

22.09.2016

Appellant in person present. During the course of arguments appellant informed the Tribunal that the respondents have not yet passed any order affecting his interest as his pay is yet to be fixed in BPS-17.

In view of the afore-stated position no adverse orders have been passed against the appellant as such the appeal is premature and the same is therefore dismissed in limine. The appellant may however agitate his grievances in the prescribed manners when any order adversely affecting his interest is passed. No orders as to costs. File be consigned to record room.

  
Chairman

Camp court, A/Abad

22.09.16.



ANNOUNCED

22.09.2016

Form- A  
FORM OF ORDER SHEET

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

Case No. 775/2016

S.No.	Date of order proceedings	Order or other proceedings with signature of judge or Magistrate.
1	2	3
1	29/07/2016	<p>The appeal of Mr. Muhammad Riaz received today by post may be entered in the Institution Register and put up to Worthy Chairman for proper order please.</p> <p style="text-align: right;"> REGISTRAR</p> <p>This case is entrusted to Touring S. Bench at A.Abad for preliminary hearing to be put up there on. <u>22-9-16.</u></p> <p style="text-align: right;"> CHAIRMAN</p>

**BEFORE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL  
PESHAWAR.**

Service Appeal No: 775 of 2016

Muhammad Riaz Khan S/O Muhammad Rafique, S.S.T G.H.S NO 01  
Abbottabad, R/O Village Nurdubba, P.O Nawan Shehr Tehsil & District  
Abbottabad.

Appellant

**Versus**

District Comptroller of Accounts, Abbottabad and 03 Other.


Respondents

**SERVICE APPEAL**

**INDEX**

S.No	DESC: OF DOCUMENTS	ANNEXURES	PAGE No
1	Memo; of Service Appeal	----	01 to 05
2	Copy of Supreme Court Judgment dated 19/07/2007 passed in CPLA 525/2007	A	06 to 08
3	Copy of Supreme Court Judgment dated 29/01/2008 passed in CRP 216/2007	B	09 to 10
4	Copy of Judgment dated 27/10/2008 passed by Service Tribunal	C	11 to 13
5	Copy of implementation /execution petition.	D	14 to 15
6	Copy of relevant page of pay roll register for the month of September 2010.	E	16
7	Copy of ACT NO IX of 2012 dated 15/05/2012.	F	17 to 19
8	Copy of departmental appeal/ representation	G	20
9	Copy of registered receipt issued by GPO Abbottabad	H	21
10	Copy of High Court Order dated 02/02/2016	I	22 to 24
11	Copy of application to Post Master GPO Abbottabad	J	25
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13	Application for Condonation of delay	L	27 to 28

Dated 26/07/2016

  
(Muhammad Riaz Khan)  
Appellant in person

(1)

**BEFORE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL  
PESHAWAR.**

Service Appeal No: 775 of 2016

Muhammad Riaz Khan S/O Muhammad Rafique, S.S.T G.H.S NO 01  
Abbottabad, R/O Village Nurdubba, P.O Nawan Shehr Tehsil & District  
Abbottabad.

Appellant

**Versus**

**Khyber Pakhtukhwa  
Service Tribunal**

Diary No. 775

Dated 29-7-2016

- 1 District Comptroller of Accounts, Abbottabad.
- 2 Accountant General Khyber Pakhtunkhwa Peshawar.
- 3 Government of Khyber Pakhtunkhwa through Secretary Finance  
Department Peshawar.
- 4 Government of Khyber Pakhtunkhwa through Secretary (Elementary &  
Secondary Education), Department Peshawar.

Respondents

**APPEAL** UNDER SECTION 4 OF KHYBER PAKHTUNKHWA  
SERVICE TRIBUNAL ACT 1974, **AGAINST** THE IMPUGNED  
ACTION OF RESPONDENT NO 1, THAT IS NON ISSUANCE OF  
SALARY SLIP (FIXATION OF PAY) IN B.P.S NO 17 WITH OUT  
DEDUCTION OF 02 ADVANCE INCREMENTS OF MA/MSc OUT  
OF 04, WHICH WERE GRANTED IN PURSUANCE OF THE  
ORDER OF THE K.P.K SERVICE TRIBUNAL AND FOR  
ISSUANCE OF SALARY SLIP AND ACCEPTANCE OF  
DEPARTMENTAL REPRESENTATION DATED 16/12/2005  
WHICH IS STILL PENDING WITH OUT RESPONSE. (Application  
for condonation of Delay is also attached)

**Filed to-day**  
**Registrar**

**29/7/16**

**PREYER**

ON ACCEPTANCE OF INSTANT SERVICE APPEAL  
RESPONDENTS MAY PLEASE BE DIRECTED TO FIX THE PAY  
OF APPELLANT WITH EFFECT FROM 02/12/2015 IN B.P.S NO

17 WITH OUT DEDUCTION OF 02 ADVANCE INCREMENTS OF MA/MSc OUT OF 04.

Respectfully Sheweth,

**FACTS**

- 1) That Appellant being School Teacher got 04 advance Increments of MA/MSc on the basis of Order/judgment dated 27/10/2008 passed in his favour by the KPK Service Tribunal which was passed in pursuance of the judgments dated 19/07/2007 & 29/01/2008 passed by Honourable Supreme Court of Pakistan Islamabad in C.P.L.A No 525 of 2007 & C.R.P No 216 of 2007. Copy of order of KPK service Tribunal & both the Judgment of Apex Court are annexed as **“Annexure “A” “B” & “C”**.
- 2) That the above judgment of KPK Service Tribunal was implemented in letter and spirit by the respondents in execution proceedings and revised the pay of the appellant and gave him 04 advance increments of MA/Msc, since then appellant is taking 04 advance increments of MA/Msc with effect from 01/09/2010 with out any disturbance. Copy of implementation/execution petition and relevant page of pay roll register of September 2010 are annexed as **“Annexure “D” & “E”**.
- 3) That in the meanwhile an ACT NO IX of 2012 dated 15/05/2012 passed by Khyber Pakhtunkhwa Provincial Assembly Peshawar, titled “The Khyber Pakhtunkhwa Cessation of Payment of Arrears on Advance Increments on Higher Educational Qualification” was issued/promulgated and its sub section 2 of section 2 is clear and in the favour of appellant. Copy of Act is annexed as **Annexure “F”**.
- 4) That appellant after upgradation the post in BPS No 17, submitted his application/case dated 16/12/2015 through registered post to respondent no1 for issuance of salary slip for the month of

December 2015. Copy of application/representation & receipt of registered post are annexed as Annexure "G" & "H".

