


163

Form- A

FORM OF ORDER SHEET

Court of _____

Case No. 1682 /2021

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1-	29/01/2021	<p>The appeal presented today by Syed Noman Ali Bukhari Advocate may be entered in the Institution Register and put to the Learned Member 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 <u>18/6/21</u></p> <p style="text-align: right;">MEMBER(J)</p>
2-		

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

APPEAL NO. _____ /2020

Ashrif Jan

VS


Education Deptt..

INDEX.

S.NO	DOCUMENTS	ANNEXURE	PAGE
1.	Memo of appeal	---	1 - 4
2.	Copy of notification dated 20.12.2012	A	05
3.	Copy of pay slip of vacation	B	06
4.	Copy of pay slip working	C	07
5.	Copy of departmental appeal	D	08
6.	Copy of High Court Judgment	E	09-15
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APPELLANT

THROUGH


(SYED NOMAN ALI BUKHARI)
ADVOCATE HIGH COURT

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

APPEAL NO. 1689 /2020

Khyber Pakhtunkhwa
Service Tribunal

Diary No. 2120

Dated 29/1/2021

Mr. Ashrif Jan SCT
GHS No 1 NRS CANTT.

.....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 of (E&SE) Department, Khyber Pakhtunkhwa, Peshawar.
6. District Education Officer (M) Nowshehra (E&SE) Department, Khyber Pakhtunkhwa.
7. District account officer Nowshehra Department, Khyber Pakhtunkhwa.

.....RESPONDENTS

Filed to day
Registrar

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 THE 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 (SUMER & WINTER VACATIONS) AND MAKE THE PAYMENT OF ALL

OUTSTANDING AMOUNT OF CONVEYANCE ALLOWANCE WHICH HAVE BEEN DEDUCTED PREVIOUSLY WITH ALL BACK BENEFITS BIENG SIMILAR PLACED EMPLOYEE. ANY OTHER REMEDY WHICH THIS AUGUST TRIBUNAL DEEMS FIT THAT MAY ALSO BE AWARDED IN FAVOR OF THE APPELLANT.

R/SHEWETH:

ON FACTS:

1. That the appellant is serving in the Elementary & Secondary Education Department quite efficiently and up to the entire satisfaction of their 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 14.7.2011 was issued. That later on vide revised notification dated 20.12.2012 whereby the conveyance allowance for employees working in BPS 1 to 15 were enhance/revised while employees from BPS-16 to 19 have been treated under the precious notification by not enhancing their conveyance allowance. **Copy of the notification dated 20.12.2012 are attached as annexure A.**
3. That appellant was receiving the conveyance allowances as admissible under the law and rules but the respondents 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 the leave period. **Copies of the salary slips of working/serving month and vacations (deduction period) are attached as annexure B & C.**
4. That appellant feeling aggrieved from the action of the respondents regarding deduction of conveyance allowance in vacations period/months filed departmental appeal on 15.04.2020 but no reply has been received so far. **Copies of the departmental appeal is attached as annexure-D.**
5. That it is pertinent to mentioned here that feeling aggrieved some colleagues of appellant filed writ petition no.3162-P/2019 before the Peshawar High Court, Peshawar which was disposed of vide judgment dated 1.10.2019 with the direction to approach the proper forum i.e. service tribunal. **Copies of the judgment is attached as annexure E.**
6. That some of colleagues of the appellant approached to this august tribunal in different services appeal which was allowed by this august tribunal vide its judgment dated 11.11.2019. **Copy of the judgment is attached as annexure F.**

7. where after the appellant waited for the statutory period of ninety days but no reply has been received from the respondents. That appellant feeling aggrieved and having no other remedy filed the instant service appeal on the following grounds amongst the others.

