



20.12.2022

Appellant alongwith counsel present. Muhammad Adeel Butt learned Additional Advocate General for respondents present.

Written reply on behalf of respondents No. 1 to 3 & 7 have already been submitted, while respondents No. 4 to 6 & 8 were given last chance to submit written reply vide order sheet dated 28.04.2022 failing which their right for submission of written reply shall be deemed as struck off. Despite directions written reply was not submitted, therefore, right of submission of written reply of respondents No. 4 to 6 & 8 stands struck off. To come up for arguments on 06.02.2023 before D.B.

SCANNED
KPST
Peshawar


(Fareeha Paul)
Member (E)



(Rozina Rehman)
Member (J)


06.02.2023

Learned counsel for the appellant present. Mr. Azam Uzair Khan, Addl. AG for the respondents present.

Learned counsel for the appellant requested for adjournment in order to further prepare the brief. Granted. To come up for arguments on 06.03.2023 before the D.B.

SCANNED
KPST
Peshawar


(FAREEHA PAUL)
Member (E)


(ROZINA REHMAN)
Member (J)

19.07.2022

Proper Bench is not available, therefore, case is adjourned to 20.10.2022 for the same as before.



Reader


20th Oct, 2022

Learned counsel for the appellant present. Mr. Kabirullah Khattak, Addl: AG for respondents present.

Learned counsel for the appellant seeks adjournment on the ground that he has not prepared the case. To come up for arguments on 20 / 10 / 2022 before D.B.



(Fareeha Paul)
Member(Executive)

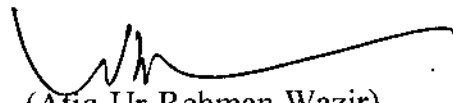


(Kalim Arshad Khan)
Chairman

11.01.2022

Counsel for the appellant present. Mr. Kabirullah Khattak, Addl. AG alongwith Mr. Nabi Gul, Superintendent for respondents present.

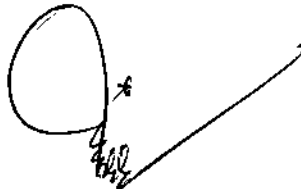
Reply/comments on behalf of respondents are still awaited. Representative of respondents sought time for submission of reply/comments. Last opportunity is granted to respondents to furnish reply/comments on or before next date, failing which their right to submit reply/comments shall be deemed as struck off by virtue of this order. To come up for arguments before the D.B on 28.04.2022.



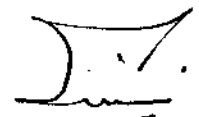
(Aliq-Ur-Rehman Wazir)
Member (E)

28.04.2022

Learned counsel for the appellant present. Mr. Nabi Gul, Superintendent as representative on behalf of respondents No. 1, 2, 3 & 7 alongwith Mr. Kabirullah Khattak, Additional Advocate General present and submitted comments, which are placed on file and copy of the same handed over to learned counsel for the appellant. Learned Additional Advocate General requested for further time for submission of reply/comments on behalf of respondents No. 4, 5, 6 & 8. Last opportunity given, failing which right for submission of reply/comments of respondents No. 4, 5, 6 & 8 shall be deemed as struck off. To come up for submission of reply/comments on behalf of respondents No. 4, 5, 6 & 8 as well as arguments on 19.07.2022 before the D.B.



(Mian Muhammad)
Member (E)



(Salah-ud-Din)
Member (J)

Anila Rehman 7266/2021

24.09.2021

Counsel for the appellant present. Preliminary arguments heard.

Learned counsel for the appellant argued that correspondence of respondent No.6 dated 01.07.2020 addressed to respondent No. 7 has been challenged whereby the facility/payment of "Health Allowance" to the appellant has been stopped and recovery of the amount already drawn was ordered. The appellant preferred departmental appeal against the impugned order on 08.07.2020 which was not responded and the appellant went in writ petition No. 3207-P/2020 before the Peshawar High Court, Peshawar. However, the Peshawar High Court, Peshawar disposed of the said writ petition on 08.06.2021 on the ground of wrong/irrelevant forum, hence, the service appeal in hand filed in Service Tribunal on 04.08.2021. Learned counsel for the appellant was confronted with the question of limitation as per provisions of Section-4 of the Service Tribunal Act, 1974. It was contended that order bring void ab-initio issued without lawful authority and without jurisdiction the question of limitation therefore does not run against void order and reliance is placed on PLD 2002 SC 84, 2007 SCMR 729, 2009 SCMR 648 and PLD 2003 SC 724.

Points raised need consideration. The appeal is provisionally admitted to regular hearing, subject to all just and legal objections including limitation. The appellant is directed to deposit security and process fee within 10 days. File to come up for arguments on 11.01.2022 before the D.B.

Appellant Deposited
Security & Process Fee

28/9/21



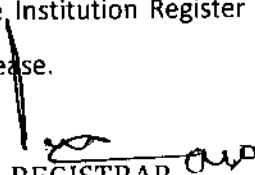

(Mian Muhammad)
Member(E)

Form- A

FORM OF ORDER SHEET

Court of _____

Case No. - 7266 /2021

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1-	09/08/2021	<p>The appeal of Mst. Aneela Rehman resubmitted today by Mr. Asif Hameed Qureshi Advocate may be entered in the Institution Register and put up to the Worthy Chairman for proper order please.</p> <p style="text-align: right;"> REGISTRAR</p>
2-		<p>This case is entrusted to S. Bench for preliminary hearing to be put up there on <u>24/09/21</u>.</p> <p style="text-align: right;"> CHAIRMAN</p>

The joint appeal of Naila Rehman, Masoor-ur-Rehman and Muhammad Ishaq received today i.e. on 04.08.2021 is in complete on the following score which is returned to the counsel for the appellants for completion and resubmission within 15 days.

- ① Memorandum of appeal may be got signed by the appellants. ✓
- 2- Copies of reinstatement/adjustment order of in respect of appellant no.1&3 mentioned in para-1 of the memo of appeal are not attached with the appeal which may be placed on it. ✓
- 3- Copy of departmental appeal in respect of appellant no.1 is not attached with the appeal which may be placed on it. ✓
- 4- Sub-rule- 2 of rule-3 of the appeal rules 1986 requires that every affected civil servant shall prefer the appeal separately. Therefore, the appeal of the above named appellants may be filed separately/individually. ✓
- 5- Annexures of the appeal may be attested. ✓
- 6- Three copies/sets of the appeal along with annexures i.e. complete in all respect for Tribunal and one for each respondent in each appeal may also be submitted. ✓

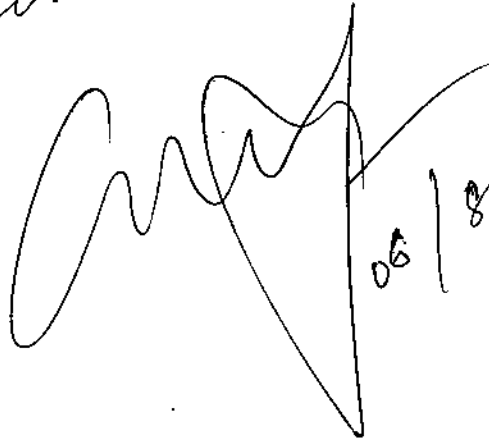
No. 1528 /S.T

Dt. 05/08 /2021


REGISTRAR
SERVICE TRIBUNAL
KHYBER PAKHTUNKHWA
PESHAWAR.

Mr. Asif Mehmood Qureshi Adv. Pesh.

*Re-submitted
after Compliance.*


05/08/21

Prayer in Appeal:-

By accepting the instant appeal, the impugned order dated 01/07/2020 of respondent No 6 may kindly be declared illegal, discriminatory and without lawful authority and the same may kindly be set by restoring the Health Allowance of the appellant from July, 2020 till the decision of this appeal.

Respectfully Sheweth:-

The facts pertaining to this appeal are as under:-

1. *That the appellant was initially of Project Shaheed Banazir Bhutto Centers for Woman^{and} in pursuance of the judgment of Honourable Peshawar High Court, Peshawar dated 08/02/2016 in Writ Petition No 1854/2012 and Writ Petition No 1880/2012, she has been re-instated and adjusted by the respondent No 1 vide order dated 23/02/2018. (Copy of order of respondent No 1 dated 23/02/2018 is attached as annexure "A").*
2. *That vide order dated 25/11/2019 of respondent No 2 the appellant granted the Health Allowance from the date of devolution to Provincial Government. (Copy of the notification dated 25/11/2019 is attached as annexure "B").*
3. *That the respondent No 6 vide impugned order dated 01/07/2020 stopped the payment of Health Allowance to the*

appellant by declaring the appellants non devolved employees and also ordered to recover the drawn amount from the appellant. (Copy of the impugned order dated 01/07/2020 is attached as annexure "C").