- 5) That when respondent no 1 did not issue salary slip and fix/revise the pay in BPS# 17, appellant filed his writ petition before Peshawar High Court Abbottabad Bench which was decided on maintainability and appellant was directed to approach Service Tribunal. Copy of High Court Order is annexed as Annexure "I"
- 6) That appellant's representation (Annexure "G") was still pending with out any response and after passing the statutory period of 90 days, appellant prepared and sent service appeal on 05/04/2016 through Registered Post to Registrar KPK Service Tribunal Peshawar, appellant on every tour of Camp Court of this Honourable Tribunal at Abbottabad is being got information of his case and inquired about date of preliminary arguments but no information is received by Appellant, at last he went to KPK Service Tribunal Peshawar on 22/07/2016 but in vain, Appellant submitted application to Post Master GPO for inquiry, due to this reason the instant service appeal is filing after passing 120 from the submission of his departmental appeal along with application of condonation of delay. Copies of application to Post Master GPO Abbottabad, receipt of registered post dated 05/04/2016 and application for Condonation of delay is annexed as Annexure "J" "K" & "L" Hence this appeal inters – alia on the following ground:

**GROUND**

- a) That the appellant under the law was entitled of advance increments and respondents are not at all entitled to withdraw the benefit extended to the appellant by competent Courts of law, i.e. Service Tribunal & Supreme Court of Pakistan.


- b) That the order dated 27/10/2008 passed by Service Tribunal was implemented by the respondents in letter and spirit and under the doctrine of locus Poenitentiae the respondents were not entitled to withdraw a benefit once it was implemented **(PLD 1991 Supreme Court 973)**.
- c) That the appellant while contesting for his right of 04 advance increments before Service Tribunal, never ever suppressed any fact from the respondents.
- d) That judicial system will be ruined, if respondents would be left free to act upon against the Judgment of Learned Service Tribunal, thus respondent are bound to obey the Judgment in its letter and spirit with out creating any kinds of self made illegal complications.
- e) That all the present respondents including respondent No 02, 03 & 4 were also arrayed as respondents in service appeal and they contested the case and then order dated 27/10/2008 was passed by Honourable Tribunal.
- f) That respondents (respondent No 01) was not at all have powers to deduct/recover the 02 advance increments out of 04 Increments, which were granted to the appellant by a competent Court of law (Service Tribunal) while all concerned respondents amongst others were not only arrayed as party in service appeal but they contested the case and they were not filed their CPLA against the Judgment of Service Tribunal dated 12/05/2009 before Apex Court, yet thus it attained its finality.
- g) That the application for condonation of delay is on genuine reason and filed on solid legal and factual ground and legally appellant is entitled for condonation of delay.

5

It is, therefore, humbly prayed that on acceptance of instant Service Appeal respondents may please be directed to fix the pay of appellants with effect from 02/12/2015 in B.P.S no 17 with out deduction of 02 advance increments of MA/MSc out of 04.

Any other relief for which the appellant is entitled, and the same is not asked/prayed specifically, may very kindly be granted in favour of the appellant.

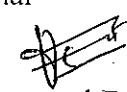
Dated 26/07/2016

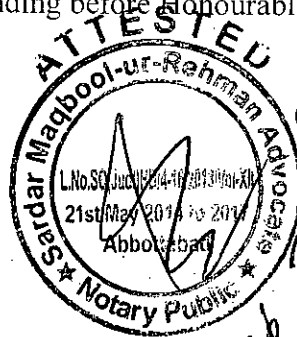
  
(Muhammad Riaz Khan)  
Appellant in person

**Affidavit**

I, Muhammad Riaz Khan S/O Muhammad Rafique, S.S.T G.H.S NO 01 Abbottabad, R/O Village Nurdubba, P.O Nawan Shehr Tehsil & District Abbottabad, do here by affirm on oath that contents of instant appeal is correct and true according to my best knowledge and belief and nothing has been suppressed from this Honourable Tribunal and this instant appeal is first appeal & same nature of any other appeal is not pending before Honourable Tribunal

Dated 26/07/2016

  
(Muhammad Riaz Khan)  
Appellant in person  
DEPONENT





Annexure A,

6

**In the Supreme Court of Pakistan**  
**(Appellate Jurisdiction)**

**Present:**

Mr. Justice Rana Bhagwandas, ACJ

Mr. Justice Sardar Muhammad Raza Khan

**C.P.L.A No.525 of 2007**

(On appeal from judgment of NWFP Service Tribunal, Peshawar dated 24.4.2007 passed in Service Appeal No.498 of 2006)

CA-1504-1505/07

Rashid Iqbal Khan

Petitioner

Versus

District Coordination Officer, Abbottabad & others

Respondents

Petitioner:

Rashid Iqbal Khan, in person

For the respondents:

Sardar Shaukat Hayat Khan,  
Additional Advocate General, NWFP

**C.P.L.A No.526 of 2007**

(On appeal from judgment of NWFP Service Tribunal, Peshawar dated 24.4.2007 passed in Service Appeal No.499 of 2006)

Muhammad Haroon Qureshi

Petitioner

Versus

District Coordination Officer, Abbottabad & others

Respondents

Petitioner:

Muhammad Haroon Qureshi, in person

For the respondents:

Sardar Shaukat Hayat Khan,  
Additional Advocate General, NWFP.