GROUNDS

- A. That the action and inaction of the respondents regarding deduction of conveyance allowance for vacations period/months is illegal, against the law, facts, norms of natural justice.
- B. That the appellant have not been treated by the respondent 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. That the action of the respondents is without any legal authority, discriminatory and in clear violation of fundamental rights duly conferred by the constitution and is liable to be declared as null and void.
- D. That there is clear difference between leave and vacation as leave is applied by the Civil Servant in light Government Servant Revised Leave Rules, 1981 while the vacations are always announced by the Government, therefore under the law and Rules the appellant fully entitled for the grant of conveyance allowance during vacations period.
- E. That the Government Servant Revised Leave Rules, 1981 clearly explain that the civil servants who avail the vacations are allowed only one leave in a month whereas, the other civil servants may avail 04 days leave in a calendar months and the same aer credited to this account and in this way he 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 twelve (12) days in a year and earned leave for twelve days in a year are credited to his account and there is no question of deduction of conveyance allowance for vacation period,the respondents while making the deduction of conveyance allowance lost sight of this legal aspects 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 appellant has the vested right of equal treatment before law and the act of the respondents to deprive the petitioners from the conveyance/allowance is unconstitutional and clear violation of fundamental rights.
- H. 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.
- I. That 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, therefore in light of the said article the appellant fully entitle for the grant of conveyance allowance during vacations.
- J. That the petitioners seeks permission of this Honourable Court to raise any other grounds available at the time of arguments.

It is therefore, most humbly prayed that the appeal of the appellant may be accepted as prayed for.

الشرف جان
APPELLANT

THROUGH


(SYED NOMAN ALI BUKHARI)
ADVOCATE HIGH COURT



GOVERNMENT OF KHYBER PAKHTUNKHWA
FINANCE DEPARTMENT
(REGULATION WING)

A - (5)

NO. FD/ISO(SR-1178-52/2012
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 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.

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 vehicles.

Yours Faithfully,

(Sahibzada Saad Ahmad)
Secretary Finance

Encl: NO. FD/ISO(SR-1178-52/2012

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

(INTIAZ AYUB)
Additional Secretary (Reg.)

M B

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.

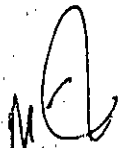
S.No.	BPS	Existing Rate (PM)	Revised Rate (PM)
1.	1-4	Rs. 1,500/-	Rs. 1,700/-
2.	5-10	Rs. 1,500/-	Rs. 1,840/-
3.	11-15	Rs. 2,000/-	Rs. 2,720/-
4.	16-19	Rs. 5,000/-	Rs. 5,000/-

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

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



B-6

**Dist. Govt. NWFP-Provincial
District Accounts Office Nowshera
Monthly Salary Statement (July-2019)**



Personal Information of Mr MIAN ASHRAF JAN d/w/s of

Personnel Number: 00134176

CNIC: 99990941037

NTN:

Date of Birth: 10.10.1969

Entry into Govt. Service: 03.12.1989

Length of Service: 29 Years 07 Months 030 Days

Employment Category: Vocational Temporary

Designation: SENIOR CERTIFIED TEACHER

80003699-DISTRICT GOVERNMENT KHYBE

DDO Code: NR6045-G.H.S NO-1 NSR CANTT

Payroll Section: 001

GPF Section: 001

Cash Center:

GPF A/C No:

Interest Applied: Yes

GPF Balance:

387,691.00

Vendor Number: -

Pay and Allowances:

Pay scale: BPS For - 2017

Pay Scale Type: Civil BPS: 16

Pay Stage: 26

Wage type		Amount	Wage type		Amount
0001	Basic Pay	58,430.00	1000	House Rent Allowance	2,727.00
1947	Medical Allow 15% (16-22)	2,633.00	2148	15% Adhoc Relief All-2013	1,380.00
2199	Adhoc Relief Allow @10%	918.00	2211	Adhoc Relief All 2016 10%	4,660.00
2224	Adhoc Relief All 2017 10%	5,843.00	2247	Adhoc Relief All 2018 10%	5,843.00
2264	Adhoc Relief All 2019 10%	5,843.00			0.00

Deductions - General

Wage type		Amount	Wage type		Amount
3016	GPF Subscription - Rs3340	-3,340.00	3501	Benevolent Fund	-800.00
3609	Income Tax	-1,143.00	3990	Emp.Edu. Fund KPK	-150.00
4004	R. Benefits & Death Comp:	-1,089.00	5011	Adj Conveyance Allowance	-2,500.00

Deductions - Loans and Advances

Loan	Description	Principal amount	Deduction	Balance

Deductions - Income Tax

Payable: 22,841.15 Recovered till July-2019: 1,143.00 Exempted: 9135.49 Recoverable: 12,562.66

Gross Pay (Rs.): 88,277.00 Deductions: (Rs.): -9,022.00 Net Pay: (Rs.): 79,255.00

