

12/2/24

BEFORE THE HONORABLE SERVICES TRIBUNAL PESHAWAR

Service Appeal No. 1511/2023

Mr. Sadat Ali Khan..... (Appellant)


VERSUS

Government of Khyber Pakhtunkhwa through Chief Secretary, Civil Secretariat Peshawar & others..... (Respondents)

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Dep. Rep.
0310-8889451


SUPERINTENDENT
Social Welfare, Sp. Edu & Women
Empowerment Department
Khyber Pakhtunkhwa Peshawar



GOVERNMENT OF KHYBER PAKHTUNKHWA
DIRECTORATE OF SOCIAL WELFARE, SPECIAL
EDUCATION & WOMEN EMPOWERMENT, OPPOSITE
ISLAMIA COLLEGE JAMRUD ROAD, PESHAWAR.

No. DSW/Lit/2-83 /
Dated the Peshawar

5909.

17/01/2024

AUTHORITY LETTER

Mr. Nabi Gul, Superintendent (BPS-17) Directorate of Social Welfare, Special Education & Women Empowerment Khyber Pakhtunkhwa Peshawar is hereby authorized to submit reply on behalf of Respondent No. 5 in **Service Appeal No. 1511/2023** titled Mr. Sadat Ali Khan **VERSUS** Govt of Khyber Pakhtunkhwa in the Honorable Service Tribunal Khyber Pakhtunkhwa Peshawar. He is also authorized to attest the affidavit on behalf of respondents and attend the Honorable Court on each date of hearing.

(Qayyum Khan)

Deputy Director (BPS-18)

Directorate of Social Welfare, Special Education &
Women Empowerment Khyber Pakhtunkhwa
Peshawar

(for Director Social Welfare, Khyber Pakhtunkhwa
Respondent No. 5)

Deputy Director (Admn)
Directorate of Social Welfare,
Special Education & Women Empowerment
Khyber Pakhtunkhwa

BEFORE THE HONORABLE SERVICES TRIBUNAL PESHAWAR

Service Appeal No. ¹⁵¹¹ ~~1150~~/2023

Mr. Sadat Ali Khan..... (Appellant)

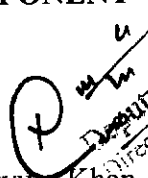
VERSUS

Government of Khyber Pakhtunkhwa through Chief Secretary, Civil Secretariat Peshawar
& others..... (Respondents)

AFFIDAVIT

I, Qayyum Khan, Deputy Director (BPS-18) Social Welfare, Special Education & Women Empowerment Khyber Pakhtunkhwa Peshawar do hereby solemnly affirm and declare on oath that the contents of the reply on behalf of the respondents are true and correct to the best of my knowledge and belief that nothing has been concealed from this Honorable Tribunal.

DEPONENT


Deputy Director (BPS-18)
Directorate of Social Welfare,
Education & Women Empowerment,
Khyber Pakhtunkhwa

Deputy Director (BPS-18)
Social Welfare, Special Education & Women
Empowerment Khyber Pakhtunkhwa Peshawar

(For Director Social Welfare Khyber Pakhtunkhwa)
CNIC # 17301-4634509-7
Phone # 091-9224253

Identified by:

Advocate General,
Service Tribunal Peshawar



BEFORE THE SERVICE TRIBUNAL KHYBER PAKHTUNKHWA PESHAWAR

Service Appeal No. 1511 of 2023

Sadat Ali Khan.....**Appellant**

VERSUS

1. Govt. of Khyber Pakhtunkhwa through Chief Secretary, Civil Secretariat Peshawar
 2. Secretary Finance Department, Khyber Pakhtunkhwa Peshawar
 3. Secretary Social Welfare, Special Education & Women Empowerment Department Khyber Pakhtunkhwa Peshawar.
 4. Accountant General Khyber Pakhtunkhwa, Peshawar
 5. Director, Social Welfare, Special Education & Women Empowerment Department Peshawar.....
- Respondents**

Khyber Pakhtunkhwa Service Tribunal

Diary No. 10939

Dated 1-2-2024

Respectfully Sheweth:

PARA-WISE COMMENT ON BEHALF OF RESPONDENTS NO 1,2,3 & 5

PRE-LIMINARY OBJECTIONS:

1. The appellant has got no cause of action to file this service appeal.
2. That the appeal is not maintainable in its present form.
3. That the appellant has no locus standi or cause of action to file the present service appeal.
4. The appeal is badly time bared.
5. That the Health Professional Allowance was granted / allowed by the Federal Govt. only to the employees of Directorate General of Special Education, Govt of Pakistan Islamabad and its allied Institutions in pursuance of the judgment of the Federal Services Tribunal, while the petitioners were neither devolved employees of the Directorate General of Special Education, Govt. of Pakistan Islamabad nor they have been appointed by the Federal Govt in the Directorate General of Special Education Govt. of Pakistan, Islamabad and its allied institutes, therefore the appeal is not maintainable.

FACTS:

1. Pertain to record.
2. Correct.
3. The Federal Govt. granted / allowed Health Professional Allowance to the employees of Special Education Institutions working under the Directorate General of Special Education, Govt of Pakistan, Islamabad. Judgment dated 18.07.2017 of the Federal Service Tribunal Islamabad was setting aside the impugned orders dated 21.03.2016 and 25.03.2016 with the direction to the respondents to continue the Health Allowance already granted to the appellants since 2012 (devolved employees of Special Education, Govt of Pakistan Islamabad) and also directed to refund all deduction made in compliance with the orders within a period of one month (**Annex-A**). As far as judgment dated 17.01.2018 of the Supreme Court of Pakistan in the case titled "Federation of Pakistan through Secretary Capital Administration and Development Division Islamabad etc VS Muhammad Attique ur Reman etc (in C.A.811/2016) was the affirmation of the judgment of Honorable Federal Services Tribunal dated 05.10.2015, 11. 01.2016 and 18.07.2017 (**Annex-B**), therefore the appeal of the instant appellant on the basis of the above judgments do not cover his eligibility for Health Allowance being non-devolved employee, appointed by the Directorate of Social Welfare, Govt of Khyber Pakhtunkhwa. As far as consolidated judgments dated 18.07.2017, 11.01.2016 and 05.01.2015 of the Federal Service Tribunal against the stoppage of allowance, the said judgments were purely in favor of the employees working/worked under the Directorate General of Special Education Islamabad. It is further to clarify that the Govt. of Khyber Pakhtunkhwa Finance Department vide Notification No. FD(SOSR)-7/2019-53 dated 25-11-2019 (**Annex-C**) granted Health Professional Allowance which is re-produced as under was purely for the devolved employees of Special Education Institutions devolved to the province of Khyber Pakhtunkhwa:

"In pursuance of the Supreme Court of Pakistan Civil Appeal No. 811/2016 titled "Muhammad Atique ur Rehman and others vs Federal Government through Secretary Capital Administration etc",

the Government of Khyber Pakhtunkhwa (Provincial Cabinet) has been approved health professional allowance at the rate of one basic pay to the devolved employees working in the Special Education Institutions from the date of their devolution to Provincial Government of Khyber Pakhtunkhwa.

Thus the above said allowance will be admissible only to the employees of the Special Education Institutions of Khyber Pakhtunkhwa devolved under the 18th constitutional amendment.”

4. Correct to the extent that Mr. Rashidullah is receiving Health Professional Allowance due to the reasons that he was appointed by the Federal Government in the Special Education Institution under the Directorate General of Special Education, Govt of Pakistan Islamabad and along with his other colleagues, he was also devolved to the province of Khyber Pakhtunkhwa. Copies of appointment order and list of devolved employees is at **(Annex-D & E)**.
5. Pertain to record.
6. Correct to the extent that the employees of Special Education Institutions along with other colleagues of Social Welfare Offices/entities filed writ petition No. 68-A/2019 titled “Muhammad Adil Khan & Others VS Government of Khyber Pakhtunkhwa, Writ Petition No. 202-A/2021 titled “Muhammad Younis etc VS Government of Khyber Pakhtunkhwa” and Writ Petition No. 628-A/2022 titled “Rubina Mazhar VS Govt” for grant of health allowance. The Honorable Peshawar High Court, Abbottabad Bench vide Order dated 27.10.2022 in the above Writ Petitions directed that the learned counsel for petitioner after arguing the case for a while stated that his writ petition be converted into departmental appeal and sent to respondent No. 1 i.e. Worthy Chief Secretary Khyber Pakhtunkhwa for decision according to law. The Honorable Court accordingly converted the petition into departmental appeal for placing before the worthy Chief Secretary, Government of Khyber Pakhtunkhwa, Peshawar for decision according to law **(copies of judgments at Annex-F, G & H)**. The worthy Chief Secretary Khyber Pakhtunkhwa The Worthy Chief Secretary Khyber Pakhtunkhwa while examining the case in detail decided that as the aforesaid Notification of Finance Department is just for the employees devolved from Directorate

General of Special Education, Government of Pakistan Islamabad therefore, all the Petitioners in the subject cases except the following three (03) who are devolved employees of Special Education Institutions, Govt of Pakistan Islamabad are not entitled for Health Professional Allowance.

1. Furqan Jamil, Junior Clerk
2. Hafeez Ur Rahman, Cook
3. Sarfaraz, Driver

Thus all the petitioners in the above writ petitions were informed accordingly (Annex-I). Keeping in view the above factual position, the appellants are not entitled to be awarded health professional allowance @ of one running basic pay freeze on 30.06.2022.

7. Incorrect, hence denied. The appellants have no cause of action to file the instant service appeal.


GROUND

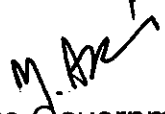
- A. Incorrect, hence denied. The order dated 31.05.2023 is according to law and facts.
- B. Incorrect, hence denied. The Respondents are law-abiding civil servants and respect the Constitution of Islamic Republic of Pakistan & did not violate any article of the Constitution of Islamic Republic of Pakistan. Moreover, as per Notification of the Finance Department the appellants are not eligible for the said relief.
- C. Incorrect, hence denied. The factual position has been explained in the preceding para. The said facility was allowed by the Federal Government to the Devolved employees of Special Education Institutions Islamabad and no other non-devolved employees of Special Education Institutions is receiving health professional allowance.
- D. Incorrect hence denied. The factual position has been explained in the preceding paras.
- E. Incorrect, hence denied. As explained in the preceding paras, the employees of Directorate General of Special Education Govt of Pakistan Islamabad and its allied Institutes knocked the doors of Federal Service Tribunal Islamabad and the Honorable Federal Service Tribunal was pleased to accept the appeal which was later on affirmed by the Supreme


Court of Pakistan (**Annex-A & B**). Therefore, claim of the appellants on the above decisions is against the law and rules.

