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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. ✓

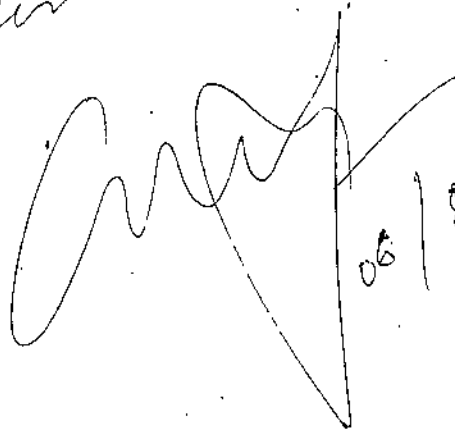
No. 1528 /S.T

Dt. 05/08 /2021


REGISTRAR
SERVICE TRIBUNAL
KHYBER PAKHTUNKHWA
PESHAWAR.

Mr. Asif Mehmood Qureshi Adv. Pesh.

*Re-submitted
after Compliance*


05/8/21

BEFORE THE SERVICES TRIBUNAL, KPK, PESHAWAR

CHECK LIST

1.	Case Title	<i>Anila Rehman and others</i> VERSUS <i>Govt of KPK and others</i>	
2.	Case is duly signed.	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
3.	The law under which the case is preferred has been mentioned.	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
4.	Approved file cover is used.	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
5.	Affidavit is duly attested and appended.	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
6.	Case and annexures are properly paged and numbered according to index.	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
7.	Copies of annexures are legible and attested. If not, then better copies duly attested have annexed.	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
8.	Certified copies of all requisite documents have been filed.	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
9.	Certificate specifying that no case on similar grounds was earlier submitted in this court, filed.	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
10.	Case is within time.	<input type="checkbox"/> Yes	<input type="checkbox"/> No
11.	The value for the purpose of court fee and jurisdiction has been mentioned in the relevant column.	<input type="checkbox"/> Yes	<input type="checkbox"/> No
12.	Court fee in shape of stamp paper is affixed. [For writ Rs. 500, for other as required]	<input type="checkbox"/> Yes	<input type="checkbox"/> No
13.	Power of attorney is in proper form.	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
14.	Memo of addressed filed.	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
15.	List of books mentioned in the petition.	<input type="checkbox"/> Yes	<input type="checkbox"/> No
16.	The requisite number of spare copies attached [Writ petition-3, civil appeal (SB-2) Civil Revision (SB-1, DB-2)]	<input type="checkbox"/> Yes	<input type="checkbox"/> No
17.	Case (Revision/ Appeal/petition etc) is filed on a prescribed form.	<input type="checkbox"/> Yes	<input type="checkbox"/> No
18.	Power of attorney is attested by jail authority (for jail prisoner only)	<input type="checkbox"/> Yes	<input type="checkbox"/> No

It is certified that formalities/documentations as required in column 2 to 18 above, have been fulfilled.

Name:- Asif Hameed Qureshi
 Signature:- [Signature]
 Dated:- 04/8/21

FOR OFFICE USE ONLY

Case:- _____
 Case received on _____
 Complete in all respect: Yes/ No, (If No, the grounds) _____
 Date in court:- _____

Signature _____
 (Reader)

Date:- _____

Countersigned:- _____
 (Deputy Registrar)

①

BEFORE THE SERVICE TRIBUNAL KHYBER PAKHTUNKHWA,
PESHAWAR

Khyber Pakhtunkhwa
Service Tribunal

Diary No. 7405

Dated 04-8-2021

Service Appeal No:- _____ /2021

1. ^{Anila} Rehman, Senior Teacher, Nastar Special Education, KDA, Kohat.
2. Masood Ur Rehman, Senior Teacher, Nastar Special Education, KDA, Kohat.
3. Muhammad Ishaq, Computer Operator, Nastar Special Education, KDA, Kohat.

.....Appellants

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. 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.

.....Respondents

File to-day

Registrar
04/8/2021

Re-submitted to -day
and filed.

Registrar

SERVICE APPEAL UNDER 4 OF THE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL ACT, 1974 AGAINST THE IMPUGNED ORDER OF RESPONDENT NO 6 DATED 01/07/2020 BY WHICH THE GRANTED HEALTH ALLOWANCE TO APPELLANTS HAS BEEN STOPPED.

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 appellants from July, 2020 till the decision of this appeal.

