -	05
189	Mrs. Shagufta	- do -	05
190	Mrs. Jameela Khatun	- do -	05
191	Mrs. Ambareen Ismail	- do -	05
192	Mrs. Rehana Bibi	- do -	05
193	Mst. Naheeda Bibi	- do -	05
194	Mr. Sohail Ahmad	Naib Qasid	04
195	Mr. Sardar Ali	- do -	04
196	Mr. Faiz-Ur-Rahman	- do -	04
197	Mr. Liaqat Ali	- do -	04
198	Mr. Farhad Ali Shah	- do -	04
199	Mr. Nadar Khan	- do -	04
200	Mr. Asifullah	- do -	04
201	Mr. Inamullah	- do -	04
202	Mr. Muhammad Ghafoor	- do -	04
203	Mr. Mukhtar Shah	- do -	04
204	Mr. Amjad Hussain	- do -	04

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205	Mr. Zia Ullah	- do -	04
206	Mr. Bakht Zamin	- do -	04
207	Mr. Mir Shah Jehan	- do -	04
208	Mr. Muhammad Shakeel	- do -	04
209	Mr. Tahir	- do -	04
210	Mr. Shaukat Hussain	- do -	04
211	Mr. Najam Khan	- do -	04
212	Mr. Zahir Ullah	- do -	04
213	Mr. Bakht Zaman	- do -	04
214	Mr. Shakri Muhammad	- do -	04
215	Mr. Khush Qadam	- do -	04
216	Mr. Fazle Maula	Chowkidar	04
217	Mr. Muhammad Ikram	- do -	04
218	Mr. Khan Zaib	- do -	04
219	Mr. Zafar Ali	- do -	04
220	Mr. Said Azam	- do -	04
221	Mr. Nizam Wali	- do -	04
222	Mr. Bashir	- do -	04
223	Mr. Ibad Ullah	- do -	04
224	Mr. Adnan	- do -	04
225	Mr. Muhammad Bilal	- do -	04
226	Mr. Muzafar Shah	- do -	04
227	Mr. Sajid Ahmad	- do -	04
228	Mr. Muhammad Hafeez	- do -	04
229	Mr. Ikrami Ali	- do -	04
230	Mr. Shahid Hussain	- do -	04
231	Mr. Muhammad Nawaz	- do -	04
232	Mr. Sad Bad Shah	- do -	04
233	Mr. Muhammad Zafar	- do -	04
234	Mr. Gulab Khan	- do -	04
235	Mr. Faisal Khan	- do -	04
236	Mr. Muhammad Abbas	- do -	04
237	Mr. Nisar Ali	- do -	04
238	Mr. Hayat Khan	- do -	04
239	Mr. Tauti Muhammad	- do -	04
240	Mr. Muhammad Azam	- do -	04
241	Mr. Farid Ullah Jan	- do -	04
242	Mr. Murad Ullah	Mali	04
243	Mr. Akbar Ali	- do -	04
244	Mr. Musafir Gul	- do -	04
245	Mr. Lal Bahadar	- do -	04
246	Mr. Faizan Akhtar	- do -	04
247	Mr. Suhbat Khan	- do -	04
248	Mr. Gul Muhammad	- do -	04

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249	Mr. Shah Jehan	- do -	04
250	Mr. Imran Ali	- do -	04
251	Mr. Zafar Hussain	- do -	04
252	Mr. Muhammad Shafiq	- do -	04
253	Mr. Fazal Rabi	- do -	04
254	Mr. Shah Nawaz	Sanitary Worker	04
255	Mr. Javed Iqbal	- do -	04
256	Mr. Riaz Ahmad	- do -	04
257	Mr. Ikram Ullah	- do -	04
258	Mr. Sajid Ullah	- do -	04
259	Mr. Wasif Ali Rauf	- do -	04
260	Mr. Ayaz	- do -	04
261	Mst. Fazilat Bibi	- do -	04
262	Mr. Danial Masih	- do -	04
263	Ms. Maryam Salim	- do -	04
264	Mst. Naheed Begum	- do -	04
265	Mr. Siddique Ali	- do -	04
266	Mr. Amjad Ali	- do -	04
267	Mr. Rahid Ali	- do -	04
268	Mr. Muhammad Irshad	- do -	04
269	Mr. Iqbal Hussain	- do -	04
270	Mr. Haji Ahmad	- do -	04
271	Mr. Arshad Ali	- do -	04
272	Mr. Raza Muhammad	- do -	04
273	Mr. Suhail	- do -	04
274	Mr. Seyad Ali	- do -	04
275	Mr. Saleem Khan	- do -	04
276	Mr. Kamran Khan	- do -	04
277	Mr. Abid Jan	- do -	04
278	Mr. Abbas Ali	- do -	04
279	Mr. Javed Hashim	- do -	04
280	Mr. Fazal Khaliq	- do -	04
281	Mr. Tariq Masih	- do -	04
282	Mst. Hasina Bibi	Dai / Midwife	04
283	Mst. Sharafat Nisa	- do -	04
284	Mr. Hameed Gul	Cook	05
285	Mr. Javed Ali	- do -	04
286	Syed Fawad Ali	- do -	04
287	Mr. Nasir Pervaiz	Cook Helper	04
288	Mr. Hafiz Ur Rahman	Hostel Bearer	05
289	Mr. Hazrat Ali	- do -	05
290	Mr. Asad Ali	- do -	05
291	Mr. Waseem Arshad	- do -	05

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-Sd-

DIRECTOR

Social welfare, Special Education &
Women Empowerment Department
Khyber Pakhtunkhwa

Endst No. and Date even

Copy forwarded for information and necessary action to the:

1. The Section Officer-VI Social Welfare, SE & WE Department Khyber Pakhtunkhwa.
2. Secretary to Govt of KP Establishment Department Khyber Pakhtunkhwa.
3. Secretary to Govt of KP Finance Department Khyber Pakhtunkhwa.
4. Principal Secretary to Chief Minister Khyber Pakhtunkhwa.
5. PSO to Chief Secretary Khyber Pakhtunkhwa.
6. Accountant General Khyber Pakhtunkhwa.
7. Director Information Khyber Pakhtunkhwa.
8. All In-charges of Devolved Institutions Khyber Pakhtunkhwa.
9. PA to Director Social Welfare, SE & WE Khyber Pakhtunkhwa.

Falati Jilani
FB

DEPUTY DIRECTOR
(ISDC)

Social welfare, Special Education &
Women Empowerment Department
Khyber Pakhtunkhwa.

gk

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[Signature]

**JUDGMENT SHEET
IN THE FEDERAL SERVICE TRIBUNAL, ISLAMABAD**

Appeals No.565 to 573, 757 to 793, 894 to 918, 918-A, 919 to 943-998 to 1045, 1108 to 1179, 1224 to 1243, 1265 to 1325, 2327 to 2350, 2352 to 2368-2368-A, 2369 to 2443, 2446 to 2484 & 2487 to 2501, 2508 to 2520(R)CS/2016 with M.Ps.

Nusrat Tahir and others

Versus

Secretary, Capital Administration & Development Division, Secretary, Finance Division and AGPR, Islamabad.

Date of Institution: 04.04.2016, etc.

Date of hearing : 17.07.2017

Date of Judgment 18.07.2017

Before: Syed Rafique Hussain Shah, and
Syed Muhammad Hamid, Members..

Present Mr. Muhammad Anwar Mughal, Advocate for the appellants.

Syed Zil-e-Husunin Kazimi, Assistant Attorney General for the respondents with M/s Arshad Anjum. Assistant Director, CA & DD. Naveed Akhter, Section Officer, Finance Division, Azhar Nadeem Awan, Assistant Account Officer and Muhammad Jabbar, Senior Auditor, AGPR D.Rs.

JUDGMENT

SYED RAFIQUE HUSSAIN SHAH, MEMBER: With this judgment. we shall decide the above titled appeals. The facts giving rise to the present appeals are that the Prime Minister of Pakistan approved payment of Health Allowance to the institutions providing health Services in the year 2012 and the Finance Division issued notification No.2(13)R-2/2011-777 dated 06.02.2012 for grant of Health Allowance equal to one basic pay of running salary to the health personnel in the employment of Federal Government in BPS Scheme w.e.f 01.01 2012, in addition to the existing pay and allowances in BPS scheme, Health Allowance had been paid to the contemporaries of the appellant other Government Hospitals including PIMS, Federal Govt. Polyclinic, CDA, IS T. Pakistan Railways and Federal Government Services Hospital, Islamabad , but it was discontinued to the present appellants vide impugned orders dated 08.08.2014. 21.03.2016

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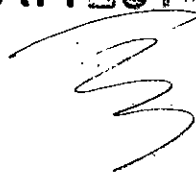
and 25.03.2010. The Secretary, Capital Administration & Development Division (CADD) vide letter dated: 06.08.2012 allowed Health Allowance to 24 personnel of Directorate General of Special Education (DGSE) and the AGPR. Islamabad started paying the said Allowance to these personnel with effect from 01.01.2013. Due to discriminative action of Secretary CA&DD the employees of DGSE started agitating the matter with him who vide letter dated 13.03.2014 allowed Health Allowance to all the employees of 16 institutions of DGSE and allied education centers, etc. in view of functions and the services being rendered by them in providing Health Services to the disabled and special children with effect from 01.01.2012 and the AGPR accordingly started paying the said allowance to them. The AGPR vide letter dated 08.08.2014 informed the Director General, DGSE that Finance Division had not provided budget allocation for the year 2014 2015 for the said Allowance, hence, the payment of said Allowance be stopped by submitting the computer changes through concerned DDOS. Subsequently the Finance Division allocated budget for the said Allowance but the CA&DD parked the budget and later on allocated the same to some other organization. Being aggrieved of stoppage of the said Allowance vide letter detail 05.03.2014 the affected employees filed Writ Petition No.3784/2014, 3358/2014 and 1007/201 which were disposed of by the Hon'ble Islamabad High Court, Islamabad vide order dated 17.09.2015 in the following manner: -

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XXX

"4. In the light of the above, the instant petition alongwith the connected petitions are converted into representations deemed to be pending before the learned Secretary CADD. The learned Secretary CADD shall afford an opportunity of hearing to an authorized representative of the petitioners and, thereafter pass a speaking order. It is expected that the Secretary shall, inter alia, take into consideration:

- a) the affidavit dated 26.3.2015 filed by the Secretary Finance, during the proceedings before this Court;
- b) the fact that in some cases the Health Allowance was paid to the employees by the AGPR pursuant to the approval given by the CADD;
- c) The request made by and on behalf of the petitioners that in the circumstances recovery of the Health Allowance would cause immense hardship; and
- d) The fact that the petitioners are employees of different departments and entities under the

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administrative control of CADD and, therefore, the entitlement or eligibility shall be taken into consideration in the light of status of each department or entity separately.

5. In order to meet the ends of justice, it would be appropriate that recovery of the Health Allowance already paid to the employees is recovered after a speaking order has been passed by the learned Secretary. It is expected that the Secretary CADD shall pass a speaking order preferably within 90-days.

XXX

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The Secretary CA&DD after perusing the record and affording the opportunity of hearing to the authorized representatives of the petitioners (now appellants) on 14.03.2016 passed the order dated 21.03.2016 and declared the CA&DD's letter dated 13.03.2016 allowing Health Allowance to the DGSE employees unlawful, against the rules, void ab initio and directed the AGPR to recover the said Allowance from their salaries in easy installments.

2. In this backdrop, the appellants filed the instant appeals with the following prayer:-

"It is, therefore, most respectfully prayed that the appellant being entitled to Health Allowance being covered under category of Health Personnel, the said order dated 21.03.2016 by respondent No.1 may therefore, be set aside and it be declared that the action of respondent No.1 in withdrawing the said allowance and recovery thereof from the salaries of appellants, is mala fide, illegal, violative of principles of locus poenitentiae, unfair, unjust, unreasonable, arbitrary, fanciful and capricious and that are entitled to receive the same, from the date it has been withdrawn and stopped from payment "

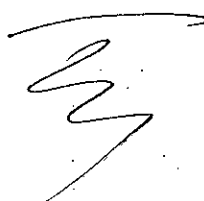
The learned counsel for the appellants argued that the appellants being Federal government Servants under Article 240 of Constitution of the Islamic Republic of Pakistan, 1973 and covered under Section 2 (b) of Civil Servant Act, 1973 were entitled to all pay and allowances prescribed by Federal Government for its employees. Further stated that financial directive contained in Ministry of Finance O.M. No.20(13) R-2/2011 dated 00:02:2013 was unambiguous and clearly stipulated admissibility of Health Allowance to all health personnel in employment of Federal Government in BDS Scheme but despite the said notification of the Finance Division, the appellants were deprived of the

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said benefits. In support of his version, the learned counsel for the appellants referred to the judgments of FST dated 05.10.2015, 11.01.2016, 18.05.2016 and 14.12.2016 passed in Appeals No.224(1)CS/22015, 867 to 872(R) CS/2013, 1176 to 1187, 1189 to 1251(R) CS/2015 & 381 16 405(R)CS/2016 and prayed for the same relief. The learned counsel vehemently argued that the respondent-Finance Division was blowing hot and cold in the same breath as, on the one hand, it had admitted the claim of the appellants in para 5 of their paras comments filed in the Hon'ble Islamabad High Court, Islamabad while, on the other hand, they declined the same claim vide order dated 21.03.2016. He contended that the benefit once granted and acted upon had created a vested right which could not be withdrawn unilaterally, in violation of principle of natural justice. The learned counsel for the appellant lastly argued that impugned orders were void ab initio, coram-non-judice and having no sanctity of law as withdrawal / stoppage of salary amounted to punishment which could not be awarded without adopting the process of law provided under the Government Servants (Efficiency and Discipline) Rules, 1973.