4. That against the above said illegal act and order of the respondent No 6 the appellant filed Writ Petition No 3207-P/2020 before the Honourable Peshawar High Court, Peshawar, and the same was dismissed on 08/06/2021 being not maintainable with the observations to approach this Honourable Tribunal. (Certified copies of the Writ Petition and judgment dated 08/06/2021 are attached as annexure "D" & "E" respectively).
5. That in the light of above said order of Honourable Peshawar High Court, the appellant is filing the instant appeal against the impugned order of respondent No 6 dated 01/07/2020 on the following amongst other grounds:-

Grounds:-

- A. That the impugned order of the respondent No 6 for the stoppage of granted Health Allowance and recovery of drawn amount of the appellant is illegal vide ab-initio, discriminatory and without lawful authority, hence liable to be set aside.

- B. That the impugned order of respondent No 6 of depriving the appellant from getting her Health Allowance has been passed without any legal justification and reasons.
- C. That the Health Allowance had been granted to appellant by respondent No 2 in pursuance of judgment of August Supreme Court of Pakistan by rightly declared the appellant as developed employees, but the respondent No 6 without any legal justification/reasons stopped the Health Allowance of the appellant and this act of the respondent No 6 is totally unwarranted under the law, because until the granted allowance/order has not been cancelled/withdrawn by the competent authority, which should be the higher than the respondent No 6.
- D. That the appellant is performing the same job, duties, functions and responsibilities, which the other officials/counter part are performing in the department, therefore, to treat the respondents different is not only illegal but discriminatory.
- E. That all the citizen of Pakistan are equal before the law and they are also equal protection of law, hence the impugned order of the respondent No 6 by stopping the Health Allowance of the appellant is clear cut violation of law laid

down Apex Court of the Country "That all persons placed in similar circumstances must be treated alike".

- F. *That the impugned order of respondent No 6 is also violation of fundamental rights guaranteed under the Articles 4, 8 & 25 of the Constitution.*
- G. *That Article 38 (C) of the Constitution of Pakistan, 1973 ensures reduction of disparity, income and earning of individual in various cadres of the service of Pakistan.*
- H. *That against the impugned order of respondent No 6 the appellant also preferred an appeal to respondent No 6, but till date the same has not been decided and this act of the appellate authority was also illegal and against the law laid down by Apex Court of the Country, reported in SCMR 2020 Peshawar 1957. (Copies of appeal and judgment are attached as annexure "F" & "G" respectively).*
- I. *That pleas/contentions of the appellant is well supported by the law laid down by superior courts of the country and in this regard reliance is placed on 2014 SCMR 1687, 2002 PLC (CS) 427, 2004 PLC (CS) 1087, 2013 PLC (CS) 592, 2012 PLC (CS) 362 & 2014 PLC(CS) 1315.*

J. That the respondents No 5 & 6 have not exercised their power, authority and jurisdiction fairly and justly, therefore, the same is liable to be declared null and void and without lawful authority.

K. That any other ground, which has not been specifically taken in the instant service appeal, may be argued at the time of arguments with the permission of this Honourable Tribunal.

It is, therefore, most humbly prayed that on acceptance of this service appeal, the impugned order dated 01/07/2020 of respondent No 6 may kindly be declared illegal, discriminatory and without lawful authority and the same may kindly be set aside by restoring the Health Allowance of the appellant from July, 2020 till the decision of this appeal.

[Handwritten signature]

Dated:- 06/08/2021

Appellant

Through:-

[Handwritten signature]

Asif Hameed Qureshi
Advocate Supreme Court

Certificate:-

It is certify that no such like Service Appeal has earlier been filed by the Appellant in this Honourable Tribunal.

[Handwritten signature] Advocate.

BEFORE THE SERVICE TRIBUNAL KHYBER PAKHTUNKHWA,
PESHAWAR

Service Appeal No:- _____/2021

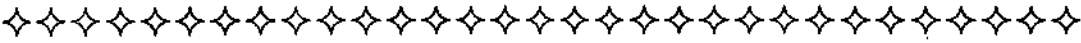
Anila Rehman

Versus

Govt: of KPK & others

..... Appellant

..... Respondents



AFFIDAVIT

I, Anila Rehman, Senior Teacher, Nistar Special Education, KDA, Kohat, (The appellant) do hereby solemnly affirm and declare on oath that the contents of this accompanying Service Appeal are true and correct to the best of my knowledge and belief and nothing has been concealed from this Honourable Court.

DEPONENT
CNIC No:- 14301-1877682-6
Cell No:-

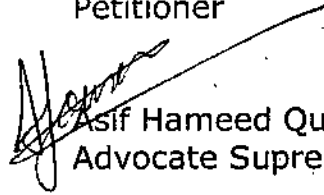
9

It is, therefore, humbly prayed that on acceptance of this application, the impugned order of respondent No 6 dated 01/07/2020 may kindly be suspended, till the final decision of the titled appeal.

Dated:- 06/08/2021


Petitioner

Through:-


Asif Hameed Qureshi
Advocate Supreme Court

AFFIDAVIT

I, Anila Rehman, Senior Teacher, Nastar Special Education, KDA, Kohat, (The appellant) do hereby solemnly affirm and declare on oath that the contents of this accompanying application for suspension are true and correct to the best of my knowledge and belief and nothing has been concealed from this Honourable Court.



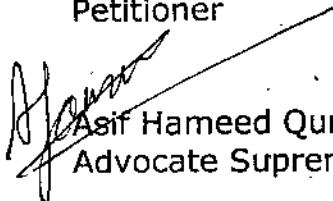
DEPONENT
CNIC No:-
Cell No:-

14301-1877682-6

- 4. That justice and equity demand that the delay may be condoned for the sake of justice.
- 5. That according to the law laid down by the Superior Courts of the Country that the cases should be decided on merits rather than on technicalities including the limitation. (Reliance is placed on 2004 PLCC.S.2 P. 1014)
- 6. That the grounds of appeal may also be considered as part of this application for condonation of delay.

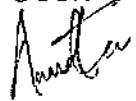
It is, therefore, humbly prayed that on acceptance of this application, the delay in filing of above titled appeal may kindly be condoned in the larger interest of justice.

Dated:- 06/08/2021

Petitioner
 Through:- 
 Asif Hameed Qureshi
 Advocate Supreme Court

AFFIDAVIT

I, Anila Rehman, Senior Teacher, Nastar Special Education, KDA, Kohat, (The appellant) do hereby solemnly affirm and declare on oath that the contents of this accompanying application for condonation of delay are true and correct to the best of my knowledge and belief and nothing has been concealed from this Honourable Court.


 DEPONENT
 CNIC No:- 14301-1877682-6

BEFORE THE SERVICE TRIBUNAL KHYBER PAKHTUNKHWA,
PESHAWAR

Service Appeal No:- _____/2021

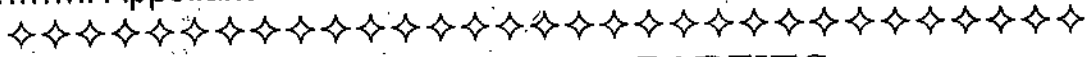
Anila Rehman

Versus

Govt: of KPK & others

..... Appellant

..... Respondents



ADDRESSES OF PARTIES

APPELLANT

Anila Rehman, Senior Teacher, Nastar Special Education, KDA, Kohat.

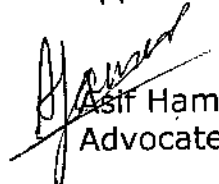
RESPONDENTS

1. Government of Khyber Pakhtunkhwa through Secretary Social Welfare, Special Education & Women Empowerment Department, Peshawar.
2. Government of Khyber Pakhtunkhwa through Secretary Finance Department, Peshawar.
3. Director Social Welfare, Special Education & Women Empowerment Department, Peshawar.
4. Accountant General, Government of Khyber Pakhtunkhwa, Peshawar.
5. Deputy Commissioner, Kohat.
6. Additional Deputy Commissioner (F&P), Kohat.
7. District Officer, Social Welfare, Special Education & Women Empowerment Department, Kohat.
8. District Comptroller of Accounts, District Complex, Gate No 2, KDA, Kohat.

Dated:- 06/08/2021


Appellant

Through:-


Asif Hameed Qureshi
Advocate Supreme Court

(13)

(6)

Annex A

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

Dated Peshawar the 23rd February, 2018

NOTIFICATION:

No. SOII/SWD/III-206/2017/Vol-I/3201-C-9 In pursuance of the Peshawar High Court Judgment dated the 18th February 2016 in Writ Petition No. 1854-P/2012 and No. 1880-P/2012, and with the approval of the competent authority, the employees of project namely "Shaheed Benazir Bhutto Centres for Women" at Peshawar, Kohat, Abbottabad and Swat of Ministry of Women Development, Islamabad are hereby reinstated and adjusted against the vacant posts mentioned against each with immediate effect.