Respectfully Sheweth:-

The facts pertaining to this appeal are as under:-

- 1. That the appellants were initially of Project Shaheed Banazir Bhutto Centers for Woman” at different posts/ designation 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, they have 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”).*

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2. *That vide order dated 25/11/2019 of respondent No 2 the appellants 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 appellants by declaring the appellants non devolved employees and also ordered to recover the drawn amount from the appellants. (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 appellants 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 appellants are filing the instant*

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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 appellants 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 appellants from getting their Health Allowance has been passed without any legal justification and reasons.
- C. That the Health Allowance had been granted to appellants by respondent No 2 in pursuance of judgment of August Supreme Court of Pakistan by rightly declared the appellants as developed employees, but the respondent No 6 without any legal justification/reasons stopped the Health Allowance of the appellants 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.

(5)

- D. That the appellants are 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 appellants 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 appellants also preferred an appeal to respondent No 6, but till date the same has not been decided and this act of the

6

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).

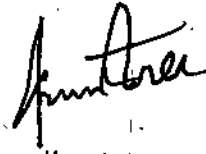
- I. *That pleas/contentions of the appellants is well supported by the law laid down by superior courts of the country and in this regard reliance is placed on 2014 SCMR 1687, 2002 PLC (CS) 427, 2004 PLC (CS) 1087, 2013 PLC (CS) 592, 2012 PLC (CS) 362 & 2014 PLC(CS) 1315.*
- J. *That the respondents 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

2

declared illegal, discriminatory and without lawful authority and the same may kindly be set aside by restoring the Health Allowance of the appellants from July, 2020 till the decision of this appeal.

Dated:- 04/08/2021



Appellant

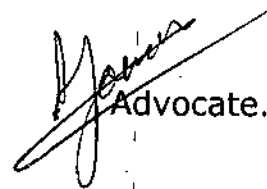
Through:-



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.



Advocate.

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BEFORE THE SERVICE TRIBUNAL KHYBER PAKHTUNKHWA,
PESHAWAR

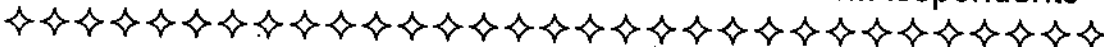
Service Appeal No:- _____ /2021

Anila
my

Rehman & others
..... Appellant

Versus

Govt: of KPK & others
..... Respondents



AFFIDAVIT

I, Muhammad Ishaq, Computer Operator, Nastar Special Education, KDA, Kohat, (The appellant No 3) 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.

ATTESTED



10/04/2021

[Signature]

DEPONENT
CNIC No:-
Cell No:-

10

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:- 04/08/2021



Petitioners

Through:-



Asif Hameed Qureshi
Advocate Supreme Court

11

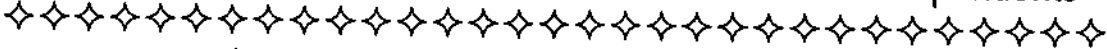
BEFORE THE SERVICE TRIBUNAL KHYBER PAKHTUNKHWA,
PESHAWAR

Service Appeal No:- _____ /2021

Anila
only Rehman & others
..... Appellant

Versus

Govt: of KPK & others
..... Respondents



AFFIDAVIT

I, Muhammad Ishaq, Computer Operator, Nastar Special Education, KDA, Kohat, (The appellant No 3) 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.

ATTESTED



[Signature]

DEPONENT
CNIC No:-
Cell No:-

504/08
2021

13

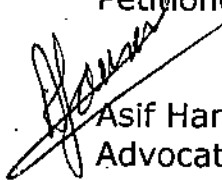
4. *That justice and equity demand that the delay may be condoned for the sake of justice.*
5. *That according to the law laid down by the Superior Courts of the Country that the cases should be decided on merits rather than on technicalities including the limitation.*
6. *That the grounds of appeal 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:- 04/08/2021

Through:-

Petitioners


Asif Hameed Qureshi
Advocate Supreme Court

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BEFORE THE SERVICE TRIBUNAL KHYBER PAKHTUNKHWA,
PESHAWAR

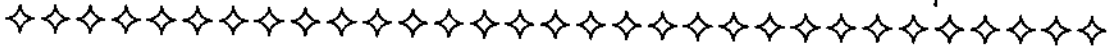
Service Appeal No:- _____ /2021

Amir
Amir

Rehman & others
..... Appellant

Versus

Govt: of KPK & others
..... Respondents



AFFIDAVIT

I, Muhammad Ishaq, Computer Operator, Nastar Special Education, KDA, Kohat, (The appellant No 3) 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.

