

13.02.2020

Learned counsel for the appellant present. Heard.


The appellant has filed the present service appeal against the deduction of conveyance allowance of the government servant/teacher working in school/college during vacations period.

Learned counsel for the appellant stated at the bar that identical nature Service Appeal No.1452/2019 has already been disposed of by this Tribunal vide order dated 11.11.2019. Learned counsel for the appellant stressed that being an identical nature case, the present service appeal may also be disposed of in terms of the said order dated 11.11.2019 passed in Service Appeal No.1452/2019.

Order dated 11.11.2019 of this Tribunal passed in Service Appeal No.1452/2019 perused. Judgment dated 03.12.2018 passed by learned Federal Service Tribunal in Appeal No.1888(R)CS/2016 and judgment dated 01.10.2019 of the Hon'ble Peshawar High Court Peshawar in Writ Petition No.3162-P/2019 referred to in the order dated 11.11.2019 in Service Appeal No.1452/2019, also gone through and plea taken by the learned counsel for the appellant is found genuine. Consequently the instant service appeal is also disposed of in terms of order dated 11.11.2019 passed in Service Appeal No.1452/2019, with the observation that the judgment of Hon'ble Peshawar High Court passed in writ petitions including Writ Petition 3162-P/2019 shall be honored and implemented by the respondents within shortest possible time.

This may also be observed that perusal of the judgment of Federal Service Tribunal in Appeal No.1888(R) CS/2016 reflects that in an identical nature case, the Federal Service Tribunal has held that the conveyance allowance is payable to the appellants w.e.f the vacations of the year when the departmental appeal/representation was filed by the appellants.

File be consigned to the record room.





(Muhammad Hamid Mughal)
Member (J)

Announced.
13.02.2020

Form- A
FORM OF ORDER SHEET

Court of _____

Case No. 9039 /2019

S.No.	Date of order Proceedings	Order or other proceedings with signature of judge or Magistrate
1	2	3
1	20.12.2019	<p>The present appeal submitted today by Mr. Noor Muhammad Khattak Advocate, may be entered in the institution register and put up to the Worthy Chairman for proper order please.</p> <p style="text-align: right;"> REGISTRAR</p> <p>This case is entrusted to S. Bench for preliminary hearing to be put up there on 09.01.2020.</p> <p style="text-align: right;"> CHAIRMAN</p> <p>09.01.2020</p> <p>Junior to counsel for the appellant present.</p> <p>Requests for adjournment due to general strike of the Bar. Adjourned to 13.02.2020 before S.B.</p> <p style="text-align: right;"> Chairman</p>
2		

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR

APPEAL NO. 2038 /2019

HAROON KHAN

VS

EDUCATION DEPTT:

INDEX

S.NO.	DOCUMENTS	ANNEXURE	PAGE
1.	Memo of appeal	1- 3.
2.	Stay application	4.
3.	Notification	A	5.
4.	Pay slips	B & C	6- 7.
5.	Departmental appeal	D	8.
6.	Judgment	E	9- 15.
7.	Service Tribunal judgment	F	16- 17.
8.	Vakalat nama	18.

APPELLANT

THROUGH:

NOOR MUHAMMAD KHATTAK
ADVOCATE

Room No. 3 & 4, Upper Floor,
Islamia Club Building,
Khyber Bazar, Peshawar
0345-9383141

Note:

Sir,

Spare copies will be submitted
After submission of the case.



BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR

APPEAL NO. 2037 /2019

Khyber Pakhtunkhwa
Service Tribunal

Diary No 2118

Dated 20-12-19

Mr. Haroon Khan, SST (BPS-16),
GHS Darora, Dir Upper.

.....**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.

.....**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 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 (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.

R/SHEWETH:

ON FACTS:

- 1- That the appellant is serving in the Elementary & Secondary Education Department as SST (BPS-16) 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 14.07.2011 was issued. That later on vide revised Notification dated 20.12.2012 whereby the conveyance allowance for employees

Filed today
Registrar

working in BPS 1 to 15 were enhance/revised while employees from BPS- 16 to 19 have been treated under the previous 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 but no reply has been received so far. That feeling aggrieved the appellant along with his other colleagues filed Writ Petition No. 3162-P/2019 before the Peshawar High Court, Peshawar which was disposed of vide judgment dated 01.10.2019 with the directions to approach the proper forum i.e. Service Tribunal. Copies of the Departmental appeal & judgment is attached as annexure.....**D & E.**
- 5- That some of colleagues of the appellant approached to this august Tribunal in different service appeal which was allowed by this august Tribunal vide its judgment dated 11.11.2019. Copy of the judgment is attached as annexure.....**F.**
- 6- That 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.