02. The re-instatement of the above mentioned officers are subject to provision of medical fitness certificate from authorized medical officer and verification of their educational credential and character/antecedents.

S.No	Name of Employee	Previous designation with BPS	Adjustment / Re-instated as with BPS
01	Mst. Syeda-tun-Nisa Aina	Manager (BPS-18)	Manager (BPS-17), Women Crises Center Peshawar relieving Mr. Jamal Siah Mohmand, Assistant Director (B&A) Directorate of Social Welfare from the additional charge of the post of Manager Women Crises Center Peshawar
02	Mst. Nusrat Iqbal	Manager (BPS-18)	Superintendent (BPS-17), Dar-Ui-Aman Swat
03	Mst. Rabia Zakeer	Manager (BPS-18)	Superintendent (BPS-17), Dar-Ui-Aman Abbottabad, relieving Mst. Shamshad Begum District Officer Social Welfare Abbottabad from the additional charge of the post of Superintendent Dar-Ui-Aman
04	Mst. Anceela Rahman	Manager (BPS-18)	Senior Special Education Teacher (BPS-17), Nishtar Special Education Center Kohat against the vacant post
05	Mr. Waheed Ullah	Law Officer (BPS-17)	Senior Special Education Teacher (BPS-17), Special Education Complex Hayatabad Peshawar, against the vacant post
06	Mr. Salim Zada	Law Officer (BPS-17)	Social Welfare Officer (BPS-17), Tehsil Head Quarter Hospital Chakdara Dir Lower, against the vacant post
07	Mr. Masood-Ur-Rahman	Law Officer (BPS-17)	Senior Special Education Teacher (BPS-17), Nishtar Special Education Center Kohat, against the vacant post



15/2/18

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

Dated Peshawar the 23rd February, 2018

NOTIFICATION:

No.SOIL/SWD/II-206/2017/Vol-I/3801-09:- In pursuance of the Peshawar High Court Judgment dated the 18th February 2016 in Writ petition No.1854-P/2012 and No.1880-P/2012, and with the approval of the competent authority, the employees of project namely "Shaheed Benazir Bhutto Centres for Women" at Peshawar, Kohat, Abbotabad and Swat of Ministry of Women Development, Islamabad are hereby reinstated and adjusted against the vacant posts mentioned against each with immediate effect.

02. The re-instatement of the above mentioned officers are subject to provision of medical fitness certificate from authorized medical officer and verification of their educational credential and character/antecedents.

S.No	Name of Employee	Previous Designation With BPS	Adjustment/Re-instated as with BPS
01	Mst Syeda-tun-Nisa Alia	Manager (BPS-18)	Manager (BPS-17), Women Crises Center Peshawar relieving Mr. Jamal Shah Mohmand, Assistant Director (B&A) Directorate of Social Welfare from the additional charge of the post of Manager Women Crises Center Peshawar.
02	Mst Nusrat Iqbal	Manager (BPS-18)	Superintendent (BPS-17), Dar-UI-Aman Swat.
03	Mst Rabia Zakeer	Manager (BPS-18)	Superintendent (BPS-17), Dar-UI-Aman Abbotabad, relieving Mst Shamshad Begum District Officer Social Welfare Abbotabad from the additional charge of the post of Superintendent Dar-UI-Aman.
04	Mr.Aneela Rahman	Manager (BPS-18)	Senior Special Education Teacher (BPS-17), Special Education Center Kohat against the vacant post.
05	Mr.Waheed Ullah	Law Officer (BPS-17)	Senior Special Education Teacher (BPS-17), Special Education Complex Hayatabad Peshawar against the vacant post.
06	Mr. Salim Zada	Law Officer (BPS-17)	Social Welfare Officer (BPS-17), Tehsil Head Quarter Hospital Chakdara Dir Lower, against the vacant post.
07	Mr. Masood UR Rehman	Law Officer (BPS-17)	Senior Special Education Teacher (BPS-17), Nishtar Special Education Center Kohat, against the vacant post.

9	Mst. Saira Mushtaq	Law Officer (BPS-17)	Senior Special Education Teacher (BPS-17), Mentally Retarded & Physically Handicapped Children Abbottabad, against the vacant post
09	Mst. Rehana Feroz	Social Welfare Officer (BPS-17)	Senior Special Education Teacher (BPS-17), Special Education Center for Heard Impaired Children Swat, against the vacant post
10	Mst. Bushra Parvez	Social Welfare Officer (BPS-17)	Social Case Worker (BPS-17), Nishtar Special Education Centre Kohat against the vacant post
11	Mst. Shamim Akhter	Social Welfare Officer (BPS-17)	Senior Special Education Teacher (BPS-17), Mentally Retarded & Physically Handicapped Children Haripur against the vacant post

03. Consequent upon adjustment of Mst. Nusrat Iqbal as Superintendent (BPS-17) Dar-ul-Aman, Swat Mr. Rahat Ullah is hereby transferred and posted as Rehabilitation Officer, Rehabilitation Centre for Drug Addicts Swat, relieving Mr. Asif Khan, District Officer Social Welfare Swat from the additional charge of the post of Rehabilitation Officer, Rehabilitation Centre for Drug Addicts Swat.

--sd--

Secretary to Govt: of Khyber Pakhtunkhwa
Zakat, Ushr, Social Welfare, Special Education & Women
Empowerment Department.

Endst: of Even No & Date:

Copy forwarded for information and further necessary action to the -

1. Accountant General Office, Khyber Pakhtunkhwa Peshawar.
2. Principal Secretary to Chief Minister Govt. of Khyber Pakhtunkhwa.
3. Registrar, Peshawar High Court Peshawar.
4. Director Social Welfare, Special Education & Women Empowerment, Khyber Pakhtunkhwa
5. Deputy Director MIS, Social Welfare, Special Education & Women Empowerment Department
6. Section Officer-V, Social Welfare, Special Education & Women Empowerment Department
7. All the District Accounts Officers concerned
8. All the District Officers Social Welfare concerned.
9. PS to Secretary, Zakat, Ushr, Social Welfare, Special Education & Women Empowerment Department

[Handwritten signature]

(Muhammad Saud)
Section Officer-I

08	Mst Saira Mushtaq	Law Officer (BPS-17)	Senior Special Education Teacher (BPS-17), Mentally Retarded & Physically Handicapped Children Abbotabad, against the vacant post.
09	Mst. Rehana Farid	Special Welfare Officer (BPS-17)	Senior Special Education Teacher (BPS-17), Special Education Centre for Heard Impaired Children Swat, against the vacant post.
10	Mst Bushra Parvez	Special Welfare Officer (BPS-17)	Social Case Worker (BPS-17), Nishter Special Education Centre Kohat, against the vacant post.
11	Mst. Shamim Akhtar	Special Welfare Officer (BPS-17)	Senior Special Education Teacher (BPS-17), Mentally Retarded & Physically Handicapped Children Haripur against the vacant post.

03. Consequent upon adjustment of Mst. Nusrat Iqbal as Superintendent (BPS-17) Dar-ul-Aman, Swat Mr. Rahat Ullah is hereby transferred and posted as Rehabilitation Officer, Rehabilitation Centre for Drug Addicts Swat, relieving Mr. Asif Khan, District Officer Social Welfare Swat from the additional charge of the post of Rehabilitation Officer, Rehabilitation Centre for Drug Addicts Swat.

Sd/-

**Secretary to Govt: Of Khyber Pakhtunkhwa
Zakat, Ushr, Social Welfare, Special Education & Women
Empowerment Department**

Endst: of Even No. & Date:-

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

1. Accountant General Office, Khyber Pakhtunkhwa, Peshawar.
2. Principal Secretary to Chief Minister Govt of Khyber Pakhtunkhwa.
3. Registrar, Peshawar High Court, Peshawar.
4. Director Social Welfare, Special Education & Women Empowerment, Khyber Pakhtunkhwa.
5. Deputy Director MIS, Social Welfare, Special Education & Women Empowerment Department.
6. Section Officer-VI, Social Welfare, Special Education & Women Empowerment Department.
7. All the District Accounts Officers concerned.
8. All the District Officers Social Welfare concerned.
9. PS to Secretary, Zakat, Ushr, Social Welfare, Special Education & Women Empowerment Department.



**(Muhammad Saud)
Section Officer-II**

15

13

M/2



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

19 Dec 2019

Reference is made to the report of the...

Name of organization: ...
From: ...
To: ...