Payee Name: MIAN ASHRAF JAN

Account Number: 4072

Bank Details: ALLIED BANK LIMITED, 250286 CAVALRY ROAD CAVALRY ROAD,

Leaves: Opening Balance: Aailed: Earned: Balance:

Permanent Address: SDEO M NOWSHERA

City: NOWSHERA

Domicile: NW - Khyber Pakhtunkhwa

Housing Status: No Official

Temp. Address:

City:

Email:

Dist. Govt. NWFP-Provincial
District Accounts Office Nowshera
Monthly Salary Statement (August-2019)



Personal Information of Mr MIAN ASHRAF JAN d/w/s of

Personnel Number: 00134176 CNIC: 99990941037 NTN:
 Date of Birth: 10.10.1969 Entry into Govt. Service: 03.12.1989 Length of Service: 29 Years 08 Months 030 Days

Employment Category: Vocational Temporary

Designation: SENIOR CERTIFIED TEACHER 80003699-DISTRICT GOVERNMENT KHYBE

DDO Code: NR6045-G.H.S NO-1 NSR CANTT

Payroll Section: 001

GPF Section: 001

Cash Center:

GPF A/C No:

Interest Applied: Yes

GPF Balance: 461,188.00

Vendor Number: -

Pay and Allowances:

Pay scale: BPS For- 2017

Pay Scale Type: Civil BPS: 16

Pay Stage: 26

Wage type		Amount	Wage type		Amount
0001	Basic Pay	58,430.00	1000	House Rent Allowance	2,727.00
1947	Medical Allow 15% (16-22)	2,633.00	2148	15% Adhoc Relief All-2013	1,380.00
2199	Adhoc Relief Allow @10%	918.00	2211	Adhoc Relief All 2016 10%	4,660.00
2224	Adhoc Relief All 2017 10%	5,843.00	2247	Adhoc Relief All 2018 10%	5,843.00
2264	Adhoc Relief All 2019 10%	5,843.00			0.00

Deductions - General

Wage type		Amount	Wage type		Amount
3016	GPF Subscription	-3,340.00	3501	Benevolent Fund	-800.00
3609	Income Tax	-1,143.00	3990	Emp. Edu. Fund KPK	-150.00
4004	R. Benefits & Death Comp.	-1,089.00			0.00

Deductions - Loans and Advances

Loan	Description	Principal amount	Deduction	Balance

Deductions - Income Tax

Payable: 22,841.15 Recovered till August-2019: 2,286.00 Exempted: 9135.45 Recoverable: 11,419.70

Gross Pay (Rs.): 88,277.00 Deductions: (Rs.): -6,522.00 Net Pay: (Rs.): 81,755.00

Payee Name: MIAN ASHRAF JAN

Account Number: 4072

Bank Details: ALLIED BANK LIMITED, 250286 CAVALRY ROAD CAVALRY ROAD,

Leaves: Opening Balance: Availed: Earned: Balance:

Permanent Address: SDEO M NOWSHERA

City: NOWSHERA

Domicile: NW.- Khyber Pakhtunkhwa

Housing Status: No Official

Temp. Address:

City:

Email:

Dist. Govt. NWFP-Provincial
District Accounts Office Nowshera
Monthly Salary Statement (September-2019)



Personal Information of Mr MIAN ASHRAF JAN d/w/s of

Personnel Number: 00134176

CNIC: 99990941037

NTN:

Date of Birth: 10.10.1969

Entry into Govt. Service: 03.12.1989

Length of Service: 29 Years 09 Months 029 Days

Employment Category: Vocational Temporary

Designation: SENIOR CERTIFIED TEACHER

80003699-DISTRICT GOVERNMENT KHYBE

DDO Code: NR6045-G.H.S NO-1 NSR CANTT

Payroll Section: 001

GPF Section: 001

Cash Center:

GPF A/C No:

Interest Applied: Yes

GPF Balance:

464,528.00

Vendor Number: -

Pay and Allowances:

Pay scale: BPS For - 2017

Pay Scale Type: Civil BPS: 16

Pay Stage: 26

Wage type		Amount	Wage type		Amount
0001	Basic Pay	58,430.00	1000	House Rent Allowance	2,727.00
1210	Convey Allowance 2005:	5,000.00	1947	Medical Allow: 15% (16-22)	2,633.00
2148	15% Adhoc Relief All-2013	1,380.00	2199	Adhoc Relief Allow @10%	918.00
2211	Adhoc Relief All 2016 10%	4,660.00	2224	Adhoc Relief All 2017 10%	5,843.00
2247	Adhoc Relief All 2018 10%	5,843.00	2264	Adhoc Relief All 2019 10%	5,843.00

