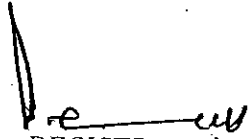


Form- A

FORM OF ORDER SHEET

Court of _____

Case No.- 7107 /2021

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
	2	3
1-	27/07/2021	<p>The appeal resubmitted today by Mr. Khan Zada Khan Advocate may be entered in the Institution Register and put to the Worthy Chairman for proper order please.</p> <p style="text-align: right;"> REGISTRAR</p> <p>This case is entrusted to S. Bench for preliminary hearing to be put up there on _____.</p> <p style="text-align: right;">CHAIRMAN</p>

The appeal of Mst. Ghousia Naz Associate Professor GGDC Timergra received today i.e. on 28.06.2021 is incomplete on the following score which is returned to the counsel for the appellant for completion and resubmission within 15 days.

- 1- Appellant is the employee of Higher Education Department but departmental appeal was preferred/made to Secretary Elementary & Secondary Education Department meaning thereby that there is no departmental appeal.
- 2- Affidavit may be got attested by the Oath Commissioner.
- 3- Annexures of the appeal may be attested.

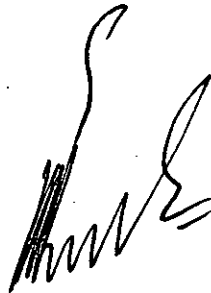
No. 1099 /S.T;

Dt. 29/06 /2021


REGISTRAR
SERVICE TRIBUNAL
KHYBER PAKHTUNKHWA
PESHAWAR.

Mr. Khan Zada Khan Adv. Pesh.

R/Sw. objection removed.



BEFORE THE SERVICE TRIBUNAL KHYBER PAKHTUNKHWA,
PESHAWAR

Service Appeal No. _____/2021

Ghousia Naz. **APPELLANT**

VERSUS

The Director Higher Education & others. . . **RESPONDENTS**

I N D E X

S.#	Description of Documents	Annex	Pages
1.	Service Appeal with Affidavit		1-7
2.	Copy of the Notification dated 20.12.2012	A	8
3.	Copies of the Salary Slips of working/serving month and vacations (deduction period)	B & C	9-10
4.	Copy of the Department Appeal	D	11
5.	Copies of the Judgment/ Order dated 1-10-19 4-11-19 11-11-19	E-F	12-20
6.	Wakalatnama ✓		



Appellant

Through



Khan Zada Khan
Advocate High Court
(Cell: 0300-9175182)

Dated: 01.06.2021

BEFORE THE SERVICE TRIBUNAL KHYBER PAKHTUNKHWA,
PESHAWAR

Service Appeal No. 2107/2021

Khyber Pakhtunkhwa
Service Tribunal

Diary No. 6683

Dated 28/6/2021

Ghousia Naz, Associate Professor (BPS-19)
Govt. Girls Degree College, Timergara. **APPELLANT**

VERSUS

1. The Director,
Higher Education,
Civil Secretariat, Peshawar.
2. The Director,
Elementary & Secondary Education,
Khyber Pakhtunkhwa, G.T Road, Peshawar.
3. The District Accounts Officer (Male),
District Dir Lower at Timergara.
4. The Secretary,
Elementary & Secondary Education,
Khyber Pakhtunkhwa, Civil Secretariat, Peshawar.
5. The Secretary,
Higher Education,
Civil Secretariat, Peshawar.
6. The Secretary Finance,
Finance Department,
Civil Secretariat, Peshawar.
7. The Accountant General,
Khyber Pakhtunkhwa, The Mall,
Peshawar Cantt.
8. The Government of Khyber Pakhtunkhwa
Through Chief Secretary,
Civil Secretariat, Peshawar. **RESPONDENTS**

Filed to-day

Registrar

28/6/21

Re-submitted to -d
and filed.

Registrar

27/7/21

SERVICE APPEAL U/S 4 OF THE SERVICE TRIBUNAL ACT, 1974 AGAINST THE IMPUGNED ACTION OF THE RESPONDENTS BY ILLEGALLY AND UNLAWFULLY DEDUCTING THE CONVEYANCE ALLOWANCE OF THE APPELLANT DURING WINTER AND SUMMER VACATIONS AND AGAINST NO ACTION TAKEN ON THE DEPARTMENTAL APPEAL DATED 01.03.2021 APPEAL OF THE APPELLANT WITHIN THE STATUTORY PERIOD OF 90 DAYS.

PRAYER-IN-APPEAL:

On acceptance of the instant service appeal, the respondents may kindly be directed not to make deduction of conveyance allowance during vacations period (summer and winter vacations) and make the payment of outstanding amount of conveyance allowance which has been deducted previously with all back benefits.