GROUND:

- 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 Servants 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 are credited to his 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 Honorable 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.

APPELLANT


HAROON KHAN

THROUGH:

NOOR MOHAMMAD KHATTAK


MIR ZAMAN SAEI
ADVOCATES


GOVERNMENT OF KHYBER PAKHTUNKHWA
FINANCE DEPARTMENT
(REGULATION 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)**

NO. FD/SO/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 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. At District Coordination Officers, 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.

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

The Government of Khyber Pakhtunkhwa has been pleased to enhance / revise the rate of Conveyance Allowance permissible to all the Provincial Civil Servants, Govt. of Khyber Pakhtunkhwa (working in BPS-1 to BPS-16) 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/-

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,

(Sambizade Saood Ahmad)
Secretary Finance

Index NO. FD/SO/SR-1178-52/2012

Dated Peshawar the 20th December, 2012

A Copy is forwarded for information to the:-

1. Accountant General, Khyber Pakhtunkhwa, Peshawar.
2. Secretaries to Government of Punjab, Sectt. 6 Secretariat, Finance Department.
3. All Administrators / Semi Autonomous Bodies in Khyber Pakhtunkhwa.

(MUTIAZ AYUB)

Additional Secretary (Reg.)

ATTESTED

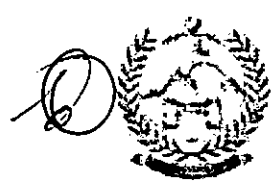
5 - A



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

②

B



Personal Information of Mr HAROON KHAN d/w/s of JUMA KHAN

Personnel Number: 00279840 CNIC: 10788192070 NTN:
Date of Birth: 20.05.1966 Entry into Govt. Service: 09.05.1987 Length of Service: 32 Years 02 Months 024 Days

Employment Category: Active Temporary

Designation: SECONDARY SCHOOL TEACHER 80001937-DISTRICT GOVERNMENT KHYBE

DDO Code: DP6048-H.M GHS DARORA

Payroll Section: 001 GPF Section: 002 Cash Center: 31
GPF A/C No: EDUDA004541 Interest Applied: No GPF Balance: 371,641.00

Vendor Number: -
Pay and Allowances: Pay scale: BPS For - 2017 Pay Scale Type: Civil BPS: 16 Pay Stage: 17

Wage type	Amount	Wage type	Amount
0001 Basic Pay	44,750.00	1000 House Rent Allowance	2,727.00
1210 Convey Allowance 2005	5,000.00	1924 UAA-OTHER 20%(16 G/NG)	1,500.00
1947 Medical Allow 15% (16-22)	1,706.00	2148 15% Adhoc Relief All-2013	1,020.00
2199 Adhoc Relief All 2010 10%	685.00	2211 Adhoc Relief All 2016 10%	3,508.00
2224 Adhoc Relief All 2017 10%	4,475.00	2247 Adhoc Relief All 2018 10%	4,475.00
2264 Adhoc Relief All 2019 10%	4,475.00		0.00

Deductions: General: Active F

Wage type	Amount	Wage type	Amount
3016 GPF Subscription - Rs3340	-3,340.00	3501 Benevolent Fund	-800.00
3609 Income Tax	-730.00	3990 Emp.Edu. Fund KPK	-150.00
4004 R. Benefits & Death Comp:	-1,089.00		0.00

Pay and Allowances:
Deductions - Loans and Advances

-Loan-	Description	Principal amount	Deduction	Balance
6505	GPF Loan Principal Instal	210,000.00	-7,500.00	37,500.00

1947 Medical Allow 15% (16-22)
Deductions - Income Tax
Payable: 14,592.55 Recovered till JUL-2019: 730.00 Exempted: 5836.62 Recoverable: 8,025.93
2224 Adhoc Relief All 2017 10%
Gross Pay (Rs.): 74,321.00 Deductions: (Rs.): -13,609.00 Net Pay: (Rs.): 60,712.00