Date of hearing:

19.7.2007

**Judgment**

**Rana Bhagwandas, ACJ** – Sole grievance of the petitioners before the NWFP Service Tribunal (hereinafter referred to as the Tribunal) appears to be that after induction in BPS-14 as Elementary School Teachers, in terms of NWFP Government Circular dated 7.8.1991 they are entitled to four advance increments in terms of NWFP Government circular letter No.FD(PRC)1-1/89 dated 11.8.1991 on acquiring higher qualification MA/MSc. They have been non-suited by the Tribunal vide judgment dated

ATTESTED

Superintendent  
Supreme Court of Pakistan  
ISLAMABAD

rested  
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24.4.2007 on the premise that they had been placed in higher grade i.e. BPS-14 on acquiring BA/BSc Second Division in terms of Finance Division circular letter No.FD(PRC)1-1/89 dated 7.8.1991, therefore, the provisions of circular letter dated 11.8.1991 issued by the Finance Department would not be applicable to teachers. Tribunal has expressed the view that this circular would be applicable only to ministerial staff, as such, the petitioners were not entitled to the relief claimed by them. Petitioners being aggrieved seek leave to appeal.

2. We have heard the petitioners, who argued their case in person whereas learned Additional Advocate General, NWFP has appeared on Court notice issued to the respondents. With the assistance of learned Additional Advocate General, we have examined both the circulars, which do not exclude the teachers in the Education Department from the benefits accruing out of circular letter dated 11.8.1991, as on its plain reading it applies to all civil servants in BPS 1 to 15 serving under the Provincial Government. Para 5 of the said circular provides mechanism for grant of advance increments to officials for possessing/attaining higher educational qualification. Para 5, clause (c) caters for the grant of four advance increments on attaining MA/MSc where prescribed qualification is FA/FSc. It would be seen that the petitioners were placed in BS-14 by reason of having acquired the qualification of BA/BSc, Second Division which is the prescribed qualification for the post of Elementary School Teacher. It is not the case of respondent-Government that the petitioners have already drawn advance increments on acquiring higher qualification of MA/MSc.

3. Learned Additional Advocate General attempted to argue that in view of the higher scale granted to Elementary School Teachers in pursuance of the circular letter dated 7.8.1991, which was personal to them, the

ATTESTED

Supervisor  
Supreme Court of Pakistan  
ISLAMABAD

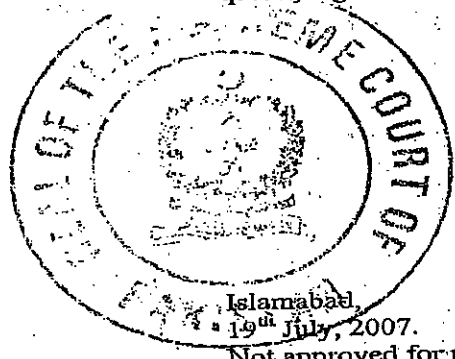
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petitioners would not be entitled to the incentive of advance increments contemplated by circular letter dated 11.8.1991 but he is unable to cite any principle of law or authority for placing this interpretation. We find that, while circular letter dated 7.8.1991 exclusively deals with the scales of pay of school teachers in different categories, circular letter dated 11.8.1991 provides for the revision of basic pay scales and grant of annual increments and advance increments for all Provincial civil servants in NWFP without any exception. Since the teachers or the employees in Education Department have never been expressly or impliedly excluded from the operation of the circular letter, view taken by the Tribunal being erroneous cannot be sustained at law. In fact, it suffers from clear misconception of law and misconstruction of the circular letter (supra).

*Missed*

3. For the aforesaid facts, circumstances and reasons, we are of the considered view that the Tribunal committed a serious error of law, therefore, the impugned judgment is liable to be set aside. Consequently, we convert these petitions into appeals and, on acceptance, declare that the petitioners would be entitled to four advance increments with effect from the date of qualifying MA/MSc exam.



Not approved for reporting.

Rlar

*10/8/07*

*7/11*

*Off. Rana Pragaswari, New  
Off. Pardan Muhammad Raza Khan, J*

Certified to be true copy

*Sup. Court*  
28/11/2007  
Superintendent  
Supreme Court of Pakistan  
ISLAMABAD  
3781/0

Date of transcription	20-11-07
No. of Words	900
No. of folios	8
Requisition Fee Rs.	5.00
Copy Fee in:	5.58
Court Fee stamps	10.58
Date of Completion of Copy	28-11-2007
Date of delivery of Copy	8-12-2007
Compared by:	<i>Farid Qureshi</i>
Received by:	<i>Farid Qureshi</i>

ANNEXURES B,

9

**IN THE SUPREME COURT OF PAKISTAN  
(REVIEW/ORIGINAL JURISDICTION)**

**Present:**  
**MR. JUSTICE MUHAMMAD NAWAZ ABBASI**  
**MR. JUSTICE MUHAMMAD QAIM JAN KHAN**  
**MR. JUSTICE MOHAMMAD MOOSA K. LEGHARI**

**C.R.P. Nos. 216 & 217/2007 in C.P. Nos. 525 & 526/2007**  
(On review from the judgment dated 19.7.2007 passed in C.A. Nos. 1504 & 1505/2007)

Secretary to Govt. of N.W.F.P. Finance Department, Peshawar  
... Petitioner (in both cases)

Versus

Rashid Iqbal Khan and others ... Respondents (in C.R.P. No. 216/07)  
Muhammad Haroon Qureshi and others ... Respondents (in C.R.P. No. 217/07)

**CRI.O.P. Nos. 66 & 67/2007 IN C.A. Nos. 1504 & 1505/2007**

Rashid Iqbal Khan ... Petitioner (in Crl.O.P. No. 66/07)  
Muhammad Haroon Qureshi ... Petitioner (in Crl.O.P. No. 67/07)

Versus

District Coordination Officer, Abbottabad and others  
... Respondents (in both cases)

For the Petitioner (in C.R.P. Nos. 216 & 217/07)	Sardar Shaukat Hayat, Addl.A.G. N.W.F.P
For the Petitioners (in Crl.O.P. 66 & 67/07)	In Person
For the Respondents (in C.R.P. Nos. 216 & 217/07)	N.R.
For the Respondents (in Crl.O.P. 66 & 67/07)	Sardar Shaukat Hayat, Addl.A.G. N.W.F.P
Date of hearing	29.1.2008

