

11.11.2019

Counsel for the appellant present.

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

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

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

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

File be consigned to the record.



Chairman

ANNOUNCED

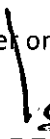
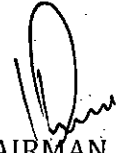
11.11.2019

Form-A

FORM OF ORDER SHEET

Court of _____

Case No.- _____ 1463/2019 _____

S.No.	Date of order proceedings	Order or other proceedings with signature of judge		
1	2	3		
1-	01/11/2019	<p>The appeal of Mr. Fazli Hadi resubmitted today by Mr. Noor Muhammad Khattak Advocate may be entered in the Institution Register and put up to the Worthy Chairman for proper order please.</p> <p style="text-align: right;"> REGISTRAR 01/11/19</p> <p>2-</p>		<p>This case is entrusted to S. Bench for preliminary hearing to be put up there on <u>11.11.2019</u></p> <p style="text-align: right;"> CHAIRMAN</p>

The appeal of Mr. Fazale Hadi SCT GHS Malogo Peshawar received today i.e. on 24.10.2019 is incomplete on the following score which is returned to the counsel for the appellant for completion and resubmission within 15 days.

- 1- Annexures of the appeal may be attested.
- 2- Annexure-D of the appeal is illegible which may be replaced by legible/better one.

No. 1871 /S.T,


Dt. 25/10 /2019.


REGISTRAR,
SERVICE TRIBUNAL
KHYBER PAKHTUNKHWA
PESHAWAR.

Noor Muhammad Khattak Adv. Pesh.

Sir,

*All objections have been removed,
hence re-submitted today dated 28/10/2019.*


28/10/2019.

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR

APPEAL NO. 1463 /2019

FAZLI HADI

V/S

EDUCATION DEPTT:

INDEX

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6	Departmental appeal	F	16- 17.
7	Judgment	G	18- 26.
8	Vakalatnama	27.

APPELLANT

THROUGH:

[Signature]
NOOR MOHAMMAD KHATTAK
ADVOCATE

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR

Khyber Pakhtunkhwa
Service Tribunal

APPEAL NO. 1463 /2019

Diary No. 1504

Dated 24/10/2019

Mr. Fazle Hadi, SCT (BPS-16),
GHS Malogo, Peshawar.....

APPELLANT

VERSUS

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

.....**RESPONDENTS**

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

PRAYER:

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

R/SHEWETH:

ON FACTS:

- 1- That the appellant is serving in the elementary and secondary education department as Certified Teacher (BPS-15) quite efficiency and up to the entire satisfaction of the superiors.
- 2- That the Conveyance Allowance is admissible to all the civil servants and to this effect a Notification No. FD (PRC) 1-1/2011 dated 14.07.2011 was issued. That later on vide revised Notification dated 20.12.2012 whereby the conveyance allowance for employees

Filed to-day
Registrar
24/10/19

Re-submitted to-day
and filed.
Registrar
24/11/19

working in BPS 1 to 15 were enhance/revised while employees from BPS-16 to 19 have been treated under the previous Notification by not enhancing their conveyance allowance. Copy of the Notification dated 20.12.2012 are attached as annexure.....**A.**

3- That appellant was receiving the conveyance allowance as admissible under the law and rules but the respondents without any valid and justifiable reasons stopped/deducted the payment of conveyance allowance under the wrong and illegal pretext that the same is not allowed for the leave period. Copies of the salary slips of working/serving month and vacations (deduction period) are attached as annexure**B & C.**

4- That one of the employee of education Department in Islamabad filed service appeal No.1888 (R) CS/2016 before the Federal Service Tribunal, Islamabad regarding conveyance allowance which was accepted by the honorable service tribunal vide its judgment dated 03.12.2018. That in light of the judgment dated 03.12.2018 proper Notifications were issued on different dates. Copies of the Judgment & Notifications are attached as annexure.....**D & E.**

5- That appellant feeling aggrieved from the action of the respondents regarding deduction of conveyance allowance in vacations period/months filled Departmental appeal but no reply has been received so far. That feeling aggrieved the appellant along with his other colleagues filed writ petition No. 3162-P/2019 before the Peshawar High Court, Peshawar which was disposed of vide judgment dated 01.10.2019 with the directions to approach the proper forum i.e. Service Tribunal. Copies of the Departmental appeal & judgment is attached as annexure.....**F & G.**

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

GROUND:

A- That the action and inaction of the respondents regarding deduction of the conveyance allowance for vacations period/months is illegal, against the law, facts norms of natural justice.

B- That the appellant have not been treated by the respondent Department in accordance with law and rules on the subject noted above and as such the respondents violated Article 4 and 25 of the Constitution of Islamic Republic of Pakistan, 1973.