Any other remedy which this august Tribunal deems fit that may also be awarded in favour of the appellant.

Respectfully Sheweth:

The appellant humbly submits as under:-

1. That the appellant is performing her duties in Education Department under the supervision and administrative control of respondents.
2. That the conveyance allowance is admissible to all the Civil Servants and to this effect notification No.FD(PRC)1-1/2011, dated 14.07.2011 was issued. Lateron, vide revised notification dated 20.12.2012, whereby the conveyance allowance for employees working in BPS-1 to BPS-15 were enhanced/ revised while employees from BPS-16 to BPS-19 have been treated under the previous notification by no enhancing their conveyance allowance. (Copy of Notification dated 20.12.2012 is annexure "A").
3. That appellant was receiving the conveyance allowances as admissible under the law and rules but the respondent without any valid and justifiable reasons stopped/deducted the payment of conveyance allowance under the wrong and illegal pretext that the same is not allowed for leave period. (Copies of the Salary Slips of working/serving month and vacations (deduction period) are annexure "B" & "C").

4. That the appellant feeling aggrieved from the action of the respondents regarding deduction of conveyance allowance in vacations period/ months filed departmental appeal, but no reply has been received so far. (Copy of the Department Appeal is annexure "D").
5. That the appellant being aggrieved with the aforesaid impugned action/inactions of the respondents, approached this Hon'ble Tribunal, on the following amongst other grounds;

GROUND S:

- A. The appellant has come to this Hon'ble Tribunal with clean hands.
- B. The appellant has not been treated by the respondents' department in accordance with law and rules on the subject noted above and as such the respondents violated Article 4 and 25 of the Constitution of Islamic Republic of Pakistan, 1973.
- C. The action of the respondents is without any legal authority, discriminatory and in clear violation of fundamental rights duly conferred by the Constitution of Pakistan and is liable to be declared as null and void.

- D. There is clear difference between leave and vacation as leave is applied by the Civil Servant in light of the Government Servant Revised Leave Rules, 1981, while the vacations are always announced by the Government, therefore, under the law and Rules the appellant is fully entitled for the grant of conveyance allowance during vacations period.
- E. The Government Servants Revised Leave Rules, 1981 clearly explains that, the civil servants who avail the vacations are allowed only one leave in a month whereas the other civil servants may avail four days leave in a calendar months and the same are credited to leave account of the appellant and in this way the appellant may avail 48 days earned leave with full pay, whereas the Government Servants to avail vacation such as appellant, is allowed one day leave in a month and 12 days in a year and earned leave for 12 days in a year are credited to his account and there is no question of deduction of conveyance allowance for vacations period, the respondents while making the deduction of conveyance allowance lost sight of this legal aspect and illegally and without any authority started the recovery and deduction of conveyance allowance from appellant.

- F. That as the act of the respondents, is illegal, unconstitutional, without any legal authority and not only discriminatory but is also the result of malafide on the part of respondents.
- G. That according to Government Servants Revised Leave Rules, 1981 vacations are holidays and not leave of any kind, therefore, the deduction of conveyance allowance in vacations is against the law and rules.
- H. According to Article 38(e) of the Constitution of Islamic Republic of Pakistan, 1973 the State is bound to reduce disparity in the income and earning of individuals including persons in the services of the Federation or Province, therefore, in light of the said Article the appellant is fully entitled for the grant of conveyance allowance during vacations.
- I. This Hon'ble Tribunal recently in so many other similar nature appeals has granted the same relief as prayed for by the appellant. (Copies of the Judgment/ Order dated ~~1-10-2019~~ is annexure "E") ^{11/19} "F"
- J. Any other ground will be raised at the time of arguments, with kind permission of this Hon'ble Tribunal.

It is, therefore, most humbly prayed keeping in view the facts and circumstances of the instant appeal, relief as prayed for may kindly be granted in favour of the appellant.

Any other remedy which this august Tribunal deems fit that may also be awarded in favour of the appellant.

Ehasia

Appellant

Through

[Signature]

Khan Zada Khan
Advocate High Court

Dated: 01.06.2021

AFFIDAVIT

It is stated on oath that the contents of the **Service Appeal** are true and correct to the best of my knowledge and belief and nothing has been concealed from this Hon'ble Tribunal.

Ehasia

DEPONENT

ATTESTED

GOVERNMENT OF KHYBER PAKHTUNKHWA
FINANCE DEPARTMENT
(REGUALTION WING)

NO.FD/SO(SR-II)/52/2012
Dated Peshawar the: 20.12.2012

From

The Secretary to Govt: of Khyber Pakhtunkhwa
Finance Department, Peshawar.