**ORDER**

**MUHAMMAD NAWAZ ABBASI, J:-** The learned Addl.

Advocate General has contended that this Court while interpreting the circulars in question has taken a view contrary to the correct legal position according to which private respondents were not entitled to the benefit of advance increments. We are affaid, the learned Addl.A.G. instead of pointing out any mistake of law and fact in the judgment made an attempt to re-open the case on merits. The scope of

**ATTESTED**

Secretary to Govt. of Pakistan  
Supreme Court of Pakistan  
Islamabad

*Attested*

*Attested*

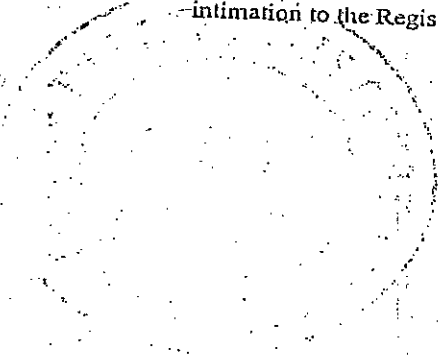
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review is very limited and the points already considered in the judgment under review cannot be allowed to be re-agitated in review jurisdiction. These review petitions being without any substance are accordingly dismissed.

Crl.O.P. Nos. 66 & 67/2007

The learned Addl.A.G. has given an undertaking for implementation of the judgment of this Court within a period of two weeks and in view thereof, this criminal original is disposed of with the direction that the judgment should be implemented in letter and spirit within two weeks under intimation to the Registrar of this Court.



Adv. Muhammad Nawaz Akhbari, J.  
Adv. Muhammad Qasim Jamil, J.  
Adv. Muhammad Masood Leghari, J.

13/02/08

Islamabad  
29.1.2008  
(Ejaz Goraya)

12/2/08

Attested

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13-02-2008  
25-02-2008

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BEFORE NWFP SERVICE TRIBUNAL PESHAWAR

Annexure C

Service Appeal No: 157 of 2007

Muhammad Riaz Khan S/O Muhammad Rafique, (Ex CT teacher)  
Now, SET, GHS NO 1, Abbottabad R/o village Nurdubba, P.O. Peshawar Shehr  
Tehsil & District Abbottabad.

Appellant

N.W.F.P. Province  
Service Tribunal  
Diary No. 15/16  
Dated 12-12-07

Versus

- 1) District Coordination Officer, Abbottabad
- 2) Executive District Officer (schools & Literacy) Abbottabad.
- 3) District Accounts Officer, Abbottabad.
- 4) Director of (schools & Literacy) NWFP Peshawar.
- 5) Secretary to Govt of NWFP (schools & Literacy) department Peshawar.
- 6) Accountant General, NWFP Peshawar
- 7) Secretary to Govt of NWFP, Finance Department, Peshawar

Respondents

Appeal under Section 4 of NWFP Service Tribunal Act 1974 for grant of four advance increments of MSc with all back benefits with effect from 24-09-1998 under Para 5(i) (C) of the notification No FD(PRC) 1-1 /89 dated 11-08-1991 issued by Respondent No 7 and on the basis of Judgment dated 19/07/2007 passed by Supreme Court of Pakistan in CPLA Nos 525,526, of 2007 against the single judgment of NWFP service Tribunal Peshawar dated 24/04/2007 passed in service appeal Nos 498,499 and 544 of 2006. (Appellant's formal appeal no 544, of 2007).

Respectfully Sheweth,

FACTS

- 1) That appellant appointed as a trained CT Teacher on 30/07/1995 and being BSc 2<sup>nd</sup> division was placed in BPS No 14 on the basis of notification dated 07/08/1991 issued by respondent no 7. Copy of said notification is Annexure A.

ATTESTED  
EXAMINER  
NWFP Service Tribunal  
Peshawar

Accepted  
Filed to-day  
M.A.  
Recd: 12/12/07

11

12

No. or proceedings	Date of Order or Proceedings	Order or other proceedings with Signature of Judge or Magistrate and that of parties or counsel where necessary
1	2	1238/07 3
8	27.10.2008	<p>Appellant in person and Ghulam Mustafa, A.G.P alongwith Khan. Afsar, A.D.O for the respondents present. Arguments heard and record perused.</p> <p>This appeal was earlier disposed of by the Tribunal vide its order dated 27.12.2007 with the direction to the respondents to dispose of the departmental appeal of the appellant in the light of the judgment of the August Supreme Court of Pakistan, but the respondents failed to dispose of the same, hence the petitioner/appellant filed an execution petition on 28.4.08. Vide order sheet No.5 dated 28.6.08, the original appeal of the appellant was restored on the ground that the respondents have not yet disposed of the case of the petitioner/appellant.</p> <p>The main contention of the appellant in the instant case is that since his two co-appellants, who went in appeal to the August Supreme Court of Pakistan against the judgment of this Tribunal dated 24.4.07 passed in Service Appeals No. 498 and 499 of 2006, were declared entitled to four advance increments on passing M.A Exam: by the apex Court of the country vide judgment dated 19.07.2007 passed in C.P.L.As No. 525 and 526 of 2007, therefore, on the strength of the said judgment and on the basis of equity of treatment, the present appellant having possessed the same qualification of M.A is also entitled to the same relief which has been meted out to his colleagues/co-appellant. In support of his contention, the appellant relies on the following authorities:-</p> <ol style="list-style-type: none"> <li>1. 1996 SCMR 1185</li> <li>2. PLJ 2005 SC 826</li> </ol> <p>The plea taken by the respondents in their written reply is that the appellant did not approach the August Supreme Court of Pakistan, therefore, he is not entitled to the relief claimed by him.</p> <p>In the above cited authorities, the Supreme Court has held as under:</p> <p style="padding-left: 40px;">"When Tribunal or Court decides a point of law relating to the terms of service of a civil servant which covers not only case of the civil servants who</p>

Attested  
[Signature]

ATTESTED  
EXAMINER  
NWFP Service Tribunal  
Peshawar

litigated, but also of other civil servants, who may have not taken any legal proceedings, the dictates of justice and rule of good governance demand that the benefit of such judgment by Service Tribunal/Supreme Court be extended to other civil servants, who may not be parties to the litigation instead of compelling them to approach the Service Tribunal or any other legal forum."