- C- That the action of the respondents is without any legal authority, discriminatory and in clear violation of fundamental rights duly conferred by the Constitution and is liable to be declared as null and void.
- D- That there is clear difference between leave and vacation as leave is applied by the Civil Servant in light Government Servant Revised Leave Rules, 1989 while the vacations are always announced by the Government, therefore under the law and rules the appellant fully entitled for the grant of conveyance allowance during vacations period.
- E- That the Government Servants Revised Leave Rules, 1981 clearly explain that the civil servants who avail the vacations are allowed only one leave in a month whereas, the other civil servants may avail 04 days leave in a calendar months and the same are credited to his account and in this way he may avail 48 days earned leave with full pay, whereas the Government Servants to avail vacation such as appellant is allowed one day leave in a month and twelve (12) days in a year and earned leave for twelve days in a year are credited to his account and there is no question of deduction of conveyance allowance for vacation period, the respondents while making the deduction of conveyance allowance lost sight of this legal aspects and illegally and without any authority started the recovery and deduction of conveyance allowance from appellant.
- F- That as the act of the respondents is illegal, unconstitutional, without any legal authority and not only discriminatory but is also the result of malafide on the part of respondents.
- G- That appellant has the vested right of equal treatment before law and the act of the respondents to deprive the petitioners from the conveyance/allowance is institutional and clear violation of fundamental rights.
- H- That according to Government Servants Revised Leave Rules, 1981 vacations are holidays and not leave of any kind, therefore, the deduction of conveyance allowances in vacations is against the law and rules.
- I- That according to Article 38(e) of the Constitution of Islamic Republic of Pakistan, 1973 the state is bound to reduce disparity in the income and earning of individuals including persons in the services of the Federation, therefore in light of the said Article the appellant fully entitle for the grant of conveyance allowance during vacations.
- J- That the petitioners seeks permission of this Honorable Court to raise any other grounds available at the time of arguments.

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

APPELLANT


FAZLE HADI

THROUGH:


NOOR MOHAMMAD KHATTAK


**MIR ZAMAN SAIFI
ADVOCATES**

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR

C.M NO. _____/2019

IN

APPEAL NO. _____ 2019

FAZLI HADI

VS

EDUCATION DEPTT:

APPLICATION FOR RESTRAINING THE RESPONDENTS
FROM RECOVERY AND ONWARD DEDUCTION OF
CONVEYANCE ALLOWANCE DURING VACATION PERIOD

R/SHEWETH:

- 1- That the appellants filed above mentioned appeal along with this application before this august service Tribunal in which no date has been fixed so far.
- 2- That appellants filed the above mentioned appeal against the impugned action of the respondents by illegal and unlawfully deducting the conveyance allowance during the winter & summer vacations.
- 3- That the impugned action of the respondents by deducting conveyance allowance during winter & summer vacations is utter violation of law and Rules.
- 4- That all the three ingredients necessary for the stay is in favor of the appellants.
- 5- That the grounds of main appeal also be considered as integral part of this application.

It is therefore, most humbly prayed that on acceptance of this application the respondents may kindly be restrained from recovery and onward deduction of conveyance allowance during vacations period till disposal of the above mentioned appeal.

APPELLANT


FAZLI HADI

THROUGH:


NOOR MOHAMMAD KHATTAK
ADVOCATE



A - (5)

GOVERNMENT OF KHYBER PAKHTUNKHWA
FINANCE DEPARTMENT
(REGULATION WING)

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

From:

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

To:

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

Subject:

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

Dear Sir,

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

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

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

Yours Faithfully,



(Sahibzada Saad Ahmad)
Secretary Finance

Encls: NO. FDSO(SR-II)/8-52/2012

Dated Peshawar the 20th December, 2012

A Copy is forwarded for information to the:-

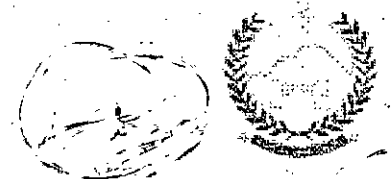
1. Assistant General, Khyber Pakhtunkhwa, Peshawar.
2. Secretaries to Government of Punjab, Sindh & Balochistan Finance Department
3. All Autonomous / Semi Autonomous Bodies in Khyber Pakhtunkhwa


(INTIAZ AYUB)
Additional Secretary (Reg.)

ATTESTED

B-6

Dist. Govt. NWFP-Provincial
District Accounts Office Peshawar Dist.
Monthly Salary Statement (April-2019)



Personal Information of Mr FAZLE HADI d/w/s of ABDUS SALAM
Personnel Number: 00021468 CNIC: 1730190161257
Date of Birth: 09.06.1966 Entry into Govt. Service: 10.03.1986

NTN: 7412352
Length of Service: 33 Years 01 Months 022 Days

Employment Category: Vocational Permanent

Designation: SENIOR CERTIFIED TEACHER 80004210-DISTRICT GOVERNMENT KHYBE
DDO Code: PW6086-HEAD MASTER G.H.S. MOLOGO PESHAWAR

Payroll Section: 003 GPF Section: 001 Cash Center:
GPF A/C.No: EDU 030580 Interest Applied: Yes GPF Balance: 897,781.00

Vendor Number: -
Pay and Allowances: Pay scale: BPS For - 2017 Pay Scale Type: Civil BPS: 16 Pay Stage: 27

Wage type		Amount	Wage type		Amount
0001	Basic Pay	59,950.00	1000	House Rent Allowance	2,727.00
1210	Convey Allowance 2005	5,000.00	1947	Medical Allow 15% (16-22)	2,239.00
2148	15% Adhoc Relief All-2013	1,265.00	2199	Adhoc Relief Allow @10%	892.00
2211	Adhoc Relief All 2016 10%	4,788.00	2224	Adhoc Relief All 2017 10%	5,995.00
2247	Adhoc Relief All 2018 10%	5,995.00			0.00

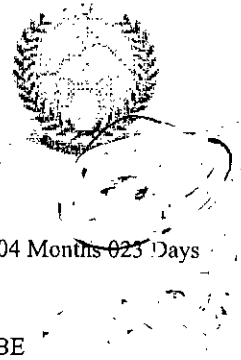
Deductions - General.