ATTESTED



9/04/2021

[Handwritten Signature]

DEPONENT
CNIC No:-
Cell No:-

105

BEFORE THE SERVICE TRIBUNAL KHYBER PAKHTUNKHWA,
PESHAWAR

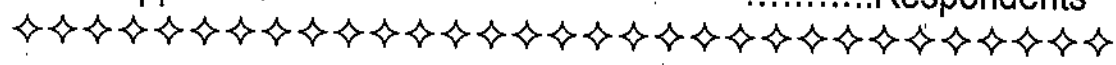
Service Appeal No:- _____/2021

Anida
Mails
2021

Rehman & others
..... Appellant

Versus

Govt: of KPK & others
..... Respondents



ADDRESSES OF PARTIES

Appellants

1. Naila Rehman, Senior Teacher, Nastar Special Education, KDA, Kohat.
2. Masood Ur Rehman, Senior Teacher, Nastar Special Education, KDA, Kohat.
3. Muhammad Ishaq, Computer Operator, 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.


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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:- 04/08/2021

Through:-


Appellant


Asif Hameed Qureshi
Advocate Supreme Court



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

Dated Peshawar the 23rd February, 2018

18

NOTIFICATION:

No. SOII/SWD/II-206/2017/Vol-I/3201-09 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 "Shahed 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 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 Abbottabad, relieving Mst Shamshad Begum District Officer Social Welfare Abbottabad from the additional charge of the post of Superintendent Dar-UI-Aman
04	Mst. Aneela Rahman	Manager (BPS-18)	Senior Special Education Teacher (BPS-17), Nishlar 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), Nishlar Special Education Center Kohat, against the vacant post

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

Dated Peshawar the 23rd February, 2018

NOTIFICATION:

No.SOII/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.

CTC
Cup

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.

[Handwritten Signature]

(19)

08	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 Farid	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 Akhtar	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-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

CT-C
[Handwritten Signature]

[Handwritten Signature]

(Muhammad Saud)
Section Officer-II

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

Section Officer-II

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.

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

Endst: of Even No. & Date:-

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

Sr.#	Name & Designation	From	To
01.	Muharrnrad 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. Shoalb Khan Social Welfare Officer (BS-17)	Office of the District Officer, Social Welfare Office Peshawar	District Officer Social Welfare Charsadda, vide Serial No.01

No.S.O(II)(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:-

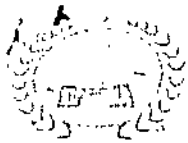
Notification

Dated Peshawar the 4th Dec, 2019

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

BETTER COPY





GOVERNMENT OF KHYBER PAKHTUNKHWA
FINANCE DEPARTMENT
(REGULATION WING)

Account (B)

Dated Peshawar the 25.11.2019

NOTIFICATION

53

No. FMSOSR-III-7/2019, in pursuance of the Supreme Court of Pakistan Civil Appeal No. 811/2017, titled "Muhammad Aqueel-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 & Date Even

- 1. 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, Social Education & Women Empowerment Deptt
- 5. Director, PMU, 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

C.T.C
C.T.C

SECTION OFFICER (SR-III)
FINANCE DEPARTMENT

[Handwritten signature]

[Handwritten signature]

17301566296503

[Handwritten signature]

Attended

SECRETARY TO GOVT. OF KHYBER PAKHTUNKHWA
(FINANCE DEPARTMENT)

072-

Amendment.

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

Khyber Pakhtunkhwa.

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

NOTIFICATION

GOVERNMENT OF KHYBER PAKHTUNKHWA
FINANCE DEPARTMENT
(REGULATION WING)
Dated Peshawar the 25.11.2019

BETTER COPY



OFFICE OF THE DEPUTY COMMISSIONER
KOHAT

(22)
Amir C

NO. 4958 /F&P/DC/KT

Dated 21/07/20

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 | Attendantt |

CT-C
Amir

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



91

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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

C.T. 1
Ay

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 KPK 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

(1) (24)

Annex (D)

BEFORE THE PESHAWAR HIGH COURT, PESHAWAR

W.P No. 3307 - 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**

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

② 25 0/11

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:

~~ATTESTED~~
EXAMINER
Peshawar High Court

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.

