

Service Appeal No. 1085/2016**Sabz Ali Khan (Associate Professor)****Vs**

1. Chief Secretary Khyber Pakhtunkhwa Peshawar.
2. Secretary Higher Education Department Government of Khyber Pakhtunkhwa Peshawar.
3. Accountant General Khyber Pakhtunkhwa Peshawar.
4. Secretary Finance Department Khyber Pakhtunkhwa Peshawar.

Judgment/Order:

19.02.2020

MUHAMMAD HAMID MUGHAL, MEMBER (J) Learned counsel for the appellants present. Mr. Muhammad Jan learned Deputy District Attorney present.

Arguments heard. File perused.

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

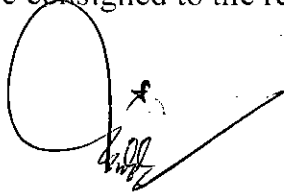
Learned counsel for the appellant stated at the bar that identical nature Service Appeal No.1452/2019 has already been disposed of by this Tribunal vide order dated 11.11.2019. Learned counsel for the appellant stressed that being an identical nature case, the present service appeal may also be disposed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

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

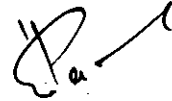
19.2.2020

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

File be consigned to the record room.



(Mian Muhammad)
Member(E)




(Muhammad Hamid Mughal)
Member (J)

Announced.
19.02.2020

12.02.2020

Counsel for the appellant present. Mr. Muhammad Jan, DDA for respondents present. Arguments heard. To come up for order on 19.02.2020 before D.B



Member



Member

10.10.2019

Due to official tour of Hon'ble Members to Camp Court Swat, the instant matter is adjourned to 24.12.2019 for the same.



Reader.

24.12.2019

Learned counsel for the appellant present. Mr. Muhammad Jan learned Deputy District Attorney present. Learned counsel for the appellant seeks impleadment of Secretary Finance Department Government of Khyber Pakhtunkhwa and submitted an application to this effect. Learned DDA was also of the view that Finance Department is a necessary party in the present case.

In view of above, Secretary Finance Department Government of Khyber Pakhtunkhwa is impleaded as respondent No.5 in the calendar of respondents. Notice be issued to the newly added respondent for reply. Adjourn. To come up for reply of newly added respondent and arguments on 12.02.2020 before D.B.



Member



Member

25.02.2019

Appellant in person, and Mr. Muhammad Jan,
DDA for the respondents present.


The former requests for adjournment as his
learned counsel is busy before the Honourable high
Court today. Adjourned to 13.05.2019 before the D.B.


Member


Chairman


13.05.2019


Nemo for the appellant. Mr. Kabirullah Khattak
learned Additional Advocate General for the respondents
present. Due to leave of the worthy Chairman the case is
adjourned to 24.07.2019 for arguments before D.B.


(Hussain Shah)
Member

24.07.2019


Learned counsel for the appellant present. Mr.
Muhammad Jan learned Deputy District Attorney for the
respondents present. Learned counsel for the appellant seeks
adjournment. Adjourned. To come up for arguments on
10.10.2019 before D.B.

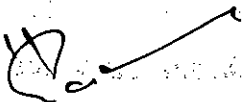

(Hussain Shah)
Member


(M. Amin Khan Kundi)
Member

01.08.2018


Appellant absent. Learned counsel for the appellant and Mr. Riaz Ahmad Paindakheil, Assistant AG for the respondents present. Learned counsel for the appellant seeks adjournment. Adjourned. To come up for arguments on 25.09.2018 before D.B.


(Ahmad Hassan)
Member (E)


(Muhammad Hamid Mughal)
Member (J)

25.09.2018

Learned counsel for the appellant present. Mr. Riaz Ahmad Paindakheil, Assistant AG alongwith Mr. Murad Khan, Superintendent for respondents present. Learned counsel for the appellant made a request for adjournment. Granted. Case to come up for arguments on 05.11.2018 before D.B.


(Ahmad Hassan)
Member


(M. Amin Khan Kundi)
Member

05.11.2018

Due to retirement of Hon'ble Chairman, the Tribunal is defunct. Therefore, the case is adjourned. To come up on 27.12.2018.


REMEMBER

27.12.2018

Junior to Mr. Fazal Shah, Advocate for appellant and Mr. Muhammad Jan, Deputy District Attorney for the respondents present.

Learned senior counsel for the appellant is away at Takht Bhai to attend a Janaza, therefore, requests for adjournment. Adjourned to 25.02.2019 for arguments before the D.B.