Wage type		Amount	Wage type		Amount
3016	GPF Subscription - Rs3340	-3,340.00	3501	Benevolent Fund	-800.00
3609	Income Tax	-100.00	3990	Emp.Edu. Fund KPK	-150.00
4004	R. Benefits & Death Comp:	-1,089.00	4200	Professional Tax	-200.00

ATTESTED

7

**Dist. Govt. NWFP-Provincial
District Accounts Office Peshawar Dist.
Monthly Salary Statement (July-2018)**



Personal Information of Mr FAZLE HADI d/w/s of ABDUS SALAM

Personnel Number: 00021468 CNIC: 1730190161257 NTN: 7412352
Date of Birth: 09.06.1966 Entry into Govt. Service: 10.03.1986 Length of Service: 32 Years 04 Months 023 Days

Employment Category: Vocational Permanent

Designation: SENIOR CERTIFIED TEACHER 80004210-DISTRICT GOVERNMENT KHYBE
DDO Code: PW6086-HEAD MASTER G.H.S. MOLOGO PESHAWAR
Payroll Section: 003 GPF Section: 001 Cash Center:
GPF A/C No: EDU 030580 Interest Applied: Yes **GPF Balance: 779,101.00**
Vendor Number: -

Pay and Allowances: Pay scale: BPS For - 2017 Pay Scale Type: Civil BPS: 16 Pay Stage: 25

Wage type		Amount	Wage type		Amount
0001	Basic Pay	56,910.00	1000	House Rent Allowance	2,727.00
1947	Medical Allow 15% (16-22)	2,124.00	2148	15% Adhoc Relief All-2013	1,265.00
2199	Adhoc Relief Allow @10%	892.00	2211	Adhoc Relief All 2016 10%	4,660.00
2224	Adhoc Relief All 2017 10%	5,691.00	2247	Adhoc Relief All 2018 10%	5,691.00

Deductions - General

Wage type		Amount	Wage type		Amount
3016	GPF Subscription - Rs3340	-3,340.00	3501	Benevolent Fund	-800.00
3609	Income Tax	-100.00	3990	Emp.Edu. Fund KPK	-150.00
4004	R. Benefits & Death Comp:	-1,089.00			0.00

Deductions - Loans and Advances

Loan	Description	Principal amount	Deduction	Balance

Deductions - Income Tax

Payable: 2,000.00 Recovered till July-2018: 100.00 Exempted: 800.00 Recoverable: 1,100.00

Gross Pay (Rs.): 79,960.00 Deductions: (Rs.): -5,479.00 Net Pay: (Rs.): 74,481.00

Payee Name: FAZLE HADI
Account Number: PLS00000005050-2
Bank Details: MCB BANK LIMITED, 240693 G. T. ROAD. G. T. ROAD., PESHAWAR

Leaves: Opening Balance: Aailed: Earned: Balance:

Permanent Address: LE PESHAWAR

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

Temp. Address:

City: Email: fazalehadi7774@gmail.com

ATTESTED
ATTESTED

Judgment Sheet
IN THE FEDERAL SERVICE TRIBUNAL, ISLAMABAD

Appeal No.1888(R)CS/2016

Date of Institution	21.10.2016
Date of Hearing	26.11.2018
Date of Judgment	03.12.2018

APPELLANT: Muhammad Sikandar Dar, Lecturer (BPS-17),
Islamabad Model College for Boys. G-10/4
Islamabad.

RESPONDENTS:

- (i) Secretary, Federal Education & Professional training Division, Islamabad.
- (ii) Director Model College, Federal Directorate of Education, Islamabad.
- (iii) Secretary Finance (Regulation wing), Islamabad.

BEFORE: Mr. Sikandar Ismail Khan, and Mr. Manzoor Ali Khan, Members.

RESPONDENTS: Mr. Ghulam rasool Bhatti, Adocacte for appellent.
Mr.Arshad Mehmood Malik, Assistant Attorney General with Rana Muhammad Nazir, DD, FDE (Legal) and Mr. Arshad Anjum, AD , Federal Education & Professiona Training Division, DRs.

JUDGMENT

SIKANDAR ISMAIL KHAN, MEMBER: Through the instant appeal, the appellent has prayed for issuance of a direction to the respondents not to deduct the conveyance allowance from the salaries of the appellent during summer and winter vacation are treated as holidays but not leave of any kind and the same be allowed as decided by the superior courts.

2. The facts as narrated in the memo of appeal are that the appellent is performing his duties as lecturer (BS-17) in Islamabad Model College for Boys. G-10/4, Islamabad. Being aggrieved by the deduction of conveyance allowance, the appellent preferred Departmental representation dated 22.06.2016 which has not been responded. Hence this appeal.
3. The learned counsel for the appellent has argued that travelling allowance and conveyance allowance is part of compensatory allowance with means an allowance granted to meet the personal expenditure necessitated by the special circumstances in which duty is performed. Further, in identical matter, the Hon'ble Sindh Service Tribunal allowed the conveyance allowance to all the teaching staff during summer and winter vacations vide judgment date 23.12.2015 which has been implemented by the department. Hence deduction of conveyance allowance from the salaries of the appellent and other reaching staff during summer and winter vacations is clear discrimination against the right of the appellent. He also referred judgment of this Tribunal dated 17.10.2017 passed in identical matter in appeals No.289 to 298@CS/2015 and upheld by

the Hon'ble Supreme Court of Pakistan, in CPs No. 4957 to 4966 of 2017 dated 13.07.2018.