The appeals were resisted by the respondents. It was stated that the said allowance was not admissible to the appellants as they did not fall under the definition of health personnel because health personnel meant a person who held a post in any institute or organization delivering services in the health sector and included in Schedule-1. It was further submitted that the Health Allowance was allowed provisionally to the appellants by the AGPR on the basis of CADD Division's letter dated 06.08.2012 but subsequently that Division sent a reference to the Finance Division to seek its concurrence for admissibility of Health Allowance which regretted the same on 14.03.2013 on the ground that they were involved in the process of education, training and rehabilitation of disabled children and persons with disabilities and, hence, could not be declared as health personnel to become entitled for the said allowance. The CA&DD on 12.03.2013 in its communication to AGPR conveyed sanction of the Health Allowance to DGSE employees without concurrence of the Finance Division and the subsequently discontinued after verification of element in order to prevent the misuse of this allowance by non-entitled personnel. It was submitted by respondent No.2 that health allowance was granted with the

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approval of the Prime Minister, through a summary, specifically, moved for three Federal Government Hospitals i.e. Pakistan Institute of Medical Sciences, F.G. Polyclinic and National Institute of Rehabilitation Medicine. The Directorate General of Special Education & Social Welfare, being an educational body, dealt with the process of education, training and rehabilitation of disabled children and persons with disabilities, which was carried out by a multi-professional team including teachers, professionals, doctors, administrators, ministerial and supportive / ancillary staff did not fall within the ambit of health organization and could not be declared as "health personnel to get the sand allowance. The respondent No.3 i.e. AGPR in its parawise comments submitted that the identical cases titled Dr. Farkh F. Lodhi, etc. vs Secretary Finance were still pending before the Hon'ble Supreme Court of Pakistan.

5. We heard the learned counsel for the parties and perused the record.

6. The health allowance equal to one basic pay of running salary was granted to the health personnel in the employment of Federal Government, in BPS Scheme, with effect from 01.01.2012. It was made admissible to non-clinical cadres. In reply to a query raised by AGPR vide letter No.TM/IS-64/CSHP/HPS/2011-12/186, dated 12.03.2012, the Regulations Wing of the Finance Division vide U.O. No.F.2(13)R-2/2012 172 dated 27.03.2012 furnished definition of the health personnel by stating that health personnel meant a persons who held a post in any institute or organization delivering services in the health sector and included Schedule-1, but did not include person who was on deputation to the Federal Government from any Province or other authority and who was on contract, or on work charged basis or who was paid from contingencies. The appellants are neither deputationists from any Province or other authority nor have been engaged on contract or on work charged basis. They are also not being paid from contingencies: On the contrary, they are civil servants under section 2 (5) of the Civil Servants Act, 1973 and are delivering services to the disabled children / personnel. The beneficiaries / appellants comprised of Academic and Administrative Cadres. According to the definition furnished by the Finance Division vide their u.o. dated 27.03.2012 the appellants are entitled to health allowance. In paras-6 & 7 under Facts of parawise comments filed before the Hon'ble Islamabad High

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Court, Islamabad on behalf of Secretary Finance Division in Writ Petition No.4007.2014, it was categorically admitted that in April, 2014 Ministry of CADD again submitted NIS / DOS containing a provision of Rs.100 million as HPA for DGSE for financial year 2011-15, however, DFA refused to endorse the NIS / BOs and forcefully deducted an amount of Rs.92.542 million of HPA, leaving Rs.7,458 million for the petitioners (now appellants) i.e. 24 employees who belonged to medical profession and came under the criteria of entitlement of HPA, as per DFA (CADD) understanding. D.O. letter dated 09.05.2014 was issued by FA's Organization to AGPR for stoppage of HPA to non-entitled employees and it was duty of AGPR to take action on the said letter and decide entitlement. It was prayed that the petition was an administrative issue with CADD & DGSE, therefore, the Finance Division be excluded from the list of respondents. Now the Finance Division but come up with different stand. It is not allowed to approbate and reprobate. No logical reply has been submitted by the respondents for depriving the appellants of their legitimate rights. A large number of employees of the Federal Government, similarly placed, are getting the said advantage. Why, alas, the appellants be deprived, is not clear from what has been write the comments before the Hon'ble Islamabad High Court, Islamabad Federal Service Tribunal. This seems to be discriminatory treatment offending Article 4 & 25 of the Constitution of Islamic Republic of Pakistan, 1973. Further, the appellants have been directed by respondent No. to refund the paid amount which is against the principle of locus poententie because the Hon'ble Supreme Court of Pakistan has consistently held that the benefit once granted and acted upon created a vested right which could not be withdrawn unilaterally, in violation of natural justice It is a established law that benefits received by a civil servant, even under erroneous order passed by the competent authority without any fault on the part of civil servant could not be recovered even if the beneficial order was subsequently withdrawn or rectified. We are fortified to make this view in the light of the judgment of Hon ble Supreme Court of Pakistan in PLD 1992 SC 207. Hence, to this extent, the meal orders are not legally sustainable and liable to be set aside.

7. We would like to make au emphasis on the judgments of the Tribunal in Appeals No.221(R)CS/2015 and 281 to 405(R)CS/2016 dated

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05.10.2015 and 14.12.2016 wherein the controversy relating to Health Allowance has already been resolved. When confronted with the said fact, the respondents have failed to deny the fact. As such, the action of the respondents appears to be inconsistent in the light of the aforementioned judgments on account of Article 25 of the Constitution which guarantees equal rights and equal protection of law for every citizen. To ensure uniformity, rule of consistency must be applied while considering the case of the appellants. Since the Hon'ble Apex Court vide its judgment in the case reported as 1996 SCMR 1155 has already held that "rule of good governance demands that the benefits of the said decision be extended to other civil servants also, who may not be parties to the litigation, instead of compelling them to approach the Tribunal or any other legal forum. Hence; the claim of the appellants is required to be decided on the same analogy/ principle as framed in the cases of Dr. Farrukh Faiz Lodhi and others by the Tribunal vide its judgment dated 05.10.2015, 11.01.2016 and 14.12.2016.

8. Foregoing in view and following the rule of consistency, the impugned orders dated 21.03.2016 and 25.03.2016 are set aside with a direction to the respondents to continue the Health Allowance already granted to the appellants since 2012, and to refund all deduction made in compliance with the impugned orders within a period of one month from the date the copy of this judgment is received in their office. Since the main appeals have been accepted, misc. Petitions are also accepted.

9. Judgment to apply all the titled appends mutatis mutandis.
10. There shall be no order as to costs.
11. Parties shall be informed accordingly.

MEMBER

MEMBER

ISLAMABAD

18.07.2017

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Muhammad Attique ur Rehman
etc.

(in C.A.811/2016)

For the Appellant(s)
in all cases)

Mr. Sajid Ilyas Blatti, DAG Syed Rifaqat Hussain Shah, AOR Ms. Sundia Kanwal, S.O Fin. Mr. Abid Hussain Channa, S.O Fin. Mir. Sajid Javed, Asstt. Legal lin. Mr Abdul Razzaq, MO MEG Rawalpindi

For the Respondent(s)

In-person

For the Respondent(s)
C.A.216/16)

Mr. Muhammad Ilyas Lodhi, ASC
Malik Itaat Hussain Awan, ASC

Amicus Curiae:

Mr. Muhammad Makhdoom Ali Khan, Sr. ASC
Mr. Sikandar Bashir Mohmand, ASC

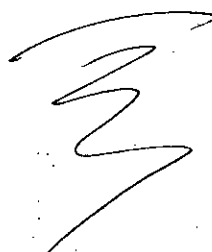
Date of Hearing

17.01.2018.

JUDGMENT

UMAR ATA BANDIAL, J. By leave of this Court granted on 23.02.2016, 01.4.2016 and 12.12.2017 in the several connected appeals before us, the appellant Federal Government challenges the judgments delivered on common questions of fact and law by the learned Federal Service Tribunal on 05.10.2015, 11.01.2016 and 18.07.2017. The judgments impugned in the connected appeals declare the respondent employees of different institutions functioning under the Directorate General of Special Education ("DGSE") to be entitled to payment of Health Allowance granted by the Federal Government vide its Office memoranda dated 04.02.2012 and 06.2.2012. These Memoranda are issued by the Finance Division (Regulations Wing) Government of Pakistan pursuant to approval granted by the Prime Minister under the Rules of Business, 1973. It would be useful to reproduce the two

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memoranda containing the terms and conditions for the grant of Health Allowance to eligible persons:

"Government of Pakistan
Finance Division
(Regulations Wing)

F.No.2(13)R-2/2011

Islamabad, the 04th Feb,2012.

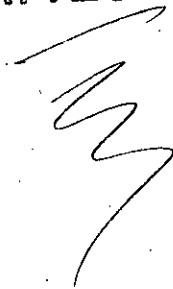
OFFICE MEMORANDUM

Subject:

GRANT OR ADHOC ALLOWANCE EQUAL TO ONE BASIC PAY AT THE INITIAL OF THE SCALE TO THE HEALTH PERSONNEL IN BPS SCHEME.

The undersigned is directed to hay that the Ordinance No.VI of 2011 that sanctioned the Career Structure for Health personnel Scheme (CSHP) has lapsed on 26.12.2011. Accordingly, CSHP in no longer in the field and all health personnel have consequently reverted to the BPS scheme. In order in compensate health personnel for the loss of benefits sought under. CSHP while preserving their stains as Civil Servants, it has been

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(not visible) the health personnel in the employment of Federal Government, in BPS Scheme, with effect from 1st January, 2012. This will be in addition to their existing pay/ allowance on BPS Scheme.

2. This Divisions OM No.2(13) R-2/2011 -698 dated 17th November. 2011 may be treated as withdrawn w.e.f 26.12.2011.

Sd/-

M. munir Sadiq

Deputy Secretary (R-I)

Islamabad, the 06th Feb, 2012

F.No.2(13)R-2/2011

OFFICE MEMORANDUM

Subject:

GRANT OR ADHOC ALLOWANCE EQUAL TO ONE BASIC PAY AT THE SALARY TO THE HEALTH PERSONNEL IN BPS SCHEME.

In continuation of Finance, Division's O.M. No.F.2(13)R-2/2011, dated 1.2.2012, it has been decided by the Federal Government in great benefit of basic pay of running salary as Health Allowance to the health personnel in the employment of Federal Government, in UPS scheme, with effect from 1 January, 2012. This will be in addition to their existing allowances BPS Scheme. Also grant of stipend amounting to Rs.50,000 per month to the postgraduate residents and Rs.24,000 per month for House Officers respectively w.e.f. 1.7.2011 will continue.

Sd/-

Manzoor Ali Khan

Sr. Joint Secretary (Regulations)

(Emphasis supplied)

2. Learned Deputy Attorney General has contended that the Health Allowance granted by the Federal Government is available to health personnel in the employment of the Federal. Government in the BPS scheme at three hospitals established in

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Islamabad, namely, Pakistan Institute of Medical Sciences ("PIMS"), Federal Government Polytechnic ("FGP") and National Institution of Rehabilitation Medicines ("NURM"). The employees at these hospitals do not have a career structure in place after the Career Structure for Health Personnel Scheme Ordinance, 2011 ("Ordinance") lapsed on 26.1.2011. The Health Allowance was accordingly granted by the Federal Government as a form of compensation. It is clear from the two memoranda dated 04.2.2012 and 06.2.2012 reproduced above that the Health Allowance is granted to "health personnel". However, the composition of the category of employees that are eligible for the benefit has not been provided therein. The respondents who are several hundred in number are unrepresented by counsel. In view of the fact that a large number of employees are affected by the instant controversy, the Court has sought assistance from Mr. Muhammad Makhdoom Ali Khan, Sr. ASC and Mr. Sikandar Bashir Mohmand, ASC an amicus curiae in the matter. Mr. Sikandar Bashir Mohmand, ASC made able submissions before the Court that highlighted important facts and document appreciably on record which simplified the controversy appreciably.

3. It transpires that an Office Memorandum dated 27.03.2012 by the Finance Division (Regulations Wing) clarifies that the term "health personnel" used in the above mentioned memoranda bears the meaning given to that expression in Section 2(b) of the Ordinance. This definition refers to the contents of Schedule-1 to the Ordinance which specifies the service providers who qualify as health personnel. A perusal of Schedule-1 shows that five categories of service providers are

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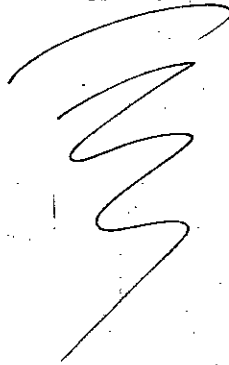


classified as health personnel, namely: Doctors, Allied, Nasreen Paramedics and Support. The services specified under the categories of Paramedics and Support include Teachers, Audiovisual Operators, Technicians, Librarians, etc.

4. The administrative Ministry for the health institutions of the Federal Government at Islamabad is the Ministry of Capital Administration and Development Division ["CADD"]. It is an admitted fact that vide order dated 13.03.2013 the Ministry of CADD granted the Health Allowance to the employees of the DGSE and its allied special education centers/institutions including National Trust for the Disabled ("NTD") and the National Council for Rehabilitation of Disabled Persons ("NERDI"). The respondents were thereby acknowledged as beneficiaries of the said grant and were paid the Health Allowance with effect from 01.1.2012 until 27.10.2014, when the finance Division informed the Accountant General Pakistan Revenue ("AGPR") that only health personnel working in Federal Government hospitals and clinics were qualified to receive the Health Allowance. The AGPR correspondingly instructed the DGSE to stop payment of the said allowance to its employees as no budget allocation for the said emolument had been made in the financial year 2014-15.

5. The discontinuation of their Health Allowance was taken to the Islamabad High Court by some of the respondents. Vide order dated 17.9.2015 the learned High Court referred the dispute to the Secretary CADD for passing a speaking order thereon; and till then restrained recovery of past payments of the Health Allowance from the affected employees of DCSE and allied centers. The Secretary CADD heard the parties and by

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order dated 21.3.2016 rejected the entitlement of the respondents to receive the said allowance. The principal ground of his decision is that employees of the DGSE were engaged in the process of education, training and rehabilitation of disabled children and therefore did not fall within the ambit of a health organization. The respondents successfully challenged the said order before the learned Federal Service Tribunal which has, inter alia, by the impugned judgment dated 18.07.2017 declared that the respondents are entitled to the grant of Health Allowance.

6. Learned Deputy Attorney General has contended that after the lapse of the Ordinance that had provided a career structure for the doctors, nurses and paramedics working in PIMS, FOP and NIRM, the Health Allowance was granted by the Federal Government as compensation to the said health personnel. He was, however, unable show any contemporaneous direction issued by the Ministry of CADD) or the Ministry of Finance that restricted the grant of the Health Allowance to the claimed employees of the three hospitals specified by him. As already noted above, the definition of health personnel provided in the Ministry of Finance Memorandum dated 27.3.2012 is wide in scope and therefore unhelpful to his plea.