(4) (27) (D/B)


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

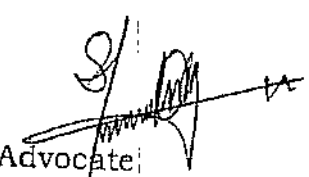
List of Books:-

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 8.7 of
the Constitution of Pakistan

12 JUN 2021


Advocate

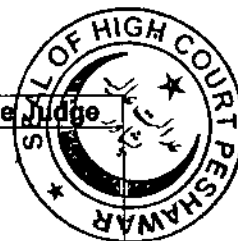
28

Amir
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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 data-bbox="613 480 917 510"><u>W.P.No.3207-P of 2020.</u></p> <p data-bbox="613 543 1307 605">Present: Mr.Shahid Qayum Khattak, advocate for the petitioners.</p> <p data-bbox="771 630 1153 692">Mr.Khaled Rehman, AAG for the respondents.</p> <p data-bbox="844 705 893 722">----</p> <p data-bbox="690 755 1307 784"><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 data-bbox="625 1308 1209 1340">2. Arguments heard and record gone through.</p> <p data-bbox="625 1370 1323 1963">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>



Jain

ATTESTED

EXAMINER
Peshawar High Court

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

[Signature]

CERTIFIED TO BE TRUE COPY
EXAMINER
Cashewer 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 6
Copying fee
Total
Date of Preparation of Copy 12/6/2021
Date of Delivery of Copy 12/6/2021
Received By *[Signature]*

(30)
Amir (F)

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) C.T.L
ay

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-II08-7/2019/53 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-II08-7/2019/53 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.

[Signature]

(31)

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 |

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5-7-2020

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08/07/2020

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مبشر اقبال

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زاهد

Copy for information and necessary action to:-

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

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

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.

The exception in Giles v Rhind

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. Sevilleja.

MWA/6/UKSC

Appeal allowed.

2020 S.C.M.R. 1957

(Supreme Court of Pakistan)

Present: Ijaz ul Ahsan,

Amin-ud-Din Khan and

Sayed Mazahar Ali Akbar Naqvi, 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.F.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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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

'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 the enhanced offer, the Authority gave public notice in a newspaper for 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 [pp. 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. [p. 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 MAZHAR 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.

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 installment 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

Mall Lahore. During the bidding proceedings respondent declared the highest bidder. The said claim of the respondent was even accepted by the appellant while submitting written 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. Faquir 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.P.3 to accept that amount in order to hand over the disputed plot. DW.1 further admitted that in the record of LDA, the application of respondent is available that he is ready 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 filed by the appellant as well as statement of DW.1 Faquir Muhammad and Ex.P.4 and Ex.P.5 shows that the acceptance of the offer of the 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.P.4 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

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 Amin-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

Waka'a Nama

36

IN THE Honorable KPu Service Tribunal Peshawar

Case No. Service Appeal Dated _____ Police Station _____
ULSY

Offence Under Section/Case Title _____

In Re: Anita Rehman and others

Retitioner/Appellant/Plaintiff (s)

Versus

Son of KPu Thruyl security social workers and others
Accused / Respondent (s)

KNOW ALL to which these present shall come that I/we, the undersigned, appoint Asif Hameed ADVOCATE, HIGH COURT/ DISTRICT COURTS, KOHAT

Asif Hameed
Asif Hameed Advocate 0345-909955-6
(hereinafter called the Advocate) to be the Advocate for the Appellants

in the above mentioned case, to do all the following acts, deeds and things or any of them that is to say;

1. To act, appear and plead in the above mentioned case in this court or any other court in which the same may be tried in the first instance or in L.P. Appeal or review or revision or execution or any other stage of its progress until its final decision.
2. To present pleadings, appeals, cross-objections or petition for execution, revision, review, withdrawal, compromise or other petitions affidavits or other documents as shall be deemed necessary or advisable for the prosecution of the said case in all its stages.
3. To withdraw or compromise the said case or submit to arbitration any differences or dispute that shall arise touching or in any manner relating to the said case.
4. To receive money and grant receipts there for and do all other acts and things which may be necessary to be done for the progress and in the course of the prosecution of the said case.
5. To employ any other Legal Practitioner authorizing him to exercise the power and authorities hereby conferred on Advocate wherever he may think fit to do so.

AND I/We, hereby agree to ratify whatever the Advocate or his substitute shall do in the said case.

AND I/We, hereby agree not to hold the advocate or his substitute responsible for the result of the said case in the consequence of his absence from the court when the said case is called up for hearing.

AND I/We, hereby agree that in the event of whole or any part of the fee agreed by me to be paid to the Advocate remaining unpaid he shall be entitled to withdraw from the prosecution of the said case until the same is paid.

IN WITNESS WHEREOF I/WE, hereunto set my/our hand to these presents the contents of which have been explained to and understood by me/us, this the day of _____ 2018

(Signature or Thumb Impression)

Petitioner/Plaintiff/Appellant (s) / Defendant/Respondent(s)

Anita Rehman
Appellant no (1)

Attested & Accepted

Asif Hameed
Asif Hameed Advocate
ASC

Appellant no (2)
MASOOD-UR-REHMAN

Muhammad Azeem
Advocate

Appellant no (3)
Muhammad IS.