Member



Chairman

Service Appeal No. 1085/2016

27.03.2018


Appellant with counsel and Mr. Ziaullah, Deputy District Attorney alongwith Mr. Ibrar Ali, AD and Mr. Murad Khan, Superintendent for the respondents present. Learned counsel for the appellant seeks adjournment. Adjourned. To come up for arguments on 24.04.2018 before D.B.

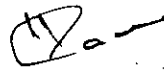

(Muhammad Amin Khan Kundi)
Member


(Muhammad Hamid Mughal)
Member

24.04.2018


Learned counsel for the appellant and Mr. Kabir Ullah Khattak, learned Additional Advocate General present. Learned counsel for the appellant seeks adjournment. Adjourn. To come up for arguments on 15.05.2018 before D.B.



(Ahmad Hassan)
Member


(Muhammad Hamid Mughal)
Member

15.05.2018


Appellant absent. Counsel for the appellant and Mr. Kabirullah Khattak, Additional AG for the respondents present. Learned counsel for the appellant seeks adjournment. Adjourned. To come up for arguments on 27.06.2018 before D.B.



(Muhammad Amin Khan Kundi)
Member


(Muhammad Hamid Mughal)
Member

27.06.2018

Appellant absent. Learned counsel for the appellant and Mr. Kabirullah Khattak, Additional AG for the respondents present. Learned counsel for the appellant seeks adjournment. Adjourned. To come up for arguments on 01.08.2018 before D.B.



(Muhammad Amin Kundi)
Member


(Muhammad Hamid Mughal)
Member

29.05.2017


Counsel for the appellant and Mr. Muhammad Adeel Butt, Additional AG for the respondent present. Counsel for the appellant requested for time to file rejoinder. Request accepted. To come up for rejoinder and arguments on 21.09.2017 before D.B

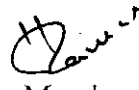
(Gul Zeb Khan)
Member


(Muhammad Amin Khan Kundi)
Member

21.09.2017


Agent to counsel for the appellant present. Learned Deputy District Attorney for the respondents present. Agent to counsel for the appellant seeks adjournment. Adjourned. To come up for arguments on 20.12.2017 before D.B.


Member
(Executive)


Member
(Judicial)

20.12.2017


Appellant in person and Mr. Muhammad Jan, DDA alongwith Zakiullah, Senior Auditor for the respondents present. Rejoinder submitted. Counsel for the appellant is not in attendance. Seeks adjournment. To come up for arguments on 15.02.2018 before the D.B.



Member


Chairman

15.02.2018

Appellant in person present. Mr. Muhammad Jan, learned DDA alongwith Murad Superintendent and Abrar Ali AD for the respondents present. Appellant seeks adjournment as his counsel is not available. Adjourned. To come up for arguments on 27.03.2018 before D.B.


(Ahmad Hassan)
Member(E)


(Muhammad Hamid Mughal)
Member(J)

1085/16

01.02.2017

Counsel for the appellant and Asif Khan, AD
alongwith Assistant AG for the respondents present.
Written reply by respondents No. 1 to 3 submitted while
learned AAG requested for adjournment on behalf of
respondent No. 4. Last opportunity granted. To come up for
written reply of respondent No. 4 on 07.03.2017 before
S.B.


Chairman

07.03.2017

Counsel for the appellant and Addl: AG for respondents
present. Written reply submitted. To come up for rejoinder and
arguments on 29.05.2017 before D.B.


(MUHAMMAD AMIR NAZIR)
MEMBER

27.10.2016

Appellant with counsel present. Learned counsel for the appellant argued that the appellant is serving as Associate Professor (BPS-19) at Government Degree College, Peshawar and in receipt of conveyance allowance. That the same is being deducted from the salary of the appellant during summer and winter vacations constraining the appellant to prefer departmental appeal on 28.6.2016 which was not responded and hence the instant service appeal on 25.10.2016.

That similarly placed employees at province of Sindh preferred service appeal before the hon'ble Sindh Service Tribunal which was allowed and on the strength of the same conveyance allowance allowed to similarly placed employees vide circular dated 16.06.2016. That the appellant is also entitled to the said allowance and refusal of the same by the respondents is an act contrary to the law.

Points urged need consideration. Admit. Subject to deposit of security and process fee within 10 days, notices be issued to the respondents for written reply/comments for 27.12.2016 before S.B.


Chairman

27.12.2016

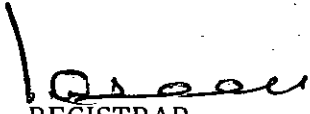

Clerk to counsel for the appellant and Mr. Murad Khan, Supdt. alongwith Assistant AG for respondents present. Written reply not submitted. Requested for adjournment. To come up for written reply/comments on 01.02.2017 before S.B.