7. We have examined the definition of "health personnel" adopted by said memorandum dated 27.3.2012 from Section 2(b) of the Ordinance which is to the following effect:

"b) "health personnel" means a person who holds a post in any institute or organization delivering services in the health sector and included in Schedule-), but does not include:

- i) a person who is on deputation to the Federal Government from any Province or other authority:

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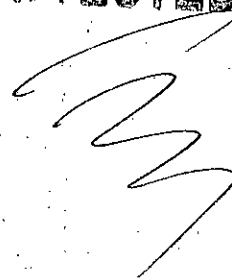


- ii) a person who is employed on contract, or on work charged basis or who is paid from contingencies.

8. It is noted that the foregoing definition of health personnel covers persons holding posts in any institute or organization who are delivering services in the health sector that are included in Schedule- 1 the Ordinance. Learned Deputy Attorney General was unable to distinguish the respondents, who are employees of the DGSE and allied institutions/centers, NCRDP and NTD, from the paramedic and support staff positions that qualify as health personnel according to Schedule-I to the Ordinance. It is not denied by the appellant, that education, training and rehabilitation of disabled persons are services provided in the health sector. These services fall within the terms of Schedule -1 to the Ordinance and therefore the providers thereof qualify as health personnel.

9. Accordingly, not only do the respondents fall within the category of persons who are, in terms of Finance Division Memoranda dated 06.2.2012 and 27.3.2012, eligible for grant of the Health Allowance but their entitlement has in fact been admitted by both the Ministry of CADD and Ministry of Finance. In this respect the aforementioned letter dated 18.3.2013 issued by the Ministry of CADD is referred. Also the affidavit of the Secretary Finance, Government of Pakistan find in the Islamabad High Court pursuant to that Court's order dated 20.3.2015 passed in Writ Petition No. 4007 of 2014, specifically records that the proposal approved by the Prime Minister vide Summary dated 25.1.2012 did not restrict admissibility of the Health Allowance to the personnel of the three hospitals (identified by the carried DAG). For that reason the Finance

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To Pakistan, through the secretary Ministry of Finance Muhammad Himayatullah Farukhi (PLD 1969 SC 407) and The Engineer in Chief Branch VS Jalalud Din (PLD) 1952. SC 207). Therefore without a change of the terms of eligibility for the Health Allowance even the prospective exclusion of the respondents from receipt of the benefit shall constitute arbitrary and unlawful action.

In the circumstances, we do not find any error or defect in the impugned judgments of the learned Federal Service Tribunal dated 05.10.2015, 11.1.2016 and 18.7.2017. Consequently, these appeals are dismissed and the entitlement of employees of the DS, Allied institutions/centers, NCRDP and NTD to receive the Health Allowance is affirmed.

Sd/- Mian Saqib Nisar, HCJ

Sd/o Umar Ata Bandial J

Sd/- Ijaz ul Ahsan J

Islam abad

17.01.2018.

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Judgment Sheet
In the Federal Service Tribunal, Islamabad

Appeals No. 565 to 573, 757 to 793, 894 to 918, 918-A, 919 to 943, 998 to 1045, 1108 to 1179, 1224 to 1243, 1265 to 1325, 2327 to 2350, 2352 to 2368 & 2368-A, 2369 to 2443, 2446 to 2484 & 2487 to 2501, 2508 to 2520(R)CS/2016 with MPs.

Nusrat Tahir and others

Versus

Secretary, Capital Administration & Development Division,
Secretary, Finance Division and AGPR, Islamabad.

Date of Institution : 04.04.2016, etc.
Date of hearing : 17.07.2017
Date of Judgment : 18.07.2017

Before: Syed Rafique Hussain Shah, and
Syed Muhammad Hamid, Members.

Present: Mr. Muhammad Anwar Mughal, Advocate for the appellants.
Syed Zil-e-Husnain Kazini, Assistant Attorney General for the respondents with M/s Arshad Anjum, Assistant Director, CA & DD, Naveed Akhter, Section Officer, Finance Division, Azhar Nadeem Awan, Assistant Accounts Officer and Muhammad Jabbar, Senior Auditor, AGPF as D.Rs.

JUDGMENT

SYED RAFIQUE HUSSAIN SHAH, MEMBER:- With this judgment we shall decide the above titled appeals. The facts giving rise to the present appeals are that the Prime Minister of Pakistan approved payment of Health Allowance to the institutions providing Health Services in the year 2012 and the Finance Division issued notification No.2(13)R-2/2011-777 dated 06.02.2012 for grant of Health Allowance, equal to one basic pay of running salary to the health personnel in the employment of Federal Government in BPS Scheme w.e.f. 01.01.2012, in addition to the existing pay and allowances in BPS scheme. Health allowance had been paid to the contemporaries of the appellants in other Government Hospitals including PIMS, Federal Govt. Polyclinic, CDA, ICF, Pakistan Railways and Federal Government Services Hospital, Islamabad, etc. but it was discontinued to the present appellants vide impugned orders dated 08.08.2014, 21.03.2016

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Federal Service Tribunal of Islamabad

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2 565 to 573(RK)S/2016, etc. with M.P.

and 25.03.2016. The Secretary, Capital Administration & Development Division (CA&DD) vide letter dated 06.08.2012 allowed Health Allowance to 24 personnel of Directorate General of Special Education (DGSE) and the AGPR, Islamabad started paying the said Allowance to these personnel with effect from 01.01.2012. Due to discriminative action of Secretary CA&DD the employees of DGSE started agitating the matter with him who vide letter dated 13.03.2013 allowed Health Allowance to all the employees of 16 institutions of DGSE and allied education centres, etc. in view of functions and the services being rendered by them in providing Health Services to the disabled and special children with effect from 01.01.2012 and the AGPR accordingly started paying the said allowance to them. The AGPR vide letter dated 08.08.2014 informed the Director General, DGSE that Finance Division had not provided budget allocation for the year 2014-2015 for the said Allowance, hence, the payment of said Allowance be stopped by submitting the computer changes through concerned DDOs. Subsequently the Finance Division allocated budget for the said Allowance but the CA&DD parked the budget and later on allocated the same to some other organization. Being aggrieved of stoppage of the said Allowance vide letter dated 08.03.2014 the affected employees filed Writ Petition No.2784/2014, 3358/2014 and 4007/2014 which were disposed of by the Hon'ble Islamabad High Court, Islamabad vide order dated 17.09.2015 in the following manner:-

XXX XXX XXX
24. In the light of the above, the instant petition alongwith the connected petitions are converted into representations deemed to be pending before the learned Secretary, CA&DD. The learned Secretary CA&DD shall afford an opportunity of hearing to an authorized representative of the petitioners and thereafter pass a speaking order. It is expected that the Secretary shall, inter alia, take into consideration:

- a) the affidavit dated 26.3.2015 filed by the Secretary Finance, during the proceedings before this Court;
- b) the fact that in some cases the Health Allowance was paid to the employees by the AGPR pursuant to the approval given by the CAⅅ
- c) The request made by and on behalf of the petitioners that in the circumstances recovery of the Health Allowance would cause immense hardship; and
- d) The fact that the petitioners are employees of different departments and entities under the

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Secretary, Capital Administration & Development Division
Islamabad

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administrative control of CADD and, therefore, the entitlement or eligibility shall be taken into consideration in the light of status of each department or entity separately.

5. In order to meet the ends of justice, it would be appropriate that recovery of the Health Allowance already paid to the employees is recovered after a speaking order has been passed by the learned Secretary. It is expected that the Secretary CADD shall pass a speaking order preferably within 90-days.

XXX XXX XXX

The Secretary CADD after perusing the record and affording the opportunity of hearing to the authorized representatives of the petitioners (now appellants) on 14.03.2016 passed the order dated 21.03.2016 and declared the CADD's letter dated 13.03.2016 allowing Health Allowance to the DGSE employees unlawful, against the rules, void ab initio and directed the AGPR to recover the said Allowance from their salaries in easy installments.

2. In this backdrop, the appellants filed the instant appeals with the following prayer:-

"It is, therefore, most respectfully prayed that the appellant being entitled to Health Allowance being covered under category of Health Personnel, the said order dated 21.03.2016 by respondent No.1 may therefore, be set aside and it be declared that the action of respondent No.1 in withdrawing the said allowance and recovery thereof from the salaries of appellants, is mala fide, illegal, violative of principles of locus poenitentiae, unfair, unjust, unreasonable, arbitrary, fanciful and capricious and that are entitled to receive the same, from the date it has been withdrawn and stopped from payment."

3. The learned counsel for the appellants argued that the appellants being Federal government servants under Article 240 of Constitution of the Islamic Republic of Pakistan, 1973 and covered under Section 2 (b) of Civil Servants Act, 1973 were entitled to all pay and allowances prescribed by Federal Government for its employees. Further stated that financial directive contained in Ministry of Finance O.M. No.2(13)R-2/2011 dated 06.02.2012 was unambiguous and clearly stipulated admissibility of Health Allowance to all health personnel in employment of Federal Government in BPS Scheme but despite the said notification of the Finance Division, the appellants were deprived of the

21/3/16
vide which Secretary
Cadd stopped
and ordered recovery
of Health Allowance

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Registrar
Federal Services Council
Islamabad

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said benefits. In support of his version, the learned counsel for the appellants referred to the judgments of FST dated 05.10.2015, 11.01.2016, 18.05.2016 and 14.12.2016 passed in Appeals No.324(R)CS/2015, 867 to 872(R)CS/2015, 1176 to 1187, 1189 to 1251(R)CS/2015 & JMI to 405(R)CS/2016 and prayed for the same relief. The learned counsel vehemently argued that the respondent-Finance Division was blowing hot and cold in the same breath as, on the one hand, it had admitted the claim of the appellants in para 6 of their parasitic comments filed in the Hon'ble Islamabad High Court, Islamabad while, on the other hand, they declined the same claim vide order dated 21.03.2016. He contended that the benefit once granted and acted upon had created a vested right which could not be withdrawn unilaterally, in violation of principle of natural justice. The learned counsel for the appellant lastly argued that impugned orders were void ab initio, coram-non-judice and having no sanctity of law as withdrawal / stoppage of salary amounted to punishment which could not be awarded without adopting the due process of law provided under the Government Servants (Efficiency and Discipline) Rules, 1973.

4. The appeals were resisted by the respondent. It was stated that the said allowance was not admissible to the appellants as they did not fall under the definition of health personnel because health personnel meant a person who held a post in any institute or organization delivering services in the health sector and included in Schedule-I. It was further submitted that the Health Allowance was allowed provisionally to the appellants by the AGPR on the basis of CADD Division's letter dated 06.08.2012 but subsequently that Division sent a reference to the Finance Division to seek its concurrence for admissibility of Health Allowance which regretted the same on 14.03.2013 on the ground that they were involved in the process of education, training and rehabilitation of disabled children and persons with disabilities and, hence, could not be declared as health personnel to become entitled for the said allowance. The CADD on 13.03.2013 in its communication to AGPR conveyed sanction of the Health Allowance to DGSE employees without concurrence of the Finance Division and the AGPR made provisional payment to the appellants, which was subsequently discontinued after verification of their status. In order to prevent the misuse of this allowance by non-entitled personnel, it was submitted by respondent No.2 that health allowance was granted with the

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approval of the Prime Minister, through a summary, specifically moved for three Federal Government Hospitals i.e. Pakistan Institute of Medical Sciences, F.G. Polyclinic and National Institute of Rehabilitation Medicine. The Directorate General of Special Education & Social Welfare, being an educational body, dealt with the process of education, training and rehabilitation of disabled children and persons with disabilities, which was carried out by a multi-professional team including teachers, professionals, doctors, administrators, ministerial and supportive / ancillary staff did not fall within the ambit of health organization and could not be declared as 'health personnel' to get the said allowance. The respondent No.3 i.e. AGPR in its paraswise comments submitted that the identical cases titled Dr. Farkh F. Lodhi, etc. vs Secretary Finance were still pending before the Hon'ble Supreme Court of Pakistan.

5. We heard the learned counsel for the parties and perused the record.

6. The health allowance equal to one basic pay of running salary was granted to the health personnel in the employment of Federal Government, in HPS Scheme, with effect from 01.01.2012. It was made admissible to non-clinical cadres. In reply to a query raised by AGPR vide letter No.TM/18-64/CSHP/HPS/2011-12/186, dated 12.03.2012, the Regulations Wing of the Finance Division vide U.O. No.F.2(13)R-2/2012-172 dated 27.03.2012 furnished definition of the health personnel by stating that 'health personnel' meant a persons who held a post in any institute or organization delivering services in the health sector and included in Schedule-I, but did not include person who was on deputation to the Federal Government from any Province or other authority and who was on contract, or on work charged basis or who was paid from contingencies. The appellants are neither deputationists from any Province or other authority nor have been engaged on contract or on work charged basis. They are also not being paid from contingencies. On the contrary, they are civil servants under section.2 (b) of the Civil Servants Act, 1973 and are delivering services to the disabled children / persons. The beneficiaries / appellants comprised of Academic and Administrative Cadres. According to the definition furnished by the Finance Division vide their u.o. dated 27.03.2012 the appellants are entitled to health allowance. In paras-6 & 7 under Facts of paraswise comments filed before the Hon'ble Islamabad High

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Federal Secretariat

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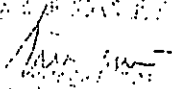
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SECTION 6-5/2, 151

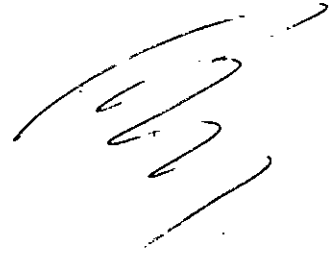
6 565 to 573(R)CS/2016, etc. with M.P.s

Court, Islamabad on behalf of Secretary Finance Division in Writ Petition No.4007/2014, it was categorically admitted that in April, 2014 Ministry of CADD again submitted NIS / BOs containing a provision of Rs.100 million as HPA for DGSE for financial year 2014-15, however, DFA refused to endorse the NIS / BOs and forcefully deducted an amount of Rs.92.542 million of HPA, leaving Rs.7.458 million for the petitioners (now appellants) i.e. 24 employees who belonged to medical profession and came under the criteria of entitlement of HPA, as per DFA (CADD) understanding. D.O. letter dated 09.05.2014 was issued by FA's Organization to AGPR for stoppage of HPA to non-entitled employees and it was duty of AGPR to take action on the said letter and decide entitlement. It was prayed that the petition was an administrative issue with CADD & DGSE, therefore, the Finance Division be excluded from the list of respondents. Now the Finance Division has come up with different stand. It is not allowed to approbate and reprobate. No logical reply has been submitted by the respondents for depriving the appellants of their legitimate rights. A large number of employees of the Federal Government, similarly placed, are getting the said advantage. Why, then, the appellants be deprived, is not clear from what has been written in the comments before the Hon'ble Islamabad High Court, Islamabad and the Federal Service Tribunal. This seems to be discriminatory treatment offending Article 4 & 25 of the Constitution of Islamic Republic of Pakistan, 1973. Further, the appellants have been directed by respondent No.1 to refund the paid amount which is against the principle of locus poenitentiae because the Hon'ble Supreme Court of Pakistan has consistently held that the benefit once granted and acted upon created a vested right which could not be withdrawn unilaterally, in violation of natural justice. It is a established law that benefits received by a civil servant, even under erroneous order passed by the competent authority without any fault on the part of civil servant could not be recovered even if the beneficial order was subsequently withdrawn or recalled. We are fortified in taking this view in the light of the judgment of Hon'ble Supreme Court of Pakistan reported in PLD 1992 SC 207. Hence, to this extent, the impugned orders are not legally sustainable and liable to be set aside.