In the light of the above, the Tribunal is left with no alternative but to declare the present appellant entitled to four advance increments from the date of qualifying M.A examination. The appeal is accepted to the above extent. Parties are however, left to bear their own costs. File be consigned to the record.

ANNOUNCED  
27.10.2008

*(Signature)*  
(MUHAMMAD HUMAYUN)  
MEMBER

*(Signature)*  
(NOOR UL HAQ)  
MEMBER

CAMP COURT A/ABAD

*(Signature)*  
Secretary  
Camp Court A/Abad

Name of presentation	7/11/08
Number of cards	1200
Dupling fee	8-00
Pages	2-00
Total	10-00
Name of copyist	7/11/08
Date of completion of copy	7/11/08
Date of delivery of copy	7/11/08

Attested  
*(Signature)*



14

Annexure D

APPLICATION FOR EXECUTION OF DECREE  
BEFORE N.W.F.P SERVICE TRIBUNAL PESHAWAR

Implementation Application No \_\_\_\_\_ of 2009.

IN

Service Appeal No 1238 of 2007.

I, Muhammad Riaz Khan S/O Muhammad Rafique, (Ex CT teacher), Now S.E.T G.H.S NO 01 Abbottabad, R/O Village Nurdubba, P.O Nawan Shehr The & District Abbottabad, decree-holder, apply for execution of degree herein below set forth:-

1	No of Service Appeal.	2	Name of parties.	3	Date of decree.	4	Whether any appeal preferred from decree.	5	Payment or adjustment made, if any.	6	Previous application, if any, with date and result.	7	Amount with interest due upon the decree other relief granted thereby together with particulars of any cross decree.	8	Against whom to be executed.	9	Mode in which the assistance of the court is required.	10
	Service Appeal No 1238 of 2007. Instituted on 12/12/2007, Decided on 27/10/08.		Muhammad Riaz Khan S/O Muhammad Rafique, (Ex CT, teacher), Now S.E.T G.H.S NO 01 Abbottabad, R/O Village Nurdubba, P.O Nawan Shehr, Teh & District Abbottabad. Appellant VERSUS 1 District Coordination Officer, Abbottabad 2 Executive District Officer (Schools & Literacy), Abbottabad. 3 District Accounts Officer, Abbottabad. 4 Director of (Schools & Literacy) N.W.F.P Peshawar. 5 Secretary to Govt of N.W.F.P (Schools & Literacy) Department Peshawar. 6 Accountant General, N.W.F.P Peshawar 7 Secretary to Govt of N.W.F.P, Finance Department, Peshawar Respondents		27.10.2008.		No appeal was preferred against the Judgment by the Respondents		None		No implementation application was filed before the instant application.		Four Advance Increments Of MSc from the date of passing in the light of Supreme Court Order dated 19/07/2007 passed in CPLA No 525 & 526 of 2007, was given.		Against the Respondents, especially against Respondents No.1 to 3		Respondents (Respondent No.02) may kindly be directed to issue Sanction (Order) of 04 advance increments of MSc w.e.f. 24/09/1998 along with all back benefits without any further delay.	

Attended  
[Signature]

15

Respectfully Sheweth,

- 1) That applicant was instituted Service appeal No 544 of 2006, which was dismissed by this Honourable Tribunal on 24/04/2007 along with applicant's Co-appellants (Mr Rashid Iqbal Khan etc service appeal no 498 & 499 of 2006).
- 2) That applicant's co-appellants filed CPLA No 525 & 526 of 2007 before Honourable Supreme Court of Pakistan against the said judgment dated 24/04/2007, which was accepted on 19/07/2007, after the said judgment, applicant was also filed another service appeal No 1238 of 2007 before this Honourable Tribunal, which was disposed of on 27/12/2007 with the direction to the respondents to dispose of the departmental appeal/representation of appellant in the light of the judgment of Supreme Court of Pakistan dated 19/07/2007. Copy of Order is annexed as Annexure A.
- 3) That applicant was submitted an application to the respondents, which was still pending without any positive result, after that applicant filed an **execution petition No** on 28/04/2008 before this Honourable Tribunal, this Honourable Tribunal has been pleased to restore his original Appeal No 1238/2007 on 28/04/2008 under Order Sheet No 05 of his Execution application. Finally this Honourable Tribunal accepted his appeal on 27/10/2008 Copy of Judgment dated 27/10/2008 passed in Service, appeal No 1238/2007 is annexed as Annexure B.
- 4) That applicant submitted an application to the respondents for implementation of the above Judgment dated 27/10/2008, but uptill now no response is given and application is still pending in spite of this fact, that on 26/02/2008 respondent no 02 issued an order of 04 advance increments of MA/Msc w.e.f. its passing date, to applicant's co-appellants (Mr Rashid Iqbal Khan), but applicant's case for implementation of order of this Honourable Tribunal dated 27/10/2008 is still pending. Copies of implementation application, and order dated 26/02/2008 issued by respondent no 02 are annexed as Annexure C & D.

In the light of above mentioned facts, respondents may be directed to implement the order of this Honourable Tribunal dated 27/10/2008 passed in Service appeal No 1238 of 2007, by issuing order of 04 advance increments of MSc w.e.f. 24/09/1998 with all back benefits.

Attested  
He

(Muhammad Riaz Khan)  
Applicant Inperson

VERIFICATION

It is verified that the contents of the instant implementation of application are true and correct to the best of my knowledge and belief and nothing has been suppressed from this Honourable Tribunal and same nature application has not been filed earlier nor pending.