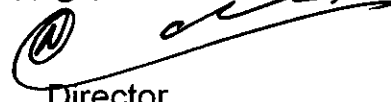
- F. Incorrect, hence denied. The facility of health professional allowance was granted by the Federal Govt to the employees of Directorate General of Special Educations and its allied institutions only and no non-devolved employees of Special Education Institutions (Provincial) have been granted such relief.
- G. The respondents may also be allowed to raise additional grounds at the time of arguments.

In the view of above factual position, it is, therefore, humbly prayed that the appeal being devoid of any merit may graciously be dismissed with cost.


Chief Secretary to Government of
Khyber Pakhtunkhwa
(Respondent No. 1)


Secretary to Government of Khyber
Pakhtunkhwa
Finance Department
(Respondent No. 2)
Amir Sultan Tareeh


Secretary to Government of Khyber
Pakhtunkhwa
Social Welfare, Special Education &
Women Empowerment Department
(Respondent No. 3)


Director
Social Welfare, Special Education &
Women Empowerment Department
(Respondent No. 5)

Dr Aneela Mahfooz Durrani

Muhammad Naeem

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In the Federal Service Tribunal, Islamabad

Appeals Nos. 565 to 573, 757 to 793, 894 to 918, 918-A, 919 to 943, 998 to 1045, 1108 to 1179, 1224 to 1243, 1265 to 1325, 2327 to 2350, 2352 to 2368 & 2368-A, 2369 to 2443, 2446 to 2484 & 2487 to 2501, 2508 to 2520(R)CS/2016 with M:Ps.

Nusrat Talib and others

Versus

Secretary, Capital Administration & Development Division,
Secretary, Finance Division and AGPR, Islamabad.

Date of Institution : 04.04.2016, etc.
Date of hearing : 17.07.2017
Date of Judgment : 18.07.2017

Before: Syed Rafique Hussain Shah, and
Syed Muhammad Hamid, Members.

Present: Mr. Muhammad Anwar Mughal, Advocate for the appellants.
Syed Zil-e-Husnain Kazmi, Assistant Attorney General for the respondents with M/s Arshad Anjum, Assistant Director, CA & DD, Naveed Akhter, Section Officer, Finance Division, Azhar Nadeem, Awan, Assistant Accounts Officer and Muhammad Jabbar, Senior Auditor, AGPR as D.Rs.

JUDGMENT

SYED RAFIQUE HUSSAIN SHAH, MEMBER:- With this judgment we shall decide the above titled appeals. The facts giving rise to the present appeals are that the Prime Minister of Pakistan approved payment of Health Allowance to the institutions providing Health Services in the year 2012 and the Finance Division issued notification No.2(13)R-2/2011-777 dated 06.02.2012 for grant of Health Allowance, equal to one basic pay of running salary to the health personnel in the employment of Federal Government in BPS Scheme w.e.f. 01.01.2012, in addition to the existing pay and allowances in BPS scheme. Health allowance had been paid to the contemporaries of the appellants in other Government Hospitals including PIMS, Federal Govt. Polyclinic, CDA, ICT, Pakistan Railways and Federal Government Services Hospital, Islamabad, etc. but it was discontinued to the present appellants vide impugned orders dated 08.08.2014, 21.03.2016

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Federal Service Tribunal
Islamabad

ACCEPTED

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Asstt. Director (Litigation)
Social Welfare, Small and W.
Khyber Pakhtunkhwa.

[Signature]

and 25.03.2016. The Secretary, Capital Administration & Development Division (CA&DD) vide letter dated 06.08.2012 allowed Health Allowance to 24 personnel of Directorate General of Special Education (DGSE) and the AGPR, Islamabad started paying the said Allowance to these personnel with effect from 01.01.2012. Due to discriminative action of Secretary CA&DD the employees of DGSE started agitating the matter with him who vide letter dated 13.03.2013 allowed Health Allowance to all the employees of 16 institutions of DGSE and allied education centres, etc. in view of functions and the services being rendered by them in providing Health Services to the disabled and special children with effect from 01.01.2012 and the AGPR accordingly started paying the said allowance to them. The AGPR vide letter dated 08.08.2014 informed the Director General, DGSE that Finance Division had not provided budget allocation for the year 2014-2015 for the said Allowance, hence, the payment of said Allowance be stopped by submitting the computer changes through concerned DDOs. Subsequently the Finance Division allocated budget for the said Allowance but the CA&DD parked the budget and later on allocated the same to some other organization. Being aggrieved of stoppage of the said Allowance vide letter dated 08.08.2014 the affected employees filed Writ Petition No.3784/2014, 3858/2014 and 4007/2014 which were disposed of by the Hon'ble Islamabad High Court, Islamabad vide order dated 17.09.2015 in the following manner: -

xxx

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4. In the light of the above, the instant petition, alongwith the connected petitions are converted into representations deemed to be pending before the learned Secretary CADD. The learned Secretary CADD shall afford an opportunity of hearing to an authorized representative of the petitioners and, thereafter pass a speaking order. It is expected that the Secretary shall, inter alia, take into consideration:

- a) the affidavit dated 26.3.2015 filed by the Secretary Finance, during the proceedings before this Court;
- b) the fact that in some cases the Health Allowance was paid to the employees by the AGPR pursuant to the approval given by the CADD;
- c) The request made by and on behalf of the petitioners that in the circumstances recovery of the Health Allowance would cause immense hardship; and
- d) The fact that the petitioners are employees of different departments and entities under the

Asstt. Director (Litigation)
Social Welfare, B&WD & WE,
Khyber Pakhtunkhwa.

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Director General
Islamabad

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administrative control of CA&DD and, therefore, the entitlement or eligibility shall be taken into consideration in the light of status of each department or entity separately.

(9)

5. In order to meet the ends of justice, it would be appropriate that recovery of the Health Allowance already paid to the employees is recovered after a speaking order has been passed by the learned Secretary. It is expected that the Secretary CA&DD shall pass a speaking order preferably within 90-days."

xxx

xxx

xxx

The Secretary (CA&DD) after perusing the record and affording the opportunity of hearing to the authorized representatives of the petitioners (now appellants) on 14.03.2016 passed the order dated 21.03.2016 and declared the CA&DD's letter dated 13.03.2016 allowing Health Allowance to the DGSE employees unlawful, against the rules, void ab initio and directed the AGPR to recover the said Allowance from their salaries in easy installments.

2. In this backdrop, the appellants filed the instant appeals with the following prayer: -

"It is, therefore, most respectfully prayed that the appellant being entitled to Health Allowance being covered under category of Health Personnel, the said order dated 21.03.2016 by respondent No.1 may therefore, be set aside and it be declared that the action of respondent No.1 in withdrawing the said allowance and recovery thereof from the salaries of appellants, is mala fide, illegal, violative of principles of locus poenitentiae, unfair, unjust, unreasonable, arbitrary, fanciful and capricious and that are entitled to receive the same, from the date it has been withdrawn and stopped from payment."

3. The learned counsel for the appellants argued that the appellants being Federal government Servants under Article 240 of Constitution of the Islamic Republic of Pakistan, 1973 and covered under Section 2 (b) of Civil Servants Act, 1973 were entitled to all pay and allowances prescribed by Federal Government for its employees. Further stated that financial directive contained in Ministry of Finance O.M. No.2(13)R-2/2011 dated 06.02.2012 was unambiguous and clearly stipulated admissibility of Health Allowance to all health personnel in employment of Federal Government in BPS Scheme but despite the said notification of the Finance Division, the appellants were deprived of the

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Asstt Director (Litigation)
Social Welfare and Welfare
Khyber Pakhtunkhwa

said benefits. In support of his version, the learned counsel for the appellants referred to the judgments of PSC dated 05.10.2013, 11.01.2016, 18.03.2016 and 14.12.2016 passed in Appeals No.224(R)CS/2015, 867 to 872(R)CS/2013, 1176 to 1187, 1189 to 1251(R)CS/2015 & 381 to 405(R)CS/2016 and prayed for the same relief. The learned counsel vehemently argued that the respondent-Finance Division was blowing hot and cold in the same breath as, on the one hand, it had admitted the claim of the appellants in para 6 of their parasitic comments filed in the Hon'ble Islamabad High Court, Islamabad while, on the other hand, they declined the same claim vide order dated 21.03.2016. He contended that the benefit once granted and acted upon had created a vested right which could not be withdrawn unilaterally, in violation of principle of natural justice. The learned counsel for the appellant lastly argued that impugned orders were void ab initio, coram-non-judice and having no sanctity of law as withdrawal / stoppage of salary amounted to punishment which could not be awarded without adopting the due process of law provided under the Government Servants (Efficiency and Discipline) Rules, 1973.

4. The appeals were resisted by the respondents. It was stated that the said allowance was not admissible to the appellants as they did not fall under the definition of health personnel because health personnel meant a person who held a post in any institute or organization delivering services in the health sector and included in Schedule-I. It was further submitted that the Health Allowance was allowed provisionally to the appellants by the AGPR on the basis of CADD Division's letter dated 06.08.2012 but subsequently that Division sent a reference to the Finance Division to seek its concurrence for admissibility of Health Allowance which regretted the same on 14.03.2013 on the ground that they were involved in the process of education, training and rehabilitation of disabled children and persons with disabilities and, hence, could not be declared as health personnel to become entitled for the said allowance. The CADD on 13.03.2013 in its communication to AGPR conveyed sanction of the Health Allowance to DGSE employees without concurrence of the Finance Division and the AGPR made provisional payment to the appellants, which was subsequently discontinued after verification of entitlement in order to prevent the misuse of this allowance by non-entitled personnel. It was submitted by respondent No.2 that health allowance was granted with the

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Asstt. Director (Litigation),
Social Welfare, Sindh and West
Khyber Pakhtunkhwa.

approval of the Prime Minister, through a summary, specifically moved for three Federal Government Hospitals i.e. Pakistan Institute of Medical Sciences, F.G. Polytechnic and National Institute of Rehabilitation Medicine. The Directorate General of Special Education & Social Welfare, being an educational body, dealt with the process of education, training and rehabilitation of disabled children and persons with disabilities, which was carried out by a multi-professional team including teachers, professionals, doctors, administrators, ministerial and supportive / ancillary staff did not fall within the ambit of health organization and could not be declared as 'health personnel' to get the said allowance. The respondent No.3 i.e. AGPR in its parawise comments submitted that the identical cases titled Dr. Faruk F. Lodhi, etc. vs Secretary Finance were still pending before the Hon'ble Supreme Court of Pakistan.