7. We would like to make an emphasis on the judgments of the Tribunal in Appeals No.224(R)CS/2015 and 381 to 394(R)CS/2016 dated

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 Under Secretary to Government
 Islamabad

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05.10.2015 and 14.12.2016 wherein the controversy relating to Health Allowance has already been resolved. When confronted with the said fact, the respondents have failed to deny the fact. As such, the action of the respondents appears to be inconsistent in the light of the aforementioned judgments on account of Article 25 of the Constitution which guarantees equal rights and equal protection of law for every citizen. To ensure uniformity, rule of consistency must be applied while considering the case of the appellants. Since the Hon'ble Apex Court vide its judgment in the case reported as 1996 SCMR 1185 has already held that "rule of good governance demands that the benefits of the said decision be extended to other civil servants also, who may not be parties to the litigation, instead of compelling them to approach the Tribunal or any other legal forum. Hence, the claim of the appellants is required to be decided on the same analogy / principle as framed in the cases of Dr. Farukh Fiaz Lodhi and others by the Tribunal vide its judgment dated 05.10.2015, 11.01.2016 and 14.12.2016.

8. Foregoing in view and following the rule of consistency, the impugned orders dated 21.03.2016 and 25.03.2016 are set aside with direction to the respondents to continue the Health Allowance already granted to the appellants since 2012, and to refund all deduction made in compliance with the impugned orders within a period of one month from the date the copy of this judgment is received in their office. Since the multi appeals have been accepted, Misc. Petitions are also accepted.

- 9. Judgment to apply all the titled appeals mutatis mutandis.
- 10. There shall be no order as to costs.
- 11. Parties shall be informed accordingly.

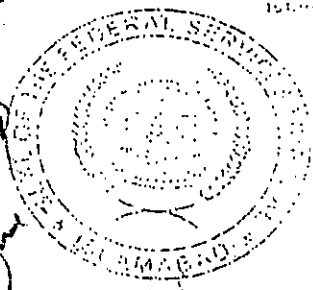
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ISLAMABAD
18.07.2017
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Federal Secretariat Islamabad
18/07/2017



*Dr. Inayatullah Khan
Special Education
Dr. Inayatullah Khan
Secretary*

*ISDC
CDE
SSMC*

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Dr.

Dr.

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STANDARD FORM NO. 201 (2015)

Muhammad Attique ur Rehman
etc. (in C.A.811/2016)

...Respondent(s)

For the Appellant(s)
(in all cases) Mr. Sajid Ilyas Bhatti, DAG
Eyed Rifaqat Hussain Shah, AOR
Ms. Saadia Karwal, S.O Fin.
Mr. Abid Hussain Channa, S.O Fin.
Mr. Sajid Javed, Asstt. Legal Fin.
Mr. Abdul Razaq, AAO MEC
Rawalpindi

For the Respondent(s) In-person

For the Respondent(s)
(in C.A.216/16) Mr. Muhammad Ilyas Lodhi, ASC
Malik Ibtat Hussain Awan, ASC

Amicus Curiae: Mr. Muhammad Makhdoom Ali
Khan, Sr. ASC
Mr. Sikandar Bashir Mohmand, ASC

Date of Hearing 17.01.2018.

JUDGMENT

UMAR ATA BANDIAL, J.— By leave of this Court granted on 23.02.2016, 01.4.2016 and 12.12.2017 in the several connected appeals before us, the appellant Federal Government challenges the judgments delivered on common questions of fact and law by the learned Federal Service Tribunal on 05.10.2015, 11.01.2016 and 18.07.2017. The judgments impugned in the connected appeals declare the respondent employees of different institutions functioning under the Directorate General of Special Education ("DGSE") to be entitled to payment of Health Allowance granted by the Federal Government vide its Office Memoranda dated 04.02.2012 and 06.2.2012. These Memoranda are issued by the Finance Division (Regulations Wing) Government of Pakistan pursuant to approval granted by the Prime Minister under the Rules of Business, 1973. It would be useful to reproduce the two

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Court Associate
Supreme Court of Pakistan
Islamabad

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PLA. 101, 1021 OF 2017, RPS

memoranda containing the terms and conditions for the grant of Health Allowance to eligible persons:

Government of Pakistan
Finance Division
(Regulations Wing)

F.No.2(13)R-2/2011

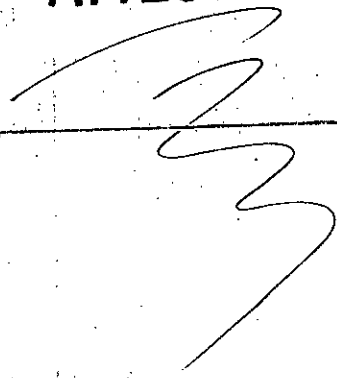
Islamabad, the 04th Feb, 2012

OFFICE MEMORANDUM

Subject: GRANT OF ADHOC ALLOWANCE EQUAL TO ONE BASIC PAY AT THE INITIAL OF THE SCALE TO THE HEALTH PERSONNEL IN RPS SCHEME.

The undersigned is directed to say that the Ordinance No.VI of 2011 that sanctioned the Career Structure for Health Personnel Scheme (CSHP) has lapsed on 26.12.2011. Accordingly, CSHP is no longer in the field and all health personnel have consequently converted to the RPS scheme. In order to compensate health personnel for the loss of benefits sought under CSHP while preserving their status as Civil Servants, it has been

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to their basic pay at the normal of the grade to the health personnel in the employment of Federal Government, in DPS scheme, with effect from 1st January, 2012. This will be in addition to their existing pay/allowances in DPS scheme.

2. This Division's O.M. No.2(13)R-2/2011-698 dated 17th November, 2011 may be treated as withdrawn w.e.f. 26.12.2011.

Sd/-
(M. Munir Sadiq)
Deputy Secretary (R-9)

Government of Pakistan
Finance Division
(Regulations Wing)

F.No.2(13)R-2/2011-777 Islamabad, the 06th February, 2012

OFFICE MEMORANDUM

Subject: GRANT OF HEALTH ALLOWANCE EQUAL TO ONE BASIC PAY OF RUNNING SALARY TO THE HEALTH PERSONNEL IN DPS SCHEME.

previous page

In continuation of Finance Division's O.M. No.F.2(13)R-2/2011, dated 12.2.2012, it has been decided by the Federal Government in total benefit of one basic pay of running salary as Health Allowance to the health personnel in the employment of Federal Government, in DPS-scheme, with effect from 1st January, 2012. This will be in addition to their existing allowances in DPS Scheme. Also grant of stipend amounting to Rs.50,000 per month to the postgraduate residents and Rs.24,000 per month for House Officers respectively w.e.f. 1.7.2011 will continue.

Sd/-
(Mansoor Ali Khan)
Sr. Joint Secretary (Regulations)
(emphasis supplied)

ATTESTED

Joint Associate
Supreme Court of Pakistan
Islamabad

2. Learned Deputy Attorney General has contended that the Health Allowance granted by the Federal Government is available to health personnel in the employment of the Federal Government in the DPS scheme at three hospitals established in

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Islamabad, namely, Pakistan Institute of Medical Sciences ("PIMS"), Federal Government Polyclinic ("FGP") and National Institution of Rehabilitation Medicine ("NIRM"). The employees at these hospitals do not have a career structure in place after the Career Structure for Health Personnel Scheme Ordinance, 2011 ("Ordinance") lapsed on 26.1.2011. The Health Allowance was accordingly granted by the Federal Government as a form of compensation. It is clear from the two memoranda dated 04.2.2012 and 06.2.2012 reproduced above that the Health Allowance is granted to "health personnel". However, the composition of the category of employees that are eligible for the benefit has not been provided therein. The respondents who are several hundred in number are unrepresented by counsel. In view of the fact that a large number of employees are affected by the instant controversy, the Court has sought assistance from Mr. Muhammad Makhdoom Ali Khan, Sr. ASC and Mr. Sikandar Bashir Mohmand, ASC as amicus curiae in the matter. Mr. Sikandar Bashir Mohmand, ASC made able submissions before the Court that highlighted important facts and documents on record which simplified the controversy appreciably.

3. It transpires that an Office Memorandum dated 27.03.2012 by the Finance Division (Regulations Wing) clarified that the term "health personnel" used in the above mentioned memoranda bears the meaning given to that expression in Section 2(b) of the Ordinance. This definition refers to the contents of Schedule-I to the Ordinance which specifies the service providers who qualify as health personnel. A perusal of Schedule-I shows that five categories of service providers are

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Court Associate
Supreme Court of Pakistan
Islamabad

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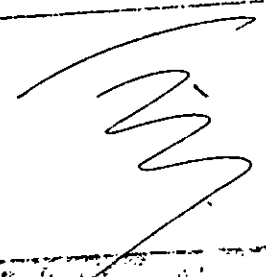
classified as health personnel, namely: Doctors, Allied, Nurses, Paramedics and Support. The services specified under the categories of Paramedic and Support include Teachers, Audiovisual Operators, Technicians, Librarians, etc.

4. The administrative Ministry for the health institutions of the Federal Government at Islamabad is the Ministry of Capital Administration and Development Division ("CADD"). It is an admitted fact that vide order dated 13.03.2013 the Ministry of CADD granted the Health Allowance to the employees of the DGSE and its allied special education centers/ institutions including National Trust for the Disabled ("NTD") and the National Council for Rehabilitation of Disabled Persons ("NCRDP"). The respondents were thereby acknowledged as beneficiaries of the said grant and were paid the Health Allowance with effect from 01.1.2012 until 27.10.2014, when the Finance Division informed the Accountant General Pakistan Revenue ("AGPR") that only health personnel working in Federal Government hospitals and clinics were qualified to receive the Health Allowance. The AGPR correspondingly instructed the DGSE to stop payment of the said allowance to its employees as no budget allocation for the said emolument had been made in the financial year 2014-15.

5. The discontinuation of their Health Allowance was taken to the Islamabad High Court by some of the respondents. Vide order dated 17.9.2015 the learned High Court referred the dispute to the Secretary CADD for passing a speaking order thereon; and till then restrained recovery of past payments of the Health Allowance from the affected employees of DGSE and allied centers. The Secretary CADD heard the parties and by

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Court Associate
Supreme Court of Pakistan
Islamabad

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order dated 21.3.2016 rejected the entitlement of the respondents to receive the said allowance. The principal ground of his decision is that employees of the DGSE were engaged in the process of education, training and rehabilitation of disabled children and therefore did not fall within the ambit of a health organization. The respondents successfully challenged the said order before the learned Federal Service Tribunal which has, *inter alia*, by the impugned judgment dated 18.07.2017 declared that the respondents are entitled to the grant of Health Allowance.

6. Learned Deputy Attorney General has contended that after the lapse of the Ordinance that had provided a career structure for the doctors, nurses and paramedics working in PIMS, FGP and NIRM, the Health Allowance was granted by the Federal Government as compensation to the said health personnel. He was, however, unable to show any contemporaneous direction issued by the Ministry of CADP or the Ministry of Finance that restricted the grant of the Health Allowance to the claimed employees of the three hospitals specified by him. As already noted above, the definition of health personnel provided in the Ministry of Finance Office Memorandum dated 27.3.2012 is wide in scope and therefore unhelpful to his plea.

7. We have examined the definition of "health personnel" adopted by said memorandum dated 27.3.2012 from Section 2(b) of the Ordinance which is to the following effect:

"b) "health personnel" means a person who holds a post in any institute or organization delivering services in the health sector and included in Schedule-1, but does not include:
i) a person who is on deputation to the Federal Government from any Province or other authority;

TESTED
S. Anwar Associate
Principal Secy of Pakistan
Islamabad

ATTEST

Memorandum of Finance.

27/3/12

ii) a person who is employed on contract, or on work charged basis or who is paid from contingency."

8. It is noted that the foregoing definition of health personnel covers persons holding posts in any institute or organization who are delivering services in the health sector that are included in Schedule-I to the Ordinance. Learned Deputy Attorney General was unable to distinguish the respondents, who are employees of the DGSC and allied institutions/centers, NCRDP and NFD, from the paramedic and support staff positions that qualify as health personnel according to Schedule-I to the Ordinance. It is not denied by the appellant that education, training and rehabilitation of disabled persons are services provided in the health sector. These services fall within the terms of Schedule-I to the Ordinance and therefore the providers thereof qualify as health personnel.