4. The appeals resisted by the respondents. It is stated that in fact the summer and winter vacations are holidays and not a leave, however, physically the teaching and other related staff are not on duty in the school and colleges during vacation, the presence of vacations, the science laboratories and libraries are also closed during holidays, therefore, conveyance allowance to vocational staff is not allowed in support of the arguments, the learned Assistant Attorney General referred SR No. 263.264 and 266.

5. We have heard the learned counsel for both the parties and have perused the available record admittedly. The summer and winter vacations are holidays and not leave of any kind but the appellant along with other colleagues are being ignored on the ground that physically the teaching and other related staff are not on duty in the school and college during vacations. We are not convinced with this assertion of the respondents especially when the summer and winter vacation are treated as holidays. We also sought wisdom from the judgment passed by the various courts and upheld by the honorable supreme court of Pakistan in identical matter. We may also like to mention that all the educational institution charge educational fee and other dues even for the winter and summer vacations. So how the respondents justify themselves by deducting the conveyance allowance of the staff for the same period. The equality should be maintained in all respect. This tribunal has already adjudicated the issue vide its judgment as referred to in Para 3 above and the said judgment has been upheld by the Honorable Supreme Court of Pakistan. It is imperative to reproduce hereunder the relevant portions of the judgment as a ready reckon:-

"8. FR-82(b) enunciates in unambiguous terms that vacations count as duty. Even during vacations a government servant/teacher is required to be prepared for any call of duty in the relevant department. The vacations are available not on the basis of any option for the government servant/teachers working in school and colleges. The period of earned leave is curtailed by one month for each year. The summer vacations are not granted on the demand and option of the teachers. They are allowed lesser earned leave than the rest of the government servant of various departments.

9. the conveyance allowance is admissible to the government servants who are on duty. The statute treats the period of vacations as duty. The explanation given by the Finance Division is in conflict with statutory provisions like FR-82(B) which are to reign supreme as compared to the explanation of the Finance Division. There seems to be no justification whatsoever for depriving the appellant of the payment of the conveyance allowance during the period of summer vacation.

10. in the circumstances, we are constrained to allow these appeals. Order accordingly. The conveyance allowance is payable to the appellants w.e.f the vacation 2014. When the departmental appeal/representation were filed by these appellants.

6. For the foregoing reasons and in view of the rule of consistence we have no hesitation to accept the appeal. Therefore, the respondents are directed not to deduct the conveyance allowance from the salary of the appellant during summer and winter vacations. The conveyance allowance already deducted should be reimbursed to the appellant forthwith. This judgment is considered in rem and not in personam and thus the respondents should pay the said allowance to all similarly placed employees of the educational institutions to avoid discrimination under Article 4 & 25 of the constitution as well as un-necessary litigation.

7. There shall be no order as to cost. Parties shall be informed.

D-8

04 DEC 2018

Attachment Sheet

IN THE FEDERAL SERVICE TRIBUNAL ISLAMABAD

Appeal No.1885(R)CS/2016

Date of Institution	21.10.2016
Date of Hearing	26.11.2018
Date of Judgment	03.12.2018

APPELLANT: Muhammad Sikander Far, Lecturer(BS-17) Islamabad Model College for Boys, G-10/4 Islamabad

RESPONDENTS:

- (i) Secretary, Federal Education & Professional Training Division, Islamabad.
- (ii) Director, Model Colleges, Federal Directorate of Education, Islamabad
- (iii) Secretary Finance (Regulation Wing), Islamabad.

Before: Mr. Sikander Ismail Khan, and Mr. Manzoor Ali Khan, Members.

Present: Mr. Ghulam Rasool Bhatti, Advocate for appellant
Mr. Arshad Mehmood Malik, Assistant Attorney General with Raja Muhammad Noor, DD, FDE(Legal) and Mr. Arshad Anjum, AD, Federal Education & Professional Training Division, DRS.

JUDGMENT

SIKANDER ISMAIL KHAN, MEMBER: Through the instant appeal, the appellant has prayed for issuance of a direction to the respondents not to deduct the conveyance allowance from the salaries of the appellant during summer and winter vacations as vacations are treated as holidays but not leave of any kind and the same be allowed as decided by the superior courts.

2. The facts as narrated in the memo of appeal are that the appellant is performing his duties as lecturer (BS-17) in Islamabad Model College for Boys, G-10/4, Islamabad. Being aggrieved by


the deduction of conveyance allowance, the appellant

ATTESTED

its opponents along with others who were not mentioned in the ground that physically the teachers and other related staff are not on duty in the school and hence their honorariums are not conveyed with the salaries of the respondents especially when the summer and winter holidays are treated as holidays. We also found that the amount paid by the various courts and up to the Federal Court of Appeal of Pakistan in identical matter is not less than the amount of the educational institutions concerned in the respondents and does even for the winter holidays. We are of the view that the respondents justify themselves by way of the fact that the allowance of the staff for the same period of the activity should be maintained in all respects. The learned judge has accordingly adjudicated the issue vide its judgment in favor of the respondents above and the said judgment has been affirmed by the Honorable Supreme Court of Pakistan. The undersigned is reproducing hereunder the relevant portions of the judgment as a ready reference.