To:

1. All administrative Secretaries to Govt: of Khyber Pakhtunkhwa.
2. The Senior Member, Board of Revenue, Khyber Pakhtunkhwa.
3. The Secretary to Governor, Khyber Pakhtunkhwa.
4. The Secretary to Chief Minister, Khyber Pakhtunkhwa.
5. The Secretary, Provincial Assembly, Khyber Pakhtunkhwa.
6. All Heads of attached Departments in Khyber Pakhtunkhwa.
7. All District Coordination Officers of Khyber Pakhtunkhwa.
8. All Political Agents/District & Session Judge in Khyber Pakhtunkhwa.
9. The Registrar Peshawar High Court, Peshawar.
10. The Chairman Public Service Commission, Khyber Pakhtunkhwa.
11. The Chairman, Service Tribunal, Khyber Pakhtunkhwa.

Subject: REVISION IN THE RATE OF CONVEYANCE ALLOWANCE FOR THE CIVIL EMPLOYEES OF THE KHYBER PAKHTUNKHWA, PROVINCIAL GOVERNMENT BPS-1-19

Dear Sir.

The Government of Khyber Pakhtunkhwa has been pleased to enhance/revise the rate of Conveyance Allowance admissible to all the Provincial Civil Servants Govt: of Khyber Pakhtunkhwa (working in BPS-1 to BPS-15) w.e.f from 1st September, 2012 at the following rates. However, the conveyance allowance for employees in BPS-16 to BPS-19 will remain unchanged.

S.No.	BPS	Existing Rate (PM)	Revised Rate (PM)
1.	1-4	Rs. 1,500/-	Rs. 1,700/-
2.	5-10	Rs. 1,500/-	Rs. 1,840/-
3.	11-15	Rs. 2,000/-	Rs. 2,720/-
4.	16-19	Rs. 5,000/-	Rs. 5,000/-

2. Conveyance Allowance at the above rates per month shall be admissible to those BPS-17, 18 and 19 officers who have not been sanctioned official vehicle.

Your Faithfully

(Sahibzada Saeed Ahmad)
Secretary Finance

ATTESTED

Endst No. FD/SO(SR-II)8-52/2012 Dated Peshawar the 20th December, 2012



GOVERNMENT OF KHYBER PAKHTUNKHWA
FINANCE DEPARTMENT
(REGULATION WING)

A - 8

NO. FD/SC(SR-11)/8-52/2012
Dated Peshawar the: 20-12-2012

From:

The Secretary to Govt. of Khyber Pakhtunkhwa,
Finance Department,
Peshawar.

To:

1. All Administrative Secretaries to Govt. of Khyber Pakhtunkhwa.
2. The Senior Member, Board of Revenue, Khyber Pakhtunkhwa.
3. The Secretary to Government Khyber Pakhtunkhwa
4. The Secretary to Chief Minister, Khyber Pakhtunkhwa.
5. The Secretary, Provincial Assembly, Khyber Pakhtunkhwa
6. All Heads of Attached Departments in Khyber Pakhtunkhwa
7. All District Coordination Officers in Khyber Pakhtunkhwa.
8. All Political Agents / District & Sessions Judges in Khyber Pakhtunkhwa
9. The Registrar, Peshawar High Court, Peshawar
10. The Chairman, Public Service Commission, Khyber Pakhtunkhwa.
11. The Chairman, Services Tribunal, Khyber Pakhtunkhwa.

305/801

REVISION IN THE RATE OF CONVEYANCE ALLOWANCE FOR THE CIVIL EMPLOYEES OF THE KHYBER PAKHTUNKHWA, PROVINCIAL GOVERNMENT BPS 1-19

Dear Sir,

The Government of Khyber Pakhtunkhwa has been pleased to enhance / revise the rate of Conveyance Allowance admissible to all the Provincial Civil Servants, Govt. of Khyber Pakhtunkhwa (Working in BPS-1 to BPS-15) w.e.f from 1st September, 2012 at the following rates. However, the conveyance allowance for employees in BPS-16 to BPS-19 will remain unchanged.

S.NO	BPS	EXISTING RATE (PK)	REVISED RATE (PK)
1.	1-4	Rs.1,500/-	Rs.1,700/-
2.	5-10	Rs.1,500/-	Rs.1,840/-
3.	11-15	Rs.2,000/-	Rs.2,720/-
4.	16-19	Rs.5,000/-	Rs.5,000/-

2. Conveyance Allowance at the above rates per month shall be admissible to those BPS-17, 18 and 19 officers who have not been sanctioned official vehicles.