(Muhammad Riaz Khan)  
Applicant Inperson

ANNEXURES (F)

17

EXTRAORDINARY  
GOVERNMENT



Annex-A  
REGISTERED NO. PIII  
GAZETTE

**KHYBER PAKHTUNKHWA**

Published by Authority

PESHAWAR, TUESDAY, 15TH MAY, 2012.

PROVINCIAL ASSEMBLY SECRETARIAT  
KHYBER PAKHTUNKHWA

**NOTIFICATION**

Dated Peshawar, the 15th May, 2012.

No. PA/Khyber Pakhtunkhwa/Bills/2012/20711.—The Khyber Pakhtunkhwa Cessation of Payment of Arrears on Advance Increments on Higher Educational Qualification Bill, 2012 having been passed by the Provincial Assembly of Khyber Pakhtunkhwa on 8th May, 2012 and assented to by the Governor of the Khyber Pakhtunkhwa on 11th May, 2012 is hereby published as an Act of the Provincial Legislature of the Khyber Pakhtunkhwa.

**THE KHYBER PAKHTUNKHWA CESSATION OF PAYMENT OF ARREARS ON  
ADVANCE INCREMENTS ON HIGHER EDUCATIONAL QUALIFICATION  
ACT, 2012.**

(KHYBER PAKHTUNKHWA ACT NO. IX OF 2012)

*(first published after having received the assent of the Governor of the Khyber  
Pakhtunkhwa in the Gazette of the Khyber Pakhtunkhwa  
(Extraordinary), dated the 15th May, 2012).*

AN  
ACT

*to cease the payment of arrears accrued on account of advance increments on  
higher educational qualification.*

WHEREAS advance increments have been granted to certain Provincial Government employees on the basis of acquiring or possessing higher educational qualification over and above the prescribe educational qualification from time to time;

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PROVINCIAL GOVERNMENT OF PAKHTUNKHWA  
R PAKHTUNKHWA GOVERNMENT GAZETTE, EXTRAORDINARY, 15th MAY, 2012.

AND WHEREAS the Provincial Government vide Notification No. (PRC)1-1/2001, dated 27.10.2001, had already discontinued the scheme of advance increments on higher educational qualification;

AND WHEREAS due to financial constraints, it is not possible for Provincial Government to pay the claimed and unclaimed arrears accrued from the said increments;

It is hereby enacted as follows:-

1. Short title, application and commencement.— (1) This Act may be called the Khyber Pakhtunkhwa Cessation of Payment of Arrears on Advance Increments on Higher Educational Qualification Act, 2012.

(2) It shall apply to all the employees of the Provincial Government, who were entitled to received advance increments on higher educational qualification.

(3) It shall come into force at once and shall be deemed to have taken effect on and from 1<sup>st</sup> day of December, 2001.

2. Cessation of payment of arrears on advance increments on higher educational qualification.—(1) Notwithstanding anything contained in any decision, judgment and order of any Tribunal or Court including High Court or Supreme Court of Pakistan, for the purpose of any claim for payment of arrears on account of advance increments on higher educational qualification sanctioned in pursuance of any order, letter, office memoranda, notification, instructions and other instruments issued before 1.12.2001, such orders, letters, office memoranda, notifications, instructions and other instruments shall be deemed to be non-existent, ceased or revoked and no further claim whatsoever on the basis of these instruments shall be entertained and all cases in respect of such claims pending in any Court or Tribunal including High Court and Supreme Court of Pakistan shall stand abated.

(2) Any order made, instruction issued, decision, judgment or order of any Court or Tribunal including a High Court or the Supreme Court, implemented immediately before the commencement of this Act, shall be deemed to have been validly made, issued and implemented by the date of commencement of this Act, and any amount already paid there-under on account of advance increments or arrears thereof shall be deemed to have been validly paid and shall not be recoverable from the recipient Government employees.

Attested  
Dec

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KHYBER PAKHTUNKHWA GOVERNMENT GAZETTE, EXTRAORDINARY, 15th MAY, 2012. 895

3. **Removal of difficulties.**— If any difficulty arises, in giving effect to the provisions of this Act, the Provincial Government may make such orders as it may deem just and equitable.

4. **Repeal.**— The Khyber Pakhtunkhwa Cessation of Payment of Arrears on Advance Increments on Higher Educational Qualification Ordinance, 2012 (Khyber Pakhtunkhwa Ordinance NO. 1 of 2012), is hereby repealed.

BY ORDER OF MR. SPEAKER

PROVINCIAL ASSEMBLY OF KHYBER  
PAKHTUNKHWA

(AMANULLAH)  
Secretary

Provincial Assembly of Khyber Pakhtunkhwa

Printed and published by the Manager,  
Staty. & Ptg. Deptt., Khyber Pakhtunkhwa, Peshawar

Attested  
[Signature]

ANNEXURES 4,

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To  
The District Comptroller of Accounts  
Abbottabad.

Through  
The Principal (D.D.O)  
Government High School  
(Boys) No 1 Abbottabad.

Subject  
APPLICATION FOR ISSUANCE OF SALARY SLIP IN BPS NO 17  
W.E.F. 02/12/2015 ON THE BASIS OF NOTIFICATION NO.  
SO(PE)E&SED/2-6/DPC/Promotion of SSTs (Personal)/2014 ISSUED  
BY GOVT. OF K.P.K E/S EDUCATION DEPARTMENT  
PESHAWAR DATED 16/11/2015

Sir

It is stated that applicant is requesting for issuance of his salary slip w.e.f  
02/12/2015 in BPS No 17 on the basis of above Notification. The pay  
fixation position/chart is given below for your kind assistance.

01/12/2015	Rs 33610	BPS 16 (12910--1035--43960)
02/12/2015	Rs 34675	BPS 17 ( 20680--1555--51780)
02/12/2015	Rs 36230	Pre-Mature Increment.