8. Section 32(b) enunciates in unequivocal terms that vacations count as duty. Even during vacations a government servant/teacher is required to be prepared for any call of duty in the relevant department. The vacations are granted not on the basis of any option for the government servants/teachers working in schools and colleges. The period of earned leave is granted by one month for each year. The summer vacations are not granted on the demand and option of the teachers. They are allowed lesser earned leave than the rest of the government servants in other departments.

9. The conveyance allowance payable to the government servants who are called to the station treats the period of vacation as duty. The explanation given by the Finance Division is in conflict with the statutory provisions of Section 32(b) which are to reign supreme, as compared to the explanation of the Finance Division. There seems to be no justification whatsoever for depriving the

ATTACHED


Required departmental representation dated 22.07.2017 has not been responded. Hence this appeal

3. The learned counsel for the appellant has argued that travelling allowance and conveyance allowance is not compensatory allowance with means an allowance granted to meet the personal expenditure necessitated by the special circumstances in which duty is performed. Further in identical matter the Hon'ble Sindh Service Tribunal allowed the conveyance allowance to all the teaching staff during summer and winter vacations vide judgment dated 23.12.2015 which has been implemented by the department. Hence deduction of conveyance allowance from the salaries of the appellant and other teaching staff during summer and winter vacations is clear discrimination against the right of the appellant. He also referred judgment of this Tribunal dated 17.10.2017 passed in identical matter in appeals No.289 to 298(R)CS/2015 and upheld by the Hon'ble Supreme Court of Pakistan in CPs No.4957 to 4966 of 2017 dated 13.07.2018.

4. The appeal is resisted by the respondents. It is stated that in fact the summer and winter vacations are holidays and not a leave; however, physically the teaching and other related staff are not on duty in the school and colleges during vacation. The presence of vocational staff in the institutions is subject to opening after vacations. The science laboratories and library are also closed during holidays. Therefore, conveyance allowance to vocational staff is not allowed in support of his arguments the learned Assistant Attorney General referred No.763, 264 & 266.

ATTESTED

5. We have heard the learned counsel for both the parties and have perused the available record. Admittedly, the summer and winter vacations are holidays and not leave of any kind but

X

appellants of the Government of ...
allowance during the period of ...

11

16. In the circumstances, we are unable to allow these appeals. Order for the conveyance allowance in relation to the appellants with the vacation ... departmental appeal / representation ... by these appellants.

6. For the foregoing reasons and in order to maintain consistency, we have no hesitation in granting the appeal. Therefore, the respondents are directed to pay the conveyance allowance from the salary of the appellants during summer and winter vacations. The conveyance allowance already deducted should be reimbursed to the appellants forthwith. This judgment is considered in uniformity and thus the respondents should pay the said allowance to all similarly placed employees of the ... institution to avoid discrimination under Article 14 & 15 of the Constitution as well as unnecessary litigation.

7. There shall be no provision to ...

Sd/-
MEMBER

MEMBER

Printed by the Government of ...

13/6/2016
12/11/2016
11/11/2016
11/12/2016
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E-12

F.No. 3(1)R-5/2014-59/A

Government of Pakistan
Finance Division
(Regulations Wing)

COURT CASE


Islamabad, the 9th January, 2019

To: The Director General,
Federal Directorate of Education,
Islamabad.

Subject: ORDER PASSED IN APPEAL NO. 1888(R)CS/2016 FILED BY MR. MUHAMMAD SIKANDAR DAR VS M/O F.E & P.T. ETC.

Sir,
Reference Federal Service Tribunal's judgment in Appeal No. 1888(R)CS/2016 dated 3-12-2018.

2. The Matter is under consideration in Finance Division. It is requested that financial implication and number of beneficiaries, in case the deduction of Conveyance Allowance during summer / winter vacations is discontinued, in respect of all employees of Federal Government educational institutions who are availing summer/ winter vacations, w.e.f 21-10-2016, may be furnished to this Division, for further processing of the case.


o/c (Abdul Ghaffar Khan)
Section Officer (R-5)

ATTESTED



SECRET

Government of Pakistan
Finance Division
(Regulations Wing)

13

F.No. 3(1)R-5/2014

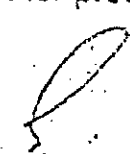
Islamabad, the 29th January, 2019

OFFICE MEMORANDUM

Subject: FST's ORDER PASSED IN APPEAL NO. 1888(R)CS/2016 FILED BY MR. MUHAMMAD SIKANDAR DAR VS M/O F.E & P.T. ETC.

The undersigned is directed to refer to Federal Service Tribunal's judgment in Appeal No. 1888(R)CS/2016 dated 5-12-2018 (Copy enclosed).

2. The Matter is under consideration in Finance Division. As Supreme Court has already upheld the judgement of FST dated 17-10-2017 in the identical case, vide their judgement dated 13-7-2018, it is requested that financial implication and number of beneficiaries, in case the deduction of Conveyance Allowance during summer / winter vacations is discontinued, w.e.f. 21-10-2016, in respect of all employees of Federal Government, Educational Institutions Cantt/ Garrison Directorate Rawalpindi who are availing summer/ winter vacations, may be furnished to this Division, for further processing of the case.


o/c (Abdul Ghaffar Khan)
Section Officer (R-5)

Ministry of Defence,
(Section Officer (D-22)),
Government of Pakistan,
Rawalpindi.