5. We heard the learned counsel for the parties and perused the record.

6. The health allowance equal to one basic pay of running salary was granted to the health personnel in the employment of Federal Government, in HPS Scheme, with effect from 01.01.2012. It was made admissible to non-clinical cadres. In reply to a query raised by AGPR vide letter No.TM/18-64/CSHP/HPS/2011-12/186, dated 12.03.2012, the Regulations Wing of the Finance Division vide U.O. No.F.2(13)R-2/2012-172 dated 27.03.2012 furnished definition of the health personnel by stating that 'health personnel' meant a persons who held a post in any institute or organization delivering services in the health sector and included in Schedule-I, but did not include person who was on deputation to the Federal Government from any Province or other authority and who was on contract, or on work charged basis or who was paid from contingencies. The appellants are neither deputationists from any Province or other authority nor have been engaged on contract or on work charged basis. They are also not being paid from contingencies. On the contrary, they are civil servants under section 2 (b) of the Civil Servants Act, 1973 and are delivering services to the disabled children / persons. The beneficiaries / appellants comprised of Academic and Administrative Cadres. According to the definition furnished by the Finance Division vide their u.o. dated 27.03.2012 the appellants are entitled to health allowance. In paras-6 & 7 under Facts of parawise comments filed before the Hon'ble Islamabad High

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Asst. Director (Education),
Social Welfare, Government of Punjab,
Khyber Pakhtunkhwa

Court, Islamabad on behalf of Secretary Finance Division in Writ Petition No.4007/2014, it was categorically admitted that in April, 2014 Ministry of CADD again submitted NIS / BOs containing a provision of Rs.100 million as HPA for DGSE for financial year 2014-15, however, DFA refused to endorse the NIS / BOs and forcefully deducted an amount of Rs.92.542 million of HPA, leaving Rs.7.458 million for the petitioners (now appellants) i.e. 24 employees who belonged to medical profession and came under the criteria of entitlement of HPA, as per DFA (CADD) understanding. D.O. letter dated 09.05.2014 was issued by EA's Organization to AGPR for stoppage of HPA to non-entitled employees and it was duty of AGPR to take action on the said letter and decide entitlement. It was prayed that the petition was an administrative issue with CADD & DGSE; therefore, the Finance Division be excluded from the list of respondents. Now the Finance Division has come up with different stand. It is not allowed to approbate and reprobate. No logical reply has been submitted by the respondents for depriving the appellants of their legitimate rights. A large number of employees of the Federal Government, similarly placed, are getting the said advantage. Why, then, the appellants be deprived, is not clear from what has been written in the comments before the Hon'ble Islamabad High Court, Islamabad and the Federal Service Tribunal. This seems to be discriminatory treatment offending Article 4 & 25 of the Constitution of Islamic Republic of Pakistan, 1973. Further, the appellants have been directed by respondent No.1 to refund the paid amount which is against the principle of locus poenitentiae because the Hon'ble Supreme Court of Pakistan has consistently held that the benefit once granted and acted upon created a vested right which could not be withdrawn unilaterally, in violation of natural justice. It is an established law that benefits received by a civil servant, even under erroneous order passed by the competent authority without any fault on the part of civil servant could not be recovered even if the beneficial order was subsequently withdrawn or rectified. We are fortified to take this view in the light of the judgment of Hon'ble Supreme Court of Pakistan reported in PLD 1992 SC 207. Hence, to this extent, the impugned orders are not legally sustainable and liable to be set aside.

7. We would like to make an emphasis on the judgments of the Tribunal in Appeals No.224(R)CS/2015 and 381 to 405(R)CS/2016 dated

ATTESTED

Federal Service Tribunal

Asstt. Director (Litigation)
Social Welfare, SE and WF
Khyber Pakhtunkhwa

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05.10.2015 and 14.12.2016 wherein the controversy relating to Health Allowance has already been resolved. When confronted with the said fact, the respondents have failed to deny the fact. As such, the action of the respondents appears to be inconsistent in the light of the aforementioned judgments on account of Article 25 of the Constitution which guarantees equal rights and equal protection of law for every citizen. To ensure uniformity, rule of consistency must be applied while considering the case of the appellants. Since the Hon'ble Apex Court vide its judgment in the case reported as 1996 SCMR 1185 has already held that "rule of good governance demands that the benefits of the said decision be extended to other civil servants also, who may not be parties to the litigation, instead of compelling them to approach the Tribunal or any other legal forum. Hence, the claim of the appellants is required to be decided on the same analogy / principle as framed in the cases of Dr. Farrukh Fiaz Lodhi and others by the Tribunal vide its judgment dated 05.10.2015, 11.01.2016 and 14.12.2016.

8. Foregoing in view and following the rule of consistency, the impugned orders dated 21.03.2016 and 25.03.2016 are set aside with direction to the respondents to continue the Health Allowance already granted to the appellants since 2012, and to refund all deduction made in compliance with the impugned orders within a period of one month from the date the copy of this judgment is received in their office. Since the main appeals have been accepted, miscellaneous petitions are also accepted.

- 9. Judgment to apply all the titled appeals mutatis mutandis.
- 10. There shall be no order as to costs.
- 11. Parties shall be informed accordingly.

Sd/-
MEMBER

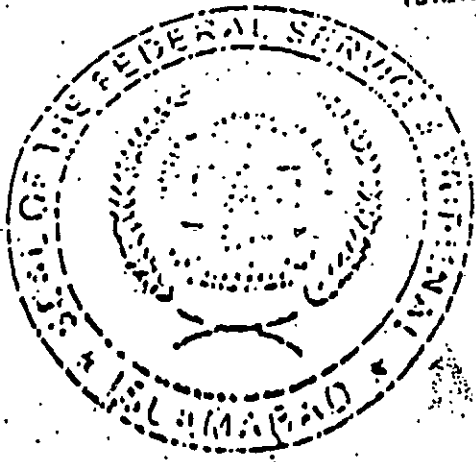
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MEMBER

ISLAMABAD
18.07.2017

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Federal Service Tribunal
Islamabad



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Asstt. Director (Litigation)
Social Welfare, SF and WE,
Khyber Pakhtunkhwa.

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Judgment sheet

In the Federal Service Tribunal, Islamabad.

Appeal No. 565 to 573, 757 to 793, 894 to 918, 918-A, 919 to 943, 998 to 1045, 1108 to 1179, 1224 to 1243, 1265 to 1325, 2327 to 2350, 2352 to 2368 & 2368-A, 2369 to 2443, 2446 to 2484 & 2487 to 2501, 2508 to 2520 (R) CS/2016 with M.Ps.

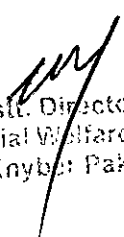
Nusrat Tahir and others
Versus

Secretary, Capital Administrative & Development Division.
Secretary, Finance Division and AGPR, Islamabad.

Date of Institution : 04-04-2016 etc
Date of Hearing : 17-07-2017
Date of Judgment : 18-7-2017

Before: Syed Rafique Hussain Shah, and
Syed Muhammad Hamid, Members.

Present: Mr. Muhammad Anwar Mughal,
Advocate for the Appellants
Syed Zile-Husnain Kamzi, Assistant
Attorney General for the respondents
with M/S Arshad Anjum, Assistant
Director, CA & DD, Naveed Akhter,
Section Officer, Finance Division,
Azhar Nadeem Awan, Assistant
Accounts Officer and Muhammad
Jabbar, Senior Auditor, AGPR as
D.Rs.


Asstt. Director (Litigation)
Social Welfare, SE and WFL
Khyber Pakhtunkhwa.

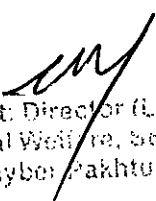
JUDGMENT

SYED RAFIQUE HUSSAIN SHAH, MEMBER: With this judgment we shall decide the above title appeals. The facts giving rise to the present appeals are that the Prime Minister of Pakistan approved payment of Health Allowance to the institutions providing Health Services in the year 2012 and the Finance Division issued notification No. 2(13) R-2/2011-777 dated 6-2-2012 for grant of Health Allowance, equal to one basic pay of running salary to the health personnel in the employment of Federal Government in BPS scheme w.e.f 01-01-2012, in addition to the existing pay and allowance in BPS Scheme. Health allowance has been to the contemporaries of the appellants in other Government Hospitals including PIMS, Federal Govt, Polyclinic, CDA, ICT, Pakistan Railway and Federal Government Services Hospital, Islamabad, etc, but it was discontinued to the present appellants vice impugned orders dated 8-8-2014, 21-03-2016

and 25-3-2016. The Secretary, Capital Administration & Development Division (CA & DD) vide letter dated 6-8-2012 allowed Health Allowance to 24 personnel of Directorate General of Special Education (DGSE) and the AGPR, Islamabad started paying the said Allowance to these personnel with effect from 01-04-2012. Due to discriminative action Secretary CA & DD the employees of DGSE started agitating the matter with his who vide letter dated 13-3-2013 allowed Health Allowance to all the employees of 16 institutions of DGSE and allied education centers, etc, in view of functions and the services being rendered by them in providing Health Services to the disabled and special children with effect from 01-01-2012 and the AGPR accordingly started paying the said allowance to them. The AGPR vide letter dated 8-8-2014 informed the Director General, DGSE that Finance Division had not provided budget allocation for the year 2014-2015 for the said Allowance, hence, the payment of said Allowance be stopped by submitting the computer changes through concerned DDOs. Subsequently the Finance Division allocated budget for the said Allowance but the CA & DD parked the budget and later on allocated the same to some other organization. Being aggrieved of stoppage of the said Allowance vide letter dated 8-8-2014 the affected employees filed Writ Petition No. 3784/2014, 3858/2014 and 4007/2004 which were disposed of by the Hon'ble Islamabad High Court, Islamabad vide order dated 17-9-2015 in the following manner:-

4. In the light of the above, the instant petition allowing with the connected petitions are converted into representations deemed to be pending before the learned Secretary CADD. The learned Secretary CADD shall afford an opportunity of hearing to an authorized representative of the petitioners and, thereafter pass a speaking order. It is expected that the Secretary shall, inter alia, take into consideration:

- a) the affidavit dated 26-3-2015 filed by the Secretary Finance the proceedings before this court.
- b) the fact that in some cases the Health Allowance was paid to the employees by the AGPR pursuant to the approval given by the CADD.
- c) The request made by and on behalf of the petitioners that in the circumstances recovery of the Health Allowance would cause immense hardship; and
- d) the fact that the petitioners are employees of different departments and entities under the


 Asstt. Director (Litigation)
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 Khyber Pakhtunkhwa.

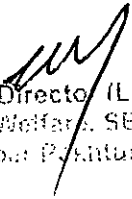
administrative control of CADD and, therefore, the entitlement of eligibility shall be taken into consideration in the light of status of such department or entity separately.