Chairman

Form- A
FORM OF ORDER SHEET

Court of _____

Case No. 1085/2016

S.No.	Date of order proceedings	Order or other proceedings with signature of judge or Magistrate
1	2	3
1	25/10/2016	<p>The appeal of Mr. Sabz Ali Khan resubmitted today by Mr. Fazal Shah Mohmand Advocate may be entered in the Institution Register and put up to the Worthy Chairman for proper order please.</p> <p style="text-align: right;"> REGISTRAR</p>
2-	25/10/2016	<p>This case is entrusted to S. Bench for preliminary hearing to be put up there on <u>27-10-2016</u></p> <p style="text-align: right;"> CHAIRMAN</p>




The appeal of Mr. Sabz Ali Khan Associate Professor Govt. College Peshawar received today i.e. on 24.10.2016 is incomplete on the following score which is returned to the counsel for the appellant for completion and resubmission within 15 days.

1- Memorandum of appeal may be got signed by the appellant.


No. 1755 /S.T.

Dt. 25-10 /2016


REGISTRAR
SERVICE TRIBUNAL
KHYBER PAKHTUNKHWA
PESHAWAR.

Mr. Fazal Shah Mohmand Adv. Pesh.

Sir, Resubmitted after compliance


25/10/16

Handwritten scribble or mark.

212. Responder after conference.

22/10/92
Dill

BEFORE THE SERVICE TRIBUNAL KPK PESHAWAR

Service Appeal No 1085 /2016.

Sabz Ali Khan.....**Appellant**

V E R S U S

Chief Secretary and Others.....**Respondents**

I N D E X

S.No	Description of Documents	Annexure	Pages
1.	Service appeal with affidavit		1-6
2.	Copy of Rule 82 of Fundamental Rules	A	7-9
3.	Copy of departmental appeal	B	10-12
4.	Copy of Order and Judgment dated 23-12-2015 & Circular dated 16-06-2016	C & D	13-21
5.	Wakalat Nama		22

Dated:-21-10-2016

Through

Appellant

**Fazal Shah Mohmand
Advocate Peshawar.**

OFFICE:- Cantonment Plaza Flat 3/B Khyber Bazar Peshawar
Cell# 0301 8804841

(1)

BEFORE THE SERVICE TRIBUNAL KPK PESHAWAR

Service Appeal No 1085 /2016.

Sabz Ali Khan, Associate Professor, BPS-19,
(History cum Civics), Govt. College Peshawar.

.....**Appellant**

Khyber Pakhtukhwa
Service Tribunal

V E R S U S

Diary No. 1117

Dated 24-10-2016

1. Chief Secretary, Govt. of KPK Peshawar.
2. Secretary, Higher Education Department, Govt. of KPK Peshawar.
3. Director, Higher Education Department, Govt. of KPK Peshawar.
4. Accountant General, Govt. of KPK Peshawar.

.....**Respondents**

5 Secretary Finance Deptt KPK Peshawar.

APPEAL U/S 4 OF THE KPK SERVICE TRIBUNAL ACT 1974 FOR DIRECTING RESPONDENTS TO PAY THE APPELLANT THE CONVEYANCE ALLOWANCE DURING SUMMER AND WINTER VACATIONS, DECLARING THE DEDUCTION OF CONVEYANCE ALLOWENCE DURING SUMMER AND WINTER VACATIONS, AS ILLEGAL UNLAWFUL, WITHOUT LAWFUL AUTHORITY AND OF NO LEGAL EFFECT, FOR WHICH THE DEPARTMENTAL APPEAL OF THE APPELLANT DATED 28-06-2016 HAS NOT BEEN RESPONDED SO FAR DESPITE THE LAPSE OF THE STATUTORY PERIOD OF NINETY DAYS.

PRAYER:-

On acceptance of this appeal the respondents may kindly be directed to pay the appellant the conveyance allowance during the summer and winter vacations declaring the deduction of conveyance allowance during the summer and winter vacations as illegal, unlawful, without lawful authority and of no legal effect.

Filed to-day

Registrar

24/10/16

Re-submitted to -day
and filed.

