

BEFORE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,  
PESHAWAR.

SERVICE APPEALS NO. 755/2012

Date of institution ... 06.07.2012

Date of judgment ... 13.06.2016

Mr. Saleem Khan, PST,  
GPS, Ghunda Khel, Mohmand Agency.

... (Appellant)

VERSUS

1. Director Education(FATA), Khyber Pakhtunkhwa, Peshawar.
2. Secretary, Government of Khyber Pakhtunkhwa, Finance Department, Peshawar.
3. Agency Education Officer, Mohmand Agency.
4. Agency Accounts Officer, Mohmand Agency.

... (Respondents)

SERVICE APPEAL UNDER SECTION 4 OF THE KHYBER PAKHTUNKHWA  
SERVICE TRIBUNAL ACT, 1974, FOR GRANTING ARREARS OF GRADED  
PAY/ANNUAL INCREMENT WITH EFFECT FROM 05.10.1976 TO 25.05.1995  
AND AGAINST NOT TAKING ACTION ON THE DEPARTMENTAL APPEAL  
WITHIN STATUTORY PERIOD.

Mr. Muhammad Asif Yousafzai, Advocate:

.. For appellant.

Mr. Usman Ghani, Senior Government Pleader

.. For respondents

MR. PIR BAKHSH SHAH

.. MEMBER (JUDICIAL)

MR. ABDUL LATIF

.. MEMBER (EXECUTIVE)

JUDGMENT

PIR BAKHSH SHAH, MEMBER: Appellants was appointed as untrained PTC Teacher on 05.10.1976 graded pay was allowed to him on 25.05.1995 when he passed PTC course. In this appeal he has come for the following relief:-

“That on acceptance of this appeal, the respondents may be directed to grant arrears of annual increments of untrained period being his legal rights. Any other remedy, which this august Tribunal deems fit that may also be awarded in favour of appellant.”

2. Arguments heard and record perused.

3. Learned counsel for the appellant while referring to the decision of the august Supreme Court of Pakistan in C.A No. 898/2006 dated 06.09.2007 titled Govt: of NWFP-vs-Muhammad Ismail, submitted that increments were allowed to civil servants even for the untrained period from their time of appointment and as appellant was initially appointed on 5.10.1976, therefore, the respondents may be directed to pay arrears to the appellant for the period w.e.f 5.10.1976 to 25.5.1995.

4. The appeal was resisted by learned Senior Government Pleader who submitted that per notification of the Government dated 30.03.2009, the civil servants through were given benefits of annual increments but without arrears. It was further submitted that in pursuance of the judgment of the august Supreme Court of Pakistan dated 6.9.2007, the benefits of annual increment was extended to the untrained teachers to the date of their appointment but without arrears, which may benefits a civil servant at the time of retirement.

5. We have considered submission of learned counsels for the parties and have gone through the record. From perusal of the record it seems that in pursuance of the judgment of the august Supreme Court of Pakistan dated 06.09.2007, when the government of Khyber Pakhtunkhwa issued notification dated 30.03.2009 so no arrears for the untrained period in the post was allowed to the civil servants. This notification was further confirmed in a subsequent notification of the Finance Department dated 30.10.2009 wherein it was reiterated that the concerned civil servant would not be entitled for any arrears. These notifications have not been challenged by the appellant and thus have attained finality. This may further be added that during the untrained period, the appellant was appointed on contract on fixed pay and the Tribunal is of the view that in the light of the stated situation appellant is not entitled for the arrears of the untrained period, hence the appeal is dismissed. Parties are left to bear their own cost. File be consigned to the record room.

6. Our this single judgment will also dispose of in the same manner appeals No. 756/2012 titled Noor Habib, No. 757/2012 titled Amal Khan, No. 758/2012, titled Mohamamd Shafiq, No.759/2012 titled Ali Rehman, No.760/2012 titled Mujeeb-Ur-Rehman, No. 761/2012 titled Shahid Khan, No.762/2012 titled Muhammad Aleem, No. 763/2012 titled Kashmir Khan, No.764/2012 titled Gulab Sher and No. 765/2012 titled Munasib Khan, where common question of law and facts are involved.

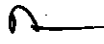
ANNOUNCED  
13.06.2016

  
(ABDUL LATIF)  
MEMBER

  
(PIR BAKHSH SHAH)  
MEMBER

14.03.2016

Counsel for the appellant and Mr. Daud Jan, Supdt. alongwith Addl: A.G for respondents present. It was brought into the notice of Tribunal that connected similar nature appeal tilted Manzoor Ahmed-vs- Education Department has been fixed on ~~13.6~~ 13.6.2016 and that the instant appeal may be clubbed with the said appeal. Hence the case is adjourned to ~~13.6~~ 13.6.2016 for arguments before D.B alongwith the afore-stated connected appeal.



MEMBER



MEMBER

13.06.2016

Counsel for the appellant and Mr. Daud Jan, Supdt alongwith Mr. Usman Ghani, Sr. GP for respondents present.

Vide our detailed judgment of today consists of three pages placed on file, the Tribunal is of the view that in the light of the stated situation appellant is not entitled for the arrears of the untrained period, hence the appeal is dismissed. Parties are, however, left to bear their own costs. File be consigned to the record.

Announced  
13.06.2016



(ABDUL LATIF)  
MEMBER



(PIR BAKHSH SHAH)  
MEMBER

11.2.2015

Clerk of counsel for the appellant and Mr. Muhammad Jan, GP with Daud Jan, Head Clerk, Khursheed Khan, SO and Mosam Khan, AD for the respondents present. Counsel for the appellant is not available. To come up for arguments on 17.6.2015.



MEMBER



MEMBER

17.06.2015

Counsel for the appellant, M/S Khurshid Khan, SO and Daud Jan, Supdt. alongwith Assistant A.G for respondents present. The learned Member (Judicial) is on leave, therefore, arguments could not be heard. To come up for arguments on 08.10.2015.