9. Accordingly, not only do the respondents fall within the category of persons who are, in terms of Finance Division Memoranda dated 06.2.2012 and 27.3.2012, eligible for grant of the Health Allowance but their entitlement has in fact been admitted by both the Ministry of CADD and Ministry of Finance. In this respect the aforementioned letter dated 13.3.2013 issued by the Ministry of CADD is referred. Also the affidavit of the Secretary Finance, Government of Pakistan filed in the Islamabad High Court pursuant to that Court's order dated 20.3.2015 passed in Writ Petition No. 4007 of 2014, specifically records that the proposal approved by the Prime Minister vide Summary dated 25.1.2012 did not restrict admissibility of the Health Allowance to the personnel of the three hospitals (identified by the learned DAG). For that reason the Finance

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Supreme Court of Pakistan
Islamabad

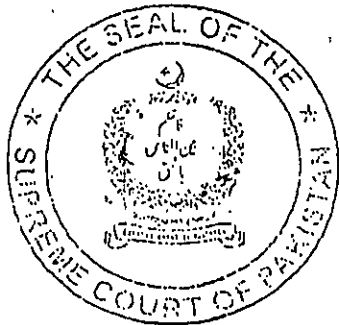
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to Pakistan, through the Secretary, Ministry of Finance and
Muhammad Hayyatullah Faruqi (PLD 1969 SC 407) and
The Engineer in Chief Haqqi, vs. Jalaluddin (PLD 1962 SC
297). Therefore without a change of the terms of eligibility for
the Health Allowance even the prospective exclusion of the
respondents from receipt of the benefit shall constitute arbitrary
and unlawful action.

12. In the circumstances, we do not find any error or
defect in the impugned judgments of the learned Federal Service
Tribunal dated 05.10.2015, 11.1.2016 and 13.7.2017.
Consequently, these appeals are dismissed and the entitlement
of employees of the DCSE, allied institutions/centers, NCRDP
and NTD to receive the Health Allowance is affirmed.

Sd/- Mian Sajid Ahsan Hg 7
Sd/- Umama Bandial 7
Sd/- Ijaz ul Ahsan 7



Certified to be True Copy
Court Associate
Supreme Court of Pakistan
Islamabad

Islamabad
17.01.2018
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Not approved for reporting.

Govt appeal
dismissed by SC

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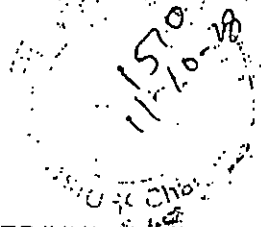
**GOVERNMENT OF KHYBER PAKHTUNKHWA
ZAKAT, USHR, SOCIAL WELFARE, SPECIAL EDUCATION &
WOMEN EMPOWERMENT DEPARTMENT**

No. SO-VI(SWD)/1-21/I.D.E./2018/17

Dated Peshawar the 03rd October, 2018. /336-6

To,

All the District Officers Social Welfare,
Khyber Pakhtunkhwa, Peshawar.



Subject: - STOPPAGE OF UNAUTHORIZED/UNLAWFUL HEALTH PROFESSIONAL ALLOWANCE TO THE EMPLOYEES OF SOCIAL WELFARE DEPARTMENT

I am directed to refer to the subject noted above and to state that devolved employees holding various positions in Federal Government entities against regular positions before the commencement of 18th Constitutional (Amendment) Act, 2010 (Act No. X of 2010) were deemed to be "Civil Servants" of the Khyber Pakhtunkhwa Province for all intents and purposes under Section 11B of the Khyber Pakhtunkhwa Civil Servant (Amendment) Act 1973 (Khyber Pakhtunkhwa Act No. XVIII of 1973). Notification to this effect was issued by the Social Welfare Department vide No. SO-VI/SWD/1-21/2017-18/757-68 dated 12.01.2018 and circulated amongst all concerned.

2. It has come into the notice of Zakat, Usrh, Social Welfare, Special Education & Women Empowerment Department that quite a number of devolved employees are still drawing unauthorized/unlawful "Health Professional Allowance" in connivance with their respective District Offices Social Welfare/District Account Offices without prior approval of the competent authority and in absence of rules/regulations. This practice is a gross violation of Khyber Pakhtunkhwa Delegation of Financial Power Rules, 2018 and may lead to serious audit objections in future.

3. The Competent Authority has taken serious notice of the issue and directed to ask you to provide following information/record: -

- (i) Total number of devolved employees drawing "Health Professional Allowance" in your respective District;

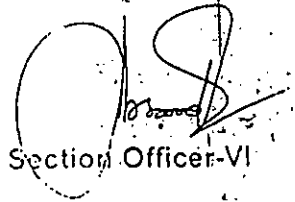
The imp for notification in ultra vires of the Act no IX of 2016 civil servants Amendment Act 2016 section 2

(Continued...)

ATTESTED

- (ii) Salary slips of devolved employees drawing "Health Professional Allowance" duly attested by the concerned District Officer Social Welfare/District Accounts Officer;
- (iii) Amount drawn so far by devolved employees under "Health Professional Allowance" with dates.

4. I am further directed to ask you to take up the case with your respective District Account Office for stoppage of unauthorized/unlawful "Health Professional Allowance" to devolved employees henceforth and a compliance report along with the above-mentioned information/record be submitted to this office within three (03) days positively; failing which, strict disciplinary action will be taken against the defaulters under Government of Khyber Pakhtunkhwa Civil Servants (Efficiency & Discipline) Rules, 2011.


Section Officer-VI

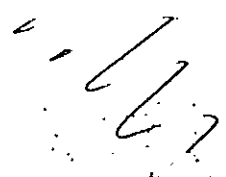
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Copy forwarded to the: -

- (i) The Director, Social Welfare, Special Education & Women Empowerment, Khyber Pakhtunkhwa with the request to furnish his report in the subject matter urgently to this office.
- (ii) PS to Secretary to Government of Khyber Pakhtunkhwa, Finance Department for information and further necessary action
- (iii) PS to Secretary to Government of Khyber Pakhtunkhwa, Zakat, Ushr, Social Welfare, Special Education & Women Empowerment Department, Peshawar for information.

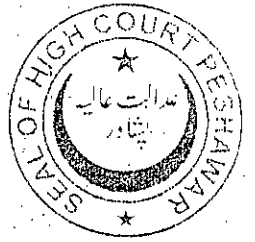

Section Officer-VI

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IN THE PESHAWAR HIGH COURT PESHAWAR

Writ Petition No. _____/2018



1. Muhammad Asif
Computer Operator
2. Said Ali Bakhsh
Deputy Director
3. Sayed Riaz-ur-Rahman,
Principal
4. Muhammad Ayaz,
Social Case Worker
5. Ashraf Zaman,
Physiotherapist
6. Muhammad Zawar,
Senior Teacher
7. Ms. Asia,
Senior Teacher
8. Zia-ur-Rahman
Senior Teacher
9. Muhammad Sadiq,
Senior Teacher
10. Aneeq Ahsan
Senior Teacher
11. Irfanullah,
Senior Teacher
12. Karim Shah,
Senior Teacher
13. Rahid Khan,
Senior Teacher
14. Majid Ali Shah,
Assistant
15. Khan Rahman
Steno-Typist

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EXAMINER
Peshawar High Court

16. Muhammad Adnan Ali
Computer Operator
17. Jawad Ali,
Computer Operator
18. Amjad Hussain,
Voc. Teacher
19. Ms. Sahira Gul,
Voc. Teacher
20. Tajamul Hussain,
Braille Teacher
21. Syed Jaffar Shah,
Senior Clerk.
22. Naveed Muhammad
Driver.
23. Adnan,
Driver
24. Abdul Sami,
Driver
25. Johar Ali,
Attendant
26. Syed Amjad Ali Shah,
Attendant
27. Tariq Zada,
Attendant
28. Siraj Khan,
Attendant
29. Muhammad Wisal,
Attendant
30. Zahid Shah,
Attendant
31. Sajjad Ali,
Attendant
32. Misal Khan,
Attendant

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Peshawar High Court

- 33. Muhammad Ishaq,
Attendant
- 34. Muhammad Bilal,
Attendant
- 35. Bakht Zamin,
Naib Qasid
- 36. Rahid Ali
Naib Qasid
- 37. Gul Muhammad,
Mali
- 38. Shah Jehan,
Mali
- 39. Imran Ali,
Mali
- 40. Iqbal Hussain,
Sanitary Worker
- 41. Muhammad Irshad
Sanitary Worker
- 42. Arshad Ali,
Sanitary Worker
- 43. Haji Ahmad
Sanitary Worker
- 44. Muzaffar Shah,
Chowkidar
- 45. Sajid Ahmad,
Chowkidar
- ✓ 46. Mrs. Nasira Bibi,
LHV, posted against the vacant post
of Primary Healthcare Technician.
- ✓ 47. Haroon Rasheed,
Junior Clerk
- ✓ 48. Ms. Sumayya,
VTI, posted against vacant post of Warden
- 49. Raza Muhammad,
Sweeper

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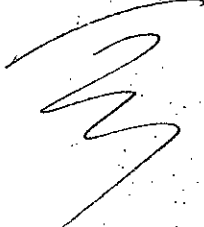
ATTESTED
EXAMINER
Peshawar High Court

- 50. Ambreen Ismail,
Aya, posted against the vacant post of Cleaner.
- 51. Zulfiqar Wazir,
Junior Computer Instructor
- 52. Ms. Shabana Tabassum,
Vocational Instructor
- 53. Ms. Amina Shafiq,
Computer Operator
- ✓ 54. Ajab Khan,
Senior Clerk
- 55. Muhammad Faizan,
Steno-Typist
- 56. Wilayat Ali,
Driver.
- 57. Muhammad Daud,
Attendant
- 58. Askar Khan,
Attendant
- 59. Akthar Ali,
Attendant
- 60. Muhammad Nawaz,
Naib Qasid
- 61. Zafar Hussain
Mali
- 62. Sayad Ali
Sanitary Worker
- 63. Sohail,
Sanitary Worker

*Posted at Special Education Complex,
Phase-II, Sector-M,
Sheikh Maltoon Town, Mardan*

64. Tariq Mahmood,
Vice-Principal

ATTESTED



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EXAMINER
Peshawar High Court

65. Ms. Razia Begum,
Senior Teacher
66. Bibi Ibtesam Shagufta,
Senior Teacher
67. Muhammad Sharif,
Assistant
68. Asif Iqbal,
Junior Steno-Typist
69. Ms. Farval Afridi,
Vocational Teacher
70. Ms. Waheeda Gul,
Vocational Teacher
71. Rafiullah,
Qari
72. Muhammad Nauman,
Senior Clerk
73. Muhammad Saeed Khan,
Junior Clerk
74. Rehmanullah,
Driver
75. Rehman Ali,
Attendant
76. Nawab Zada
Attendant
77. Muhammad Mukhtiar Shah,
Naib Qasid
78. Muhammad Ghafoor,
Naib Qasid
79. Muhammad Abbas,
Chowkidar

*Posted at Nishtar Special Education Centre,
Kohat.*

ATTESTED

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EXAMINER
Peshawar High Court

80. Kiramatullah,
Senior Teacher
81. Rafiullah,
Senior Teacher
82. Rahmatullah,
Assistant
83. Fazal Wahab,
Steno-Typist
84. Gul Sher,
Senior Clerk
85. Ms. Shaheen
Vocational Teacher.
86. Sikandar,
Driver
87. Aoun Abbas,
Driver.
88. Pir Madar,
Attendant
89. Hazrat Bilal
Attendant
90. Ms. Shagufta
Attendant
91. Ms. Ulfat,
Attendant
92. Fazal Rabbi,
Mali
93. Touti Muhammad,
Chowkidar
94. Tahir,
Naib Qasid
95. Fazal Khaliq,
Sanitary Worker

*Posted at Special Education Centre,
Saidu Sharif, Swat.*

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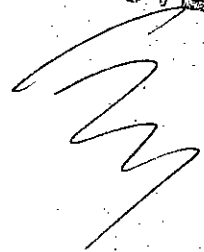
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EXAMINER
Peshawar High Court

96. Syed Mehdi Hasnain,
Speech Therapist (Senior Teacher)/DDO.
97. Arifullah Khan,
Senior Teacher.
98. Fazal Haq,
Senior Teacher.
99. Muhammad Waqas Javed,
Social Case Worker (Senior Teacher)
100. Ms. Amraiz Begum,
Vocational Teacher
101. Fazl-ur-Rahman,
Steno-Typist
102. Ms. Yasmeen,
Vocational Teacher
103. Muhammad Ramzan,
Driver
104. Ms. Tahira Naqvi,
Aya
105. Ms. Azra Bukhari,
Aya
106. Abbas Ali,
Attendant
107. Said Badshah,
Watchman
108. Muhammad Zafar,
Watchman
109. Javed Hashim
Sanitary Worker
110. Muhammad Shakeel,
Naib Qasid
111. Mir Shah Jahan,
Naib Qasid.

*Posted at Gomal Special Education Centre,
Dera Ismail Khan.*

Petitioners

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EXAMINER
Peshawar High Court

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V e r s u s

1. The Govt. of Khyber Pakhtunkhwa
through Chief Secretary,
Civil Secretariat, Peshawar.
2. The Secretary to Govt. of Khyber Pakhtunkhwa
Finance Department,
Civil Secretariat, Peshawar.
3. The Secretary to Govt. of Khyber Pakhtunkhwa
Social Welfare, Special Education &
Women Empowerment Department,
Civil Secretariat, Peshawar.
4. The Director,
Social Welfare & Special Education,
Khyber Pakhtunkhwa, Peshawar..... Respondents

WRIT PETITION UNDER ARTICLE, 199 OF THE CONSTITUTION OF
THE ISLAMIC REPUBLIC OF PAKISTAN, 1973.

Respectfully Sheweth,

Facts giving rise to the present writ petition are as under:-

1. That previously Petitioners were working against various posts as mentioned in the title of the petition in the defunct Directorate of Special Education under the Ministry of Social Welfare and Special Education, Islamabad.
2. That on re-organization of the Federal Secretariat and pursuant to the Constitution (Eighteenth Amendment) Act, 2010 (Act No.X of 2010), various Special Education Centers wherein Petitioners were serving under the defunct Directorate of Special Education, Ministry of Social Welfare and Special Education, Islamabad were transferred to the Khyber Pakhtunkhwa Social Welfare and Special Education Department vide Notification dated 01.04.2011 (*Annex:-A*). Accordingly Petitioners were also transferred to the Social Welfare and Special Education Department,

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M. J.
ATTESTED
EXAMINER
Peshawar High Court

Govt. of Khyber Pakhtunkhwa initially on deputation basis.