ATTESTED



14

Government of Pakistan
Finance Division
(Regulations Wing)

F.No.3(1)R-5/2014-4

Islamabad, the 29th January 2019

OFFICE MEMORANDUM

Subject: FST's ORDER PASSED IN APPEAL NO. 1888(R)CS/2016 FILED BY MR. MUHAMMAD SIKANDAR DAR VS M/O F.E & P.T. ETC.

The undersigned is directed to refer to the Federal Service Tribunal's judgment in Appeal No. 1888(R)CS/2016 dated 3-12-2018 and Ministry of Federal Education and Professional Training's O.M No. F.5-192/2015-Lit dated 10-1-2019 on the above subject.

The Matter is under consideration in Finance Division. As Supreme Court has already upheld the judgement of FST dated 17-10-2017 in the identical case, vide their judgement dated 13-7-2018, this Division has requested Director General, Federal Government Educational Institutions Islamabad, to provide financial implication in case the deduction of Conveyance Allowance during summer / winter vacations is discontinued, w.e.f. 21-10-2016, in respect of all employees of Federal Government Educational Institutions. (Copy enclosed).

(Abdul Ghaffar Khan)
Section Officer (R-5)

Ministry of Federal Education and Professional Training,
(Mr. Muhammad Iqbal,
Deputy Secretary (Lit)),
Government of Pakistan,
Islamabad.

ATTESTED

23-5-19

BEFORE THE FEDERAL SERVICE TRIBUNAL, ISLAMABAD

M.P No. 187/2019 In Appeal No. 1888(R)CS

15

Muhammad Sikandar Dar

...Petitioner

Vs.

1. Secretary Federal Education & Professional Training Division, Islamabad.
2. Director Medical Colleges, Federal Directorate of Education, Islamabad
3. Secretary Finance (Regulation Wing), Islamabad

...Respondents

REPORT ON BEHALF OF FINANCE DIVISION

Respectfully Sheweth:

Vide Misc. Petition No. MP No. 187/2019 in Appeal No. 1888(R)CS/2016, the petitioner Mr. Muhammad Sikandar Dar (Lecture BS-18) have prayed before the honourable Federal Service Tribunal, Islamabad, that the respondents be directed to implement the FST, Islamabad's judgment dated 03-12-2018, in its true letter and spirit.

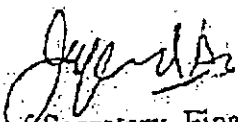
2. FST in their judgment dated 03-12-2018 has directed as under:

"The respondents are directed not to deduct the conveyance allowance from the salary of the appellant during summer and winter vacations. The conveyance allowance already deducted should be reimbursed to the appellant forthwith. This judgment is considered in rem and not in personam and thus the respondents should pay the said allowance to all similarly placed employees of the educational institutions to avoid discrimination under Article 4 & 25 of the Constitution as well as unnecessary litigation.


3. It is submitted that the matter is under consideration in Finance Division. Ministry of Federal Education and Professional Training and Ministry of Defence have been requested to provide financial implications in case the deduction of Conveyance Allowance during summer/winter vacation is discontinued, in respect of all employees of Federal Government educational institutions who are availing summer/winter vacations (Annex-I). Reply from the concerned quarters is still awaited.

4. It is, therefore, humbly, prayed that Finance Division may be allowed more time for implementation of the honourable, FST's judgment and Respondent No. 1 may please be directed to provide requisite information/documents to the Finance Division, please.

Dt. 25-3-2019.


On behalf of Secretary, Finance Division
Government of Pakistan
Islamabad.

Section Officer (Legal Cell)
Finance Division
Government of Pakistan
Islamabad

ATTESTED


To

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

F-16

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

Respected Sir,

With due respect it is stated that I am the employee of your good self Department and is serving as Senior Certified Teacher (BPS-16) quite efficiency and up to the entire satisfaction of the superiors. It is stated for kind information that Conveyance Allowance is admissible to all the civil servants and to this effect a Notification No. FD (PRC) 1-1/2011 dated 14.07.2011 was issued. Later on vide revised Notification dated 20.12.2012 whereby the conveyance allowance for employees working in BPS 1 to 15 were enhance/revised while employees from BPS-16 to 19 have been treated under the previous Notification by not enhancing their conveyance allowance. Respected Sir, I was receiving the conveyance allowance as admissible under the law and rules but the concerned authority without any valid and justifiable reasons stopped/deducted the payment of conveyance allowance under the wrong and illegal pretext that the same is not allowed for the leave period. One of the employee of Education Department in Islamabad filed service appeal No.1888 (R) CS/2016 before the Federal Service Tribunal, Islamabad regarding conveyance allowance which was accepted by the Honorable Service Tribunal vide its judgment dated 03.12.2018. That I also the similar employee of Education Department and under the principle of consistency I am also entitled for the same treatment meted out in the above mentioned service appeal but the concerned authority is not willing to issue/grant the same conveyance allowance which is granting to other employees. **Copy attached.** I am feeling aggrieved from the action of the concerned authority regarding deduction of conveyance allowance in vacations period/months preferred this Departmental appeal before your good self.