Member

08.10.2015

Counsel for the appellant and Mr. Khurshid Khan, SO alongwith Addl: A.G for respondents present. The Bench is incomplete therefore, case is adjourned to 10-12-15 for arguments.



MEMBER

10.12.2015

Counsel for the appellant and Addl: A.G for respondents present. Learned counsel for the appellant requested for adjournment. Adjourned to 14.3.2016 for arguments.



MEMBER



MEMBER

15.5.2014

Counsel for the appellant and Mr. Muhammad Jan, GP Daud Jan, Head Clerk for the respondents present. Counsel for the appellant needs time. To come up for arguments on 13.6.2014.

MEMBER

MEMBER

13.6.2014

Appellant with counsel and Mr. Muhammad Jan, GP with Daud Jan, Head Clerk for the respondents present. Learned Judicial Member is on leave, therefore, case to come up for further arguments on 15.8.2014.

MEMBER

15.08.2014

Counsel for the appellant and Mr. Muhammad Jan, GP with Daud Jan, Head Clerk for the respondents present. Learned executive Member of the Bench is on ex-Pakistan leave, therefore, case to come up for arguments on 04.12.2014.

MEMBER

4.12.2014

Counsel for the appellant and Mr. Muhammad Jan, GP with Daud Jan, Head Clerk for respondents present. The Tribunal is incomplete. To come up for the same on 12.2.2015.

MEMBER

7.10.2013.

Appellant in person and Mr. Muhammad Jan, GP with Daud Jan, Head Clerk for the respondents present. Appellant needs time. To come up for rejoinder on 7.11.2013.

MEMBER

MEMBER

7.11.2013.

Counsel for the appellant and Mr. Muhammad Jan, GP with Daud Jan, Head Clerk for the respondents present. Rejoinder received. Copy handed over to the learned GP. To come up for arguments on 31.12.2013.

MEMBER

MEMBER

31.12.2013.

Counsel for the appellant and Mr. Usman Ghani, Sr.GP with Daud Jan, GP for the respondents present. Counsel for the appellant needs time. To come up for arguments on 21.3.2014.

MEMBER

MEMBER

21.3.2014.

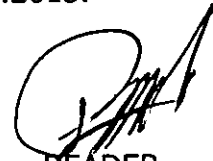
Counsel for the appellant and Mr. Muhammad Adeel Butt, AAG with Daud Jan, GP for the respondents present. Counsel for the appellant needs time. To come up for arguments on 15.5.2014.

MEMBER

MEMBER


20.6.2013

Counsel for the appellant and Mr. Muhammad Jan, GP with Daud Jan, Supdt. for the respondents present. In pursuance of promulgation of Khyber Pakhtunkhwa Service Tribunal (Amendment) Ordinance 2013, the Tribunal is incomplete. To come up for the same on 8.7.2013.

  
READER

8.7.2013

Counsel for the appellant and Mr. Muhammad Jan GP for the respondents present. In pursuance of Khyber Pakhtunkhwa Service Tribunal (Amendment) Act 2013, the Tribunal is incomplete, therefore, case to come up for the same on 5.9.2013.

  
READER

5.9.2013

Appellant with counsel and Mr. Muhammad Jan, GP with Daud Jan, GP for the respondents present. Written reply received. Copy handed over to counsel for the appellant. To come up for rejoinder on 7.10.2013. Reader is directed to record Note Reader in connected appeals.

  
MEMBER

  
MEMBER



23.01.2013.

No one is present on behalf of the appellant. Mr. Sherafgan Khattak, AAG with Mr. Muhammad Aqeel and Mr. Daud Jan, Supdt for the respondents present. Written reply has not been received on behalf of the respondents and requested for time. To come up for writne reply/comments on 13.03.2013.

  
MEMBER

  
MEMBER

13.3.13

Counsel for the appellant, and Shahabud Din, Senior Auditor for respondent No. 4 with Mr. Arshad Alam AGP for the respondents present. The learned AGP needs time to contact respondents No. 1 to 3. To come up for written reply of all the respondents on 28.5.2013.

  
MEMBER

  
MEMBER

28.05.2013.

Clerk to counsel for the appellant and Usman Ghani, SGP with Ashrafud Din, Senior Auditor and Muhammad Irshad, SO (Litigation) for the respondents present. In pursuance of promulgation of Khyber Pakhtunkhwa Service Tribunal (Amendment) Ordinance 2013, the Tribunal is incomplete. To come up for the same on 20.6.2013.

  
READER

Appeal No. 755/2012.  
Mr. Saleem Khan

6. 5.12.2012

Counsel for the appellant present and heard.

Contended that the appellant is entitled to the grant of arrears of graded pay/annual increments according to the judgment of the Hon'ble Supreme Court of Pakistan, granting graded pay/annual increments to untrained Teachers for their un-trained period and Notification dated 30.3.2009 but without arrears. The appellant was also allowed the same but without arrears against which he preferred a departmental appeal but with no response. Hence, the instant appeal. Points raised need consideration. The appeal is admitted to regular hearing subject to all legal objections. The appellant is directed to deposit the security amount and process fee within 10 days. Thereafter, notice be issued to the respondents. Case adjourned to 23.1.2012 for submission of written reply.

*Appellant deposited  
Process fee & Security  
Rs. 2000/- Bank Receipt  
attached with file  
(A. no. 755 to 765/2012)*

Member.

7. 5.12.2012

This case be put up before FB U for further proceedings.

Chairman.

3.9.2012

Counsel for the appellant present and requested for adjournment. Case adjourned to 17.10.2012 for preliminary hearing.

  
Member.

17.10.2012

Munshi to Counsel for the appellant present and requested for adjournment. Case adjourned to 14.11.2012 for preliminary hearing.

  
Member

14-11-2012.