3. That due to legislative vacuum, the Petitioners faced numerous problems like uncertainty of the Competent Authority, deputation allowance, delay in the process of Promotion and transfers etc. due to which service careers of the Petitioners badly suffered and lastly on 22.03.2016, an amendment was introduced in the Civil Servants Act-1973 vide Notification dated 22.03.2016 (*Annex:-B*) and Section-3 was amended, relevant portion of the amendment is as under:-

“(3) The Federal Government may transfer a civil servant of a devolved Ministry or Division, working in an Attached Department or subordinate office situated in a Province, to the Province concerned, in consequence of the devolution of functions pursuant to the Constitution (Eighteenth Amendment) Act, 2010 (Act No.X of 2010) and thereby he shall become the civil servant of the respective Province on the same terms and conditions of service as were applicable to him before such transfer.”

Thus pursuant to the amendment *ibid*, the Petitioners stood permanently transferred to the Province of the Khyber Pakhtunkhwa on their existing terms and conditions of service. Accordingly, pursuant to the amendment *ibid*, the Government of the Khyber Pakhtunkhwa Directorate of Social Welfare and Special Education and Women Empowerment vide Notification dated 31.01.2018 (*Annex:-C*) absorbed the Petitioners in the Provincial Civil Service.

4. That while serving under the Federal Government, Petitioners and their other colleagues were allowed the Health Professional Allowance as the task and role assigned to the Petitioners was no less than the Professionals of the Health Department. Subsequently, the allowance was stopped which was called in question by the Petitioners before the Federal Service Tribunal, Islamabad in various Service Appeals, however, the same were allowed vide consolidated Judgments dated 18.07.2017, 11.01.2016 and 05.10.2015. The Federal Government being aggrieved of the Judgments *ibid*, challenged the same before the august Supreme Court of Pakistan but

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EXAMINER
Peshawar High Court

vide Judgment dated 17.01.2018 (*Annex:-D*), the same were upheld.

5. That it is pertinent to add that the Government of Khyber Pakhtunkhwa vide Notification dated 23.02.2017 and 15.04.2016 (*Annex:-E*) has also allowed Health Professional Allowance on various rates to the Doctors, Paramedics and Nursing Staff of the Health Department.
6. That vide impugned letter No.SO.VI(SWD)/1-21/IDE/2016 dated 03.10.2018 (*Annex:-F*) Respondent No.3 has directed for the stoppage of Health Professional Allowance to the Petitioners in utter violation of the law and Rules. Petitioners have also ventilated their grievances before Respondent No.1 vide joint Appeal but the same has not produced any positive response till date.
7. That petitioners, being aggrieved of the impugned letter dated 03.10.2018 *ibid* and the refusal of the Respondents to continue the Health Professional Allowance to Petitioners and having no other adequate and efficacious remedy, file this constitutional petition inter-alia on the following grounds:-

Grounds:

- A. That Respondents have not treated petitioners in accordance with law, rules and policy on subject and acted in violation of Article 4 of the Constitution of Islamic Republic of Pakistan, 1973 and unlawfully issued the impugned letter and refused to continue the Health Professional Allowance to Petitioners, which is unjust, unfair and hence not sustainable in the eye of law.
- B. That on stoppage of the allowance by the Federal Government, the matter went to Federal Service Tribunal and by means of detailed Judgments, the Tribunal was pleased to uphold the disputed allowance of the Petitioners. The issue was finally settled by the Hon'ble Supreme Court in comprehensive and well-reasoned Judgment, therefore, the refusal of the Respondents is not only illegal, unlawful but is also affront to the Judgment of Federal Service Tribunal as well as august Supreme Court of Pakistan.

ATTEST:



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EXAMINER
Peshawar High Court

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C. That the employees of the Special Education are working as a multi-professional team. As a team-work they are involved in all aspects of rehabilitation of Special Children in order to make them productive citizens of the Pakistan viz:-

- i) to enable a disabled child to read and write;
- ii) to enable a blind child to read and write and get education;
- iii) to enable mentally retarded child to live like a normal person;
- iv) to enable physically handicapped persons to use his affected body parts for spending normal life;
- v) There are vocational teachers who equipped the Special people with skill of profession enabling them to earn good and adequate livelihood.
- vi) There are Speech Therapists who are working on language development of deaf children;
- vii) There are Physical Therapists and Medical Officers working on the Health problems of Special Children.

Thus the employees of the Special Education are a hope for the socially backward sectors of the society and it was on the basis of such role that the Health Professional Allowance was allowed to Petitioners by the Federal Government and finally affirmed by the Apex Court, therefore, the stoppage of such allowance to the Petitioners is unjust, arbitrary and therefore not sustainable in the eye of law.

D. That the Petitioners were transferred to the Provinces pursuant to the Civil Servants (Amendment) Act, 2016 and as per Section-3(3) the previous terms and conditions including the Health Professional Allowance was legislatively protected and as per Article-143 of the Constitution of the Islamic Republic of Pakistan-1973 in case of inconsistency between the Federal law and Provincial law, the Federal Law shall prevail.

E. That the Government of Khyber Pakhtunkhwa has allowed Health Professional Allowance to all Doctors, Paramedics, therefore, Petitioners are also entitled on that analogy and the refusal of the Respondents is thus

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EXAMINER
Peshawar High Court

an act of utter discrimination which is violative of Article 25 of the Constitution of the Islamic Republic of Pakistan-1973.

It is therefore, humbly prayed that the impugned letter dated 03.10.2018 and the refusal of the Respondents to continue Health Professional Allowance to Petitioners as without lawful authority and hence of no legal effect and this august Court may further be pleased to set aside the impugned letter dated 03.10.2018 and to direct the Respondents to continue the Health Professional Allowance to Petitioners with all back benefits.

Any other relief as deemed appropriate in the circumstances of case not specifically asked for, may also be granted to petitioners.

Interim Relief:

By way of interim relief the operation of the impugned letter dated 03.10.2018 may graciously be suspended and Respondents be restrained from discontinuing the Health Professional Allowance to Petitioners till the final disposal of the instant writ petition.

Dated: 08/11/2018

Through

Petitioners
Khaled Rahman
Advocate,
Supreme Court of Pakistan

EXAMINED TO BE TRUE COPY
EXAMINER
Peshawar High Court, Peshawar
Authorised Under Article 317 of
The Constitution of Pakistan 1973

22 FEB 2022

ATTESTED

E/A 47

18/2/19

BEFORE THE HONOURABLE PESHAWAR HIGH COURT PESHAWAR

Writ Petition No. 5452/2018

Mohammad Asif & Others..... (Petitioner)

VERSUS

Govt. of Khyber Pakhtunkhwa & Others (Respondents)

Respectfully Sheweth:

PARA-WISE COMMENTS/REPLY BY RESPONDENTS No. 2 & 3

PRE-LIMINARY OBJECTIONS:

1. The Petitioner has got no cause of action to file this writ petition.
2. That the petition is not maintainable in its present form being service matter.
3. That the petitioner/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.

FACTS:

1. Correct to the extent that the petitioners were the employees of the defunct Directorate of Special Education under the Ministry of social Welfare and special Education before the promulgation of 18th constitutional amendment. Presently the petitioners are the employees of Social Welfare, Special Education and Women Empowerment Department Govt. of Khyber Pakhtunkhwa.

2. Correct.

3. Pertains to record.

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4. Brief of the case is that the petitioners are performing their duties in Special Education Complex Hayatabad, on various positions. Before 18th amendment the petitioners were employees of Federal Government (DGSE), and since 01/04/2011, after 18th amendment, they are working under Secretary Social Welfare, & Special Education Department of Khyber Pakhtunkhwa. The petitioners were receiving Health Allowance since 01/01/2012; when they were under the control of Federal Government. The allowance was stopped to them by the Federal Government and accordingly the petitioners filed Service Appeal in Federal Service Tribunal Islamabad. On 18-07-2017, the Federal Service Tribunal allowed

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Deputy Registrar

18 FEB 2019

the service appeal and directed the Federal Government to continue the Health Allowance, already granted to the appellant since 2012, and to refund deduction made from them within a period of one month (Annex-I). The Federal Government challenged the judgment of Federal Service Tribunal in Supreme Court of Pakistan and affirmed the Health Allowance to the employees of DGSE (Annex-II). After shifting the services from Federal Government to Provincial Government the employees of Special Education are receiving the Health Allowance Provisionally. On 13/06/2018, the Accountant Officer (PR-04) office of the Accountant General Khyber Pakhtunkhwa wrote a letter to Deputy Commissioner Peshawar with a copy to Director Social Welfare and Secretary Finance Khyber Pakhtunkhwa and inform him that though budget for the Health Allowance has been allocated but the same has not been uploaded in SAP computer system till date. He further clarified that the Accountant General Office has released the payment (Health Allowance) to these employees on the request of department (Social Welfare & Special Education) in compliance of the judgment of Supreme Court of Pakistan dated 17-01-2018, provisionally & subject to its admissibility from Finance Department and that in case the release budget has not been upladed in SAP System the payment of Health Allowance will be stopped (Annex-III). Accordingly the employees of Special Education filed a writ petition under article 199 of the constitution of Pakistan 1973, and requests for suspension of the above mentioned letter of Accountant General Office and for continuation of payment of Health Allowance (Annex-IV).

5. 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 HPA 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)8-18/20111, dated Peshawar the 6th of August, 2011, accorded approval of Health Professional Allowance to 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 15,000/- P.M while doctors in

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BP-18 to BS-20 (all cadres) would receive at the rate of 10,000/- P.M (Annex-V), while the present petitioners are receiving the said allowance equal to once month running pay.

On 07-01-2016, in continuation of 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 to reach 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 & Hardest. Special package/incentives at Civil Hospital (Gari Habib Ullah Mansehra Incentives allowance to Gynecologist and Lady doctors all districts Battagram Kohista, Hangu, Tank, Buner, Dir Upper, Dir Lower, Shangla, 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.
- 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-VI).

wherein condition No.V is, not admissible to the employees posted /deputed outside the

Health Department. Thereafter vide notification No. FD/SOSR-II 8-18/2017 dated 23-02-

Deputy Registrar 2017, was issued 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-VII), 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 Paramedics & Nursing staff of Health

Department at a flat rate of Rs.10, 000/-per month (Annex-VIII). From the above

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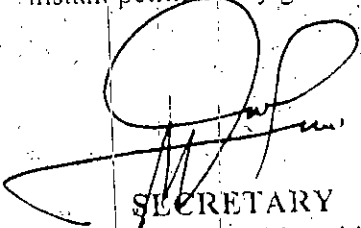
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18 FEB 2019

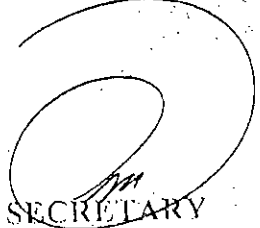
details/notifications it is crystal clear that HPA is allowed only to employees of Health Department & employees of Special Education are providing Educational Service, not Health Service to Special Persons, hence not entitled for Health Professional Allowance.

6. 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.
7. Incorrect. There is no tussle between the two departments. Departments are 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 provinces. The extension of HPA to employees of Special Education will be against cardinal principals of good Governance & will result in wrong precedents. Similarly it will be difficult for the Provincial Exchequer to bear the financial implication involved in this regards.

Prayer:-

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


SECRETARY
Govt. of Khyber Pakhtunkhwa for
Finance, Civil Secretariat, Peshawar.
(Respondent No. 2)


SECRETARY
Govt. of Khyber Pakhtunkhwa for
Social Welfare, Special Education &
Women Empowerment Department
(Respondent No. 3)

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FILED TODAY
Deputy Registrar
18 FEB 2019



F 51

GOVERNMENT OF KHYBER PAKHTUNKHWA
FINANCE DEPARTMENT
(REGULATION WING)

Dated Peshawar the 25-11-2019

NOTIFICATION

-53

No. FD(SOSR-III)8-7/2019. In pursuance of the Supreme Court of Pakistan Civil Appeal No 811/2016 titled "Muhammad Atique-Ur-Rehman & Others vs Federal Government of Pakistan through Secretary Capital Administration etc." the Government of Khyber Pakhtunkhwa (Provincial Cabinet) has been pleased to approve Health Allowance at the rate of one running basic pay to the devolved employees working in the Special Education Institutions from the date of their devolution to Provincial Govt of Khyber Pakhtunkhwa

2 The above said allowance will be admissible only to the employees of Special Education Institutions of Khyber Pakhtunkhwa devolved under 18th Constitutional Amendment

Secretary to Govt of Khyber Pakhtunkhwa
 Finance Department

Endst. No. & Date Even.

Copy is forwarded for information and necessary action to the:-

- 1 Accountant General, Khyber Pakhtunkhwa, Peshawar
- 2 Principal Secretary to Chief Minister, Khyber Pakhtunkhwa
- 3 Principal Secretary to Governor, Khyber Pakhtunkhwa
- 4 Secretary to Social Welfare, Special Education & Women Empowerment Dept.
- 5 Director, FMIU Finance Department, Khyber Pakhtunkhwa
- 6 PS to Minister Finance, Khyber Pakhtunkhwa
- 7 PS to Secretary, Finance Department, Khyber Pakhtunkhwa
- 8 PS to Special Secretary, Finance Department, Khyber Pakhtunkhwa
- 9 PA to Additional Secretary (Regulation), Finance Department
- 10 Master File

27/11/19

22/11/19

27/11/19

SECTION OFFICER (SR-III)
 FINANCE DEPARTMENT

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 etc. 17301566-968

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G 52

GOVERNMENT OF KHYBER PAKHTUNKHWA
ZAKAT, USHR, SOCIAL WELFARE, SPECIAL EDUCATION
AND WOMEN EMPOWERMENT DEPARTMENT

No. SO-VI/SWD/135/2020/92
Dated Peshawar the 19th August 2020

- To:
1. The Secretary to Govt. of Khyber Pakhtunkhwa,
Finance Department.
 2. The Director,
Social Welfare, Khyber Pakhtunkhwa.

Subject: MINUTES OF THE MEETING REGARDING PROFESSIONAL HEALTH ALLOWANCE TO THE EMPLOYEES OF SPECIAL EDUCATION (INSTITUTES) & DIRECTORATE OF SOCIAL WELFARE, SPECIAL EDUCATION & WOMEN EMPOWERMENT DEPARTMENT

Dear Sir,

I am directed to refer to the subject noted above and to enclose herewith minutes of the subject meeting held on 29.07.2020 for information and necessary action please.