Yours Faithfully,

(Saibzad Saad Ahmad)
Secretary Finance

Under NO. FD/SC(SR-11)/8-52/2012

Dated Peshawar the 20th December, 2012

A Copy is forwarded for information to the:-

1. Assistant General, Khyber Pakhtunkhwa, Peshawar
2. Secretaries to Government of Punjab, Sindh & Balochistan Finance Department
3. All Autonomous / Semi Autonomous Bodies in Khyber Pakhtunkhwa

ATTESTED

(INTIAZ AYUB)

Additional Secretary (Reg)

Dir at Timargar

S#:

P Sec:001 Month:January 2021
DA4037 -GOVT GIRLS COLLEGE TIMARGA
GOVERNMENT GIRLS DEGREE C

Pers # 00258299 Buckle: 0

Name: GHOSI NIAZ
ASSOCIATE PROFESSOR

NTN:
GPF #: 258299VOCPL3P74
Old #:

CNIC No.10777261094
GPF Interest Applied
19 Active Temporary

DA4037 -

PAYS AND ALLOWANCES:

0001-Basic Pay	86,660.00
1000-House Rent Allowance	8,856.00
1518-Entertainment Allowance	500.00
1925-UAA-OTHER 20%(17-22)	2,000.00
1947-Medical Allow 15% (16-22)	3,293.00
2148-15% Adhoc Relief All-2013	1,675.00
2199-Adhoc Relief Allow (10% Adhoc)	1,136.00
2211-Adhoc Relief All 2016 10%	5,829.00
2224-Adhoc Relief All 2017 10%	8,666.00
Gross Pay and Allowances	131,614.00

DEDUCTIONS:

IT Payable 21,228.90	Deducted 30,169.00	TAX: (3609)	4,246.00
GPF Balance 576,383.00		Subrc:	7,180.00
6505-GPF Loan Principal Instal Bal: 341,000.00			15,500.00
3501-Benevolent Fund			1,500.00
3990-Emp. Edu. Fund KPK			250.00
4004-R. Benefits & Death Comp:			1,600.00
			8,856.00
			500.00
			2,000.00
			3,293.00
			1,675.00
			1,136.00
			5,829.00
			8,666.00
Total Deductions			30,276.00

101,338.00

131,614.00

D.O.B

LFP Quota:

10.06.1977

HABIB BANK LIMITED TIMERGARA, DIR.

18 Years 05 Months 020 Days

PLS 5221-1

ATTESTED

Dir at Timargar

S. 1

P Sec:001 Month:December 2020
DA4037 --GOVT GIRLS COLLEGE TIMARGA
GOVERNMENT GIRLS DEGREE C

Pers #: 00258299 Buckle: 0
Name: GHOSI NIAZ
ASSOCIATE PROFESSOR
CNIC No.10777261094
GPF Interest Applied
19 Active Temporary

NTN:
GPF #: 258299VOCPI3P74
Old #:

DA4037

PAYS AND ALLOWANCES:		
0001-Basic Pay		86,660.00
1000-House Rent Allowance		8,856.00
1210-Convey Allowance 2005		5,000.00
1518-Entertainment Allowance		500.00
1925-UAA-OTHER 20% (17-22)		2,000.00
1947-Medical Allow 15% (16-22)		3,293.00
2148-15% Adhoc Relief All-2013		1,675.00
2199-Adhoc Relief Allow @10%		1,136.00
2211-Adhoc Relief All 2016 10%		5,829.00
Gross Pay and Allowances		136,614.00
DEDUCTIONS:		
IT Payable 27,724.86	Deducted 25,923.00	TAX: (3609) 4,621.00
GPF Balance 553,703.00		Subrc: 7,180.00
6505-GPF Loan Principal Instal	Bal: 356,500.00	15,500.00
3501-Benevolent Fund		1,500.00
3990-Emp.Edu. Fund KPK		250.00
4004-R. Benefits & Death Comp:		1,600.00
Total Deductions		30,651.00
		105,963.00

D.O.B 10.06.1977 LFP Quota:
18 Years 04 Months 020 Days HABIB BANK LIMITED TIMERGARA, DIR.
PLS 5221-1

~~ATTESTED~~

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To

Highw Edu. Hk.
The Secretary
Khyber Pakhtunkhwa, Peshawar,

D 

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Subject: DEPARTMENTAL APPEAL AGAINST THE IMPUGNED ACTION OF THE CONCERNED AUTHORITY BY ILLEGALLY AND UNLAWFULLY DEDUCTING THE CONVEYANCE ALLOWANCE DURING WINTER AND SUMMER VACATIONS.