*Counsel for appellant present and request for adjournment, case adjourned to 15-12-2012 for p.H.*


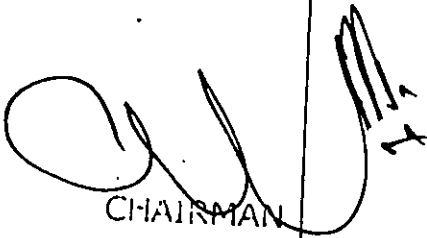
  
Member.

Form - A

FORM OF ORDER SHEET

Court of Khyber Pakhtunkhwa Service Tribunal, Peshawar

Case No. 755/2012

S.No.	Date of Order Proceedings	Order or Other Proceedings with signature of Judge or Magistrate
1.	6-7-12	The Appeal of Mr. <u>Saleem Khan</u> Submitted today by Mr. M. Asif Yousafzai, Advocate may be entered in the Institution Register and put up to the worthy Chairman for Preliminary Hearing.   REGISTRAR
2.	19-7-2012	The case is entrusted to Primary Bench for Preliminary Hearing, to be put up there on <u>3-9-2012</u> .   CHAIRMAN

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

Appeal No. 755 /2012

Mr. Saleem Khan, PST

V/S

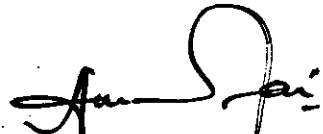
Education Department.

**INDEX**

S.No.	Documents	Annexure	Page No.
1.	Memo of Appeal	-----	01-03
2.	Copy of Relevant Page of S/Book	- A -	04-10
3.	Copy of Judgment	- B -	11
4.	Copy of Notification	- C -	12
5.	Copy of Appeal	- D -	13
6.	Vakala Nama	-----	14

APPELLANT  
Saleem Khan

THROUGH:

  
( M. ASIF YOUSAFZAI )  
ADVOCATE, PESHAWAR.

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

Appeal No. 755 /2012

**G. W. J. Provincial**  
**Service Tribunal**  
**Case No. 765**  
**Date 06/7/12**

Mr. Saleem Khan, PST,  
GPS, Ghunda Khel, Mohmand Agency.

**APPELLANT**

VERSUS

1. The Director Education (FATA), Khyber Pakhtunkhwa, Peshawar.
2. The Secretary, Government of Khyber Pakhtunkhwa, Finance Department, Peshawar.
3. The Agency Education Officer, Mohmand Agency.
4. The Agency Accounts Officer, Mohmand Agency.

**RESPONDENTS**

.....  
**APPEAL UNDER SECTION-4 OF THE KHYBER  
PAKHTUNKHWA, SERVICE TRIBUNAL ACT, 1974  
FOR GRANTING ARREARS OF GRADED PAY/  
ANNUAL INCREMENT WITH EFFECT FORM  
05.10.1976 to 25.05.1995 AND AGAINST NOT  
TAKING ACTON ON THE DEPARTMENTAL APPEAL  
WITHIN STATUTORY PERIOD.**  
.....

**PRAYER:**

**THAT ON ACCEPTANCE OF THIS APPEAL, THE  
RESPONDENTS MAY BE DIRECTED TO GRANT  
ARREARS OF ANNUAL INCREMENTS OF  
UNTRAINED PERIOD BEING HIS LEGAL RIGHTS.  
ANY OTHER REMEDY, WHICH THIS AUGUST  
TRIBUNAL DEEMS FIT THAT MAY ALSO BE  
AWARDED IN FAVOUR OF APPELLANT.**

**RESPECTFULLY SHEWETH:**

1. That the appellant was appointed as untrained PTC Teacher vide order dated 05.10.1976 and after passing PTC on 25.05.1995, the appellant was allowed graded pay of PST post. All entries are recorded in the Service Book relevant pages of which are attached as Annexure-A.
2. That recently the august Supreme Court of Pakistan has granted graded pay/annual increments to untrained teachers for their untrained period. Thus, in light of the Judgment of the Supreme Court, the Government has issued a Notification on 30.3.2009 where in annual increments have been allowed to all untrained teachers of their untrained period but without arrears. Copies of Judgment and Notification are attached as Annexure-B and C.
3. That as the appellant was also allowed only fixation of untrained period with effect from 05.10.1976 to 25.05.1995 but no arrears have been give. Therefore, the appellant filed departmental appeal for his claim and waited for statutory period but no reply has been received so far. Hence, the present appeal on the following grounds amongst the others. Copy of Appeal is attached as Annexure-D.

**GROUND:**

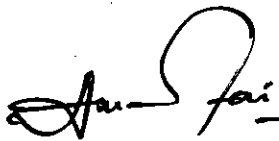
- A) That not awarding the arrears of annual increment of untrained period and not taking action on the departmental appeal within 90 days is against he law, and norms of justice.
- B) That the appellant fully performed duty during period of untrained service, therefore, the appellant is fully entitled to the arrears of annual increments.
- C) That as it has already been held by the Superior Courts that the pay is not a bounty of state but a right of an employee, therefore, the arrears of annual increments can not be denied.

- D) That even under principles of fair play and justice the appellant is entitled to the arrears of his annual increments.
- E) That the appellant has not been treated according to law and rules and principles of equity.
- F) That the appellant seeks permission to advance others grounds and proofs at the time of hearing.

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

APPELLANT   
Saleem Khan

THROUGH:

  
( M. ASIF YOUSAFZAI )  
ADVOCATE, PESHAWAR.



جیو

A  
2  
(4)

Department only).

Passed P.T.C. examination from R.D.E Peshawar under Roll No 5.

The result was declared on dated 25.5.95 Securing marks 239, Division 2nd.

Verification Roll No. , dated

Agency Education Officer  
received by  
Mehmand Agency  
of Chailan  
Eh

Left thumb-impression.

**ATTESTED**

Qualifications	Date	Qualifications	Date
English		First Arts	
Pashtu		B. L. or B.A.	
Urdu		Plendship examination	
Plan-drawing		Training School final examination	
Finger print		Other qualifications—	
Drill instructing		Passed SSC Examination from	
Court duties		The BISE Peshawar in Third division	
Reserve duties		held in March, 1968	
		Under R. No. 8896.	