Deductions - General

Wage type		Amount	Wage type		Amount
3016	GPF Subscription	-3,340.00	3501	Benevolent Fund:	-800.00
3609	Income Tax	-1,292.00	3990	Emp.Edu. Fund KPK	-150.00
4004	R. Benefits & Death Comp:	-650.00			0.00

Deductions - Loans and Advances

Loan	Description	Principal amount	Deduction	Balance

Deductions - Income Tax

Payable: 25,341.15 Recovered till September-2019: 3,578.00 Exempted: 10136.32 Recoverable: 11,626.83

Gross Pay (Rs.): 93,277.00 Deductions: (Rs.): -6,232.00 Net Pay: (Rs.): 87,045.00

Payee Name: MIAN ASHRAF JAN

Account Number: 4072

Bank Details: ALLIED BANK LIMITED, 250286 CAVALRY ROAD CAVALRY ROAD,

Leaves: Opening Balance: Availed: Earned: Balance:

Permanent Address: SDEO M-NOWSHERA

City: NOWSHERA

Domicile: NW - Khyber Pakhtunkhwa

Housing Status: No Official

Temp. Address:

City:

Email:

(50486881/27.09.2019/11:43:31) 2) All amounts are in Pak Rupees 3) Errors & omissions excepted.

0-8

To

The Secretary (E & SE) Department ,
Khyber Pakhtunkhwa , Peshawar ,

as

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 . latter on vide revised notification dated 20-12-2012 whereby the conveyance allowance for employees working in BPS 1 to 15 were enhance 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 employee of 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 granting to others employees . **Copy attached** . I am feeling aggrieved from the action of concerned authority regarding deduction of conveyance allowance in vacations 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 : 23.10.2020

اشرف جان
Your Obediently
Ashraf Jan

Judgment Sheet

E-9

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.

Rooh-ul-Amin

M. S.

ATTESTED

EXAMINER
Peshawar High Court

(10)

- 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.

Kochun San

M

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 Maqsad 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 Sohrab 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

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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

ATTESTED

EXAMINER
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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

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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."

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(15)

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

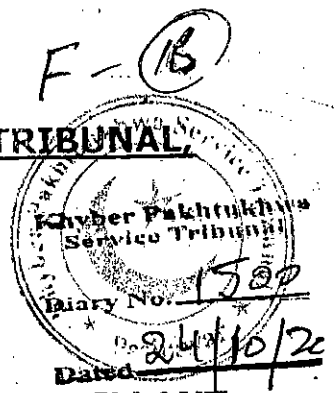
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EXAMINER
Peshawar High Court, Peshawar
Authorized Under Article 87 of
The Constitution of Pakistan

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:

ATTENTION 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 20.12.2012 whereby the conveyance allowance for employees

11/11/19
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Appeal No. 1452/2019
Masood Hayat vs Govt

(17)

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.

File be consigned to the record.



Chairman

ANNOUNCED

11.11.2019



Certified to be true copy


Chairman
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

VAKALAT NAMA

NO. _____/20

IN THE COURT OF Kp Service Tribunal

Ashraf Jam

(Appellant)
(Petitioner)
(Plaintiff)

VERSUS

Edu Deptt

(Respondent)
(Defendant)

I/We, Ashraf Jam

Do hereby appoint and constitute **SYED NOMAN ALI BUKHARI Advocate High Court Peshawar**, to appear, plead, act, compromise, withdraw or refer to arbitration for me/us as my/our Counsel/Advocate in the above noted matter, without any liability for his default and with the authority to engage/appoint any other Advocate/Counsel on my/our costs.

I/We authorize the said Advocate to deposit, withdraw and receive on my/our behalf all sums and amounts payable or deposited on my/our account in the above noted matter. The Advocate/Counsel is also at liberty to leave my/our case at any stage of the proceedings, if his any fee left unpaid or is outstanding against me/us.

Dated _____/20

اشرف جمال
(CLIENT)

ACCEPTED

Syed Noman Ali Bukhari

SYED NOMAN ALI BUKHARI
Advocate High Court Peshawar.