- 5. In order to meet the ends of justice, it would be appropriate that recovery of the Health Allowance already paid to the employees is recovered after a speaking order has been passed by the learned Secretary. It is expected that the Secretary CADD shall pass a speaking order preferably within 90-days.

The Secretary CA & DD after perusing the record and affording the opportunity of hearing in the authorized representatives of the petitioners (now appellants) on 14-03-2016 passed the order dated 21-3-2016 and declared the CA & DD's letter dated 13-3-2016 allowing Health Allowance to the DGSE employees unlawful, against the rules, void ab initio and directed the AGPR to recover the said Allowance from their salaries in easy installments.

- 2. In this backdrop, the appellants filed the instant appeals with the following prayers.

It is, therefore, most respectfully prayed that the appellant being entitled to Health Allowance being covered under category of Health Personnel, the said order dated 21-3-2016 by respondent No. 1 may therefore, be set aside and it be declared that the action of respondent No. 1 in withdrawing the said allowance and recovery thereof from the salaries of appellants, is malafide, illegal, violative of principles of locus poenitentiae, unfair, unjust, unreasonable, arbitrary, fanciful and capricious and that are entitled to receive the same, from the date it has been withdrawn and stopped from payments.


 Asstt. Director (Litigation)
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- 3. The learned counsel for the appellants argued that the appellants being Federal Government Servants under Article 240 of Constitutions of the Islamic Republic of Pakistan, 1973 and covered under Section 2 (b) of Civil Servants Act. 1973 were entitled to all pay and allowances prescribed by Federal Government for its employees. Further stated that financial directive contained in Ministry of Finance O.M. No. 2 (13) R-2/2011 dated 6-2-2012 was unambiguous and clearly stipulated admissibility of Health Allowance to all health personnel in employment of Federal Government in BPS Scheme but despite the said notification of the Finance Division, the appellants were deprived of the

said benefits. In support of his version, the learned counsel for the appellants referred to the judgment of FST dated 3-10-2015, 11-01-2016, 18-05-2016 and 14-12-2016 passed in Appeals No. 324 (R) CS/22015, 867 in 872(R) CS/2013, 1176to 1487, 1189 to 1251 (R) CS/2015 & 381 to 405 (R)CS/2016 and prayed for the same relief. The learned counsel vehemently argued that the respondent-Finance Division was blowing hot and cold in the same health as on the land, it had admitted the claim of the appellants in para 5 of their parawise comments filed in the Hon'ble Islamabad High Court, Islamabad while, on the order hand, they declined the same claim vide order dated 21-3-2016. He contended that the benefit once granted and acted upon had created a vested right which could not be withdrawn unilaterally, in violation of principle of nature justice. The learned counsel for the appellant lastly argued that impugned orders were void ab initio, coram-non-judice and having no sanctity of law as withdrawal/stoppage of salary amounted to punishment which could not be awarded without adopting the due process of law provided under the Government Servants (Efficiency and Discipline) Rules, 1973.


4. The Appeals were resisted by the respondents. It was stated that the said allowance was not admissible to the appellants as they did not fall under the definition of health personnel because health personnel means a person who held a post in any institute or organization delivering services in the health sector and included in Schedule-I. It was further submitted that the Health Allowance was allowed provisionally to the appellants by the AGPR on the basis of CADD Division's letter dated 6-8-2012 but subsequently that Division sent a reference to the Finance Division to sack its concurrence for admissibility of Health Allowance which regretted the same on 14-3-2013 on the ground that they were involved in the process of education, training and rehabilitation of disabled children and persons with disabilities and, hence, could not be declared as health personnel to become entitle for the said allowance. The CADD on 13-3-2013 in its communication to AGPR conveyed sanction of the Health Allowance to DGSE employees without concurrence of the Finance Division and the AGPR made provisional payment to the appellants, which was subsequently discontinued after verification of entitlement in order to prevent the misuse of this allowance by no-entitled personnel. It was submitted by respondent No. 2 that health allowance was granted with the

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approval of the Prime Minister, through a summary, specifically moved for three Federal Government Hospitals i.e. Pakistan Institute of Medical Sciences, F.G. Polyclinic and National Institute of Rehabilitation Medicine. The Directorate General of Special Education and Social Welfare, being an educational body, dealt with the process of education, training and rehabilitation of disabled children and person with disabilities, which was carried out by a multi-professional team including teacher, professionals, doctors, administrators, ministerial and supportive/ancillary staff did not "health personnel" to get the said allowance. The respondent No.3 i.e. AGPR in its parawise comments submitted that the identical cases titled DR. Farkh F, Lodhi, etc. vs Secretary Finance were still pending before the Hon'ble Supreme Court of Pakistan.


5. We heard the learned counsel for the parties and perused the record.

6. The health allowance equal to one basic pay of running salary was granted to the health personnel in the employment of Federal Government, in BPS Scheme, with effect from 01-01-2012. It was made admissible to no-clinical cadres. In reply to a query raised by AGPR vide letter No. TM/18-64/CSHP/HPS/2011-12/186, dated 12-3-2012, the Regulations Wing of the Finance Division vide U.O. No. F.2(13) R-2/2012-172 dated 27-3-2012 furnished definition of the health personnel by stating that "health personnel" meant a person who held a post in any institute or organization delivering services in the health sector and included in Schedule-I, but not include person who was on deputation to the contract, or on work charged basis or who was paid from contingencies. The appellants are neither deputationists from any Province or other authority nor have been engaged on contract or on work charged basis. They are also not being paid from contingencies. On the contrary, they are delivering services to the disabled children/person. The beneficiaries / appellants comprised of Academic and Administrative Cadres. According to the definition furnished by the Finance Division vide their U.O. dated 27 -3- 2012 the appellants are entitled to health allowance. In paras 6 & 7 under facts of parawise comments filed before the Hon'ble Islamabad High


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Court, Islamabad on behalf of Secretary Finance Division in Writ Petition o. 4007/2014, it was categorically admitted that in April 2014 Ministry of CADD again submitted NIS/BOs containing a provision of Rs. 100 million as HPA for DGSE for financial year 2014-15, however, DFA refused to endorse of HPA, leaving Rs. 7.458 million for the petitioners (now appellants) i.e. 24 employees who belonged to medical profession and came under the criteria of entitlement of HPA, as per DFA (CADD) understanding, D.O letter dated 9-5-2014 was issued by FA's Organization to AGPR to take action on the said letter and decide entitlement. It was prayed that petition was an administrative issue with CADD & DGSE, therefore, the Finance Division be excluded from the list of respondents. Now the Finance Division has come up the different stand. It is not allowed in approbate and reprobate. No logical reply has been submitted by the respondents for depriving the appellants of their legitimate right. A large number of employees of the Federal Government, similarly placed are getting the said advantage. Why, then, the appellants be deprived is not clear from what has been written in the comments is before the Hon'ble Islamabad High Court, Islamabad and the Federal Service Tribunal, this seems to be discriminatory treatment offending Article 4 & 25 of the Constitution of Islamic Republic of Pakistan. Further, the appellants have been directed by respondent No.1 to refund the paid amount which is against the principle of locus poenitentiae because the Honorable Supreme Court of Pakistan has consistently held that the benefit once granted and acted upon created a vested right which could not be withdrawn unilaterally, in violation of natural justice. It is an established law that benefits received by a civil servant even under erroneous order passed by the competent authority without any fault on the part of civil servant could not be recovered even if the beneficial order was subsequently withdrawn or rectified. We are fortified to take this view in the light of the judgment of Hon'ble Supreme Court of Pakistan reported in PLD 1992 SC 207. Hence, to this extent, the impugned orders are not legally sustainable and liable to be set aside.

7. We would like to make an emphasis on the judgments of the Tribunal in Appeals No. 224@CS/2015 and 381 to 405 (R) CS/2016 dated


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05.10.2015 and 14.12.2016 wherein the controversy relating to Health Allowance has already been resolved. When confronted with the said fact, the respondents have failed to deny the fact. As such, the action of the respondents appears to be inconsistent in the light of the aforementioned judgments on account of Article 25 of the Constitution which guarantees equal rights and equal protection of law for every citizen. To ensure uniformity, rule of consistency must be applied while considering the case of the appellant. Since the Hon'ble Apex Court vide its judgment in the case reported as 1996 SCMR 1185 has already held that "rule of good governance demands that the benefits of the said decision be extended to other civil servants also, who may not be parties to the litigation, instead of compelling them to approach the Tribunal or any other legal forum. Hence, the claim of the appellants is required to be decided on the same analogy / principle as framed in the cases of Dr: Farrukh Fiaz Lodhi and others by the Tribunal vide its judgment dated 05.10.2015, 11.01.2016 and 14.12.2016.

8. Foregoing in view and following the rule of consistency, the impugned orders dated 21.03.2016 and 25.03.2016 are set aside with the direction to the respondents to continue the Health Allowance already granted to the appellants since 2012 and to refund all deduction made in compliance with the impugned orders within a period of one month from the date the copy of this judgment is received in their office. Since the main appeals have been accepted. Misc. Petitions are also accepted.

9. Judgment to apply all the titled appeals mutatis mutandis.

10. There shall be no order as to costs.

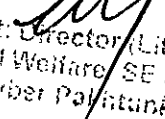
11. Parties shall be informed accordingly.

ISLAMABAD
18.07.2017

SD/-- MEMBER

SD/-- MEMBER

Sd/--- Registrar
Federal Services Tribunal
Islamabad.


Asstt. Director (Litigation)
Social Welfare, SE and W
Khyber Pakhtunkhwa

Muhammad Attique ur Rehman
etc.

(in C.A.811/2016)

Respondents(s)

E-17

Amex B

For the Appellant(s)
(in all cases)

Mr. Sajid Ilyas Bhatti, DAG
Syed Rifaqat Hussain Shah, AOR
Ms. Saadia Kanwal, S.O Fin.
Mr. Abid Hussain Channa, S.O Fin.
Mr. Sajid Javed, Asstt. Legal Fin.
Mr. Abdul Razzaq, AAC MEG
Rawalpindi

For the Respondent(s)

In-person

For the Respondent(s)
(in C.A.216/16)

Mr. Muhammad Ilyas Lodhi, ASC
Malik Itaat Hussain Awan, ASC

Amicus Curiae:

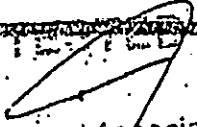
Mr. Muhammad Makhdoom All
Khan, Sr. ASC
Mr. Sikandar Bashir Mohmand, ASC

Date of Hearing

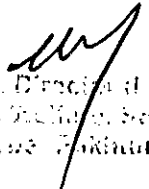
17.01.2018.