Distt. Inspector of Schools  
Mehmand Agency  
Chailan

N.B. A line to be drawn under the qualification possessed

سليم خان ولد عثمان خان بی بی بی بی بی

1977-5-1 سے 1995

بی بی بی بی بی بی بی بی بی بی بی

سیدیں بی بی

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(5)

Note.—The entries in this page should be renewed or re-attested at least every five years, and the signature to be dated.

1. Name

- Saleem Khan ✓

2. Race

- Afghan ✓

3. Residence

- Village Nauri Kelli Ganda 6  
Mohmand Agency.

4. Father's name and residence

- Usman Khan

5. Date of birth by Christian era nearly as can be ascertained

- 1. 11. 50. First November, N.H  
4 Fifty.

6. Exact height by measurement

- 5' 6"

7. Personal marks for identification

- A wounded mark ~~on the~~  
under left eye.

8. Left hand thumb and finger impression of (non-gazetted) officer

Little Finger.



Middle Finger



Thumb.



Ring Finger.



Fore Finger.



Handwritten signature and number 5738

9. Signature of Government servant

ATTESTED

10. Signature and designation of the Head of the Office, or other Attesting Officer

Handwritten signature and date

25-5-95

L.

inform  
ind div.

6

Name of post	Whether substantive or officiating, and whether permanent or temporary	State— (1) in which appointed or (2) in which he holds his post under Act 171, G. S. II.	Pay in substantive post	Additional pay for officiating	Other emoluments and allowances	Date of appointment	Signature	Signature and designation of the officer in charge of the office for attesting the following columns 1 to 8
PTC								
EPS Azad Khan Killa (Mohmand Agency) EPS. Gwadar			165/- PM (Fixed)			6-10-76	Subin	M. Inspector Mohmand
			Rs 315/- PM (Fixed)			1-5-77		
<p>Pay fixation in B. P. S. 1964</p> <p>Pay fixed in Basic Pay Scale</p> <p>No. of 560-23-1022 ✓</p> <p>of Rs. 569/- fixed on 1.7.1965</p> <p>with date of effect from 1.12.1964</p> <p><b>Head of</b></p> <p><b>ASSISTANT ACCOUNTS OFFICER</b></p> <p><b>ACCOUNTANT GENERAL (P.B.)</b></p> <p><b>Sub Office, PESHAWAR</b></p>				<p>Revision of pay on 1.7.1965</p> <p>Index Pay fixed at Rs. 29/-</p> <p>on 1.7.1965</p> <p><b>Head of</b></p> <p><b>ASST. ACCOUNTS OFFICER</b></p> <p><b>ASST. General P.B. Office</b></p> <p><b>Sub Office, Peshawar.</b></p>				
OH	ds		315/- PM fixed			1-12-77		
d	a		560/- fixed			1-7-83	Subin	M. Inspector Mohmand
<p>Service Verified from 1-12-82 to 30-11-83 for the Acquittance Rolls of the Office Records</p> <p>Agency Inspector of Schools Mohmand Agency, Ghallanai.</p>	<p>Service Verified from 1-12-82 to 30-11-83 for the Acquittance Rolls of the Office Records</p> <p>Agency Inspector of Schools Mohmand Agency, Ghallanai.</p>						<p>Service Verified from 1-12-82 to 30-11-83 for the Acquittance Rolls of the Office Records</p> <p>Agency Inspector of Schools Mohmand Agency, Ghallanai.</p>	<p>Service Verified from 1-12-82 to 30-11-83 for the Acquittance Rolls of the Office Records</p> <p>Agency Inspector of Schools Mohmand Agency, Ghallanai.</p>

7

Signature of the head of the office or other attesting officer in attention columns 1 to 4	Date of termination of appointment	Termination (such as promotion, transfer, dismissal, etc.)	Signature of the head of the office or other attesting officer	Period and duration of leave taken	pay up to four months for which leave salary is debitable to unexhausted Government Government to which debitability	Signature of the head of the office or other attesting officer	Recorded punishment, or censure, or reward or praise of the Government servant
<i>M. Inspector of Schools</i>	30/9/77	Retirement	<i>M. Ahmad Agooz</i>	10/1/77 to 30/9/77	Government	<i>M. Ahmad Agooz</i>	Reported against P.T.C post vide D-1-S Mohd Agooz Em No 315-29 dated 5.10.1976.
<i>M. Inspector of Schools</i>	30/6/83	Retirement	<i>R.P.S. Zia</i>	10/1/77 to 30/6/83	Government	<i>M. Ahmad Agooz</i>	Leave from 1-4-80 to 9-6-80 on half pay vide this order No. 1325-78 dtd 11-6-80.
<i>M. Inspector of Schools</i>	30/6/83	Retirement	<i>R.P.S. Zia</i>	10/1/77 to 30/6/83	Government	<i>M. Ahmad Agooz</i>	Leave from 1-4-80 to 9-6-80 on half pay vide this order No. 1325-78 dtd 11-6-80.
<i>M. Inspector of Schools</i>	30/6/83	Retirement	<i>R.P.S. Zia</i>	10/1/77 to 30/6/83	Government	<i>M. Ahmad Agooz</i>	Leave from 1-4-80 to 9-6-80 on half pay vide this order No. 1325-78 dtd 11-6-80.
<i>M. Inspector of Schools</i>	30/6/83	Retirement	<i>R.P.S. Zia</i>	10/1/77 to 30/6/83	Government	<i>M. Ahmad Agooz</i>	Leave from 1-4-80 to 9-6-80 on half pay vide this order No. 1325-78 dtd 11-6-80.
<i>M. Inspector of Schools</i>	30/6/83	Retirement	<i>R.P.S. Zia</i>	10/1/77 to 30/6/83	Government	<i>M. Ahmad Agooz</i>	Leave from 1-4-80 to 9-6-80 on half pay vide this order No. 1325-78 dtd 11-6-80.
<i>M. Inspector of Schools</i>	30/6/83	Retirement	<i>R.P.S. Zia</i>	10/1/77 to 30/6/83	Government	<i>M. Ahmad Agooz</i>	Leave from 1-4-80 to 9-6-80 on half pay vide this order No. 1325-78 dtd 11-6-80.