Payee Name: HAROON KHAN

Account Number: 3442-0

Bank Details: HABIB BANK LIMITED, 221538 DARORA, UPPER DIR. DARORA, UPPER DIR., UPPER DIR

4016 GPF Subscription - Rs3340

Leaves: Opening Balance: Aailed: Earned: Balance:

4004 R. Benefits & Death Comp:

Permanent Address: MILL KAIR DIR

City: DIRPROPER

Domicile: NW - Khyber Pakhtunkhwa

Housing Status: No Official

Temp. Address: Des

6505 GPF Loan Principal Ins

Email: haroonkhansstg@gmail.com

Deductions - Income Tax

Payable: 14,592.55 Recov

Gross Pay (Rs.): 74,321.00

Payee Name: HAROON KHAN

System generated document in accordance with APPM 4.6.12.9 (SERVICES/27.07.2019/16:34:36/v1.1)

* All amounts are in Pak Rupees

* Errors & omissions excepted

Leaves: Opening Balance:

Permanent Address: MILL KAIR I

City: DIRPROPER

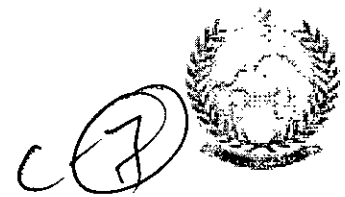
Temp. Address:

City:

ATTESTED

M

**Dist. Govt. NWFP-Provincial
District Accounts Office Dir Upper
Monthly Salary Statement (February-2019)**



Personal Information of Mr HAROON KHAN d/w/s of JUMA KHAN

Personnel Number: 00279840 CNIC: 10788192070 NTN:
Date of Birth: 20.05.1966 Entry into Govt. Service: 09.05.1987 Length of Service: 31 Years 09 Months 021 Days

Employment Category: Active Temporary

Designation: SENIOR ENGLISH TEACHER 80001937-DISTRICT GOVERNMENT KHYBE
DDO Code: DP6048-H.M GHS DARORA
Payroll Section: 001 GPF Section: 002 Cash Center: 31
GPF A/C No: EDUDA004541 Interest Applied: No **GPF Balance:** 317,441.00
Vendor Number: -

Pay and Allowances: Pay scale: BPS For - 2017 Pay Scale Type: Civil BPS: 16 Pay Stage: 17

Wage type		Amount	Wage type		Amount
0001	Basic Pay	44,750.00	1000	House Rent Allowance	2,727.00
1924	UAA-OTHER 20%(16 G/NG)	1,500.00	1947	Medical Allow 15% (16-22)	1,706.00
2148	15% Adhoc Relief All-2013	1,020.00	2199	Adhoc Relief Allow @10%	685.00
2244	Adhoc Relief All 2016 10%	3,508.00	2224	Adhoc Relief All 2017 10%	4,475.00
2245	Adhoc Relief All 2018 10%	4,475.00			0.00

Date of Birth: 20.05.1966

Deductions - General

Wage type		Amount	Wage type		Amount
3016	GPF Subscription - Rs3340	-3,340.00	3501	Benevolent Fund	-800.00
3609	Income Tax	-10.00	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
6505	GPF Loan Principal Instal	210,000.00	-7,500.00	75,000.00

1924 UAA-OTHER 20%(16 G/NG) Recovered till FEB-2019: 560.00 Exempted: 400.00 Recoverable: 40.00
2148 15% Adhoc Relief All-2013

Gross Pay (Rs.): 64,846.00 Deductions: (Rs.): -12,889.00 Net Pay: (Rs.): 51,957.00

Payee Name: HAROON KHAN
Account Number: 3442-0

Bank Details: HABIB BANK LIMITED, 221538 DARORA, UPPER DIR. DARORA, UPPER DIR., UPPER DIR

3016 GPF Subscription - Rs3340
Leaves: Opening Balance: Aailed: Earned: Balance:

4004 R. Benefits & Death Comp

Permanent Address: MILL KAIR, DIR

City: DIRPROPER Domicile: NW - Khyber Pakhtunkhwa Housing Status: No Official

Temp Address: GPF Loan Principal Ins
City: Email: haroonkhansstg@gmail.com

Deductions - Income Tax
Payable: 1,000.00 Rec.