JUDGMENT

UMAR ATA BANDIAL, J.— By leave of this Court granted on 23.02.2016, 01.4.2016 and 12.12.2017 in the several connected appeals before us, the appellant Federal Government challenges the judgments delivered on common questions of fact and law by the learned Federal Service Tribunal on 05.10.2015, 11.01.2016 and 18.07.2017. The judgments impugned in the connected appeals declare the respondent employees of different institutions functioning under the Directorate General of Special Education ("DGSE") to be entitled to payment of Health Allowance granted by the Federal Government vide its Office Memoranda dated 04.02.2012 and 06.2.2012. These Memoranda are issued by the Finance Division (Regulations Wing) Government of Pakistan pursuant to approval granted by the Prime Minister under the Rules of Business, 1973. It would be useful to reproduce the two

ATTESTED

Senior Court Associate
Supreme Court of Pakistan

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Asstt. Director of Information
Social Media & Research Wing
Islamabad, Pakistan

memoranda containing the terms and conditions for the grant of Health Allowance to eligible persons:

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Government of Pakistan
Finance Division
(Regulations Wing)

F.No.2(13)R-2/2011 Islamabad, the 04th Feb, 2012

OFFICE MEMORANDUM

Subject: GRANT OF ADHOC ALLOWANCE EQUAL TO ONE BASIC PAY AT THE INITIAL OF THE SCALE TO THE HEALTH PERSONNEL IN BPS SCHEME.

The undersigned is directed to say that the Ordinance No.VI of 2011 that sanctioned the Carper Structure for Health Personnel Scheme (CSHP) has lapsed on 26.12.2011. Accordingly, CSHP is no longer in the field and all health personnel have consequently reverted to the BPS scheme. In order to compensate health personnel for the loss of benefits sought under CSHP while preserving their status as Civil Servants, it has been decided by the Federal Government to grant adhoc allowance equal to one basic pay at the initial of the scale to the health personnel in the employment of Federal Government, in BPS scheme, with effect from 1st January, 2012. This will be in addition to their existing pay/allowances in BPS Scheme.

2. This Division's OM No.2(13)R-2/2011-698 dated 17th November, 2011 may be treated as withdrawn w.e.f. 26.12.2011.

Sd/-
(M. Munir Sadiq)
Deputy Secretary (R-I)

Government of Pakistan
Finance Division
(Regulations Wing)

F.No.2(13)R-2/2011-777 Islamabad, the 06th February, 2012

OFFICE MEMORANDUM

Subject: GRANT OF ADHOC ALLOWANCE EQUAL TO ONE BASIC PAY OF RUNNING SALARY TO THE HEALTH PERSONNEL IN BPS SCHEME.

In continuation of Finance, Division's O.M. No.2(13)R-2/2011, dated 4.2.2012, it has been decided by the Federal Government to grant benefit of one basic pay of running salary as Health Allowance to the health personnel in the employment of Federal Government, in BPS scheme, with effect from 1st January, 2012. This will be in addition to their existing allowances in BPS Scheme. Also grant of stipend amounting to Rs.50,000 per month to the postgraduate residents and Rs.24,000 per month for House Officers respectively w.e.f. 1.7.2011 will continue.

Sd/-
(Munsoor Ali Khan)
Sr. Joint Secretary (Regulations)
(emphasis supplied)

2. Learned Deputy Attorney General has contended that the Health Allowance granted by the Federal Government is available to health personnel in the employment of the Federal Government in the BPS scheme at three hospitals established in

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Senior Court Associate
Islamabad

Asstt. Director (Regulation)
Social Welfare, S&WE,
Khyber Pakhtunkhwa.

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Islamabad, namely, Pakistan Institute of Medical Sciences ("PIMS"), Federal Government Polyclinic ("FGP") and National Institution of Rehabilitation Medicines ("NIRM"). The employees at these hospitals do not have a career structure in place after the Career Structure for Health Personnel Scheme Ordinance, 2011 ("Ordinance") lapsed on 26.1.2011. The Health Allowance was accordingly granted by the Federal Government as a form of compensation. It is clear from the two memoranda dated 04.2.2012 and 06.2.2012 reproduced above that the Health Allowance is granted to "health personnel". However, the composition of the category of employees that are eligible for the benefit has not been provided therein. The respondents who are several hundred in number are unrepresented by counsel. In view of the fact that a large number of employees are affected by the instant controversy, the Court has sought assistance from Mr. Muhammad Makhdoom Ali Khan, Sr. ASC and Mr. Sikandar Bashir Mohmand, ASC as amicus curiae in the matter. Mr. Sikandar Bashir Mohmand, ASC made able submissions before the Court that highlighted important facts and documents on record which simplified the controversy appreciably.

3. It transpires that an Office Memorandum dated 27.03.2012 by the Finance Division (Regulations Wing) clarifies that the term "health personnel" used in the above mentioned memoranda bears the meaning given to that expression in Section 2(b) of the Ordinance. This definition refers to the contents of Schedule-I to the Ordinance, which specifies the service providers who qualify as health personnel. A perusal of Schedule-I shows that five categories of service providers are

Senior Court Associates
Supreme Court of Pakistan

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classified as health personnel, namely: Doctors, Allied, Nurses, Paramedics and Support. The services specified under the categories of Paramedics and Support include Teachers, Audiovisual Operators, Technicians, Librarians, etc.

4. The administrative Ministry for the health institutions of the Federal Government at Islamabad is the Ministry of Capital Administration and Development Division ("CADD"). It is an admitted fact that vide order dated 13.03.2013 the Ministry of CADD granted the Health Allowance to the employees of the DGSE and its allied special education centers/ institutions including National Trust for the Disabled ("NTD") and the National Council for Rehabilitation of Disabled Persons ("NCRDP"). The respondents were thereby acknowledged as beneficiaries of the said grant and were paid the Health Allowance with effect from 01.1.2012 until 27.10.2014, when the Finance Division informed the Accountant General Pakistan Revenue ("AGPR") that only health personnel working in Federal Government hospitals and clinics were qualified to receive the Health Allowance. The AGPR correspondingly instructed the DGSE to stop payment of the said allowance to its employees as no budget allocation for the said emolument had been made in the financial year 2014-15.

5. The discontinuation of their Health Allowance was taken to the Islamabad High Court by some of the respondents. Vide order dated 17.9.2015 the learned High Court referred the dispute to the Secretary CADD for passing a speaking order thereon; and till then restrained recovery of past payments of the Health Allowance from the affected employees of DGSE and allied centers. The Secretary CADD heard the parties and by

[Signature]
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Khyber Pakhtunkhwa.

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order dated 21.3.2016 rejected the entitlement of the respondents to receive the said allowance. The principal ground of his decision is that employees of the DOSE were engaged in the process of education, training and rehabilitation of disabled children and therefore did not fall within the ambit of a health organization. The respondents successfully challenged the said order before the learned Federal Service Tribunal which has, *inter alia*, by the impugned judgment dated 18.07.2017 declared that the respondents are entitled to the grant of Health Allowance.

6. Learned Deputy Attorney General has contended that after the lapse of the Ordinance that had provided a career structure for the doctors, nurses and paramedics working in PIMS, FGP and NIRM, the Health Allowance was granted by the Federal Government as compensation to the said health personnel. He was, however, unable to show any contemporaneous direction issued by the Ministry of CADL or the Ministry of Finance that restricted the grant of the Health Allowance to the claimed employees of the three hospitals specified by him. As already noted above, the definition of health personnel provided in the Ministry of Finance Office Memorandum dated 27.3.2012 is wide in scope and therefore unhelpful to his plea.

7. We have examined the definition of "health personnel" adopted by said memorandum dated 27.3.2012 from Section 2(b) of the Ordinance which is to the following effect:

"b) "health personnel" means a person who holds a post in any institute or organization delivering services in the health sector and included in Schedule-I, but does not include:
i) a person who is on deputation to the Federal Government from any Province or other authority;

ATTESTED

Asstt. Director (Litigation)
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Senior Court Associate

ii) a person who is employed on contract, or on work charged basis or who is paid from contingencies.

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8. It is noted that the foregoing definition of health personnel covers persons holding posts in any institute or organization who are delivering services in the health sector that are included in Schedule-I to the Ordinance. Learned Deputy Attorney General was unable to distinguish the respondents, who are employees of the DGSE and allied institutions/centers, NCRDP and NTD, from the paramedic and support staff positions that qualify as health personnel according to Schedule-I to the Ordinance. It is not denied by the appellant that education, training and rehabilitation of disabled persons are services provided in the health sector. These services fall within the terms of Schedule-I to the Ordinance and therefore the providers thereof qualify as health personnel.

9. Accordingly, not only do the respondents fall within the category of persons who are, in terms of Finance Division Memoranda dated 06.2.2012 and 27.3.2012, eligible for grant of the Health Allowance but their entitlement has in fact been admitted by both the Ministry of CADD and Ministry of Finance. In this respect the aforementioned letter dated 13.3.2013 issued by the Ministry of CADD is referred. Also the affidavit of the Secretary Finance, Government of Pakistan filed in the Islamabad High Court pursuant to that Court's order dated 20.3.2015 passed in Writ Petition No. 4007 of 2014, specifically records that the proposal approved by the Prime Minister vide Summary dated 25.1.2012 did not restrict admissibility of the Health Allowance to the personnel of the three hospitals (identified by the learned DAG). For that reason the Finance

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Khyber Pakhtunkhwa.

Senior Court Associate

Division Memoranda dated 04.2.2012 and 6.2.2012 made the allowance available to all health personnel employed by the Federal Government in the BPS Scheme.

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10. As a result, the said allowance was paid to the health personnel of the DGSE and its allied institutions until 27.10.2014 when the Finance Division instructed the AGPR to confine the grant of the allowance to employees of Federal Government hospitals and clinics. This instruction represents merely a change of opinion which is not occasioned by an amendment in the terms of eligibility for the Health Allowance. Therefore, as the Memoranda dated 04.2.2012, 06.2.2012 and 27.3.2012 issued by the Finance Division, Government of Pakistan still hold the field in their original terms, there is no merit in the objection by the learned DAG to the entitlement of the respondents to claim and receive the Health Allowance.

11. As a secondary and also tenuous argument, learned Deputy Attorney General contended that the Health Allowance is granted under executive fiat without any statutory backing therefore the same can be withdrawn by the Federal Government at any time. That is clearly a flawed contention. It is admitted that grant of the Health Allowance and the terms of eligibility to receive the same were determined by the competent authority, Ministry of Finance in accordance with Rules of Business of the Federal Government. The original terms of the said lawful grant still hold the field. These were acted upon and payment of the Health Allowance to the respondents has conferred a vested right upon them. In such circumstances, the executive is barred by the rule of *locus poenitentiae* from unilaterally rescinding and retrieving the benefit availed by its recipients. Reference is made

Asstt. Director (Litigation)
Social Welfare, SE and WE,
Khyber Pakhtunkhwa.