Service Verified from 6-10-26 to 30-6-83 for the Acquisition of the Records

Equal to Half Pay  
 Pay Viz Rs. 157150  
 Admitted for Payment  
 During the month  
 Under Order No. 60706  
 Dated 17/12

Asstt. Accounts Officer  
 N. W. F. P. Peshawar

Granted leave & full pay from 16-12-80 to 30-12-1980 (15 days) with the effect from 1-1-81.

ATTESTED





(10)

Name of post	Type of officiating and whether permanent or temporary	(1) substantive appointment or (ii) whether counts (a) pension under Art. 374, C. R. & A.	Pay to substantive post	Additional pay for officiating	Other emoluments falling under the term "Pay"	Date of appointment	Signature Government servant	Sign of other person if any
PTE		BPS No. 7 (1180-51-2695)						
—	—		Rs. 1564/p.m.			1-12-95	Salim	
—	—		Rs. 1649/p.m.			1-12-96	Salim	
Do	Do		Rs. 1723/p.m.			1-12-97	Salim	
Do	Do		Rs. 1804/p.m.			1-12-98	Salim	
Do	Do		Rs. 1885/p.m.			1-12-99	Salim	
Do	Do		Rs. 1966/p.m.			1-12-2000	Salim	
Do	Do		Rs. 2047/p.m.			1-12-2001	Salim	
		Revised BPS No 7 (2220-120-5820)						
			Rs. 3060/p.m.			1-12-01	Salim	
			Rs. 3180/p.m.			1-12-02	Salim	
			Rs. 3300/p.m.			1-12-03	Salim	
			Rs. 3420/p.m.			1-12-04	Salim	



J/K

B  
12/2/07

(11)

IN THE SUPREME COURT OF PAKISTAN  
(Appellate Jurisdiction)

PRESENT: MR. JUSTICE IFTIKHAR MUHAMMAD CH., CJ.  
MR. JUSTICE ABDUL HAMEED DOGAR.  
MR. JUSTICE MUHAMMAD NAJAZ ABBASI.  
MR. JUSTICE FAZIR MUHAMMAD KHORRAM.  
MR. JUSTICE MIAN SHAKIRULLAH JAN.  
MR. JUSTICE M. JAVED BUTTAR.  
MR. JUSTICE RAJA FAYYAZ AHMED.

C. A. NO. 898/2006.  
(On appeal from the judgment dated 07.09.2002  
passed by NWFP Service Tribunal, in  
Appeal No. 1419/2000)

Government of N.W.F.P.

Appellant(s)

VERSUS

Muhammad Ismail.

Respondent(s)

For the Appellant(s):

Sardar Shaukat Hayat, Addl. A.G., NWFP.

For the Respondent(s):

Mr. Shahid Ahmed, ASC.

Date of Hearing:

06.09.2007.

ORDER

IFTIKHAR MUHAMMAD CH., CJ.: - It is an admitted position that  
vide appointment letter, the respondent was appointed as SET on temporary and  
Ad-hoc basis wherein Scale and pay alongwith allowances have also been  
mentioned. We, therefore, are of the view that in such situation, he was entitled  
for the pay of the post, thus no interference is called for. Dismissed.



*Ed. Iftikhar Muhammad Chaudhry, J*  
*Ed. Abdul Hameed Dogar, J*  
*Ed. Muhammad Naqaz Abbasi, J*  
*Ed. Fazir Muhammad Khorram, J*  
*Ed. Mian Shakirullah Jan, J*  
*Ed. M. Javed Buttar, J*  
*Ed. Raja Fayyaz Ahmed, J*

Certified to be true copy

*Muz Ali*  
Superintendent  
Supreme Court of Pakistan  
ISLAMABAD  
9/10/2007

522/7  
5-10-07  
3  
1-12  
6-82  
9-10-2007  
12-10-07  
ISLAMABAD  
06.09.2007  
(MAZ) 12/9/07

**ATTESTED**

*[Signature]*

GOVERNMENT OF NWFP  
FINANCE DEPARTMENT.

(REGULATION WING)

No. FD(PRC)5-2/2009,  
Dated Peshawar, the 30.3.2009.

To

The Secretary to Government of NWFP,  
Elementary & Secondary Education,  
Department.

Subject: GRANT OF ANNUAL INCREMENT/RUNNING PAY TO UNTRAINED  
TEACHERS IN THE LIGHT OF SUPREME COURT JUDGEMENT.

Dear Sir,

I am directed to refer to your letter No. SO(B&A)/1-16/08/Advance Increment dated February 27, 2009 on the subject noted above and to state that the Provincial Government is pleased to allow the benefit of annual increments to the concerned teachers from the date of their regular appointment.

No arrears shall however, be admissible/payable prior to the date of issuance of this circular.

Sd/-

(ABDUL JABBAR)  
SECTION OFFICER(SR-I)

Encl. of even Number & Date.

Copy for information & necessary action to the :-

- 1) Accountant General NWFP.
- 2) All District Coordination Officers.
- 3) All District/Agency Accounts Officers NWFP/FATA.

Sd/-

SECTION OFFICER(SR-I)

GOVERNMENT OF NWFP,  
ELEMENTARY & SECY.EDU: DEPTT:

No. SO(B&A)/1-16/Budget/09,  
Dated Peshawar, the 6.4.2009.

Encl. of even Number & Date.

Copy of the above is forwarded to :-

- 1) The Director (E&S) Education NWFP Peshawar.
- 2) The Director(PITE) Peshawar.
- 3) The Director Curriculum & Teachers Education Abbottabad.
- 4) All Executive District Officers(E&SE) in NWFP.
- 5) The P.S. to Secretary(E&S) Education Department.