Respected sir,

With due respect it is stated that I am the employee of your good self department and work with full zeal and zest and up to the entire satisfaction of the superiors. It is stated for kind information that conveyance allowance is admissible to all the civil servants and to this effect a notification No. FD (PRC) 1-1/2011 dated 14-7-2011 was issued. Later on vide revised notification dated 20-12-2012 whereby the conveyance allowance for employees working in BPS 1 to 15 were enhanced while employees from BPS -16 to 19 have been treated under the previous notification by not enhancing their conveyance allowance. Respected sir, I was receiving the conveyance allowance as admissible under the law and rules but the concerned authority without any valid and justifiable reasons stopped the payment of conveyance allowance under the wrong and illegal pretext that the same is not allowed for the leave period. One of the employees of the education department in Islamabad filed service appeal No. 1888 (R) CS/2016 before the federal service tribunal, Islamabad regarding conveyance allowance which was accepted by the honorable service tribunal vide its judgment dated 3.12.18 and also allowed by the Peshawar High court Peshawar in writ petition. That I also the similar employee of education department and under the principle of consistency I am also entitled for the same treatment meted out in the above mentioned service appeal but the concerned authority is not willing to issue the same conveyance allowance which is granted to other employees. **Copy attached**. I am feeling aggrieved from the action of concerned authority regarding deduction of conveyance allowance in vacation period preferred this department appeal before your good self.

It is therefore, most humbly prayed that on acceptance of this departmental appeal the concerned authority may very kindly be directed the conveyance allowance may not be deducted from my monthly salary during the winter & summer vacations.

Dated : ..

28 ²/₂₁

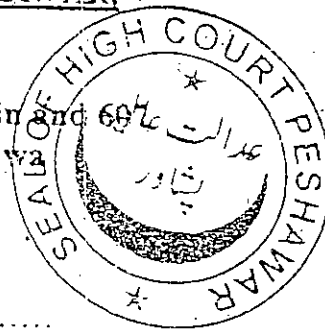
Chasim

Your Obediently

ATTESTED

IN THE PESHAWAR HIGH COURT, PESHAWAR,
JUDICIAL DEPARTMENT.

Writ Petition No. 3162-P/2019 Akhtar Hussain and
others..vs..Govt of Khyber Pakhtunkhwa



JUDGMENT

Date of hearing.....01.10.2019.....

Petitioner(s) by Mr. Noor Mohammad Khattak, Advocate.

Mr. Mujahid Ali Khan, AAG, for respondents.

ROOH-UL-AMIN KHAN, J:- Through this common judgment we, proposed to decided the instant as well as the connected writ petitions as all having involved common question of law and facts, the particulars of which are given below.

- i. WP No. 3162-P/2019 titled Akhtar Hussain etc..vs..Government of Khyber Pakhtunkhwa through Chief Secretary, Peshawar and 4 others.
- ii. WP No. 3064-P/2019 titled Habeeb Ullah etc...Vs.. Government of Khyber Pakhtunkhwa through Chief Secretary, Peshawar and 7 others.
- iii. WP No. 3084-P/2019 titled Sikandar Khan etc...Vs.. Government of Khyber Pakhtunkhwa through Chief Secretary, Peshawar and 4 others.
- iv. WP No. 3178-P/2019 titled Abdur Rehman etc...Vs.. Government of Khyber Pakhtunkhwa through Chief Secretary, Peshawar and 4 others.

ATTESTED
M. J. Khan

ATTESTED
EXAMINER
Peshawar High Court



- v. WP No. 3233-P/2019 titled Amjid Ali etc...Vs..
Government of Khyber Pakhtunkhwa through Chief
Secretary, Peshawar and 4 others.
- vi. WP No. 3283-P/2019 titled Gul Saeed etc...Vs..
Government of Khyber Pakhtunkhwa through Chief
Secretary, Peshawar and 4 others.
- vii. WP No. 3287-P/2019 titled Syed Israr Shah etc...Vs..
Government of Khyber Pakhtunkhwa through Chief
Secretary, Peshawar and 7 others.
- viii. WP No. 3288-P/2019 titled Firdous Khan etc...Vs..
Government of Khyber Pakhtunkhwa through Chief
Secretary, Peshawar and 4 others.
- ix. WP No. 3353-P/2019 titled Hafiz Inam Ur Rehman
etc...Vs.. Government of Khyber Pakhtunkhwa
through Chief Secretary, Peshawar and 6 others.
- x. WP No. 3366-P/2019 titled Jehanzeb Khan etc...Vs..
Government of Khyber Pakhtunkhwa through Chief
Secretary, Peshawar and 4 others.
- xi. WP No. 3390-P/2019 titled Haji Rehman etc...Vs..
Government of Khyber Pakhtunkhwa through Chief
Secretary, Peshawar and 2 others.
- xii. WP No. 3520-P/2019 titled Mohammad Khalid
etc...Vs.. Government of Khyber Pakhtunkhwa
through Chief Secretary, Peshawar and 4 others.