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

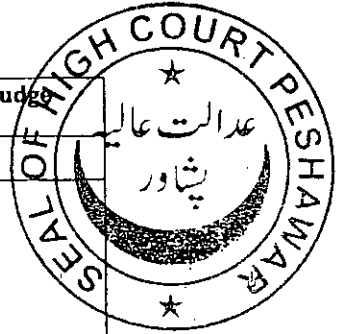
Dated: 18.07.2019

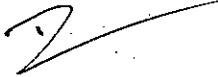
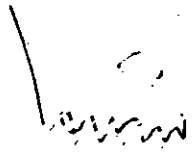
Your Obediently **ATTESTED**
Fazli Hadi (SCT)
GHS Malogo, Peshawar

PESHAWAR HIGH COURT, PESHAWAR

17

ORDER SHEET



Date of Order or Proceedings	Order or others Proceedings with Signature of Judge
1	2
13.06.2019	<p><u>W.P.No.3084-P/2019.</u></p> <p>Present: Mr. Noor Muhammad Khattak, Advocate, for the petitioners.</p> <p>*****</p> <p>Comments be called from respondents No.2,3 and 4, so as to reach this Court within a fortnight.</p> <p><u>Interim Relief</u></p> <p>Notice for 30.07.2019. Till then, the respondents are restrained from deduction of conveyance allowance.</p> <p style="text-align: center;">  JUDGE </p> <p style="text-align: center;">  JUDGE </p>

ATTESTED

(D. No. 1000/2019) (Hon'ble Mr. Justice Ikramullah Khan and Hon'ble Justice Musarrat Hilali)

CERTIFIED TO BE TRUE COPY

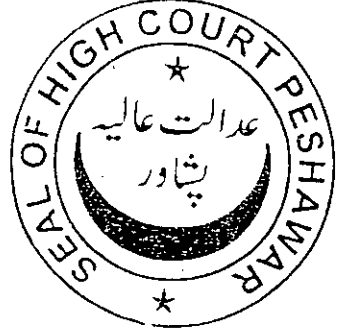
EXAMINER
Peshawar High Court, Peshawar
Authorising Under Article 177 of
1973 Constitution of Pakistan

21 OCT 2019

BEFORE THE PESHAWAR HIGH COURT, PESHAWAR

G-18

WRIT PETITION NO. _____/2019



- 1- Mr. Sikandar Khan, Certified Teacher (BPS-15), Govt: Centennial Model High Secondary School No.2, Peshawar City.
- 2- Mr. Sher Akbar, Senior Certified Teacher (BPS-16), Govt: Centennial Model High Secondary School No.2, Peshawar City.
- 3- Mr. Muhammad Ishaq, SST, GCMHSS No.2, Peshawar City.
- 4- Mr. Muhammad Shafiq, PST, GPS Hazar Khwani, Peshawar.
- 5- Mr. Fida Muhammad, SST, GCMHSS No.2, Peshawar City.
- 6- Mr. Misbah-Ul-Islam, DM, GCMHSS No.2, Peshawar City.
- 7- Mr. Shukar Gul, Senior Drawing Master (BPS-16), GCMHSS No.2, Peshawar City.
- 8- Mr. Imran Khan, SST, GCMHSS No.2, Peshawar City.
- 9- Mr. Arshad Hamid, SET, GCMHSS No.2, Peshawar City.
- 10- Mr. Abuzar, SST, GCMHSS No.2, Peshawar City.
- 11- Mr. Hidayat Khan, SCT, GCMHSS No.2, Peshawar City.
- 12- Mr. Fazal Mohammad, SST, GCMHSS No.2, Peshawar City.
- 13- Mr. Khalid Riaz, SST, GCMHSS No.2, Peshawar City.
- 14- Mr. Muhammad Shafi, SCT, GCMHSS No.2, Peshawar City.
- 15- Mr. Fayaz Khan, SPET, GCMHSS No.2, Peshawar City.
- 16- Mr. Ghaus Ud Din, Qari, GCMHSS No.2, Peshawar City.
- 17- Mr. Sohail, SCT, GCMHSS No.2, Peshawar City.
- 18- Mr. Saeed Ur Rehman, Qari, GCMHSS No.2, Peshawar City.
- 19- Mr. Bakhshish Ullah, SCT, GCMHSS No.2, Peshawar City.
- 20- Mr. Javed Khan, CT, GCMHSS No.2, Peshawar City.
- 21- Mr. Dawood Jan, SST, GCMHSS No.2, Peshawar City.
- 22- Mr. Siraj Muhammad, SST, GCMHSS No.2, Peshawar City.
- 23- Mr. Amir Nawaz, SST, GCMHSS No.2, Peshawar City.
- 24- Mr. Zahid Ur Rehman, GCMHSS No.2, Peshawar City. ST,
- 25- Mr. Muhammad Mazhar, SCT, GCMHSS No.2, Peshawar City.
- 26- Mr. Sakhi Jan Badshah, STT, GCMHSS No.2, Peshawar City.
- 27- Mr. Farooq Shah, SCT, GCMHSS No.2, Peshawar City.
- 28- Mr. Muhammad Nawaz, SST, GCMHSS No.2, Peshawar City.
- 29- Mr. Ahmad Jan, SS, GCMHSS No.2, Peshawar City.
- 30- Mr. Fazli Khuda, SCT, GCMHSS No.2, Peshawar City.
- 31- Mr. Amjid Ali, CT, GCMHSS No.2, Peshawar City.
- 32- Mr. Masood Ahmad, SET, GHSS No.1, Peshawar City.
- 33- Mr. Rashid Hussain, SCT, GHSS No.1, Peshawar City.
- 34- Mr. Abdul Khalil, SCT, GHSS No.1, Peshawar City.
- 35- Mr. Habib Gul, DM, GHSS No.1, Peshawar City.
- 36- Mr. Kaleem Ullah, SAT, GHSS No.1, Peshawar City.
- 37- Mr. Hafiz Muhammad, SAT, GHSS No.1, Peshawar City.
- 38- Mr. Muhammad Ayaz, CT, GHSS No.1, Peshawar City.
- 39- Mr. Malik Faizan, CT, GHSS No.1, Peshawar City.
- 40- Mr. Gul Nabi, CT, GHSS No.1, Peshawar City.
- 41- Mr. Sued Saif, All Shah, SCT, GHSS No.1, Peshawar City.