(ABDUL HAMID MARWAT)  
SECTION OFFICER(SR-I)

DIRECTORATE OF ELEMENTARY & SECONDARY EDUCATION, NWFP PESHAWAR.

No. 555 /F, No.64/Gen Information/GB. Dated Peshawar the 27/4/2009.

Copy of the above is forwarded for necessary action & strict compliance to the:

- 1-24 All the Executive Distt. Officers (E&SE) in NWFP.
- 25 Section Officer (B&A) Govt. of NWFP, E&SE Deptt: w/r to his No. cited above for information, please
- 26 PA to Director Local office.

Assistant Director (1st)  
(E&S), NWFP, Peshawar.

G.

12

ATTESTED

D (13)

To

The Director of Education,  
FATA, FATA Secretariat,  
Warsak Road, Peshawar.

Subject: Appeal for Allowing Arrears of Annual Increments of Untrained Period i.e. 5.10.76 to 25.5.95

Sir,

It is submitted respectfully that I was appointed as P.T.C. by the competent authority through order dated 5.10.76. I passed P.T.C on 25.5.95 after which I was allowed graded pay of PTC post. Thus, my total period of untrained service is 5.10.76 to 25.5.95.

Now the Provincial Government has allowed the benefits of graded pay / annual increments for untrained period but without any arrears. This is great injustice to me because I had fully done my duty during untrained period and given 100% research.

Therefore, it is requested that I may please be allowed arrears of annual increments/graded pay for untrained period.

I shall be very thankful to your good-elf.

Yours Obediently *Sal*

Salim Khan P.S.T.  
GPS Ghunda Khel,  
Mohmand Agency.

dt: 2.4.12.

*Supdt.  
Muz.*

*2/4/12*

ATTACHED  
*[Signature]*

# VAKALAT NAMA

NO. \_\_\_\_\_/20

IN THE COURT OF Service Tribunal Peshawar :

Saleem Khan (Appellant)  
(Petitioner)  
(Plaintiff)

VERSUS

Education Dept. (Respondent)  
(Defendant)

I/We Saleem Khan (Appellant)

Do hereby appoint and constitute **M.Asif Yousafzai, 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 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

[Signature]  
( CLIENT )

ACCEPTED

[Signature]  
**M. ASIF YOUSAFZAI**  
Advocate

**M. ASIF YOUSAFZAI**  
Advocate High Court,  
Peshawar.

**OFFICE:**  
Room No.1, Upper Floor,  
Islamia Club Building,  
Khyber Bazar Peshawar.  
Ph.091-2211391-  
0333-9103240

BEFORE THE KHYBER PAKHTOONKHWA SERVICE TRIBUNAL PESHAWAR.

Appeal No.755/2012.

Mr.Muhammad Saleem PST GPS Ghunda Khel,  
Mohmand Agency.

Appellant.

.....Versus.....

- 1.The Director Educaion(FATA)Khyber Pakhtoon khwa Peshawr.
- 2.The Secretary Government of Khyber Pakhtoon Khawa Finance Deptt;Peshawar.
- 3.The Agency Education Officer, Mohmand Agency.
- 4.The Agency Accounts Officer Mohmand Agency.

Respondents.

PRELIMINARY OBJECTIONS.

- 1.Thagt the appellant has got no cause of action/locus standi to file the instant appeal.
- 2.That the appellant has not come to this honorable tribunal with clean hands.
- 3.That the appellant has concealed material facts from this honorable tribunal.
- 4.That the appellant is estopped by his own conduct to bring the present appeal.
- 5.That the appeal is not maintainable.
- 6.That the appeal is bad due to non-joinder and mis-joinder of necessaries parties.

PARAWISE COMMENTS ON BEHALF OF RESPONDENT NO.1 AND 3 IN  
APPEAL NO.755/2012.

RESPECTFULLY SHEWETH.

1.Incorrect.Pertains to record.

2.Incorrect..Each and every case has its own merit. Pay fixation Annual increments Pension etc. is the responsibility of Finance Department. Respondent No.1 is proforma respondent. Principal respondent is respondent No.2.

3. Incorrect. Relates to finance department. Pay fixation is the responsibility of Accounts officer concerned Respondent No.1 has no power to interfere in the subject case.

GROUND.

a).Incorrect. No action has been taken by the respondent department which is against the law and norms of justice. According to notification issued by the Finance Department Khyber Pakhtoon Khwa Peshawar Graded Pay has been awarded to the Appellant(Copy of the same is attached for ready reference).

b).Incorrect. As explained above in Para-a above.

c).Incorrect. Each and every case has its own merit and circumstances.

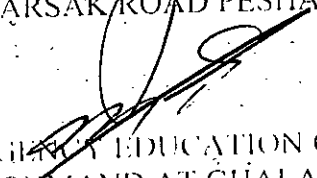
d).Incorrect. The honorable Service Tribunal is requested to direct the appellant to approach the Finance Department/Agency Accounts Officer Mohmand at Ghalanai being right forum for the purpose.

E. Incorrect. All Government Employees are bound to perform their duties according to rules/regulations as no one is allowed to violate the Government rules. The present appeal has also been treated by the competent authority according to rules.

F). This office is also seeks permission to advance other grounds at the time of arguments.

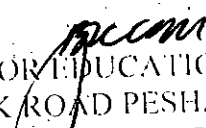
In the light of above facts it is humbly requested to please dismiss the appeal very graciously having no legal force.

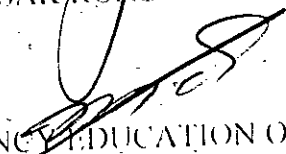
  
DIRECTOR EDUCATION FATA  
WARSAK ROAD PESHAWAR.

  
AGENCY EDUCATION OFFICER  
MOHMAND AT GHALANAI.