Senior Counsel Associate
Government of Pakistan

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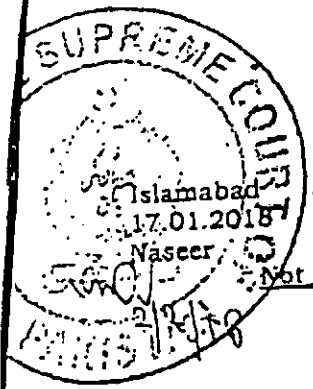
to Pakistan, through the Secretary, Ministry of Finance vs. Muhammad Himayatullah Farukhi (PLD 1969 SC 407) and The Engineer-in-Chief Branch vs. Jalaluddin (PLD 1992 SC 207). Therefore without a change of the terms of eligibility for the Health Allowance even the prospective exclusion of the respondents from receipt of the benefit shall constitute arbitrary and unlawful action.

12. In the circumstances, we do not find any error or defect in the impugned judgments of the learned Federal Service Tribunal dated 05.10.2015, 11.1.2016 and 18.7.2017. Consequently, these appeals are dismissed and the entitlement of employees of the DGSE, allied institutions/centers, NCRDP and NTD to receive the Health Allowance is affirmed.

Sd/- Mian Saqib Nisar, CJ
Sd/- Umar Ata Bandial, J
Sd/- Ijaz ul Ahsan, J

Certified to be True Copy

[Signature]
 Senior Court Associate
 Supreme Court of Pakistan
 Islamabad



Not approved for reporting.

C.R. No: 8158/2022 Civil/Criminal
 Date of Presentation: 20.4.22
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 Date of Delivery of Copy: 26/4/2022
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 Received by: [Signature]

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 Asstt. Director (Litigation)
 Social Welfare, SE and ME,
 Khyber Pakhtunkhwa

"Annex - c"

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GOVERNMENT OF KHYBER PAKHTUNKHWA
FINANCE DEPARTMENT
(REGULATION WING)

Dated Peshawar the 25-11-2019

NOTIFICATION

-53

No.FD(SOSR)118-7/2019, in pursuance of the Supreme Court of Pakistan Civil Appeal No B11/2018 titled "Muhammad Aliqaz-Ur-Rehman & Others v/s Federal Government of Pakistan through Secretary Capital Administration etc." the Government of Khyber Pakhtunkhwa (Provincial Cabinet) has been pleased to approve Health Allowance at the rate of one running basic pay to the devoted employees working in the Special Education Institutions from the date of their devolution to Provincial Govt of Khyber Pakhtunkhwa

2 The above said allowance will be admissible only to the employees of Special Education Institutions of Khyber Pakhtunkhwa devolved under 18th Constitutional Amendment

Secretary to Govt of Khyber Pakhtunkhwa
Finance Department

Encl: No. & Date Even.

Copy is forwarded for information and necessary action to the:

- 1 Accountant General, Khyber Pakhtunkhwa, Peshawar.
- 2 Principal Secretary to Chief Minister, Khyber Pakhtunkhwa.
- 3 Principal Secretary to Governor, Khyber Pakhtunkhwa.
- 4 Secretary to Social Welfare, Special Education & Women Empowerment Dept.
- 5 Director, PMU, Finance Department, Khyber Pakhtunkhwa
- 6 PS to Minister Finance, Khyber Pakhtunkhwa.
- 7 PS to Secretary, Finance Department, Khyber Pakhtunkhwa.
- 8 PS to Special Secretary, Finance Department, Khyber Pakhtunkhwa.
- 9 PA to Additional Secretary (Regulation), Finance Department.
- 10 Master File

Asstt. Director (Litigation),
Social Welfare, Special Education & Women
Empowerment Dept., Peshawar.

SECTION OFFICER (SR-II)
FINANCE DEPARTMENT

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**GOVERNMENT OF KHYBER PAKHTUNKHWA
FINANCE DEPARTMENT
(REGULATION WING)**

Dated Peshawar the 25-11-2019

NOTIFICATION

NO.FD(SOSR-II)8-7/2019-53, In pursuance of the Supreme Court of Pakistan Civil Appeal No.811/2016 titled "Muhammad Atique-Ur-Rehman & Others vs Federal Government of Pakistan through Secretary Capital Administration etc." the Government of Khyber Pakhtunkhwa (Provincial Cabinet) has been pleased to approve Health Allowance at the rate of one running basic pay to the devolved employees working in the Special Education Institutions from the date of their devolution to Provincial Govt. of Khyber Pakhtunkhwa.

2 The above said allowance will be admissible only to the employees of Special Education Institutions of Khyber Pakhtunkhwa devolved under 18th Constitutional Amendment.

**Secretary to Govt of Khyber Pakhtunkhwa
Finance Department**

Endst.No.& Date Even,

Copy is forwarded for information and necessary action to the:-

1. Accountant General, Khyber Pakhtunkhwa, Peshawar
2. Principal Secretary to Chief Minister, Khyber Pakhtunkhwa
3. Principal Secretary to Governor, Khyber Pakhtunkhwa
4. Secretary to Social Welfare, Special Education & Women Empowerment Deptt
5. Director, FMIU, Finance Department, Khyber Pakhtunkhwa
6. PS to Minister Finance, Khyber Pakhtunkhwa
7. PS to Secretary, Finance Department, Khyber Pakhtunkhwa
8. PS to Special Secretary, Finance Department, Khyber Pakhtunkhwa
9. PA to Additional Secretary (Regulation), Finance Department
10. Master File

[Signature]
Asstt. Director (Litigation)
Social Welfare, SE and WE,
Khyber Pakhtunkhwa.

**SD/-
Section Officer (SR-II)
Finance Department**

Islamabad the 1st 2010

Subject OFFER OF APPOINTMENT ON CONTRACT BASIS

Consequent upon the recommendations of the Departmental Selection Committee Rashidullah Shah S/o Muhammad Umar Shah has been selected for appointment on contract basis under the Directorate General of Special Education on the following terms and conditions:

S.No	Post	Senior Teacher (BS-17)
1	Place of posting	Special Education Centre for Hearing Impaired Children, Phase-V, Hayatabad, Peshawar
2	Period of Contract	With effect from the date of joining to 30.06.2011 or till the expiry of term of nomination of FPSC, whichever is earlier
3	Pay	Pay equivalent to BS-17 as admissible under the Government of Punjab pay scale to time
4	Allowances	As admissible to corresponding civil servants
5	Traveling Allowance	As admissible to civil servants of the corresponding pay scale and rules
6	Seniority	This contract appointment does not confer any right for being placed in the gradation seniority list of the cadre group to which the appointee belongs
7	Leave	As admissible under the Revised Rules, 1980 however provisions contained in Rules 5(B), 8, 11, 14, 16, 18-A, 19, 27, 33, 34, 35, 36, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 130, 131, 132, 133, 134, 135, 136, 137, 138, 139, 140, 141, 142, 143, 144, 145, 146, 147, 148, 149, 150, 151, 152, 153, 154, 155, 156, 157, 158, 159, 160, 161, 162, 163, 164, 165, 166, 167, 168, 169, 170, 171, 172, 173, 174, 175, 176, 177, 178, 179, 180, 181, 182, 183, 184, 185, 186, 187, 188, 189, 190, 191, 192, 193, 194, 195, 196, 197, 198, 199, 200, 201, 202, 203, 204, 205, 206, 207, 208, 209, 210, 211, 212, 213, 214, 215, 216, 217, 218, 219, 220, 221, 222, 223, 224, 225, 226, 227, 228, 229, 230, 231, 232, 233, 234, 235, 236, 237, 238, 239, 240, 241, 242, 243, 244, 245, 246, 247, 248, 249, 250, 251, 252, 253, 254, 255, 256, 257, 258, 259, 260, 261, 262, 263, 264, 265, 266, 267, 268, 269, 270, 271, 272, 273, 274, 275, 276, 277, 278, 279, 280, 281, 282, 283, 284, 285, 286, 287, 288, 289, 290, 291, 292, 293, 294, 295, 296, 297, 298, 299, 300, 301, 302, 303, 304, 305, 306, 307, 308, 309, 310, 311, 312, 313, 314, 315, 316, 317, 318, 319, 320, 321, 322, 323, 324, 325, 326, 327, 328, 329, 330, 331, 332, 333, 334, 335, 336, 337, 338, 339, 340, 341, 342, 343, 344, 345, 346, 347, 348, 349, 350, 351, 352, 353, 354, 355, 356, 357, 358, 359, 360, 361, 362, 363, 364, 365, 366, 367, 368, 369, 370, 371, 372, 373, 374, 375, 376, 377, 378, 379, 380, 381, 382, 383, 384, 385, 386, 387, 388, 389, 390, 391, 392, 393, 394, 395, 396, 397, 398, 399, 400, 401, 402, 403, 404, 405, 406, 407, 408, 409, 410, 411, 412, 413, 414, 415, 416, 417, 418, 419, 420, 421, 422, 423, 424, 425, 426, 427, 428, 429, 430, 431, 432, 433, 434, 435, 436, 437, 438, 439, 440, 441, 442, 443, 444, 445, 446, 447, 448, 449, 450, 451, 452, 453, 454, 455, 456, 457, 458, 459, 460, 461, 462, 463, 464, 465, 466, 467, 468, 469, 470, 471, 472, 473, 474, 475, 476, 477, 478, 479, 480, 481, 482, 483, 484, 485, 486, 487, 488, 489, 490, 491, 492, 493, 494, 495, 496, 497, 498, 499, 500, 501, 502, 503, 504, 505, 506, 507, 508, 509, 510, 511, 512, 513, 514, 515, 516, 517, 518, 519, 520, 521, 522, 523, 524, 525, 526, 527, 528, 529, 530, 531, 532, 533, 534, 535, 536, 537, 538, 539, 540, 541, 542, 543, 544, 545, 546, 547, 548, 549, 550, 551, 552, 553, 554, 555, 556, 557, 558, 559, 560, 561, 562, 563, 564, 565, 566, 567, 568, 569, 570, 571, 572, 573, 574, 575, 576, 577, 578, 579, 580, 581, 582, 583, 584, 585, 586, 587, 588, 589, 590, 591, 592, 593, 594, 595, 596, 597, 598, 599, 600, 601, 602, 603, 604, 605, 606, 607, 608, 609, 610, 611, 612, 613, 614, 615, 616, 617, 618, 619, 620, 621, 622, 623, 624, 625, 626, 627, 628, 629, 630, 631, 632, 633, 634, 635, 636, 637, 638, 639, 640, 641, 642, 643, 644, 645, 646, 647, 648, 649, 650, 651, 652, 653, 654, 655, 656, 657, 658, 659, 660, 661, 662, 663, 664, 665, 666, 667, 668, 669, 670, 671, 672, 673, 674, 675, 676, 677, 678, 679, 680, 681, 682, 683, 684, 685, 686, 687, 688, 689, 690, 691, 692, 693, 694, 695, 696, 697, 698, 699, 700, 701, 702, 703, 704, 705, 706, 707, 708, 709, 710, 711, 712, 713, 714, 715, 716, 717, 718, 719, 720, 721, 722, 723, 724, 725, 726, 727, 728, 729, 730, 731, 732, 733, 734, 735, 736, 737, 738, 739, 740, 741, 742, 743, 744, 745, 746, 747, 748, 749, 750, 751, 752, 753, 754, 755, 756, 757, 758, 759, 760, 761, 762, 763, 764, 765, 766, 767, 768, 769, 770, 771, 772, 773, 774, 775, 776, 777, 778, 779, 780, 781, 782, 783, 784, 785, 786, 787, 788, 789, 790, 791, 792, 793, 794, 795, 796, 797, 798, 799, 800, 801, 802, 803, 804, 805, 806, 807, 808, 809, 810, 811, 812, 813, 814, 815, 816, 817, 818, 819, 820, 821, 822, 823, 824, 825, 826, 827, 828, 829, 830, 831, 832, 833, 834, 835, 836, 837, 838, 839, 840, 841, 842, 843, 844, 845, 846, 847, 848, 849, 850, 851, 852, 853, 854, 855, 856, 857, 858, 859, 860, 861, 862, 863, 864, 865, 866, 867, 868, 869, 870, 871, 872, 873, 874, 875, 876, 877, 878, 879, 880, 881, 882, 883, 884, 885, 886, 887, 888, 889, 890, 891, 892, 893, 894, 895, 896, 897, 898, 899, 900, 901, 902, 903, 904, 905, 906, 907, 908, 909, 910, 911, 912, 913, 914, 915, 916, 917, 918, 919, 920, 921, 922, 923, 924, 925, 926, 927, 928, 929, 930, 931, 932, 933, 934, 935, 936, 937, 938, 939, 940, 941, 942, 943, 944, 945, 946, 947, 948, 949, 950, 951, 952, 953, 954, 955, 956, 957, 958, 959, 960, 961, 962, 963, 964, 965, 966, 967, 968, 969, 970, 971, 972, 973, 974, 975, 976, 977, 978, 979, 980, 981, 982, 983, 984, 985, 986, 987, 988, 989, 990, 991, 992, 993, 994, 995, 996, 997, 998, 999, 1000
8	Medical Facility	As admissible to officials of the Government under the rules
9	Pension	Service rendered under this contract shall not qualify for gratuity. Pension in respect of previous service, if any shall continue to be drawn in addition to pay
10	G.P. Fund	Non contribution towards G.P. Fund shall be required
11	Conduct & Discipline	Rules made and instructions issued by the Government of Punjab under authority as for civil servants under Removal from Service (Special Powers) Ordinance, 2000 (amended) shall apply
12	Appeal	Civil Servants (Appeal) Rules, 1977 with amendments if any shall apply.
13	Termination of contract	The appointment during the period of contract shall be liable to termination on 30 days notice from either sides or payments of basic pay in lieu thereof, without assigning any reasons.
14	Whole Time Employment posting transfer	Whole time of the contract appointee would be at the disposal of the Government. He/She may be employed in any manner required by the appropriate authority without claim for additional remuneration. He/She shall at all times obey the rules prescribe for the time being for the regulation of the service or cadre to which the post in which he has been employed belongs.
15	Other matters	In respect of other matters not specified in this contract, the Rules/Regulations as applicable to Federal Civil Servants shall apply.
16	Accommodation	The person employed on contract shall not be entitled to Government accommodation. However, they will be entitled to such house rent allowance as may be prescribed by Government time to time.
17	Appointment	The appointment is subject to verification of testimonials.
18	Posting - Transfer	Transferable anywhere in Pakistan & AJK