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ATTESTED

ATTESTED

EXAMINER
Peshawar High Court

- xiii. WP No. 3567-P/2019 titled Husnur Rehman etc...Vs..
Government of Khyber Pakhtunkhwa through Chief
Secretary, Peshawar and 3 others.
- xiv. WP No. 3667-P/2019 titled Maqсад Hayat etc...Vs..
Government of Khyber Pakhtunkhwa through Chief
Secretary, Peshawar and 4 others.
- xv. WP No. 3939-P/2019 titled Syed Khurshid Shah
etc...Vs.. Government of Khyber Pakhtunkhwa
through Chief Secretary, Peshawar and 5 others.
- xvi. WP No. 4072-P/2019 titled Subhan Ullah etc...Vs..
Government of Khyber Pakhtunkhwa through Chief
Secretary, Peshawar and 6 others.
- xvii. WP No. 4758-P/2019 titled Sobrab Hayat etc...Vs..
Government of Khyber Pakhtunkhwa through Chief
Secretary, Peshawar and 4 others.

2. As per averments of the writ petition, the
petitioners are serving in the Elementary & Secondary
Education Department on their respective posts. On 14.7.2011
the Government of Khyber Pakhtunkhwa enhanced the
conveyance allowance to all the Civil Servants i.e. from BPS-1
to 15, including the petitioners, which was subsequently revised
vide another notification dated 20.12.2012 and was further
enhanced. But the respondents without any valid and justifiable
reasons stopped / deducted the payment of conveyance

looked

ATTESTED

ATTESTED
EXAMINER
Peshawar High Court



allowance under the wrong and illegal pretext that the same is not allowed for the leave period.

3. In essence, the grievance the petitioners is that they were receiving the conveyance allowance under the notifications mentioned above, which was stopped without any justifiable reason.

4. Since the matter pertain to grant of conveyance allowance which is part and parcel of pay. Similar controversy came before this Court in Writ Petition No. 3509-P/2014 titled (Hafiz Mohammad Ilyas etc. vs. Government of Khyber Pakhtunkhwa), wherein the pay and salary were defined in the following manner.

"7. To resolve the controversy as to whether payment of allowances to a civil servant falls in chapter-2 of Khyber Pakhtunkhwa Civil Servants Act, 1973 i.e. terms and conditions of service, it is necessary to reproduce the definition of "pay" provided in section 2(e) of the Khyber Pakhtunkhwa Civil Servants Act, 1973 which reads as under:

" 2. (e)—"Pay" means the amount drawn monthly by a civil servant as pay, and includes special pay, personal pay and any other emoluments declared by the prescribed authority to be paid." (emphasis provided).

The word "emolument" used in the above quoted definition clause of the Civil Servants Act, 1973, according to its dictionary meaning, denotes wages and benefits received as compensation for

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EXAMINER
Peshawar High Court



holding an office or having employment. The word emolument is basically derived from the Latin word emolumentum. It originally meant "the sum paid to a miller for grinding a customer wheat". Today, the term exists mostly as a bit of archaic legalese, but it might be within the route of expression i.e. "grinding out a living". From the above it is manifest that emoluments are essentially the benefits that one gets from the working of being employed. Emolument is the profit from employment and is compensation in return of services, hence the emoluments are part and parcel of pay. Section 17 being part of chapter-2 i.e. terms and conditions of service of a civil servant provides that, a civil servant appointed to a post shall be entitled, in accordance with rules, to the pay sanctioned for the post. Likewise, Rule 9(21) of (FR/SR) provide, the definition of pay which means the amount drawn monthly by a government servant as ;

- (i) the pay, other than special pay or pay granted in view of his personal qualification, which has been sanctioned for the post held by him substantively or in an officiating capacity, or to which he is entitled by reason of his position in a cadre, and
- (ii) overseas pay, technical pay, special pay and personal pay and
- (iii) any other emoluments which may be specially classed as pay by the governor general.