Secretary to Govt of Khyber Pakhtunkhwa
Zakat, Ushr, Social Welfare, Special Education & Women
Empowerment Department.

Copy of File No. & Date:

Copy forwarded for information and further necessary action to the:

- 1. Additional Secretary, Khyber Pakhtunkhwa
- 2. Secretary, Special Education & Women Empowerment Department
- 3. Secretary, Social Welfare, Special Education & Women Empowerment Department
- 4. District Officer, Charsadda and Kunar
- 5. District Officer, Charsadda and Kunar
- 6. P.O. Secretary, Social Welfare, Special Education & Women Empowerment Department
- 7. P.O. Secretary, Social Welfare, Special Education & Women Empowerment Department
- 8. P.O. Secretary, Social Welfare, Special Education & Women Empowerment Department
- 9. P.O. Secretary, Social Welfare, Special Education & Women Empowerment Department
- 10. P.O. Secretary, Social Welfare, Special Education & Women Empowerment Department

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Section Officer II

BETTER COPY

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

Dated Peshawar the 4th Dec, 2019.

Notification

No.SOI(SW)II-52/2016/- The competent authority is pleased to order the posting/transfer of the following officers of Social Welfare Special Education & Women Empowerment Khyber Pakhtunkhwa in the best public interest with immediate effect:-

Sr.#	Name & Designation	From	To
01.	Muhammad Younis Afridi, Social Welfare Officer (BS-17)	District Officer Social Welfare Charsadda	Deputy Director Nishter Special Education Complex Kohat against the vacant post.
02.	Mr. Shoaib Khan Social Welfare Officer (BS-17)	Office of the District Officer, Social Welfare Office Peshawar	District Officer Social Welfare Charsadda, vide Serial No.01

Sd/-

**Secretary to Govt: Of Khyber Pakhtunkhwa
Zakat, Ushr, Social Welfare, Special Education & Women
Empowerment Department**

Endst: of Even No. & Date:-

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

1. Accountant General Office, Khyber Pakhtunkhwa.
2. Director Social Welfare, Special Education & Women Empowerment, Khyber Pakhtunkhwa.
3. Deputy Director MIS cell, Social Welfare, Special Education & Women Empowerment Department.
4. District Social Welfare Officer Charsadda and Kohat.
5. District Accounts Officer Charsadda and Kohat.
6. PS to Secretary, Zakat, Ushr, Social Welfare, Special Education & Women Empowerment Department.
7. Officers concerned
8. Personal file
9. Master File.

Section Officer-II



GOVERNMENT OF KHYBER PAKHTUNKHWA
FINANCE DEPARTMENT
(REGULATION WING)

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B
Asstt

Dated Peshawar the 25-11-2019

NOTIFICATION

- 53

No.FM(SOSR-III)-7/2019, in pursuance of the Supreme Court of Pakistan Civil Appeal No 2112010 titled "Masood 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 month basic pay to the devolved employees working in the Special Education Institutions from the date of their devolution to Provincial Govt of Khyber Pakhtunkhwa.

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

Copy to 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, FIADU 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

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173015662965-3

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Attended

BETTER COPY

GOVERNMENT OF KHYBER PAKHTUNKHWA
FINANCE DEPARTMENT
(REGULATION WING)

Dated Peshawar the 25.11.2019

NOTIFICATION

NO. FD(SOSR-ID8-7/2019-: In pursuance of the Supreme Court of Pakistan Civil Appeal NO. 811/2016 titled "Muhammad Atique -ur-Rehman & others V/s Federal Government of Pakistan (Provincial Cabinet) has been please to approve Health Allowance at the rate of one running basic pay to the devolved employees working in the Special Education Institution from the date of their devolution to Provincial Govt of Khyber Pakhtunkhwa.

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

SECRETARY TO GOVT. OF KHYBER PAKHTUNKHWA
(FINANCE DEPARTMENT)



Attested



OFFICE OF THE DEPUTY COMMISSIONER
KOHAT

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NO. 4958 = /F&P/DC/KT

Dated 01/07/20

To

The District Officer
SW, SE & WE, Kohat

Subject: HEALTH PROFESSIONAL ALLOWANCE

Please refer to your letter No. DO/SW/KT/HPA 6925 dated 6-2-2020 and this office letter No 4283/F&P/DC/KT dated 24-2-2020 on the subject noted above.

The Government of Khyber Pakhtunkhwa Finance Department vide their Notification No. FD(SOSR-II)8-7/2019-53 dated 25-11-2019 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. (copy attached)

However, the following employees mentioned in your letter are appointed / adjusted / transferred in the Special Education Center, Kohat. (copy attached)

- | | |
|---------------------------|-------------------|
| 1. Muhammad Younas Afridi | Deputy Director |
| 2. Masood ur Rehman | Senior Teacher |
| 3. Anila Rehman | Senior Teacher |
| 4. Muhammad Ishaq | Computer Operator |
| 5. Zia ur Rehman | Driver |
| 6. Mubshir Iqbal | Naib Qasid |
| 7. Zahid | Attendant |

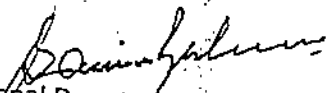
The above mentioned employees are not devolved employees and they are drawing the Health Allowance illegally as per notification.


It is therefore requested to immediately stop the payment of Health Allowance to the non-devolved employees and make a mechanism to recover the illegally drawn amount from the employees.


Additional Deputy Commissioner (F&P)
Kohat

Copy forwarded for information to the:

1. Deputy Commissioner, Kohat.
2. District Comptroller of Accounts, to stop the payment to non devolved employees.
3. Accountant General, Govt of Khyber Pakhtunkhwa, Peshawar.
4. PS to Special Secretary, Finance Department, Khyber Pakhtunkhwa.
5. Deputy Director NSEC, Kohat w.r.t his letter No 1-11/SEC/KT/2012-343 dated 12th FEB, 2020.
6. PA to Director Social Welfare, Peshawar.


Additional Deputy Commissioner (F&P)
Kohat





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OFFICE OF THE DISTRICT
OFFICER SOCIAL WELFARE,
SE & WE DEPARTMENT: KOHAT

No. 7039 DO/SW/KT

Dated. 08/07 /2020

To

The Deputy Commissioner,
Kohat.

Subject: Health Professional Allowance

Please refer to the letter No.4958/F&P/DC/KT dated 01/07/2020 and this office letter No.7036/DO/SW/KT dated 07/07/2020 on the subject cited above address to Deputy Director (NSEC, Kohat).

A self explanatory appeal for sanction of "Health Allowance" to the adjusted/transferred employees of KPIC Govt. to the Devolved Institute (NSEC, Kohat) is attached for further necessary action please.

Copy for information to:-

- 1- Director, Social Welfare Spl. Edu. WED, Kohat
- 2- District Comptroller of Accounts Kohat

District Officer,
SW, SE & WE, Kohat

District Officer,
SW, SE & WE, Kohat


Attested

BEFORE THE PESHAWAR HIGH COURT, PESHAWAR

W.P No. 3207 - P/ 2020



Annex (D)

1. Masood-ur-Rehman Senior Teacher, Nastar Special Education, KDA, Kohat.
2. Muhammad Younis Deputy Director, Nastar Special Education, KDA, Kohat.
3. Anila Rehman Senior Teacher, Nastar Special Education, KDA, Kohat.
4. Muhammad Ishaq Computer Operator, Nastar Special Education, KDA, Kohat.Petitioners

Versus

1. Government of Khyber Pakhtunkhwa through Secretary Social Welfare, Special Education & Women Empowerment Department, Peshawar
2. Government of Khyber Pakhtunkhwa through Secretary Finance Department, Peshawar.
3. Director Social Welfare, Special Education & Women Empowerment Department, Peshawar
4. Accountant General, Government of Khyber Pakhtunkhwa, Peshawar
5. Additional Deputy Commissioner (F& P) Kohat
6. District Officer, Social Welfare, Special Education & Women Empowerment Department, Kohat
7. District Comptroller of Accounts, District Complex, Gate No. 2 KDA, Kohat.Respondents

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

ATTESTED
EXAMINER
Peshawar High Court

Respectfully Sheweth:

1. That the Government of Khyber Pakhtunkhwa Finance Department Issue a notification bearing No. FD(SOSR-II)8-7/2019 Dated 25/11/2019 wherein Health Allowance at the rate of one running basic pay has been awarded to devolved employees working in the

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Special Education Institutions from the date of devolution to Provincial Government. (Copy of the Notification is attached as Annexure "A")

2. That petitioners being transferred /posted in the said department have also been granted the same health allowance from the date of their joining duties in the Special Education Institution.
3. That respondent No. 5 send letter dated 01/07/2020 to respondent No. 7 vide which the benefits receiving by the petitioner have been declare illegal and order for stoppage of the same and recovery of the already drawn amount. (Copy of the letter is attached as Annexure "B")
4. That petitioner are performing the same duties which are performing by the others who are held entitled for the health allowance and thus petitioners are discriminated and thus indulgence of this Hon'ble Court is required and thus petitioner having being aggrieved and dissatisfied by the actions and inactions, misuse of power, excess of power and discrimination of the respondents, and having no other alternative remedy seek the indulgence of this of this Hon'ble Court, inter alia, on the following grounds:

GROUND S:

- A) That respondents are violating the clear cut directions of Higher Judicial forum of the country regarding discrimination amongst the employees of the same department, thus the impugned actions and inactions violate the mandate provided under Article 4 & 25 of the Constitution of Pakistan.
- B) That respondent are legally bound to treat the petitioner at par with the others who has been held entitled for health allowance but the petitioners have been discriminated by the respondents although the August Supreme Court has clearly directed respondent department to treat all the person holding the same post alike, hence the manner in which the petitioner has been treated need indulgence of this Hon'ble Court.