2. That applicant points out and clarify the whole present legal & factual  
position of 04 Advance Increments of MA/MSc against CT post. Case of  
04 Advance Increments of MA/MSc was decided by the Honourable KPK  
Service Tribunal Peshawar on 27/10/2008 in favour of Applicant, and no  
appeal was filed before Supreme Court of Pakistan against the said  
Judgment. Copy attached
3. That the said judgment was implemented by KPK Service Tribunal  
Peshawar itself and under the directions of Tribunal, the representative of  
your office (Mr Malik Muhammad Haroon AAO) himself submitted  
implementation report before the Court wherein claim/payroll system  
Amendment Form of applicant was shown Approved on 21/09/2010 by  
your good self. Copy of Bill and pay print of Sep 2010 is attached for  
ready reference.
4. That applicant is taking 04 Advance Increments of MA/MSc from the  
year 2010 regularly, and it is well mentioned here that presently an Act  
"Khyber Pakhtunkhwa cessation of payment of arrears on advance  
increments on higher education qualification Act" (KPK ACT NO IX OF  
2012 dated 15/05/2012) which is in favour of applicant.

In the light of above factual and legal position it is hoped and  
requested that salary slip may please be issued with out any complication or  
any kind of illegal deduction.

Dated 16/12/2015.

(Muhammad Riaz Khan)  
S/O Muhammad Rafique,  
S.S.T G.H.S NO 01 Abbottabad.

No 407 Dated 23/12/15  
submitted to Distt. Controller of Accounts  
Distt: A. Abad.

Principal  
Government High School  
Abbottabad

Attested  
for

ANNEXURE C H,

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No. 465

For Insurance Notices see reverse. Stamps allowed except in case of uninsured letters of not more than the initial weight prescribed in the Post Office Guide or on which no acknowledgement is due.

Rs. 50 Ps.

Received a registered\* addressed to \_\_\_\_\_

Date-Stamp \_\_\_\_\_



\*Write here "letter", "postcard", "packet" or "parcel" with the word "insured" before it when necessary. (in figures) (in words)

If insured

Insurance fee Rs. \_\_\_\_\_

Weight \_\_\_\_\_ (in words)

Kilo \_\_\_\_\_ Grams \_\_\_\_\_

Name and address of sender \_\_\_\_\_

Admitted  
Let

ANNEXURE (I)

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BEFORE THE PESHAWAR HIGH COURT, ABBOTTABAD BENCH

Writ Petition No 63-A of 2015.

Muhammad Riaz Khan S/O Muhammad Rafique, S.S.T G.H.S NO 01  
Abbottabad, R/O Village Nurdubba, P.O Nawan Shehr Tehsil & District  
Abbottabad.

Petitioner

Versus

- 1 Government of Khyber Pakhtunkhwa through Secretary Finance  
Department Peshawar.
- 2 Accountant General Khyber Pakhtunkhwa, Peshawar.
- 3 District Comptroller of Accounts, Abbottabad.
- 4 Government of Khyber Pakhtunkhwa through Secretary Elementary &  
Secondary Education Department Peshawar.

Respondents

p. 16-18

WRIT PETITION UNDER ARTICLE 199 OF THE  
CONSTITUTION OF ISLAMIC REPUBLIC OF PAKISTAN  
1973, FOR DECLARATION, THAT UNDER THE LAW  
PETITIONER IS ENTITLED FOR FIXATION OF PAY IN  
B.P.S NO 17 WITH OUT DEDUCTION OF 02 ADVANCE  
INCREMENTS OF MA/MSc OUT OF 04, AND  
RESPONDENTS ARE LEGALLY BOUND TO FIX THE  
PAY OF PETITIONER WITH OUT DEDUCTION OF ANY  
ADVANCE INCREMENT.

PREYER

ON ACCEPTANCE OF INSTANT WRIT PETITION  
RESPONDENTS MAY PLEASE BE DIRECTED TO FIX THE PAY  
OF PETITIONER WITH EFFECT FROM 02/12/2015 IN B.P.S NO  
17 WITH OUT DEDUCTION OF 02 ADVANCE INCREMENTS  
OF MA/MSc OUT OF 04.

Respectfully Sheweth,

Attested  
Hez



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PESHAWAR HIGH COURT ABBOTTABAD BENCH

JUDICIAL DEPARTMENT

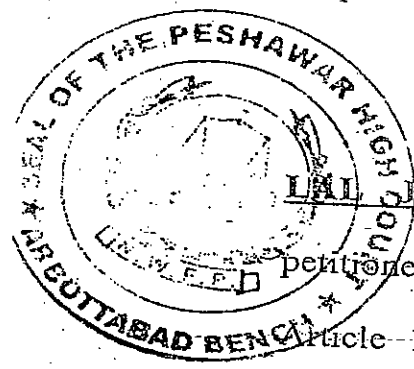
JUDGMENT SHEET

Writ Petition No. 63-A/16

Date of hearing: 02-02-2016

Petitioner M. Riaz Khan (in person)

Respondents Govt-



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MR. IAN KHATTAK, J., Muhammad Riaz Khan

petitioner through the instant writ petition filed under Article-199 of the Constitution of Islamic Republic of Pakistan, 1973 has prayed this Court for issuance of direction to respondents to fix his pay w.e.f. 02.12.2015 in BPS-17 without deduction of two advance increments of MA/M.Sc. out of the four, already granted to him on account of his higher educational qualification.

Arguments heard and record gone through.

Perusal of available case record would reveal that petitioner is seeking fixation of his salary in BPS-17 w.e.f. 02.12.2015 without deduction of two increments granted to him on the basis of his acquiring higher

*Govt*  
Certified to be True Copy  
Examiner  
Peshawar High Court  
Abbottabad Bench  
Notionized Under Sec 75 Acts Ordns

*Attested*  
*Re*

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qualification. It is worth to mention that pay is one of the terms and conditions of service and if any person is aggrieved from wrong fixation of his pay then he can approach the Services Tribunal for redressal of his grievance but in no case, for fixation of pay in certain scale, a civil servant can file petition under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973, as under Article 212 of the Constitution, jurisdiction of this Court to entertain an issue relating to the terms and conditions of service is barred.

5- For what has been discussed above, this petition, being not maintainable before this Court, is hereby dismissed in limine alongwith CM No.36-A/16.