2. If the above terms and conditions of appointment are acceptable to him he may report for duty to **Deputy Director, Special Education Centre for Hearing Impaired Children, Phase-V, Hayatabad, Peshawar** on or before **20-03-2010**.

3. This offer of appointment will be treated as cancelled if you do not report for duty by given date.

4. No TADA will be admissible.

Asstt. Director (Litigation)
Social Welfare and WE,
Khyber Pakhtunkhwa

Government of Pakistan
Directorate General of Special Education

Annex - D 32
Better Copy

Islamabad the 1st March, 2010

Subject: **OFFER OF APPOINTMENT ON CONTRACT BASIS**

Consequent upon the recommendations of the Departmental Selection Committee, **Rashidullah Shah S/o Muhammad Umar Shah** has been selected for appointment on contract basis under the Director General of Special Education on the following terms and conditions:-

S.No	Post	Senior Teacher (BS-17)
1	Place of posting	Special Education Centre for Hearing Impaired Children, Peshawar
2	Period of contract	With effect from the date of joining to 30-06-2011 or till the availability of nominee of FPSC whichever is earlier
3	Pay	Pay equivalent to BS-17 as admissible under the Government from time to time.
4	Allowances	As admissible to corresponding civil servants.
5	Travelling Allowance	As admissible to civil servants of the corresponding pay scale under the rules.
6	Seniority	This contract appointment does not confer any right for being placed in the gradation/seniority list of the cadre/group to which the subject post belongs.
7	Leave	As admissible under the Revised Rules, 1980 however, provision contained in Rules 5 (R) 8, 11, 14, 16, 18-A, 19, 27, 33, 34, 35, 36 & 39 of Rules shall not apply.
8	Medical Facility	As admissible to officials of the Government under the rules.
9	Pension	Service rendered under this contract shall not qualify for a pension or gratuity Pension in respect of previous service, if any shall continue to be drawn in addition to pay.
10	G.P Fund	Non contribution towards G.P Fund shall be required.
11	Conduct & Discipline	Rules made and instructions issued by the Government or a prescribed authority as for civil servants under Removal from Service (Special Powers) Ordinance 2000 (amended) shall apply.
12	Appeal	Civil Servants (Appeal) Rules, 1977 with amendments if any, shall apply.
13	Termination of contract	The appointment during the period of contract shall be liable to termination on 30 days' notice from either sides or payments of basic pay in lieu thereof, without assigning any reasons.
14	Whole Time Employment posting/transfer	Whole time of the contract appointee would be at the disposal of the Government. He /She may be employed in any manner required by appropriate authority without claim for additional remuneration. He / She shall at all times obey the rules prescribed for the time being for the regulation of the service or cadre to which the post in which he has been employed belongs.
15	Other matters	In respect of other matters not specified in this contract, the Rules/Regulations as applicable to Federal Civil Servants shall apply.
16	Accommodation	The person employed on contract shall not be entitled to Government accommodation. However, they will be entitled to such house rent allowance as may be prescribed by Government time to time.
17	Appointment	The appointment is subject to verification of testimonials.
18	Posting / Transfer	Transferable anywhere in Pakistan & AJK.

2. If the above terms and conditions of appointment are acceptable to him he may report for duty to Deputy Director, Special Education Centre for Hearing Impaired Children, Phase-V, Hayatabad, Peshawar on or before 20.03.2010.
3. This offer of appointment will be treated as cancelled if you do not report for duty by given date.
4. No. TA/DA will be admissible.

Sd/- (Zarif Hussain Siddiqi)
Deputy Director (A&C)

Rashidullah Shah S/o Muhammad Umar Shah

Asst. Director (Education)
Secretary
Karachi



Annex C
Annex-E 199

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**GOVERNMENT OF THE KHYBER PAKHTUNKHWA
SOCIAL WELFARE SPECIAL EDUCATION AND WOMEN
EMPOWERMENT DEPARTMENT**

NOTIFICATION:

Peshawar, dated the 12th January, 2018

No. SO-VII/SWD/1-21/2017-18/757-68 In pursuance of Section 11B of the Khyber Pakhtunkhwa Civil Servant Amendment Act, 1973 (Khyber Pakhtunkhwa Act No. XVIII of 1973), the following Devolved Employees of the Federal Government, holding various posts in Federal Government entities, on regular basis before the commencement of the 18th Constitutional (Amendment) Act, 2010 (Act No. X of 2010), shall be deemed to be civil servants of the Province for all intents and purposes under the Act *ibid*.


S.No	Name	Designation	BPS
1.	Syed Riaz Ur Rahman	Principal	19
2.	Mr. Qismat Khan	- do -	19
3.	Mr. Javed Khan	Vice Principal/Deputy Director	18
4.	Mr. Javed Yousaf Ali	Vice Principal	18
5.	Mr. Said Ali Bakhsh	- do -	18
6.	Mr. Falak Naz Khan	- do -	18
7.	Mr. Tariq Mehmood	- do -	18
8.	Mr. Shahid Latif Durrani	- do -	18
9.	Mr. Nazir Shah	Senior Teacher	18 (personal)
10.	Mr. Fazal Haq	- do -	18 (personal)
11.	Mr. Fida Hussain	- do -	18 (personal)
12.	Mr. Mehdi Hasnain	- do -	18 (personal)
13.	Mr. Shahid Akram Shah	- do -	18 (personal)
14.	Mr. Hameed Ullah Khan	- do -	18 (personal)
15.	Mr. Arif Ullah Khan	- do -	18 (personal)
16.	Mr. Usman Ali Shah	- do -	17
17.	Mr. Abdul Khaliq	- do -	17
18.	Mr. M. Anwar Khan	- do -	17
19.	Mr. Mushtaq Ahmad	- do -	17


Asstt. Director (Administration)
Social Welfare, Special Education and WE
Government of the Khyber Pakhtunkhwa

Asstt. Director (Administration)
Social Welfare, Special Education and WE
Government of the Khyber Pakhtunkhwa

20.	Mr. Kiramt Ullah		
21.	Mr. Rafiullah	- do -	17
22.	Mr. Anwar Zaib	- do -	17
23.	Mr. Shahid Majeed	- do -	17
24.	Mrs. Khizran Wani	- do -	17
25.	Mr. Arbab Khan Khattak	- do -	17
26.	Mr. Rashidullah Shah	- do -	17
27.	Mrs. Kiran Ghafoor	- do -	17
28.	Mr. Tariq Khan	- do -	17
29.	Mr. Habib Ullah Khan	- do -	17
30.	Mr. Nasir Gul	- do -	17
31.	Mr. Rizwan Ahmad	- do -	17
32.	Mr. Asfand Ali	- do -	17
33.	Mrs. Abida Naurin	- do -	17
34.	Mrs. Shahzia Gul	- do -	17
35.	Mr. Waqar Alam	- do -	17
36.	Mr. Muhammad Javed	- do -	17
37.	Mr. Umar Zada	- do -	17
38.	Mr. Rahid Khan	- do -	17
39.	Mr. Muhammad Zawar	- do -	17
40.	Mr. Zia-Ur-Rehman	- do -	17
41.	Mr. Aneeq Ahsan	- do -	17
42.	Mr. Muhammad Sadiq	- do -	17
43.	Mr. Irfan Ullah	- do -	17
44.	Mrs. Asia Begum	- do -	17
45.	Mr. Liaqat Ali	- do -	17
46.	Mr. Karim Shah	- do -	17
47.	Mr. M.Waqas Javed	- do -	17
48.	Bibi Ibtisam Shagufta	- do -	17
49.	Mrs. Razia Begum	- do -	17
50.	Mr. Abid Ali	- do -	17