~~ALLEGED~~
EXAMINER
Peshawar High Court

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- C) That because the impugned actions and inactions are against the principles ordained under Article 25 of the Constitution of Islamic Republic of Pakistan.
- D) That petitioner are providing same services and same nature of job within the same institute on the ground of which devolved employees of special Education getting " Health Allowance". Under the law petitioner are liable to be treated alike but this aspect of the case has been ignored by the respondents.
- E) That petitioner are also falling under the same category as they are providing the same services which the other person who are retaining " Health Allowance" which created great disparity amongst the employees inducted/ transferred by the Government of Khyber Pakhtunkhwa and Devolved Employees within the same institute (NSEC, Kohat) and a clear cut discrimination.
- F) That because the impugned actions and inactions are blatantly against all norms of justice and principles of reasonability.
- G) That employees of Special Education Devolved from Federal Government to Province under 18th Constitution Amendment absorbed with Social Welfare, Special Education and Woman Empowerment Department which is providing the same services to Special Children as provided by the Directorate General, Special Education (DGSE) at Federal Level. While later on the vacant post in these Devolved institute are filled by the Khyber Pakhtunkhwa Government by inducting / Transferred from Khyber Pakhtunkhwa Social Welfare, Special Education and Women empowerment Department. The Apex Court of Pakistan vide case reported as 1996 SCMR 1185 has held " rule of good governance" demand that benefits of the said decision to the other civil servants also who may not be party to this litigation, instead of compelling to approach the tribunal or other legal forum.
- H) That in view of the Judgments of Superior Judiciary it was incumbent upon respondent to have accorded the same benefits to all the officers similarly placed but they badly fails to discharge their responsibility thus indulgence of this Hon'ble Court is required in the matter.

ATTESTED
EXAMINER
Peshawar High Court

(4) (9) (22) (D/S)


It is, therefore, respectfully prayed that on accepting this Writ Petition respondents may please be directed to act in the matter in accordance to law and petitioners being similarly placed and providing same services and same nature of job within the same institute thus entitled to "Health Allowance" which the other employees are drawing and thus the letter bearing No. 4958/ F & P/DC/KT dated 01/07/2020 may please be declare illegal, against the judgments of superior Court, based on discrimination and thus liable to be struck down.

Any other relief not specifically prayed for deem appropriate in the circumstance of the case may also be granted.

INTERIM RELIEF

To safe guard the right of the petitioner the operation of the impugned letter dated 01/07/2020 may please be suspended.

Petitioners
Through


SHAHID QAYUM KHATTAR
Advocate, Supreme Court
of Pakistan

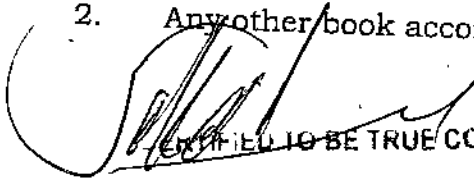
Certificate:-

Certified (as per information provided by petitioner) that no such Writ Petition has previously been filed by the petitioner before this Hon'ble court.


Advocate

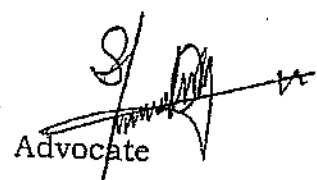
List of Books:-

1. Constitution of Islamic Republic of Pakistan, 1973
2. Any other book according to need.


CERTIFIED TO BE TRUE COPY

EXAMINER
Peshawar High Court, Peshawar
Authorized Under Article 87 of
The Constitution of Pakistan Order 1997

12 JUN 2021


Advocate

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PESHAWAR HIGH COURT, PESHAWAR.

FORM 'A'
FORM OF ORDER SHEET

Date of order.	Order or other proceedings with the order of the Judge
08.06.2021	<p style="text-align: center;"><u>W.P.No.3207-P of 2020.</u></p> <p>Present: Mr.Shahid Qayum Khattak, advocate for the petitioners.</p> <p style="text-align: center;">Mr.Khaled Rehman, AAG for the respondents.</p> <p style="text-align: center;">—</p> <p style="text-align: center;"><u>LAL JAN KHATTAK, J.-</u> Petitioners through the instant petition under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973 seek issuance of an appropriate writ directing the respondents to act in the matter in accordance with law entitling them to the Health Allowance being drawn by similarly placed employees and also to declare letter dated 01.07.2020 as illegal, against the judgments of superior courts, discriminatory and thus same be struck down.</p> <p>2. Arguments heard and record gone through.</p> <p>3. Perusal of the case record would show that the petitioners are civil servants and the matter qua grant of the Allowance as claimed by them through the instant petition is one of the terms and conditions of their service and if any term and condition of service of a civil servant is violated by his department, then in that eventuality, he can approach the Services Tribunal established by the Government for that purpose and on no count he can come to this court for the enforcement of any of the terms and conditions of his service keeping in view the bar</p>



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ATTESTED
EXAMINER
Peshawar High Court

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contained in Article 212 of the Constitution of Islamic Republic of Pakistan, 1973.

4. For what has been discussed above, the petition in hand is hereby dismissed in limine for its being not maintainable before this court, leaving the petitioners at liberty to approach the Services Tribunal for the redressal of their grievance, if so advised.

JUDGE

JUDGE

EXAMINER
Peshawar High Court, Peshawar
Authorised Under Article 87 of
The Constitution of Pakistan

12 JUN 2021

No. 37492
Date of Presentation of Application 10/6/2021
No of Pages 62
Copying fee
Total
Date of Preparation of Copy 12/6/2021
Date of Delivery of Copy 12/6/2021
Received By

Deputy Commissioner
Kohat

Through : Proper Channel : (District Officer, Social Welfare Kohat)

SUBJECT: APPEAL FOR SANCTION OF HEALTH ALLOWANCE TO THE INDUCTED/
TRANSFERRED EMPLOYEES OF KPK GOVT. TO THE DEVOLVED INSTITUTE
(NSEC, KOHAT)

Respect Sir,

It is humbly submitted in your kind honour and your attention is invited to the subject cited above and to state that primarily the "Health Allowance" was allowed to the employees of Directorate General Special Education and Allied institutions/Centers w.e.f 01-01-2012 in light of the Federal Service Tribunal Decision dated 18-07-2017 (Annex-A) and Supreme Court of Pakistan decision Dated 17-01-2018 (Annex-B) which is very much clear that the employees of Directorate General Special education (DGSE) allied institutions/Centers, NCRDP etc are entitled for "Health Allowance".

The Finance Department Khyber Pakhtunkhwa recent Notification FD(SOSR-1108-7/2019/53 dated 25-11-2019 (Annex-C) all the employees of Nishtar Special Education Center Kohat (Devolved and inducted/ Transferred by KPK Govt:) submitted the Case for honoring "Health Allowance" along with arrear within the stipulated period of the individual which was honored accordingly.

Now as per reference No:4958/F&P/DC/KT Dated 01-07-2020 Additional Deputy Commissioner (F&P) Kohat mentioned that the employees inducted/ Transferred by KPK Govt: in the Devolved Institute NSEC, Kohat are not devolved employees and are getting "Health Allowance" illegally and issue direction to District Comptroller of Accounts Kohat, to Stop the payment of "Health Allowance" and make mechanism for recovery to the non-devolved employees of (NSEC, Kohat) vide Notification No: FD(SOSR-1108-7/2019/53 dated 25-11-2019.