The legislature in its wisdom has wisely used the word "pay" instead of salary in definition clause and section 17 of Khyber Pakhtunkhwa Civil Servants Act, 1973. The word 'pay' connotes

ATTESTED

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ATTESTED

EXAMINER
Peshawar High Court

payment of wages including emolument in broader spectrum while the salary is used for amount that one receives in return for work and or service provided, which is paid periodically i.e. over a specified interval of time such as weekly or most commonly monthly. The term "salary" has been dealt with at page-553 of Corpus Juris Secundum Vol. 77 as under:-

"Salary". The word "Salary" is defined has meaning fixed compensation regularly paid by the year, quarter, month or week; fixed compensation for regular work, or for continuous services over a period of time; periodical compensation for services; compensation for services rendered; per annum compensation mean in official and in some other situation, or station; legal compensation.

Salary is also defined as meaning stipulated periodical recompense; or consideration paid, or stipulated to be paid to a person on regular interval for services usually a fixed sum to be paid by the year or half year, quarter, reward or consideration paid or agreed to be paid to a person on a regular intervals by the year, month or week for services; reward of fixed or recompense for services rendered or performed; reward or compensation of services rendered or performed.

From the above mentioned definition it is manifest that the "salary" of a civil servant is a fixed amount regularly paid as compensation to the employee, whereas the pay means an amount received by a civil servant including other emoluments i.e. allowances."

ATTESTED

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ATTESTED

EXAMINER
Peshawar High Court

5. Besides, certain other petitions filed by the Teachers /employees of the same department serving from other corners of the province which were decided by Abbottabad Bench of this Court, wherein it was held that the conveyance allowance being part of pay fall in terms and conditions of civil servant and it can adequately be claimed through an appeal by adopting the prescribed procedure under the Khyber Pakhtunkhwa Civil Servants Act, 1974.

6. For the reasons given hereinabove, the petitioners are civil servants and their claim falls in terms and conditions of service enumerated in Chapter-2 of the Khyber Pakhtunkhwa Civil Servants Act, 1973, wherein the jurisdiction of this Court is expressly barred by Article 212 of the Constitution of Islamic Republic of Pakistan, 1973. Resultantly, this and the connected writ petition mentioned above stand dismissed being not maintainable. However, the petitioners are liberty to approach the proper forum, if so desire.

Announced on;
1st of October, 2019

"Zarhad"

JUDGE

JUDGE

(DB) Mr. Justice Rooh Ul Amin Khan & Mr. Justice Mohammad Naeem Anwar

ATTESTED

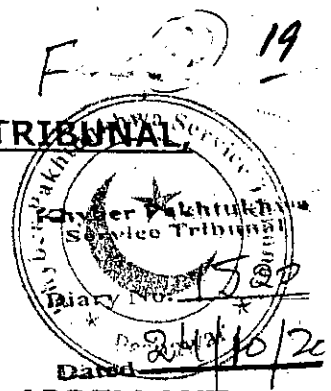
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EXAMINER
Peshawar High Court, Peshawar
Authorized Under Article 87 of
The Constitution of Pakistan Order 1908

21 OCT 2019

**BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR**

APPEAL NO. 1452 /2019



Mr. Maqsd Hayat, SCT (BPS-16),
GHS Masho Gagar, Peshawar.....

APPELLANT

VERSUS

- 1- The Government of Khyber Pakhtunkhwa through Chief Secretary, Khyber Pakhtunkhwa, Peshawar.
- 2- The Secretary (E&SE) Department, Khyber Pakhtunkhwa, Peshawar..
- 3- The Secretary Finance Department, Khyber Pakhtunkhwa, Peshawar.
- 4- The Accountant General, Khyber Pakhtunkhwa, Peshawar.
- 5- The Director (E&SE) Department, Khyber Pakhtunkhwa, Peshawar.

.....**RESPONDENTS**

APPEAL UNDER SECTION-4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974 AGAINST THE IMPUGNED ACTION OF THE RESPONDENTS BY ILLEGALLY AND UNLAWFULLY DEDUCTING THE CONVEYANCE ALLOWANCE OF THE APPELLANT DURING WINTER & SUMMER VACATIONS AND AGAINST NO ACTION TAKEN ON THE DEPARTMENTAL APPEAL OF APPELLANT WITHIN THE STATUTORY PERIOD OF NINETY DAYS.

PRAYER:

That on acceptance of this appeal the respondents may kindly be directed not to make deduction of conveyance allowance during vacations period (Summer & Winter Vacations) and make the payment of all outstanding amount of Conveyance allowance which have been deducted previously with all back benefits. Any other remedy which this august Tribunal deems fit that may also be awarded in favor of the appellant.