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 Asstt. Director (Litigation)
 Social Welfare and
 Labour Department


 Asstt. Director (Litigation)
 Social Welfare, SE and WE,
 Khyber Pakhtunkhwa

51.	Mr. Noushad Ali		
52.	Mr. Yasin Wali	Audiologist	17
53.	Mr. M. Sharafat Ali Khan	Physiotherapist	18 (personal)
54.	Mr. Rafiq Ahmad	- do -	17
55.	Mr. Ashraf Zaman	- do -	17
56.	Mrs. Saima Haider	- do -	17
57.	Mr. Muhammad Karim	Speech Therapist	17
58.	Mr. Muhammad Ayaz	Social Case Worker	17
59.	Mr. Fahad Ashraf	- do -	17
60.	Mrs. Nusrat Jabeen	Social Welfare Officer	17
61.	Mrs. Faqiha Rafiq	- do -	17

sd-

Secretary to Govt: of Khyber Pakhtunkhwa
Zakat, Ushr, Social Welfare, Special Education &
Women Empowerment Department

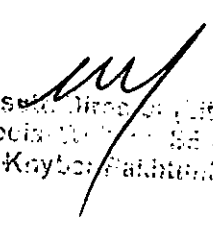
Endst No. and Date even:

Copy forwarded for information and necessary action to the:-

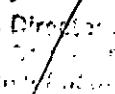
1. Secretary to Government of Khyber Pakhtunkhwa, Finance Department.
2. Secretary to Government of Khyber Pakhtunkhwa, Establishment Deptt:
3. Principal Secretary to Governor, Khyber Pakhtunkhwa.
4. Principal Secretary to Chief Minister, Khyber Pakhtunkhwa.
5. PSO to Chief Secretary, Khyber Pakhtunkhwa.
6. Accountant General, Khyber Pakhtunkhwa.
7. Director, SW, SE & WED, Khyber Pakhtunkhwa.
8. Director, Information, Khyber Pakhtunkhwa.
9. All the Incharge of the Special Education Institutions, Khyber Pakhtunkhwa.
10. PS to Secretary SW, SE, WED, Khyber Pakhtunkhwa.
11. All concerned.
12. Personal Files.



Section Officer-VI



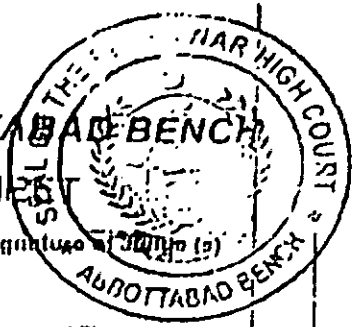
Asstt. Director of Information,
Social Welfare, SE and WE,
Khyber Pakhtunkhwa



Asstt. Director of Information,
Social Welfare, SE and WE,
Khyber Pakhtunkhwa

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PESHAWAR HIGH COURT, ABBOTTABAD BENCH
FORM OF ORDER SHEET



Date of Order of Proceedings

1

27.10.2022

Order or other Proceedings with Signature of Judge (s)

2

WP No. 68-A/2019

Present: Muhammad Arshad Khan Tanoli, Advocate, for the petitioners.

Mr. Sajid Rehman Khan, AAG for the respondents.

WIQAR AHMAD, J.- Learned counsel for petitioner after arguing the case for a while stated that this writ petition be converted into departmental appeal and sent to respondent No.1 for decision according to law.

In view of the circumstances, we accordingly convert this petition into departmental appeal, which shall be placed before the worthy Chief Secretary, Government of Khyber Pakhtunkhwa, Peshawar for decision according to law.

JUDGE
JUDGE

Checked to 10/10/2022 Copy
EXAMINER
07/10/2022
Peshawar High Court Add Bench
Abbottabad Bench to Peshawar Bench

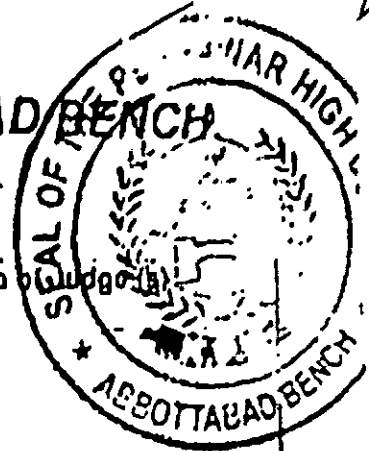
Asst. Director (Litigation)
Social Justice Commission, J.W.E.
Khyber Pakhtunkhwa

~~Annex - G~~

101

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PESHAWAR HIGH COURT, ABBOTTABAD BENCH
FORM OF ORDER SHEET



Date of Order of Proceedings

1

27.10.2022

Order or other Proceedings with Signature of Judge

2

WP No. 202-A/2021

Present: Muhammad Arshad Khan Tanoli, Advocate,
for the petitioners.

Mr. Sajid Rehman Khan, AAG for the
respondents.

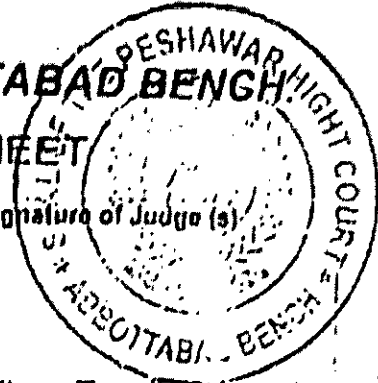
WIQAR AHMAD, J. - Same order as in the connected WP

No. 68-A/2019.

JUDGE
JUDGE

Asstt. Director, Litigation,
Social Welfare and Labour Welfare,
Khyber Pakhtunkhwa.

PESHAWAR HIGH COURT, ABBOTTABAD BENCH
FORM OF ORDER SHEET



Date of Order of Proceedings

1

27.10.2022

Order or other Proceedings with Signature of Judge (s)

2

WP No. 628-A/2022

Present: Muhammad Arshad Khan Tanoli, Advocate, for the petitioners.

Mr. Sajid Rehman Khan, AAG for the respondents.

WIQAR AHMAD, J. - Same order as in the connected WP

No. 68-A/2019.

JUDGE

JUDGE

[Handwritten signature]

Asstt. Director, Litigation,
Social Welfare, GI and WE,
Khyber Pakhtunkhwa.

**COPY OF SECTION OFFICER (LIT) GOVERNMENT OF KHYBER PAKHTUNKHWA
SOCIAL WELFARE, SPECIAL EDUCATION & WOMEN EMPOWERMENT,
DEPARTMENT LETTER NO. SO-LIT (SWD) 2-88/W.P 68-A/2018 DATED PESHAWAR
THE 03/05/2023**

Subject: **DEPARTMENTAL APPEAL IN:**

- I. **W.P NO. 68-A/2019 TITLED MUHAMMAD ADIL VS GOVERNMENT OF KHYBER PAKHTUNKHWA.**
- II. **W.P NO. 202-A/2021 TITLED MUHAMMAD YOUNUS VS GOVERNMENT OF KHYBER PAKHTUNKHWA.**
- III. **W.P NO. 628-A/2022 TITLED SYEDA ROZINA MAZHAR VS GOVERNMENT OF KHYBER PAKHTUNKHWA.**

I am directed to refer to your letter No. DSW/Lit/1-331/320-21 dated 28-12-2022 and order sheets dated 27-10-2022 of Peshawar High Court Abbottabad Bench for placing the subject cases before the Worth Chief Secretary Khyber Pakhtunkhwa for its decision according to law.

2. In this regard this department moved a comprehensive note vide tracking Id. ZUSWEMWE-48-90-00241 dated 24-02-2023 to the Worthy Chief Secretary Khyber Pakhtunkhwa for taking its decision whether the Petitioners in the subject cases are entitled for drawing Health Professional Allowance in light of the Finance Department Notification No. FD (SOSR-II) 8-7/2019 dated 25-11-2019 or otherwise.

3. The Worthy Chief Secretary Khyber Pakhtunkhwa while examining the case in detail decided that as the aforesaid Notification of Finance Department is just for the employees devolved from Director General of Special Education therefore, all the Petitioners in the subject cases except the following three (03) are not entitled for Health Professional Allowance.

1. Furqan Jamil, Junior Clerk
2. Hafeez Ur Rahman, Cook
3. Sarfaraz, Driver

4. It is therefore, requested to inform the concerned Petitioners accordingly, please.

Sd/-----

Section Officer (Lit)

**GOVERNMENT OF KHYBER PAKHTUNKHWA
DIRECTORATE OF SOCIAL WELFARE, SPECIAL EDUCATION &
WOMEN EMPOWERMENT, OPPOSITE ISLAMIA COLLEGEJAMRUD
ROAD, PESHAWAR**

No. Endst: No. DSW/Lit/1-331/1480-86
Dated Peshawar the 31.05./2023

Copy to:-

1. PS to Secretary (SW, SE & WE) Khyber Pakhtunkhwa
2. Section Officer-Lit, Social Welfare Department Peshawar w/r to his office letter quoted above
3. PA to Director, Social Welfare Spl: Edu & WE Khyber Pakhtunkhwa
4. Mr. Muhammad Adil Khan, District Officer, Social Welfare Battagram (Petitioner in WP # 68-A/2019)
5. Mr. Muhammad Younis, Senior Special Education Teacher, Govt. Institute for Visually Handicapped Children, Abbottabad (Petitioner in WP # 202-A/2019)
6. Mst. Rubina Mazhar, Principal (Rtd) Government School for Children with Hearing Impairment, Haripur C/O District Officer (SW) Haripur (Petitioner in WP # 628-A/2022)
7. The District Officer, Social Welfare Abbottabad, Mansehra & Haripur

For information w/r to the judgment dated 27.12.2022 in WP No. 68-A/2019, WP# 202-A/2021 and WP # 828-A/2022

Asstt. Director (Litigation)
Social Welfare Department
Khyber Pakhtunkhwa

Assistant Director
(Litigation)