Sir we are providing same services and same nature job within the same Institute (NSEC, Kohat) on the ground of which devolved employees of Special Education retained "Health Allowance" we also fall in the category of Health personal.. Sir this has created extreme disappointment among employees inducted/transferred by the Govt: of KPK and Devolved employees within the same institute (NSEC, Kohat) and seems to be discriminatory offending Article 4 and 25 of the constitution of Islamic Republic of Pakistan 1973 Section 2(b) entitle all pay and allowances as prescribed by Federal and Provincial Govt: employees without any discrimination.

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Similarly the honorable Apex Court vide its judgment in the case reported as 1996 SCMR 1185 has already held "rule of good governance" demands that benefits of the said decision to the other civil servants also who may not be party to this litigation, instead of compelling to approach the tribunal or other legal forum.

The employees of Special Education Devolved from Federal Govt. to Province under 18th Constitution Amendment absorbed with Social Welfare, Special Education and Women Empowerment Department which is providing the same services to Special children as provided by the Directorate General, Special Education (DGSE) at Federal level. While later on the vacant Post in these Devolved institute are filled by the KPK Govt. by inducting/Transferred from KPK Social Welfare, Special Education and Women empowerment Department.

In view of the above factual position it is humbly requested to accord approval of "Health Allowance" to all the staff/employees of Devolved institute and stop recovery from the following inducted/transferred employees to Devolved institute (NSEC, Kohat) and reinstate ("Health Allowance") as to other devolved employees of the Center (NSEC, Kohat).

- 1. Muhammad Younas Afridi Deputy Director
- 2. Masood ur Rehman Senior Teacher
- 3. Anila Rehman Senior Teacher
- 4. Muhammad Ishaq Computer Operator
- 5. Zia ur Rehman Driver
- 6. Mubsher Iqbal Naib Qasid
- 7. Zahid Attendant

[Signature]
5-7-2020

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8-7-2020

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8-7-2020

[Signature]
03/07/2020

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مبشر اقبال

زاهد

Copy for information and necessary action to:-

- 1- The Director, SW, SE & WE Department, Khyber Pakhtunkhwa.
- 2- The District Comptroller of Accounts, Kohat.

[Signature]

Attested

2020] Lahore Development Authority v. Muhammad Tariq Niazi (Sayed Mazhar Ali Akbar Nagvi, J.) 1957

their reasoning. For the reasons given above, I would hold that the reflective loss principle, if it exists, does not apply in the present case.

212. In view of my conclusion that the reflective loss principle does not apply in this case, the question regarding the ambit of the exception to that principle, which was identified in *Giles v Rhind*, does not arise. However, it is worth pointing out that the exception was identified in an effort to achieve practical justice against the backdrop of an assumption that the reflective loss principle stated in *Prudential* was valid. If *Prudential* is held to lay down a bright-line rule of law, deeming reflective loss not to be a loss, whatever the true position on the facts, and that bright-line rule is endorsed, cases such as *Giles v Rhind*, exemplifying the dissonance between the rule and practical justice on the facts, will continue to arise. This will put pressure on the acceptability of the rule itself.

Conclusion

213. For the reasons set out above, I would allow Marex's appeal and permit it to proceed with its OBG claim and *Lumley v Gye* claim directly against Mr Sevilla.

MWA/6/UKSCC
Appeal allowed.

2020 S.C.M.R. 1957

[Supreme Court of Pakistan]

Present: Jaz ul Hassan, Amin-ud-Din Khan and Sayed Mazhar Ali Akbar Nagvi, JJ.

LAHORE DEVELOPMENT AUTHORITY

and another—Appellants

versus

MUHAMMAD TARIQ NIAZI—Respondent

Civil Appeal No. 152-L of 2010, decided on 27th August, 2020

(Against the judgment of Lahore High Court, Lahore, dated 24.06.2002 passed in R.A. No. 180/1994)

(a) Specific Relief Act (I of 1877)—

—Ss. 12 & 42—Suit for declaration and specific performance—Open public auction—Plot bought by highest bidder in open public auction put up for re-auction by the (Lahore) Development Authority (the

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Authority?—Legality—Admittedly the plaintiff participated in the open auction qua the subject plot, and during the bidding proceedings he was declared the highest bidder—Plaintiff deposited Rs. 1,50,000/- at the time of bid and later on he deposited Rs. 1,18,500/- as 1/3rd of the bid—Authority never denied the fact that the plaintiff visited the Authority's office various times in order to complete the bidding process by depositing the rest of the amount to discharge his liability qua payment of amount of auction—After the auction was complete the Authority enhanced the price of bid belatedly on the pretext that a third party, which had not participated in the open auction, had made a higher offer for the subject plot than the plaintiff—Plaintiff even agreed to meet such enhanced offer, under protest, which enhanced offer did not have sanction of any law—Despite plaintiff agreeing with re-auction of the plot—Such enhanced offer made belatedly by a third party could not be made basis for re-auction of the plot and such practice seemed to be un-precedented being without any lawful authority—Authority was grossly unjustified to issue another proclamation for public auction relating to the subject plot, once its valid acceptance was made by the plaintiff—Suit filed by plaintiff against the Authority had been rightly decreed—Appeal filed by Authority was dismissed. *Ipp. 1960, 1961] A, B & C*

(b) Public functionary—

Public functionaries were expected to perform their duties well within the prescribed limits of the law of the land—Any act by a public functionary against the dictates of justice might frustrate public confidence qua public functionaries which might be detrimental to uphold the public order which was paramount to keep the society peaceful. *Ip. 1962] D*

Ch. Waseem Arif Bhaddar, Advocate Supreme Court and
M. Sabir, Deputy Director for Appellants.

Ahmad Waheed Khan, Advocate Supreme Court for Respondent.

Date of hearing: 27th August, 2020.

JUDGMENT

SAYYED MAZAHAR ALI AKBAR NAQVI, J.—Civil appeal, by leave of the Court under Article 185(3) of Constitution of Islamic Republic of Pakistan, 1973, is directed against the impugned judgment of Lahore High Court, Lahore dated 24.06.2002 passed in R.F.A. No.180 of 1994.

2020] Lahore Development Authority v. Muhammad Tariq Niaz 1959
(Sayyed Mazahar Ali Akbar Naqvi, J.)

2. The facts leading to file the instant civil appeal are that the respondent/plaintiff filed a suit for declaration/specific performance with consequential relief qua an agreement on the basis of which an offer was made by the appellant to respondent/plaintiff. The said offer was in response to an open public action proceedings published in a newspaper dated 06.10.1980 regarding a plot bearing No.193/B, Upper Mall Lahore. The respondent/plaintiff was one of the participants in the open auction proceedings while depositing Rs.5000/- in lieu of terms and conditions. The respondent/plaintiff was declared as highest bidder of the auction proceedings which was declared Rs.3,56,000/- per Kanal. As the respondent was highest bidder by all standards, therefore, the appellant formally invited the respondent to make 1/3 of the total auction price as per legal requirement at the spot. Consequently, Rs.1,50,000/- was deposited and he was further directed to deposited an amount of Rs.1,18,500/- in view of the acceptance of the bid. All such requirements were fulfilled accordingly and as such receipt of the same was duly issued. The respondent visited the office of the appellant time and again while seeking demand notice to make the rest of the amount payable against total auction amount. It is a matter of surprise that letter bearing No.707 dated 18.10.1980 was sent by the appellant/defendant wherein the respondent/plaintiff was intimated to contact the appellant/defendant. Subsequently, the respondent/plaintiff was informed on 11.12.1980 that a third party (not participated in auction proceedings) had offered them higher price of Rs.3,85,000/- per Kanal and as such showed their unwillingness to hand over the plot, the subject matter of auction proceedings to the respondent/plaintiff. Although the subsequent development was squarely unjustified, however, the respondent/plaintiff showed his inclination to pay the enhanced price to meet the offer and as such intimated the appellant through a letter which was incorporated in diary of the appellant on 11.12.1980. The appellant in lieu of the offer made to the respondent/plaintiff directed him verbally to deposit the remaining amount within seven days, but in the meantime another public notice for open auction was published in "Daily Pakistan Times" dated 16.11.1980 wherein the same plot bearing No.193/B Upper Mall Lahore was made the subject matter which was already auctioned in favour of the respondent/plaintiff.

3. Being aggrieved by the conduct of the appellant, the respondent/plaintiff filed a declaratory suit and specific performance with consequential relief, while calling in question the re-auction of the plot already auctioned in favour of respondent/plaintiff. The learned trial court after recording of evidence of both the parties decreed the suit of the respondent/plaintiff vide judgment and decree dated 27.03.1994. The appellant challenged the judgment and decree of learned trial court

through filing Regular First Appeal before Lahore High Court, Lahore which was ultimately dismissed vide judgment dated 24.06.2002.