Filed to-day
Registrar
24/10/19

R/SHEWETH:

ATTESTATION FACTS:

- 1- That the appellant is serving in the elementary and secondary education department as Certified Teacher (BPS-15) quite efficiency and up to the entire satisfaction of the superiors.
- 2- That the Conveyance Allowance is admissible to all the civil servants and to this effect a Notification No. FD (PRC) 1-1/2011 dated 14.07.2011 was issued. That later on vide revised Notification dated 2.2.2012 whereby the conveyance allowance for employees

Examined and
Khyber Pakhtunkhwa
Service Tribunal
Peshawar
11 to day
ATTESTED

Appeal No. 1452/2019
Masood Hayat vs Govt



20

11.11.2019

Counsel for the appellant present.

Learned counsel referred to the judgment passed by learned Federal Service Tribunal in Appeal No. 1888(R)CS/2016 which was handed down on 03.12.2018. Through the said judgment the issue of payment of Conveyance Allowance to a civil servant during summer and winter vacations was held to be within his entitlement and the deduction already made from him was to be reimbursed. Similar reference was made to the judgment by Honourable Peshawar High Court passed on 01.10.2019 in the case of appellant.

Learned counsel, when confronted with the proposition that the issue, in essence, was dilated upon by the Federal Service Tribunal and, more particularly, by the Honourable Peshawar High Court in the case of appellant, stated that in case the respondents are required to execute the judgment of Peshawar High Court, the appellant will have no cavil about disposal of instant appeal.

The record suggests that while handing down judgment in the Writ Petition, preferred by the appellant, the Honourable High Court not only expounded the definition of "Pay" as well as "Salary" but also entitlement of a civil servant for the Conveyance Allowance during the period of vacations. It is important to note that the respondents were represented before the High Court during the proceedings.

In view of the above noted facts and circumstances and in order to protect the appellant from a fresh round of litigation which may protract over a formidable period, the appeal in hand is disposed of with observation that the judgment of Honourable Peshawar High Court passed in Writ Petitions including W.P. No. 3162-P/2019 shall be honoured and implemented by the respondents within shortest possible time. The appellant shall, however, be at liberty to seek remedy in accordance with law in case his grievance is not redressed by the respondents within a reasonable time.

Certified to be true copy

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

ATTESTED

M

File be consigned to the record.

Chairman

ANNOUNCED

11.11.2019

بعدالت

جھینڈہ غٹو ٹیڈ اسٹریٹس ٹریڈنگ کمپنی
پشاور

کیس نمبر

2021 پنجاب

معدومہ نامہ بنام
جھینڈہ غٹو ٹیڈ اسٹریٹس ٹریڈنگ کمپنی

مورخہ 6
2021
دعویٰ سہرسر ڈیپوٹ
جرم

باعث تحریر آنکہ

مقدمہ مندرجہ عنوان بالا میں اپنی طرف سے دائرہ پیروری کیلئے خانزادہ خان اسٹریٹس
آن مقام سہرسر ڈیپوٹ کے اقرار کیا جاتا ہے۔ کہ صاحب موصوف کو مقدمہ کی کل کارروائی کا کمال اختیار ہوگا۔ نیز
مقرر کر کے اقرار کیا جاتا ہے۔ کہ صاحب موصوف کو مقدمہ کی کل کارروائی کا کمال اختیار ہوگا۔ نیز
وکیل صاحب کو راضی نامہ کرنے و تقرر ثالث و فیصلہ پر حلف دیئے جواب دہی اور اقبال دعویٰ اور
بصورت ڈگری کرنے اجراء اور وصولی چیک و روپیہ عرضی دعویٰ اور درخواست ہر قسم کی تصدیق
زرایں پر دستخط کرانے کا اختیار ہوگا۔ نیز صورت عدم پیروی یا ڈگری یکطرفہ یا اپیل کی برآمدگی
اور منسوخی نیز دائر کرنے اپیل نگرانی و نظر ثانی و پیروی کرنے کا مختار ہوگا۔ از بصورت ضرورت
مقدمہ مذکور کے کل یا جزوی کارروائی کے واسطے اور وکیل یا مختار قانونی کو اپنے ہمراہ یا اپنے بجائے
تقرر کا اختیار ہوگا۔ اور صاحب مقرر شدہ کو بھی وہی جملہ مذکورہ باختیارات حاصل ہوں گے
اور اس کا ساختہ پرداخت منظور و قبول ہوگا دوران مقدمہ میں جو خرچہ ہر جانہ التوائے مقدمہ کے
سبب سے ہوگا۔ کوئی تاریخ پیشی مقام دورہ پر ہو یا حد سے باہر ہو تو وکیل صاحب پابند ہوں
گے۔ کہ پیروی مذکور کریں۔ لہذا وکالت نامہ لکھ دیا کہ سندر ہے۔

Shahar
پشاور

2021

ماہ جون

المرقوم 22

کے لئے منظور ہے۔

Attest by: [Signature]

مقام پشاور