Section Officer-VI

Encl: No. & Date Even

Copy forwarded for information to:-

1. PS to Secretary, SW, SE & WED, Khyber Pakhtunkhwa
2. Master File

Section Officer-VI

ATTESTED



MINUTES OF THE MEETING REGARDING PROFESSIONAL ALLOWANCE TO THE EMPLOYEES OF SPECIAL EDUCATION INSTITUTES & DIRECTORATE OF SOCIAL WELFARE, SPECIAL EDUCATION & WOMEN EMPOWERMENT DEPARTMENT

The subject meeting was held under the chairmanship of Secretary to Government of Khyber Pakhtunkhwa, Social Welfare, Special Education & Women Empowerment Department in the committee room on 29/07/2020 at 12 hours which was attended by the following:-

- 1. Hafiz Atta-Ul-Munim: Deputy Secretary (Admin) Social Welfare Department
- 2. Rizwan Ullah Khan: Deputy Secretary, Social Welfare Department
- 3. Habib Khan: Director, Social Welfare
- 4. Noor Muhammad: Deputy Director, Social Welfare
- 5. Abdul Haq: Section Officer (SR-II), Finance Department
- 6. Savindar Kumar: Section Officer-VI, Social Welfare Department

The meeting started with the recitation of Holy verses. The chair welcomed the participants and apprised about the issue of Health Professional Allowance. It was informed that the employees of Special Education (Devolved) are drawing one running basic pay w.e.f 2010 as Health Professional Allowance approved by the cabinet and notified by the Finance Department vide Notification No. FD(SOSR-II)8-7/2019-53 dated: 25.11.2019, whereas the Special Education Employees of Social Welfare, Special Education & Women Empowerment Department (Provincial) & Directorate of Social Welfare, Special Education & Women Empowerment are not getting the said allowance as the same is allowed only to devolved employees as per decision of the cabinet which is clear cut discrimination with the employees of Special Education & Directorate of Social Welfare, Special Education & Women Empowerment.

The Director, Social Welfare, Special Education & Women Empowerment also informed the participants that due to the said allowance majority of the staff are trying and approaching for their posting at the devolved institutes and litigation has been started in the courts by staff of special education and Social Welfare for the said allowance. Therefore the same should be allowed to all the employees of Special Education & Directorate of Social Welfare, Special Education & Women Empowerment.

ATTESTED



54

The Representative of Finance Department agreed with the chair and point of view of the Director Social Welfare and he also agreed upon that proper case (Summary) for provincial cabinet be moved by the Department through Finance Department

DECISION:

It is unanimously decided that Social Welfare, Special Education & Women Empowerment Department will move a Summary through Finance Department to allow one running Basic Pay as Health Professional Allowance to the employees of Special Education & Directorate of Social Welfare, Special Education & Women Empowerment on the analogy of the previous Notification issued by Finance Department.

The meeting ended with a vote for and from the chair.

H 55
1

**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 Saifil
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,

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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.

EXAMINED
Authorised Officer
22 FEB 2022

JUDGE

Announced
16.02.2022

ATTESTED

JUDGE

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

25771
Date of Presentation of Application 19/2/22
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Total 56
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Date of Delivery of copy 22/2/22

یعدالت چٹا پسر سروس ٹریڈ یونین صوبہ سندھ لہستان اور

مستجاب ایڈوائس

سید ماجد علی نام

دعویٰ اپیل

باعتبار شکر یہ ایسکہ

مقررہ مندرجہ عنوان بالا میں اپنی طرف سے واسطے پیروی و جواب دہی دیکھ کر کاروائی متعلقہ کارروائی کے لئے
 کیسٹ سید احمد خان صاحب نے ایڈووکیٹ ہائی کورٹ کو وکیل مقرر کر کے اجازت کیا جاتا ہے کہ صاحب
 موصوف کو مقدمہ کا کل کاروائی کا کابل اختیار ہوگا نیز وکیل صاحب کو کرنے پر اپنی نارہ و آفر ثالث و ایضاً برعکاف
 اپنے جواب دہی اور اقبال دعویٰ اور بصورتہ ڈگری کرنے اجزاء اور دعویٰ چیک و روپیہ اور دعویٰ اور درخواست
 ہر قسم کی نقل وین اون اس پر دستخط کرانے کا اختیار ہوگا نیز بصورتہ عدم پیروی یا ڈگری یکطرفہ یا اپیل کی برآمدگی
 اور دستخطی نیز دائر کرنے اپیل نگران و نظر ثانی و پیروی کرنے کا اختیار ہوگا اور بصورتہ ضرورت مقدمہ مندرجہ
 کے کل یا جزوی کاروائی کے واسطے اور وکیل یا نثار قانونی کو اپنے ہمراہ یا اپنی بجائے تفریکہ اختیار ہوگا
 اور اس پر مقرر شدہ کو بھی وہی جملہ مندرجہ بالا اختیارات حاصل ہوں گے اور اس کا سامنے پروا نہ منقولہ
 قبول ہوگا و دوران مقدمہ میں جو خرچہ و تہ جانہ التزام مقدمہ کے سبب ہوگا اس کے مستحق وکیل صاحب
 موصوف ہوں گے نیز لایا و فرحہ سبکی و دعویٰ کو نہ کا بھی اختیار ہوگا اگر کوئی تاریخ پیشی مقام درود
 پر ہو یا عدسے باہر ہو تو وکیل صاحب پابند نہ ہوں گے کہ پیروی مندرجہ کریں
 لہذا رکالت نامہ دیکھ دیا کہ سند ہے۔

۱۶-۰۳-۲۲ المرقوم

القید القید القید

ارباب سید اکمال
ایڈووکیٹ

سید ماجد علی
ایڈووکیٹ

syed majid ali shah

محمد نواز
ایڈووکیٹ

BEFORE THE KPK SERVICE TRIBUNAL, PESHAWAR

CM. No. _____ /2022

Syed Majid Ali Shah

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.

Ph: 0300-5872676

Dated: 16-03-2022

BEFORE THE KPK SERVICE TRIBUNAL, PESHAWAR

C.M. No. _____ /2022

Syed Majid Ali Shah

versus

Secretary & Others

AFFIDAVIT

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


DEPONENT

BEFORE THE HONORABLE SERVICES TRIBUNAL PESHAWAR

Service Appeal No. 492 to 498 / 2022

Mr. Syed Majid Ali Shah & Others..... **(Appellant)**

VERSUS

Government of Khyber Pakhtunkhwa through Chief Secretary, Civil Secretariat Peshawar

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BEFORE THE PESHAWAR SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 492 to 498 of 2022

Mr. Syed Majid Ali Shah & others..... (Appellant)

Versus

Government of Khyber Pakhtunkhwa

AFFIDAVIT

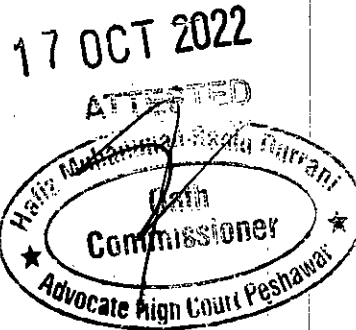
I Syed Nabi Gul, Superintendent (Lit), Directorate of Social Welfare, Special Education & Women Empowerment Khyber Pakhtunkhwa, do hereby solemnly affirm and declare on oath that the contents of the accompanying reply/comment are true and correct to the best of my knowledge and belief and that nothing has been concealed therein from this Hon'ble Tribunal.

Syed Nabi Gul

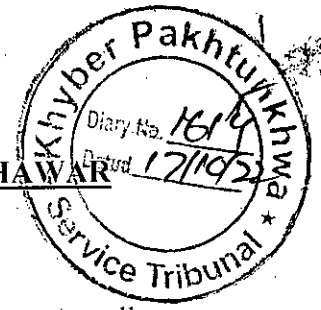
DEPONENT

CNIC No.17101-0377128-9

Cell# 03469148582



BEFORE THE SERVICE TRIBUNAL KHYBER PAKHTUNKHWA PESHAWAR



Service Appeal No. 492 to 498 / 2022

Syed Majid Ali Shah & 06 Others.....Appellant

VERSUS

1. Govt. of Khyber Pakhtunkhwa through Secretary Zakat, usher, Social Welfare & Women Empowerment Department Peshawar.
2. Chief Secretary to Government of Khyber Pakhtunkhwa Peshawar
3. Secretary to Government of Khyber Pakhtunkhwa Finance Department.
4. The Director, Social Welfare, Special education & Women Empowerment Department, Peshawar..... **(Respondents)**

Respectfully Sheweth:

PARA-WISE COMMENT ON BEHALF OF RESPONDENTS

PRE-LIMINARY OBJECTIONS:

1. The appellant has got no cause of action to file this service appeal.
2. That the appeal is not maintainable in its present form.
3. That the appellant has no locus standi or cause of action to file the present service appeal.
4. The appeal is badly time bard. Therefore, the appeal is not maintainable.
5. That the Health Professional Allowance was allowed by the Federal Govt. to only the employees of Directorate General of Special Education, Govt of Pakistan Islamabad and its allied Institutions in pursuance of the judgment of the Federal Services Tribunal, therefore the appeal is not maintainable.

FACTS:

1. Correct.
2. Correct to the extent that the appellant was transferred to Vocational Training for Disabled Persons Mardan on 19.09.2013.
3. Correct.
4. Correct to the extent that the Federal Govt. granted Health Professional Allowance to the employees of Special Education Institutions working under the Directorate General of Special Education Islamabad and not to the employees working in Social Services Medical Centers under the Ministry of Social Welfare & Special Education, Govt. of Pakistan Islamabad (Social Welfare side). The appellants were initially appointed on the strength of Social Welfare side under the said Ministry and they may not consider them at par with the employees of Special Education Institutions devolved under the 18th amendment just only by transferring themselves to the Special Education Institutions (devolved). As far as consolidated judgments dated 18.07.2017, 11.01.2016 and 05.01.2015 of the Federal Service Tribunal against the stoppage of allowance, the said judgments were purely in the favor of

the employees working under the Directorate General of Special Education Islamabad and not for the employees working on social welfare side under the Ministry of Social Welfare and Special Education Govt. of Pakistan Islamabad. It is further to clarify that the Govt. of Khyber Pakhtunkhwa Finance Department vide Notification No. FD(SOSR)-7/2019-53 dated 25-11-2019 granted Health Professional Allowance which is re-produced as under:

“In pursuance of the Supreme Court of Pakistan Civil Appeal No. 811/2016 titled “Muhammad Atique ur Rehman and others vs Federal Government through Secretary Capital Administration etc”, the Government of Khyber Pakhtunkhwa (Provincial Cabinet) has been approved health professional allowance at the rate of one basic pay to the devolved employees working in the Special Education Institutions from the date of their devolution to Provincial Government of Khyber Pakhtunkhwa.

Thus the above said allowance will be admissible only to the employees of the Special Education Institutions of Khyber Pakhtunkhwa devolved under the 18th constitutional amendment.”

5. Pertains to record. As explained above, the appellant is not entitled to receipt Health Professional Allowance and the allowance received by the appellant is against the rules, law and liable to be recovered in lump sum and do not justify for permanent receipt.
6. No comments. The matter relates to Health Department.
7. Incorrect, hence denied. Stoppage of Health Professional Allowance was within the law and rules. Agitation of the appellant was based on malafide.
8. Correct to the extent that the appellant along with other employees of Special Education Institutions (Devolved) filed a Writ Petition No. 5452-P/2018 in the Honorable Peshawar High Court, Peshawar and later on the petitioners devolved from the Directorate General of Special Education, Govt. of Pakistan withdrew the petition due to grant of Health Professional Allowance by the Govt.
9. Correct.
10. Incorrect, hence denied. The appellant was devolved from Social Welfare Side of Ministry of Social Welfare & Special Education Govt. of Pakistan, Islamabad which was an independent entity and the Health Professional Allowance was allowed only to the employees working under the Directorate General of Special Education Institutions, Islamabad. Both the Special Education and Social Welfare are quite different entities having different job description and working under the administrative control of Social Welfare, Special Education & Women Empowerment Department. The Finance Department Govt. of Khyber Pakhtunkhwa issued notification dated 25.11.2011 of which text has been narrated in Para-4 above.
11. Incorrect, hence denied. According to the letter dated 19.08.2020 of the Director Social Welfare & Special Education Special Education Complex Phase-V Sector B/2 Plot No. 5 Peshawar, he requested the Director Social Welfare, Special Education & Women Empowerment Department Govt of Khyber Pakhtunkhwa for approaching Finance

Department Govt. of Khyber Pakhtunkhwa for creation of new object Head "Health Allowance" for the Financial Year 2019-2020 which was already allowed by the Finance Department Govt of Khyber Pakhtunkhwa vide (**Annex-A**) dated 25.11.2019 to the devolved employees working in the Special Education Institutions from the date of their devolution to Provincial Govt of Khyber Pakhtunkhwa (**Annex-B**). Therefore, the letter date 19.08.2020 was for the purpose of creation of new object head of "Health Allowance" for the financial year 2019-2020 for the employees of Special Education Institutions devolved under the 18th amendment and not a summary for allowing one running basic pay as Health Allowance to all the employees of Special Educations and Directorate of Social Welfare, Special Education and Women Empowerment Khyber Pakhtunkhwa

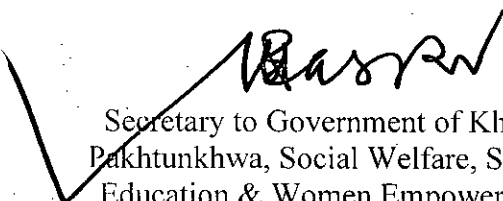
12. Incorrect, hence denied. The WP came up for hearing 16.02.2022 was dismissed on the grounds of jurisdiction and not of merit.
13. Incorrect, hence denied. The appellants has no cause of action to file the present appeal.