4. At the very outset, learned counsel for the appellant contends that the learned courts below have grossly misinterpreted, misconstrued the evidence available on the record which was not evaluated in its true prospective. It is further contended that the oral as well as documentary evidence adduced by the appellant was altogether ignored and the same was not given due appreciation. Contents that the main aspect of the auction proceedings was not sustainable as no approval of the Director General was ever sanctioned in favour of the auction proceedings in the capacity as "competent authority" and as such, whole super structure raised has no legal sanctity. Contents that the declaration as prayed was not sustainable as such no right or interest was ever accrued to the respondent/plaintiff in the given scenario. Contents that the communication through Ex.D-8 qua confirmation of the auction proceedings has no legal weightage as the negotiations were carried out with LDA staff having no authorization to enter into negotiations and as such hardly contribute towards completion of contract. Lastly, it is argued that mere assumption that the contract was complete cannot be substituted in absence of due sanction by the competent authority which is squarely missing in the given circumstances. Learned counsel prayed that as no right or interest has accrued in favour of the respondent/plaintiff, hence, no liability can be ascribed to the appellant, therefore, the reasoning assigned by the learned courts below are artificial, hence, nullity in the eye of law.

5. On the other hand, learned counsel appearing on behalf of respondent argued that the respondent was bona fide participant/bidder of the auction proceedings qua the plot in question. Contents that all pre-requisite to enter into open auction were fulfilled as per terms and conditions and as such the depositing of different instalment being highest bidder further supplement the bona fide of the respondent/plaintiff. Contents that the conduct of the appellant while enhancing the auction price at belated stage was uncalled for although the respondent/plaintiff accepted the same with open heart. Contents that the public functionary cannot demonstrate beyond the limits prescribed by the law and as such an equitable right of the respondent was made complicated in unprecedented manner, hence, such conduct cannot be assented by the court of law.

6. We have heard the arguments of the learned counsel for the parties and perused the record with their able assistance.

7. There is no denial to this fact that the respondent/plaintiff participated in the open auction qua the plot bearing No. 193/B, Upper

SCMR

Mall Lahore. During the bidding proceedings respondent/plaintiff was declared the highest bidder. The said claim of the respondent/plaintiff was even accepted by the appellant while submitting written statement before the learned trial court. It was further admitted that the respondent deposited Rs.1,50,000/- at the time of bid and later on he deposited Rs.1,18,500/- as 1/3rd of the bid. Admittedly the appellant/defendant never denied the various visits of respondent/plaintiff in the office of LDA in order to complete the bidding process while depositing the rest of the amount to discharge its liability qua payment of amount of auction. The introduction of third party by the appellant (not participated in the open auction proceedings) with offer of higher price was also intimated to the respondent/plaintiff which was ultimately accepted by the respondent/plaintiff and as such the letter was written which was incorporated in the daily register, therefore, despite of the acceptance of higher price another public notice was published in daily newspaper, Faqir Muhammad, Assistant Director LDA while appearing as DW.1 admitted in cross-examination that the respondent was the highest bidder and LDA issued letter Ex.P.2 to respondent for negotiation. DW.1 also admitted that the respondent paid an amount of Rs.2,73,500/- at the spot as 1/3rd amount of the bid. The cross-examination of DW.1 further reveals that one Saeed Ahmad filed an application to the LDA that the disputed plot be given to him at the rate of Rs.3,85,000/- per Kanal and the respondent was called through letter Ex.P3 to accept that amount in order to hand over the disputed plot. DW.1 further admitted that in record of LDA, the application of respondent is available that in the to admit the condition under protest. The appellant did not deny that the offer was made subsequently to the respondent/plaintiff, therefore, the appellant could not back out from his admission. The written statement and Ex.P.4 and Ex.P5 shows that the acceptance of DW.1 Faqir Muhammad appellant to pay the price at the rate of Rs.3,85,000/- was made first orally on 03.11.1980 and thereafter through Ex.P4 dated 28.11.1980 and then through Ex.P.5 dated 15.12.1980 despite the fact that as per Ex.D.2 the bid of the respondent/plaintiff was cancelled on 28.11.1980. The learned counsel for the appellant was specifically confronted that the Director General ever proceeded to cancel the bid being unlawful as it was carried out without the sanction of competent authority. Further that the competent authority ever proceeded against those employees who negotiated with the respondent/plaintiff on behalf of the competent authority without seeking prior sanction. The learned counsel failed to satisfy this Court. Otherwise the fact that the price of bid was enhanced at belated stage on the pretext that one person who was not participant of the open auction had made an offer of higher price which cannot be made basis for re-auction of the plot and this practice seems to be unprecedented being without any lawful authority. On the contrary it is

SCMR

noticed by us that the respondent/plaintiff has performed his part towards fulfillment of contract by first depositing an amount of Rs. 5000/- as per terms and conditions as he was declared highest bidder. Therefore he deposited an amount of Rs. 2,73,500/- at the spot as 1/3rd amount of the bid. All these facts are admitted by Assistant Director of LDA while deposing before the court, hence, in the given circumstances narrated above, it is made abundantly clear that the appellant/defendant was grossly unjustified to issue another proclamation for public auction relating to plot No. 193/B Upper Mall Lahore, once its valid acceptance was made by the respondent/plaintiff. It is worth mentioning that the conduct of the appellant/defendant was not aboveboard, rather they acted in a manner which was squarely against the dictates of justice. This practice if allowed to continue it might frustrate public confidence qua public functionaries which might be detrimental to uphold the public order which is paramount to keep the society in peaceful atmosphere, therefore, the public functionaries are expected to perform their duties well within the prescribed limits of the law of the land.

8. For reasons recorded above, we do not find any merit in this appeal. It is accordingly dismissed.

MWA/L-2/SC

Appeal dismissed

2020 S C M R 1962

[Supreme Court of Pakistan]

Present: Gulzar Ahmed, C.J.

[Ijaz ul Ahsan and Amir-ud-Din Khan, JJ]

GOVERNMENT OF THE PUNJAB

through Chief Secretary—Petitioner

versus

MUHAMMAD ARSHAD and 2 others—Respondents

Civil Petitions Nos. 813, 814 and 815-L of 2020, decided on 7th September, 2020.

(Against the judgment dated 4-11-2019 passed by the Punjab Service Tribunal, Lahore in Appeal No. 5830 of 2015)

Punjab Service Tribunals Act (IX of 1974)—

—S. 4—Service Tribunal—Jurisdiction—Retribution, concept of—Applicability—Punishment, quantum of—Civil servant, after departmental proceedings, was awarded punishment of reduction to four

بعد الت صاحب سروس ٹریبونل کراچی ۱۹

۲۰۲۱ء منجانب عبدالرحمن

۵۴/۸/۲۱

مدرخہ
مقدمہ
دعویٰ
جرم زبردفعہ

بنام

پاعت تحریر آنکہ

مقدمہ مندرجہ عنوان بالا اپنی طرف سے واسطے پیروی و جواب دہی وکل کاروائی متعلقہ آن مقام کراچی کے اقرار کیا جاتا ہے کہ صاحب موقوفہ کو مقدمہ کی نظر کاروائی کا میل اختیار ہوگا۔ نیز وکیل صاحب کو راضی نامہ و تقرر ثالثہ، فیصلہ برحلف دینے جواب وہی اور اقبال دعویٰ بصورت ڈگری کرانے اجراء اور اصول چیک روپیہ اور عرضی دعویٰ اور درخواست ہر قسم کی تصدیق زر اس پر دستخط کرنے کا اختیار ہوگا۔ نیز بصورت عدم پیروی یا ڈگری یکطرف یا اپیل کی برآمدگی اور منسوخی اور دائر کرنے اپیل نگرانی و نشر ثانی و پیروی کرنے کا اختیار ہوگا۔ اور یہ صورت ضرورت مقدمہ مذکورہ کے کل یا جزوی کاروائی کے واسطے اور وکیل یا مختار قانونی کو اپنے ہمراہ یا اپنی بجائے تقرر کا اختیار ہوگا۔ اور صاحب مقرر شدہ کو بھی وہی جملہ مذکورہ بالا اختیارات حاصل ہوں گے۔ اور اس کا ساختہ پرداختہ منظور و قبول ہوگا۔ اور دوران مقدمہ میں جو خرچہ و ہرجانہ التوائے مقدمہ کے سبب سے ہوگا۔ اس کے مستحق وکیل صاحب موصوفہ ہوں گے۔ نیز بقایا خرچہ کی وصولی کرنے کا اختیار حاصل ہوگا۔ اگر کوئی تاریخ پیشی مقام دورہ یا حد سے باہر کو وکیل صاحب پابند نہ ہوں گے کہ پیروی مقدمہ مذکورہ کریں۔ لہذا وکالت نامہ لکھ دیا تاکہ سند رہے۔

۵۴/۸/۲۱ المرقوم

العبد العبد العبد

Accepted
کے لئے منظور ہے
Hamed

بمقام

Abdul Rahman

14301-1877682-6.