AFFIDAVIT.

We the above respondents do hereby declare and affirm that the above comments are true and correct to the best of our knowledge and belief that nothing has been concealed from this honorable tribunal.

  
DIRECTOR EDUCATION FATA  
WARSAK ROAD PESHAWAR.

  
AGENCY EDUCATION OFFICER  
MOHMAND AT GHALANAI.

GOVERNMENT OF NWFP  
EDUCATION DEPARTMENT  
(REGULATIONS WING)

No: F1(PRC)S-272009  
Dated Peshawar, the 30.3.2009.

10

The Secretary to Government of NWFP,  
Elementary & Secondary Education  
Department.

Subject: GRANT OF ANNUAL INCREMENT/RETIRING PAY TO UNTRAINED  
TEACHERS IN THE LIGHT OF SUPREME COURT JUDGEMENT.

I am directed to refer to your letter No. 5716/1/1/2008/Advance Increment  
dated 27.12.2008 on the subject noted above and to state that the Provincial Government is  
pleased to allow the benefit of annual increments to untrained teachers from the date of their  
appointment.

No arrears shall however, be admissible prior to the date of issuance of  
this order.

(ABDUL JABBAR)  
SECTION OFFICER(SR)

Copy of order Number & Date:

Copy for information & necessary action to the:

- 1) Accountant General NWFP.
- 2) All District Coordination Officers.
- 3) All District/Agency Accounts Officers NWFP/ATA.

SECTION OFFICER(SR)

GOVERNMENT OF NWFP  
EDUCATION DEPARTMENT

Copy of order Number & Date:

- 1) Director (E&S) Education, NWFP Peshawar.
- 2) Director (PTE) Peshawar.
- 3) Director Curriculum & Teacher Education Peshawar.
- 4) All Executive District Officers (E&S) NWFP.
- 5) P.S. to Secretary (E&S) Education Department.

(ABDUL HAMID NAKWAL)  
SECTION OFFICER(SR)

DIRECTORATE OF ELEMENTARY & SECONDARY EDUCATION, NWFP PESHAWAR.

No. 5716/1/1/2008/Advance Increment/G.O. Dated Peshawar the 27/12/2008.

Copy of the above is forwarded for necessary action & strict compliance to the:

- 1) All the Executive Dist. Officers (E&S) in NWFP.
- 2) Section Officer (B&A) Govt. of NWFP, E&S Dept. w/o to his No. cited above for information, please.
- 3) P.A. to Director Local office.

(Signature)  
21/4/09  
Assistant Director (1st)  
E&S Dept. NWFP, Peshawar.

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

Appeal No.755/2012

**Mr. Saleem Khan, PST,**  
GPS Ghunda Khel, Mohmand Agency.....(Petitioners).

**V E R S U S**

Government of Khyber Pakhtunkhwa, Director, Education (FATA) &  
others.....(Respondents).

**PARAWISE COMMENTS ON BEHALF OF RESPONDENT NO.2**

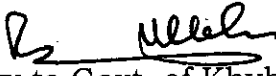
**Respectfully Sheweth**

1. Pertain to record of Administrative Deptt:
2. In pursuance of judgement of august Supreme Court of Pakistan dated 06-09-2007), the benefit of annual increment was extended / allowed to the untrained teachers from the date of their appointment, without arrear, by the Provincial Government vide letter dated 30-03-2009 wherein, it has clearly been mentioned that no arrear shall however, be admissible **(Annex-I.**
3. As per para-2 above.

**Grounds:**

- A. Pertains to the record of Administrative Deptt:
- B. Pertains to record of the Administrative Deptt: Anyhow, annual increment was allowed from the date of appointment but without arrear as explained at para-2 above.
- C. Each and every case has its own nature and circumstances and to be dealt with in accordance with its own rules and regulations. In the instant case the appellat had no right to claim the arrear, as per rules.
- D. As explained at para-2 & C above.
- E. As explained at para-C above.
- F. No comments.

In view of the above, it is therefore, humbly prayed that appeal of the appellat may be dismissed, being without force.

  
Secretary to Govt. of Khyber Pakhtunkhwa,  
Finance Department,  
**Respondent No.2**





*Annex-I*

**GOVERNMENT OF N.W.F.P  
FINANCE DEPARTMENT  
(REGULATION WING)**

NO.FD (PRC) 5-2/2002

Dated Peshawar the: 30-03-2009

To:

The Secretary to Govt. of NWFP,  
Elementary & Secondary Education,  
**Peshawar.**

Subject:

**GRANT OF ANNUAL INCREMENT / RUNNING  
PAY TO UNTRAINED TEACHERS IN THE LIGHT  
OF SUPREME COURT JUDGEMENT.**

Dear Sir,

I am directed to refer to your letter NO.SO (B&A) 1-16/08/  
Advance Increment dated February 27, 2009 on the subject noted above and  
to state that the Provincial Government is pleased to allow the benefit of  
annual increments to the untrained teachers from the date of their regular  
appointment.

No arrears shall however, be admissible / payable prior to the  
date of issuance of this circular.

  
(ABDUL JABBAR)  
SECTION OFFICER (SR-1)

**Endst: of even No & date.**

Copy for information & necessary action to the:

1. Accountant General NWFP.
2. All District Coordination Officers.
3. All District / Agency Accounts Officers NWFP / FATA.

  
SECTION OFFICER (SR-1)



GOVERNMENT OF KHYBER PAKHTUNKHWA  
FINANCE DEPARTMENT

No. SO(Lit-II)FD/2-1384/2012  
Dated Peshawar the 24/09/2013

To

✓  
The Registrar,  
Khyber Pakhtunkhwa Service Tribunal.  
Peshawar.

759  
25/9/13

Subject: SUBMISSION OF PARA WISE COMMENTS IN SERVICE APPEALS  
NOS.755/2012 TO 765/2012 TITLED SALEEM KHAN PST & 10  
OTHERS V/S DIRECTOR EDUCATION FATA & OTHERS.