SD [Signature]

Announced.  
02.02.2016.

Certified to be True Copy  
15/2/2016  
Peshawar High Court  
Abbottabad Bench  
Authorized Under Sec 75 Acts Ordms

[Signature]

Muhammad Rustam,  
P/S

لغزمت کھناب پوسٹ ماسٹر صاحب P.O ایبٹ آباد

جناب عالی

تذاریں میں 1463  
فورم 5/4 کے تحت سروس اپیل رجسٹر  
سروس ٹریبونل P.O ایبٹ آباد کو یعنی  
جیکارٹن کے حساب سے فرم /30/13  
Rs

تھا۔  
1 مقام رجسٹر صاحب کے پاس پڑھائی  
وہ عمل نہیں ہوئی اور وہاں نہ کوئی  
کارروائی سروس اپیل میں نہیں ہوئی ہے  
میں نے 22 کو خود لٹا کر مالک  
معلومات کسی ہیں، جیکارٹن کو  
تفصیلات

Attested  
اس باب میں نہ انہوں نے کوئی کارروائی  
کیا ہے اور نہ ہی اس کے بارے میں  
کوئی اطلاع ہے۔ اس کے ساتھ ساتھ  
25/7  
ایبٹ آباد اور ایبٹ آباد

ایبٹ آباد  
SST لغزمت کھناب پوسٹ ماسٹر

OFFICE OF  
CHIEF POST MASTER  
25 JUL 2016  
ABBOTTABAD G.P.O.

Handwritten signature

No. 1463

For Insurance Notices see reverse. Stamps affixed except in case of uninsured letters of not more than the initial weight prescribed in the Post Office Guide or on which no acknowledgement is due.

Rs. 130

Received a registered\* addressed to

*J. J. J.* Date Stamp

Initials of Receiving Officer

\*Write here "letter", "postcard", "packet" or "parcel" with the word "insured" before it when necessary.

Insured for Rs. (in figures)

*1000* (in words)

Insurance fee Rs.

Ps.

Weight

Kilo

Grams

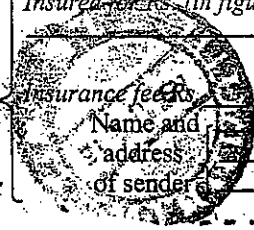
Name and address of sender

*1000* (in words)

*5/4/16*

if insured.

*Attended*  
*A. C.*



Annexure L

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**BEFORE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL  
PESHAWAR.**

Service Appeal No: \_\_\_\_\_ of 2016

Muhammad Riaz Khan S/O Muhammad Rafique, S.S.T G.H.S NO 01  
Abbottabad, R/O Village Nurdubba, P.O Nawan Shehr Tehsil & District  
Abbottabad.

Appellant

**Versus**

District Comptroller of Accounts, Abbottabad and 03 Other.

Respondents

**SERVICE APPEAL**

APPLICATION FOR CONDONATION OF DELAY FOR THE  
PERIOD SPENT AFTER PASSING 120 DAYS TILL  
INSTITUTION OF TITLED SERVICE APPEAL

Respectfully Sheweth,


- 1) That appellant has already filed titled accompanying Service appeal before this Honourable Tribunal for grant of salary slip with out deduction of 02 advance increments out of 04.
- 2) That appellant availed his Departmental remedy and submitted his representation to the respondents no 1 and after passing the statutory period of 90 days on 05/04/2016 appellant sent his service appeal through Registered Post to Registrar KPK Service Tribunal Peshawar, and appellant on every tour of Camp Court of this Tribunal at Abbottabad was being gotten information of his case and inquired about date of preliminary arguments but no information is received by Appellant, at last he went to KPK Service Tribunal Peshawar on 22/07/2016 but in vain, Appellant submitted application to Post Master GPO for inquiry. copy is also attached with appeal.
- 3) That due to this reason the instant service appeal is filing after passing 120 from the submission of his departmental appeal, appellant could not avail the first option available to appellant Under Section 4 (1) (a) of NWFP Service Tribunal Act 1974, whereby he could prefer his Service Appeal within the statutory period of 120 days from the date of representation submitted to Department (Respondents No 1).

*Attended  
Dec*

- 4) That now the period of more than 6 months have been passed and respondents are not being decided the appellant's representation too, and appellant is suffering from this critical situation, because he can come to this Honourable Tribunal U/S 4 (1) of NWFP Service Tribunal Act 1974 after taking final order passed by respondents and they are not deciding his representation intentionally, and there is no other efficacious remedy provided by law available to the appellant except to invoke Jurisdiction of this Honourable Tribunal u/s 4 of NWFP Service Tribunal Act 1974, for grant of revised salary slip.
- 5) That in the Service matter, this Honourable Tribunal and as well as Honourable Supreme Court Of Pakistan condoned the delay, which was in some cases more than ten years, in the interest of justice and in view of the similarity of point involved in other cases. According to same law it is admitted fact, that in the instant case, others numerous same nature cases are admitted and one also accepted by this Honourable Tribunal, reference is given herein below at Para k, l in accompanying appeal.

It is therefore , prayed that time consumed, after passing 120 days from the submission of representation, till institution of titled service appeal may gracious be condoned in the interest of justice.

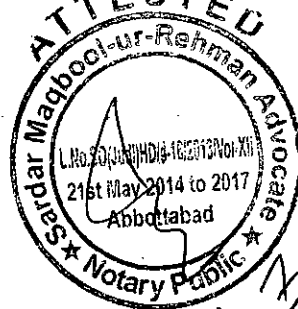
Dated 26/07/2016


  
(Muhammad Riaz Khan)  
Appellant in person

**Affidavit**

I do here by affirm on oath that contents of instant application is correct and true according to my best knowledge and belief and nothing has been suppressed from this Honourable Tribunal and this instant application is first application & same nature of any other appeal or application is not pending before Honourable Tribunal

Dated 26/07/2016



  
(Muhammad Riaz Khan)  
Appellant in person

26/7/2016 **DEPONENT**