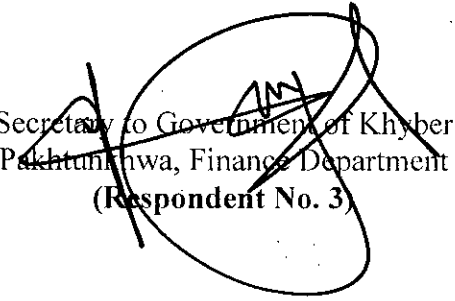
GROUNDS


- A. Incorrect, hence denied. The Respondents are law abiding civil servants and respect the Constitution of Islamic Republic of Pakistan & did not violate any article of the Constitution of Islamic Republic of Pakistan. Moreover, as per Notification of the Finance Department the appellants are not eligible for the said relief (**Annex-A**).
- B. Incorrect, hence denied. The factual position has been explained in the preceding para.
- C. Incorrect hence denied. The factual position has been explained in the preceding para.
- D. Incorrect, hence denied. The factual position has been explained in the preceding paras. The judgment of the August Supreme Court of Pakistan allowing the said allowance to allied institutions / centers NCRDP (PCRDP) at Provincial level, burden of proof is on the shoulders of the appellants. Provincial Council for the Rehabilitation of Disabled Persons (PCRDP) being autonomous body employees of which are working under the administrative control of Social Welfare, Special Education and Women Empowerment Department Khyber Pakhtunkhwa are not receiving such like allowance nor allowed by the Government of Khyber Pakhtunkhwa. Therefore, keeping in view the above factual position, the appellants are not entitled to draw Health Professional Allowance.
- E. Incorrect, hence denied. No official (s) of the Social Welfare, Special Education & Women Empowerment Khyber Pakhtunkhwa are drawing / allowed such facility. Only those devolved employees who were under the administrative control of Directorate General of Special Education, Government of Pakistan, Islamabad are drawing / allowed such like facility as explained in the preceding paras. As far as working in the Special Education Institution Mardan, in this respect it is stated that the appellant several time requested for transfer to Mardan for the reasons mentioned in his applications / requests, therefore keeping in view his requests, he was transferred to Mardan. Posting of the appellant in the Special Education Complex Mardan does not meant for the allowance i.e. Health Professional Allowance to be granted to him. Requests for transfer to Mardan are at (**Annex-C, D, E, F G & H**).

F. Incorrect, hence denied. No constitutional violation has been made by the respondents by not allowing the said allowance to the appellant. The appellant is a devolved employees devolved from Ministry of Social Welfare SSMC and not from the Directorate General of Special Education Govt. of Pakistan. The Social Services Medical Centers etc and Directorate General of Special Education Govt. of Pakistan were quite different wings with different job description and were just only under one Ministry i.e. Social Welfare & Special Education. That any other grounds which has not been specifically taken in the above mentioned comments/reply maybe argued at the time of arguments with the permission of this Honorable Tribunal.

In the view of above factual position it is humbly prayed that the order / letter dated 03.10.2018 is according to the law / rules and the benefits of Notification dated 25.11.2019 may not be extended to the appellants being not relevant and this Appeal being devoid of any merit may graciously be dismissed with cost.


Secretary to Government of Khyber
Pakhtunkhwa, Social Welfare, Special
Education & Women Empowerment
Department
(Respondent No. 1)


Secretary to Government of Khyber
Pakhtunkhwa, Finance Department
(Respondent No. 3)


Director
Social Welfare, Special Education and Women
Empowerment Khyber Pakhtunkhwa
(Respondent No. 4)

Annex A 5



GOVERNMENT OF KHYBER PAKHTUNKHWA
FINANCE DEPARTMENT

(REGULATION WING)

Dated Peshawar the 25-11-2019

NOTIFICATION

- 53

No.FD(SOSR-II)8-7/2019. In pursuance of the Supreme Court of Pakistan Civil Appeal No.811/2016 titled "Muhammad Alique-Ur-Rehman & Others v/s Federal Government of Pakistan through Secretary Capital Administration etc." the Government of Khyber Pakhtunkhwa (Provincial Cabinet) has been pleased to approve Health Allowance at the rate of one running basic pay to the devolved employees working in the Special Education Institutions from the date of their devolution to Provincial Govt of Khyber Pakhtunkhwa.

2. The above said allowance will be admissible only to the employees of Special Education Institutions of Khyber Pakhtunkhwa devolved under 18th Constitutional Amendment.

Secretary to Govt of Khyber Pakhtunkhwa
Finance Department

Endst: No. & Date Even.

Copy is forwarded for information and necessary action to the:-

1. Accountant General, Khyber Pakhtunkhwa, Peshawar.
2. Principal Secretary to Chief Minister, Khyber Pakhtunkhwa.
3. Principal Secretary to Governor, Khyber Pakhtunkhwa.
4. Secretary to Social Welfare, Special Education & Women Empowerment Deptt.
5. Director, FMIU, Finance Department, Khyber Pakhtunkhwa.
6. PS to Minister Finance, Khyber Pakhtunkhwa.
7. PS to Secretary, Finance Department, Khyber Pakhtunkhwa.
8. PS to Special Secretary, Finance Department, Khyber Pakhtunkhwa.
9. PA to Additional Secretary (Regulation), Finance Department.
10. Master File.

SECTION OFFICER (SR-II)
FINANCE DEPARTMENT

Annex B

Governn — — — unkhwa
Social Welfare & Special Education & Women Empowerment Department
SPECIAL EDUCATION COMPLEX
Hayatabad Phase -V, Sector B/2 Plot No.5

27
b

69/2018/SEC/1027

Peshawar, the 19th August 2020.

✓
The Director,
Directorate of Social Welfare, SE & WE,
Khyber Pakhtunkhwa, Peshawar.

Subject: - REQUEST FOR CREATION OF NEW OBJECT HEAD FOR HEALTH ALLOWANCE IN THE LIGHT OF APPROVAL BY PROVINCIAL CABINET AND NOTIFICATION OF FINANCE DEPARTMENT, GOVERNMENT OF KHYBER PAKHTUNKHWA.

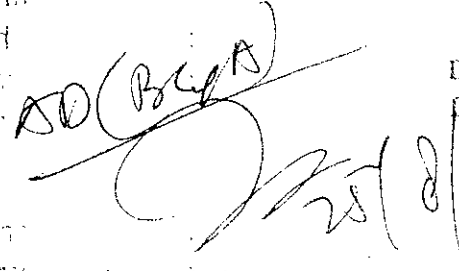
This case pertains to the creation of new object head of "Health Allowance" for the Financial Year 2019-20. In this connection Finance Department, Govt of Khyber Pakhtunkhwa, Peshawar issued vide Notification No. FD (SOSR-II) 8-7/2019-53 dated 25.11.2019 (Regulation Wing) regarding admissibility of Health Allowance at the rate of one Running Basic pay to the devolved employees working in the Special Education Institutions from the date of their devolution to Provincial Government of Khyber Pakhtunkhwa.

Presently No object Head Exists in the Budget SNE for "Health Allowance" the Said Allowance is drawn under the Head "Health Professional Allowance" therefore the new head is required to be create from the Provincial Finance Department, Peshawar in the Budget SNE for the current financial year 2020-21. In the light of decision of the Provincial Cabinet Committee and with reference to the Notification of Finance Department, Peshawar, Govt of Khyber Pakhtunkhwa vide Notification No. FD (SOSR-II) 8-7/2019-53 dated 25.11.2019 (copy enclosed).

Keeping in view the above position the case may be taken up with Finance Department, Peshawar for the creation of new Head Object of "Health Allowance" in the Budget SNE for the current financial year 2020-21 please.

regard
sample
cover
allowance
request
current
paper
month
Depart
for

Directorate of Social Welfare PPK
Dairy # 50278
Dated: 26/8/2020


(QISMAT KHAN)
DIRECTOR

Copy forwarded to:-

1. PS to Special Secretary (Finance) Department, Government of Khyber Pakhtunkhwa, Peshawar.
2. PS to Accountant General, Government of Khyber Pakhtunkhwa, Peshawar.

- 51 -
DIRECTOR

Annex C

85

7
+

To

The secretary,
Social Welfare: Spl: Edu& WE
Khyber Pakhtunkhwa.

Subject:- REQUEST FOR DETAILMENT TRANSFER

Respected Sir,

It is respectfully that I am resident of village Gujrat Tehsil& District mardan and working as "office Assistant" Grade BPS-14 at Directorate Social Welfare: Spl: Edu& WE Peshawar.

It is very Difficult for me and facing very treble due to daily convenience, In the light of above it is therefore humbly request to your kind honour that I May kindly be detailment transferred to special Education Sheikh Maltoon Town Mardan.

I will pray for this act of kindness forever.

Yours Faithfully,

*Director Sew
12 post his at
NSRC Mardan in
detailment basis.*

Dated:-04-06-2012

[Signature]
11/6/2012

Secretary to Govt of
Khyber Pakhtunkhwa
Social Welfare
Directorate
Peshawar

[Signature]

Syed Majid Ali shah (Asstt)
Litigation Section
Contact No.0300-9146641
0343-9990775

AD(A)

[Signature]
11/6/12

Per on file

[Signature]
12/6

Directorate of
Social Welfare K.P.K.
No. 10415
Date: 12-06-2012

Annex D

8

10/10/2012

53

The Director,
Social Welfare and Special Education,
Peshawar.

From: B. MASFER

Reference 838
Date 31/5/12

I respectfully that I am resident of village Gujrat Tehsil & District Mardan and working as "Office Assistant" Grade BPS-14 District Office Social Welfare and Special Education Peshawar.

It is very difficult for me and facing very trouble due to daily work. In the light of above it is therefore humbly request to please consider that I may kindly be transferred to Special Education Tehsil Madoon Town Mardan.

I am grateful for this act of kindness forever.

Yours faithfully,

[Faint signature]

Yours faithfully,

[Signature]

Syed Majid Ali Shah
Office Assistant

Contact No: 0300 9146641
0343 9990775

BETTER COPY

To

The Director
Social Welfare and Special Education
Peshawar

Subject: **TRANSFER**

R/Sir,

It is respectfully that I am resident of village Gujrat Tehsil & District Mardan and working as Office Assistant" Grade BPS-14 at Directorate of Social Welfare and Special Education Peshawar.

It is very difficult for me and facing very trouble due to daily convenience. In the light of above it is therefore humbly request to your kind honour that I may kindly be transferred to Special Education Sheikh Maltoon Town Mardan.

I will pray for this act of kindness forever.

Dated 17/05/2012

Yours faithfully,

Syed Majid Ali Shah
Office Assistant
Contact No. 0300 9146641
0343 9990775

Annex B

10

To

The Secretary
Social Welfare and Special Education
Peshawar.

99

Subject: Request for Transfer

Date
24/4/2013

Sir,

It is submitted that I am permanent resident of Dera Mandan and working as office Asst (B-14) at Directorate of Social Welfare and Special Education Peshawar. As I am living with my ailing and aged Parents in ~~in~~ Mandan so it is very difficult for me to perform my duties properly and look after my ailing Parents ^{in Peshawar}.

I have come to know that Mr Ishaq Asst (BS-14) posted at Mandan Special Education Complex and performing their duties in Charsala Special Education Center on attachment basis.

Therefore it is requested to kindly transfer Mr Ishaq Asst (BS-14) to the nearest place Peshawar and sayed Majid Ali Shah (BS-14) to my home town Mandan.

Thanks

Sd/-
Sayed Majid Ali Shah
Asst (B-14)
Peshawar

Amru [

11

(101)

To,

The Director,
Social welfare, SPI, Edu & W.E.
Peshawar.

Subject: Attachement Transfer.

Sir,

S/R:

It is submitted I belong to Wazir Mirza Distt Mardan. I am working as office Assistant (B-14) at Directorate of social welfare SPI, Edu & W.E Peshawar.

It is further stated that my aged & ailing parents who are also wholly dependant upon me are residing at Mardan. It is very difficult for me to look after them properly as I am posted at Peshawar.

It is therefore requested that I may kindly be transferred to attachement basis from Peshawar to Mardan. It will enable me to perform my official duties properly and also look after my aged parents.

Directorate of
Social Welfare S.P.I. E.K.

No: 3102

Date: 15-5-2013

DD(I)

Thanks.

ADD

11/5

Yours obediently,
Syed Majid ali Shah.
Assistant (B-14)

Date: 13⁰⁵/₁₃

14/5

Amru G 12

TO,

AD E PU
10/9

The Director
social welfare SPI, Edu &
W.E Govt. of Khyber Pakhtunkhwa,
Peshawar.

subject:- Request for Transfer against the Post of V/I (BS-14) ^{Mardan}

R/sir,

It is submitted I belong to vill, Gujrat Distt Mardan,
I am working as office Assistant (BS-14) at Directorate of Social
welfare SPI, Edu & W.E Peshawar.
It is further stated that my aged & ailing parents who are
also wholly dependent upon me are residing at mardan. It is
very difficult for me to look after them properly as I am
posted at Peshawar.

It is therefore requested that I may
Kindly be transferred from Peshawar to Special Education,
Mardan against the some vacant posts of Vocational Instructors
(BS-14) at V.T.C.D.P Special Education Mardan.
It will able me to perform my official duties
properly and also look after my aged parents.

Thanks,

Yours obediently,

^{Shah}
Syed Majid Ali Shah
Assistant (BS-14)
Peshawar.

Date: 10-09-13

DD

10/9/13

Directorate of
Social Welfare K.P.K.
No: 2947
Date: 10-9-2013

Annex H

11/13/12

1181
03/04/2012

The Secretary
Social Welfare and Special Education
Peshawar

Subject :- TRANSFER

Respected sir,

It is respectfully submitted that I am permanent resident of village Gujarat Tahsil & Mardan and working as an office Assistant grade B.S-14 at directorate of social welfare and special Education Peshawar . It is very difficult for me and facing very trouble due to daily convenience. Moreover having come to know that Mr. ISHTIAQ who is also working as an office Assistant at Special Education Sheikh Maltoon Town Mardan and he is the resident of Charsadda and near to Peshawar.

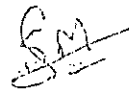
SW
SE

In the light of above it is therefore humbly request to you kind honor that I may kindly be Transferred to Special Education Sheikh Maltoon Mardan and Mr. Ishtiaq an office Assistant may kindly be transferred to the Directorate of social Welfare and special Education Jam road Road Peshawar on humane companionate ground.

I will pray for this act of kindness forever.

Your's Faithfully

Date: 01/04/2012


(SAYED MAJID ALI SHAH)

Assistant litigation section

Peshawar.

Contact No: 0300-9146641

0343-9990775

*So-cc
Forward to the
Director Genl & SE
to order the
mutual transfer of
Mr. Majid and
Mr. Ishtiaq.*

3/4/2012