①

BEFORE THE SERVICE TRIBUNAL KHYBER PAKHTUNKHWA PESHAWAR

Service Appeal No. 7266/2021

Anila Rehman, Senior Teacher, Nishtar Special Education, KDA, Kohat.....**Appellant**

VERSUS

1. Govt. of Khyber Pakhtunkhwa through Secretary Zakat, usher, Social Welfare & Women Empowerment Department Peshawar.
2. Govt. of Khyber Pakhtunkhwa through Secretary Finance Department Peshawar.
3. The Director, Social Welfare, Special education & Women Empowerment Department, Peshawar.
4. Accountant General , Khyber Pakhtunkhwa
5. Deputy Commissioner, Kohat.
6. Additional Deputy Commissioner (F&P) Kohat
7. The District Officer Social Welfare Kohat.
8. District Controller of Accounts, District Complex, Kohat..... **(Respondents)**

Respectfully Sheweth:

PARA-WISE COMMENT ON BEHALF OF RESPONDENTS NO. 1 TO 3 & 7.

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.
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.

FACTS:

1. Correct.
2. Correct to the extent that the Respondent No. 2 granted the Health Allowances to the devolved employees of special education institutions however the appellant is not the initial appointee of Special Education Institution but she was initially appointed in a project namely **"Shaheed Benazir Bhutto Women Center Kohat"** under supervision of Federal Government of Pakistan & she was not serving in Special Education. That the Finance Department issued a notification vide NO FD(SOSR)-7/2019-53 dated 25-11-2019 **(Annex-I)** only to the employees working in the Special Education devolved institution of the Federal Govt of Pakistan which states that

②

"In pursuance of the court order the competent authority issued notification No FD/(SOSR-ID)8-7/2019-53 dated 25-11-2019 in pursuance of the case titled Muhammad Atique ur Rehman and others vs Federal Government through Secretary Capital Administration etc, the Government of Khyber Pakhtunkhwa has approved health allowance at the rate of one basic pay to the devolved employees working in the special education institutions from the date of the devolution to provincial Government of Khyber Pakhtunkhwa.

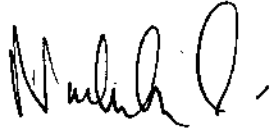
Thus above said allowance will be admissible only to the employees of the special education institutions of Khyber Pakhtunkhwa devolved under the 18th constitutional amendment.” (Annex-I) While the appellant was not the employee of Special Education but she was devolved from the ADP scheme by the Federal Govt which was later on regularized through a court case and adjusted/reinstated in the special education on various posts.

3. Para No. 3 related to respondent No. 5 & 6.
4. Correct with clarification that the Honorable High Court dismissed the judgment of the appellant & the relevant para in the petition is reproduced as under “for what has been discussed above, the petition in hand is hereby dismissed in limine for the being not maintainable before this court, leaving the petitioners at liberty to approach the Services Tribunal for the redressal of their grievance, if so advised”. (Annex-II)
5. Pertains to record.

GROUNDS

- A. Related to respondent No. 5 & 6.
- B. Related to respondent No.5 & 6.
- C. Incorrect, hence denied. The factual position has been explained in the preceding para.
- D. Incorrect hence denied. According to Notification No. FD(SOSR-II)8-7/2019-53 dated 25-11-2019 where in para No. 2 states “The above said allowance will be admissible only to the employee of Special Education of Khyber Pakhtunkhwa devolved under 18th Constitutional amendment” (Annex-I)
- E. Related to respondent No.5 & 6.
- F. Related to respondent No.5 & 6.
- G. That the respondents are Law abiding civil servants and respect the Constitution of Islamic Republic of Pakistan 1973 & the respondents did not violate any article of the Constitution of Islamic Republic of Pakistan. Moreover as per Notification of the Finance Department the appellant is not eligible for this said relief.
- H. Related to respondent No. 5 & 6.
- I. That respondents will produce relevant Law & decision of the superior courts in support of their comments/reply in the time of arguments
- J. Related to respondent No. 5 & 6.
- K. 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 this petition being devoid of any merit may graciously be dismissed with cost.



SECRETARY

Khyber Pakhtunkhwa through
Social Welfare, Special Education &
Women Empowerment Department
Peshawar
(Respondent No. 1)



SECRETARY

Finance Department
Khyber Pakhtunkhwa
(Respondent No. 2)



DIRECTOR

Social Welfare, Special Education &
Women Empowerment
Peshawar
(Respondent No. 3)



DISTRICT OFFICER

Social Welfare, Special Education &
Women Empowerment
Kohat
(Respondent No. 7)



GOVERNMENT OF KHYBER PAKHTUNKHWA
FINANCE DEPARTMENT
(REGULATION WING)

Annex I

Dated Peshawar the 25-11-2019

NOTIFICATION

-53-

No. FDISOSR-III/18-7/2019. In pursuance of the Supreme Court of Pakistan Civil Appeal No. 811/2010 titled "Muhammad Alique-Ul-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

Enclat: 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

[Signature]
 SECTION OFFICER (BR-II)
 FINANCE DEPARTMENT

[Large Handwritten Signature]

173015662965-2

BEFORE THE PESHAWAR HIGH COURT, PESHAWAR

W.P No. 3207 - P/ 2020



1. Masood-ur-Rehman Senior Teacher, Nastar Special Education, KDA, Kohat.
2. Muhammad Younis Deputy Director, Nastar Special Education, KDA, Kohat.
3. Anila Rehman Senior Teacher, Nastar Special Education, KDA, Kohat.
4. Muhammad Ishaq Computer Operator, Nastar Special Education, KDA, Kohat.Petitioners

Versus

1. Government of Khyber Pakhtunkhwa through Secretary Social Welfare, Special Education & Women Empowerment Department, Peshawar
2. Government of Khyber Pakhtunkhwa through Secretary Finance Department, Peshawar.
3. Director Social Welfare, Special Education & Women Empowerment Department, Peshawar
4. Accountant General, Government of Khyber Pakhtunkhwa, Peshawar
5. Additional Deputy Commissioner (F& P) Kohat
6. District Officer, Social Welfare, Special Education & Women Empowerment Department, Kohat
7. District Comptroller of Accounts, District Complex, Gate No. 2 KDA, Kohat.Respondents

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

Respectfully Sheweth:

ATTESTED
EXAMINER
Peshawar High Court

1. That the Government of Khyber Pakhtunkhwa Finance Department Issue a notification bearing No. FD(SOSR-II)8-7/2019 Dated 25/11/2019 wherein Health Allowance at the rate of one running basic pay has been awarded to devolved employees working in the

WP3207P2020 MASOOD UR REHMAN VS GOVT CF PG36

(28) (23)

Amir #
30

PESHAWAR HIGH COURT, PESHAWAR.

FORM 'A'
FORM OF ORDER SHEET



Date of order.	Order or other proceedings with the order of the Judge
08.06.2021	<p><u>W.P.No.3207-P of 2020.</u></p> <p>Present: Mr. Shahid Qayum Khattak, advocate for the petitioners.</p> <p>Mr. Khaled Rehman, AAG for the respondents.</p> <p style="text-align: center;">—</p> <p><u>LAL JAN KHATTAK, J.-</u> Petitioners through the instant petition under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973 seek issuance of an appropriate writ directing the respondents to act in the matter in accordance with law entitling them to the Health Allowance being drawn by similarly placed employees and also to declare letter dated 01.07.2020 as illegal, against the judgments of superior courts, discriminatory and thus same be struck down.</p> <p>2. Arguments heard and record gone through.</p> <p>3. Perusal of the case record would show that the petitioners are civil servants and the matter qua grant of the Allowance as claimed by them through the instant petition is one of the terms and conditions of their service and if any term and condition of service of a civil servant is violated by his department, then in that eventuality, he can approach the Services Tribunal established by the Government for that purpose and on no count he can come to this court for the enforcement of any of the terms and conditions of his service keeping in view the bar</p>

Gan

ATTESTED
EXAMINER
Peshawar High Court

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2 (29) (24) 31/11/21

contained in Article 212 of the Constitution of Islamic Republic of Pakistan, 1973.

4. For what has been discussed above, the petition in hand is hereby dismissed in limine for its being not maintainable before this court, leaving the petitioners at liberty to approach the Services Tribunal for the redressal of their grievance, if so advised.

JUDGE

JUDGE

No. 37992
Date of Presentation of Application 10/6/2021
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Date of Delivery of Copy 12/6/2021
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EXAMINER
Peshawar High Court, Peshawar
Authorised Under Article 27 of
The Courts of Sindh Act, 1973
12 JUN 2021

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