Dear Sir,

I am directed to refer to the subject noted above and to enclose herewith reply on behalf of Secretary to Government of Khyber Pakhtunkhwa Finance Department (Respondent No. 2) in captioned appeals for further necessary action. Next date of hearing has been fixed as 07/10/2013 with Final Bench-II.

Yours faithfully,

  
SECTION OFFICER (LIT-II)

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

Appeal No.755/2012

**Mr. Saleem Khan, PST,**  
GPS Ghunda Khel, Mohmand Agency.....(Petitioners).

**V E R S U S**

Government of Khyber Pakhtunkhwa, Director, Education (FATA) &  
others.....(Respondents).

**PARAWISE COMMENTS ON BEHALF OF RESPONDENT NO.2**

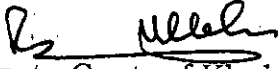
**Respectfully Sheweth**

1. Pertain to record of Administrative Deptt:
2. In pursuance of judgement of august Supreme Court of Pakistan dated 06-09-2007), the benefit of annual increment was extended / allowed to the untrained teachers from the date of their appointment, without arrear, by the Provincial Government vide letter dated 30-03-2009 wherein, it has clearly been mentioned that no arrear shall however, be admissible **(Annex-I.**
3. As per para-2 above.

**Grounds:**

- A. Pertains to the record of Administrative Deptt:
- B. Pertains to record of the Administrative Deptt: Anyhow, annual increment was allowed from the date of appointment but without arrear as explained at para-2 above.
- C. Each and every case has its own nature and circumstances and to be dealt with in accordance with its own rules and regulations. In the instant case the appellant had no right to claim the arrear, as per rules.
- D. As explained at para-2 & C above.
- E. As explained at para-C above.
- F. No comments.

In view of the above, it is therefore, humbly prayed that appeal of the appellant may be dismissed, being without force.

  
Secretary to Govt. of Khyber Pakhtunkhwa,  
Finance Department,  
**Respondent No.2**



**GOVERNMENT OF N.W.F.P  
FINANCE DEPARTMENT  
(REGULATION WING)**

NO.FD (PRC) 5-2/2002

Dated Peshawar the: 30-03-2009

To:

The Secretary to Govt. of NWFP,  
Elementary & Secondary Education,  
**Peshawar.**

Subject:

**GRANT OF ANNUAL INCREMENT / RUNNING  
PAY TO UNTRAINED TEACHERS IN THE LIGHT  
OF SUPREME COURT JUDGEMENT.**

Dear Sir,

I am directed to refer to your letter NO.SO (B&A) 1-16/08/  
Advance Increment dated February 27, 2009 on the subject noted above and  
to state that the Provincial Government is pleased to allow the benefit of  
annual increments to the untrained teachers from the date of their regular  
appointment.

No arrears shall however, be admissible / payable prior to the  
date of issuance of this circular.

  
**(ABDUL JABBAR)**  
SECTION OFFICER (SR-1)

**Endst: of even No & date.**

Copy for information & necessary action to the:

1. Accountant General NWFP.
2. All District Coordination Officers.
3. All District / Agency Accounts Officers NWFP / FATA.

  
SECTION OFFICER (SR-1)

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

Service Appeal No. 755 /2012

Mohammad Saleem

V/S Education Department.

.....

**REJOINDER ON BEHALF OF APPELLANT**

.....

**RESPECTFULLY SHEWETH:**

**Preliminary Objections:**

(1-6) All objections raised by the respondents are incorrect. Rather the respondents are estopped to raise any objection due to their own conduct.

**RESPECTFULLY SHEWETH:**

- 1 Incorrect while Para 1 of the appeal is correct.
- 2 Incorrect the august Supreme Court of Pakistan has granted graded pay/annual increments to untrained teachers for their untrained period. The instant case is the same nature case and judgments of Superior Courts are to be applied as precedent in same nature cases. Finance department acts on the requisition of high ups. Moreover, respondents No.1 and respondents No.2 are responsible respondents.
- 3 Incorrect and not replied according to Para 3 of the appeal.

**GROUND:**


- A) Incorrect, while Para-A of appeal is correct.
- B) Not replied according to Para B of the appeal.

- C) Incorrect, Supreme Court of Pakistan has granted graded pay/annual increments to untrained teachers for untrained period. The instant case is also same nature case and judgment of Superior Courts is to be applied as precedent in same nature cases.
- D) Not replied according to Para D of the appeal.
- E) Incorrect, while Para-E of appeal is correct.
- F) Legal.

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

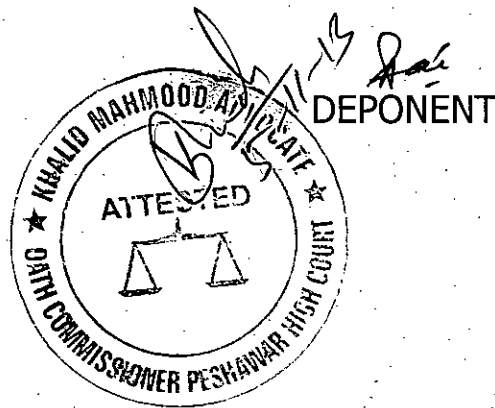
APPELLANT

Through:

  
( M. ASIF YOUSAFZAI )  
ADVOCATE, PESHAWAR.

**AFFIDAVIT**

It is affirmed and declared that the contents of rejoinder are true and correct to the best of my knowledge and belief.



**KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR**

No. 1043 /ST

Dated 16/6/2016


To

The Director of Education FATA,  
FATA Secretariat Warsak Road Peshawar.

Subject: - **JUDGMENT**

I am directed to forward herewith a certified copy of Judgement dated 13.6.2016 passed by this Tribunal on the above subject for strict compliance.

Encl: As above

  
REGISTRAR  
KHYBER PAKHTUNKHWA  
SERVICE TRIBUNAL  
PESHAWAR.