Gross Pay (Rs.): 64,846.00

Payee Name: HAROON KHAN
Account Number: 3442-0

System Generated document in accordance with APPM 4.6.12.9 (SERVICES/27.02.2019/16:24:33/v1.1)

* All amounts are in Pak Rupees
* Errors & omissions excepted
Leaves: Opening Balance:

Permanent Address: MILL KAIR

City: DIRPROPER

Temp Address:

City:

ATTESIED
MO

The graft is a global form of Corruption. Most noteworthy, it refers to the illegal use of a politician's authority for personal gain.

Furthermore, a popular way for the graft is misdirecting public funds for the benefit of politicians.

The graft is
politicians.
noteworthy,

politician's
Extortion is another major method of
Furthermore

Corruption. It means to obtain property, money
misdirecting
or services illegally. Above all, this obtainment

takes place by coercing individuals or

organizations. Hence, Extortion is quite similar
Extortion
to blackmail.

Corruption.

or services i
Favouritism and nepotism is quite an old form

takes place
of Corruption still in usage. This refers to a

organization
person favouring one's own relatives and friends

to job in this is certainly very unfair
practice. This because many deserving
candidates fail to get jobs.

favouritism

of Corruption

To

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

D - 8

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

Respected Sir,

With due respect it is stated that I am the employee of your good self Department and is serving as SST (BPS- 16) quite efficiency 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 14.07.2011 was issued. Later on vide revised Notification dated 20.12.2012 whereby the conveyance allowance for employees working in BPS 1 to 15 were enhance/revised 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/deducted 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 03.12.2018. 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/grant the same conveyance allowance which is granting to other employees. **Copy attached.** I am feeling aggrieved from the action of the concerned authority regarding deduction of conveyance allowance in vacations period/months preferred this Departmental 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: 28.08.2019

ATTESTED

M A

Your Obediently

HAROON KHAN, SST
GHS Darora, Dir Upper

Judgment Sheet

IN THE PESHAWAR HIGH COURT, PESHAWAR,
JUDICIAL DEPARTMENT.

Writ Petition No. 3162-P/2019 Akhtar Hussain and 697
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

ATTESTED

ATTESTED
EXAMINER
Peshawar High Court

M B

- 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.

Kashif Sami

ATTESTED

M-Q

ATTESTED

EXAMINER
Peshawar High Court

- 3
- (11)
- 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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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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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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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
"Zareshad"

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 JUDGE
[Signature]
 JUDGE

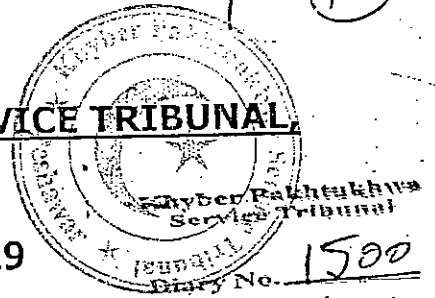
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M. [Signature]

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

CERTIFIED TO BE TRUE COPY
 EXAMINER
 Peshawar High Court, Peshawar
 Authorized Under Article 87 of
 The Constitution of Pakistan Order 1988
21 OCT 2019

**BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR**



APPEAL NO. 1452 /2019

Dated 24/10/2019

Mr. Maqсад 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.

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R/SHEWETH:
ON FACTS:

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Khyber Pakhtunkhwa
Service Tribunal

- 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

Filed to-day

Registrar

ATTESTED

Received to-day

11/11/19

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.

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Chairman

ANNOUNCED

11.11.2019

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Peshawar

VAKALATNAMA

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR

_____ OF 2019

Haroon Khan

(APPELLANT)
(PLAINTIFF)
(PETITIONER)

VERSUS

Education Department

(RESPONDENT)
(DEFENDANT)

I/We Haroon Khan

Do hereby appoint and constitute **NOOR MOHAMMAD KHATTAK, Advocate, 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 cost. 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.

Dated. ____/____/2019



CLIENT


ACCEPTED
NOOR MOHAMMAD KHATTAK


MIR ZAMAN SAFI
ADVOCATES

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Mobile No.0345-9383141