ATTESTED

[Handwritten signature]

ATTESTED

EXAMINER
Peshawar High Court

Judgment Sheet

19

IN THE PESHAWAR HIGH COURT, PESHAWAR,
JUDICIAL DEPARTMENT.Writ Petition No. 3084-P/2019 Sikandar Khan etc. vs. Govt of
Khyber Pakhtunkhwa & 4 others.**JUDGMENT**

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

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

Mr. Mujahid Ali Khan, AAG, for respondents.

ROOH-UL-AMIN KHAN, J:- Vide our common judgment in the connected WP No. 3162-P/2019 titled Akhtgar Hussain and 607 other..vs..Government of Khyber Pakhtunkhwa etc. the petitioners are civil servants and their claim falls in terms and conditions of service enumerated in Chapter-2 of the Khyber Pakhtunkhwa Civil Servants Act, 1973, wherein the jurisdiction of this Court is expressly barred by Article 212 of the Constitution of Islamic Republic of Pakistan, 1973. Resultantly, this writ petition stands dismissed being not maintainable. However, the petitioners are at liberty to approach the proper forum, if so desire.

Announced on;
1st of October, 2019

"Zarshad"

JUDGE

JUDGE

ATTESTED

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

CERTIFIED TO BE TRUE COPY

EXAMINED
PESHAWAR HIGH COURT PESHAWAR
JUDICIAL DEPARTMENT
3084-P/2019

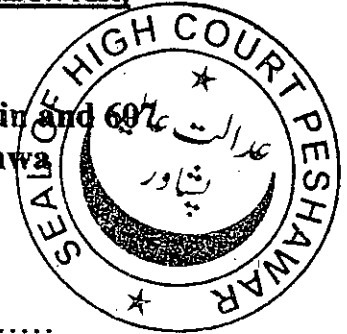
21 OCT 2019

1
Judgment Sheet

20

IN THE PESHAWAR HIGH COURT, PESHAWAR,
JUDICIAL DEPARTMENT.

Writ Petition No. 3162-P/2019 Akhtar Hussain and 697
others..vs..Govt of Khyber Pakhtunkhwa



JUDGMENT

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

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

Mr. Mujahid Ali Khan, AAG, for respondents.

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

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

Rooh-ul-Amin

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EXAMINER
Peshawar High Court

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

Attestation

ATTESTED

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EXAMINER
Peshawar High Court

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

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

ATTESTED

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EXAMINER
Peshawar High Court

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

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

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

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

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

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

ATTESTED

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EXAMINER
Peshawar High Court

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

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

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

ATTESTED

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EXAMINER
Peshawar High Court

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

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

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

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

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ATTESTED

EXAMINER
Peshawar High Court

ATTESTED

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

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

Announced on;
1st of October, 2019
"Zarshad"

[Signature]
 JUDGE

[Signature]
 JUDGE

ATTESTED

[Signature]

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

CERTIFIED TO BE TRUE COPY

EXAMINER
 Peshawar High Court, Peshawar
 Authorized Under Article 87 of
 The Constitution of Pakistan Order 1166

21 OCT 2019

[Signature]

VAKALATNAMA

Before the KP Service Tribunal, Peshawar

OF 2019

Fazli Hadi

(APPELLANT)
(PLAINTIFF)
(PETITIONER)

VERSUS

Education Dept.

(RESPONDENT)
(DEFENDANT)

I/We *Fazli Hadi*

Do hereby appoint and constitute **NOOR MOHAMMAD KHATTAK, Advocate, Peshawar** to appear, plead, act, compromise, withdraw or refer to arbitration for me/us as my/our Counsel/Advocate in the above noted matter, without any liability for his default and with the authority to engage/appoint any other Advocate Counsel on my/our cost. I/we authorize the said Advocate to deposit, withdraw and receive on my/our behalf all sums and amounts payable or deposited on my/our account in the above noted matter.

Dated. ____/____/2019

Fazli Hadi

CLIENT

ACCEPTED
NOOR MOHAMMAD KHATTAK

SHAHZULLAH YOUSAFZAI

KAMRAN KHAN

MIR ZAMAN SAFI
ADVOCATES

OFFICE:

Flat No.3, Upper Floor,
Islamia Club Building, Khyber Bazar,
Peshawar City.

Mobile No.0345-9383141