Registrar

25/10/14

2

Respectfully Submitted:-

1. That the appellant was appointed as Lecturer BPS-17 on 19-09-1989 in the Higher Education Department Govt. of KPK, was promoted as Associate Professor BPS- 19 and since then is serving as such and since then he performed his duties with honesty and full devotion with spotless service career.
2. That the department in which the appellant is serving is a vacation department and the conveyance allowance is deducted from the appellant during Summer and Winter vacations in violation of **Rule 82 (b)** of the Fundamental Rules 1922, according to which **vacation counts as duty**, hence deduction of conveyance allowance during the Summer and Winter vacations is illegal and against the **Rule 82 (b)** of the Fundamental Rules 1922. **(Copy of the Rule 82 (b) of Fundamental Rules is enclosed as Annexure A).**
3. That the appellant approached respondents for directing respondents to pay him the conveyance allowance during summer and winter vacations with further directions to the respondents to pay the appellant the already illegally deducted amount in this regard, vide departmental appeal dated 28-06-2016, which has not been responded so far despite the lapse of the statutory period of ninety days. **(Copy of departmental appeal is enclosed as Annexure B).**
4. That this action of the respondents of not paying the appellant the conveyance allowance during the summer and winter vacations and not paying the appellant the illegally deducted

amount in this respect is against the law, facts and principles of justice on grounds inter alia as follows:-

GR O U N D S:-

- A.** That the omissions and commissions of the respondents are illegal and void abinitio.
- B.** That mandatory provisions of law and rules have badly been violated by the respondents and the appellant has not been treated according to law and rules on the subject.
- C.** That **Rule 82 (b)** of the Fundamental Rules 1922, is very much clear on the point, according to which **vacation counts as duty**, hence deduction of conveyance allowance during the Summer and Winter vacations is illegal and against the **Rule 82 (b)** of the Fundamental Rules 1922.
- D.** That even this issue was agitated before the Sindh Service Tribunal in Service Appeal No 1231 which appeal was accepted on 23-12-2015 and consequently it was held that all the civil servants serving in the vacations departments are allowed to receive the conveyance allowance during Summer and Winter vacations and even that judgment has been implemented by the Accountant General vide Circular dated 16-06-2016. **(Copy of the Order and Judgment dated 23-12-2015 & Circular dated 16-06-2016 is enclosed as Annexure C & D).**

4

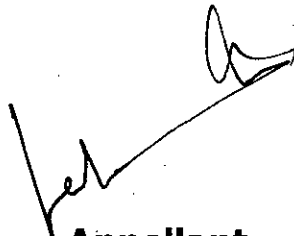
- E.** That even after the decision of Sindh Service Tribunal and its implementation by the Accountant General Sindh, it amounts to discrimination, which is against the very spirit of the constitution of the land.
- F.** That the illegal deduction of the conveyance allowance during the summer and winter vacations cause monetary loss to the appellant.
- G.** That it is pertinent to mention here that during the Summer and Winter vacations the teaching faculty perform various types of duties, including preparation for and managing various examinations, admissions to new classes, looking after affairs of BS programs etc and as such they are all the time at duty.
- H.** That the appellant is as such punished without any omission or commission on his part besides, as the vacation is not any sort of leave, rather a holiday, and as such too the appellant is entitled to be paid the conveyance allowance During Summer and Winter vacations.
- I.** That the appellant has about 27 years of service with unblemished service record.

5

J. That the appellant seeks the permission of this honorable Tribunal for further/additional grounds at the time of arguments.

It is therefore prayed that appeal of the appellant may kindly be accepted as prayed for in the heading of the appeal.

Dated:-21-10-2016



Appellant

Through



**Fazal Shah Mohmand
Advocate, Peshawar**

6

BEFORE THE SERVICE TRIBUNAL KPK PESHAWAR

Service Appeal No _____/2016.

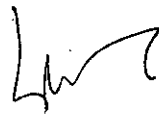
Sabz Ali Khan.....**Appellant**

V E R S U S

Chief Secretary and Others.....**Respondents**

A F F I D A V I T

I, Sabz Ali Khan, Associate Professor, BPS-19, (History cum Civics) Govt. College Peshawar, do hereby solemnly affirm and declare on oath that the contents of this **Appeal** are true and correct to the best of my knowledge and belief and nothing has been concealed from this honorable Tribunal.

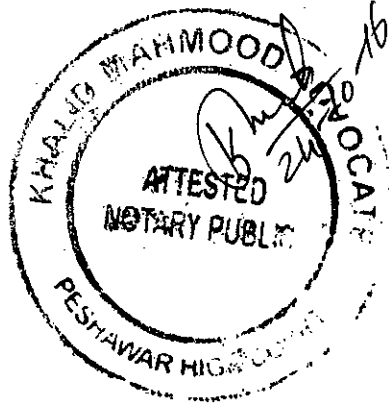


DEPONENT

Identified by



**Fazal Shah Mohmand
Advocate Peshawar**



Code No.

FSL No.

**COMBINED SET
OF**

F.R. & S.R.

VOLUMES I & II

"A"
7

APPLICABLE TO THE FEDERAL CIVIL SERVANTS IN PAKISTAN

With Model Questions & Answers

Revised Edition

2010



Peshawar High Court
Bar Association
Session 2011/2012

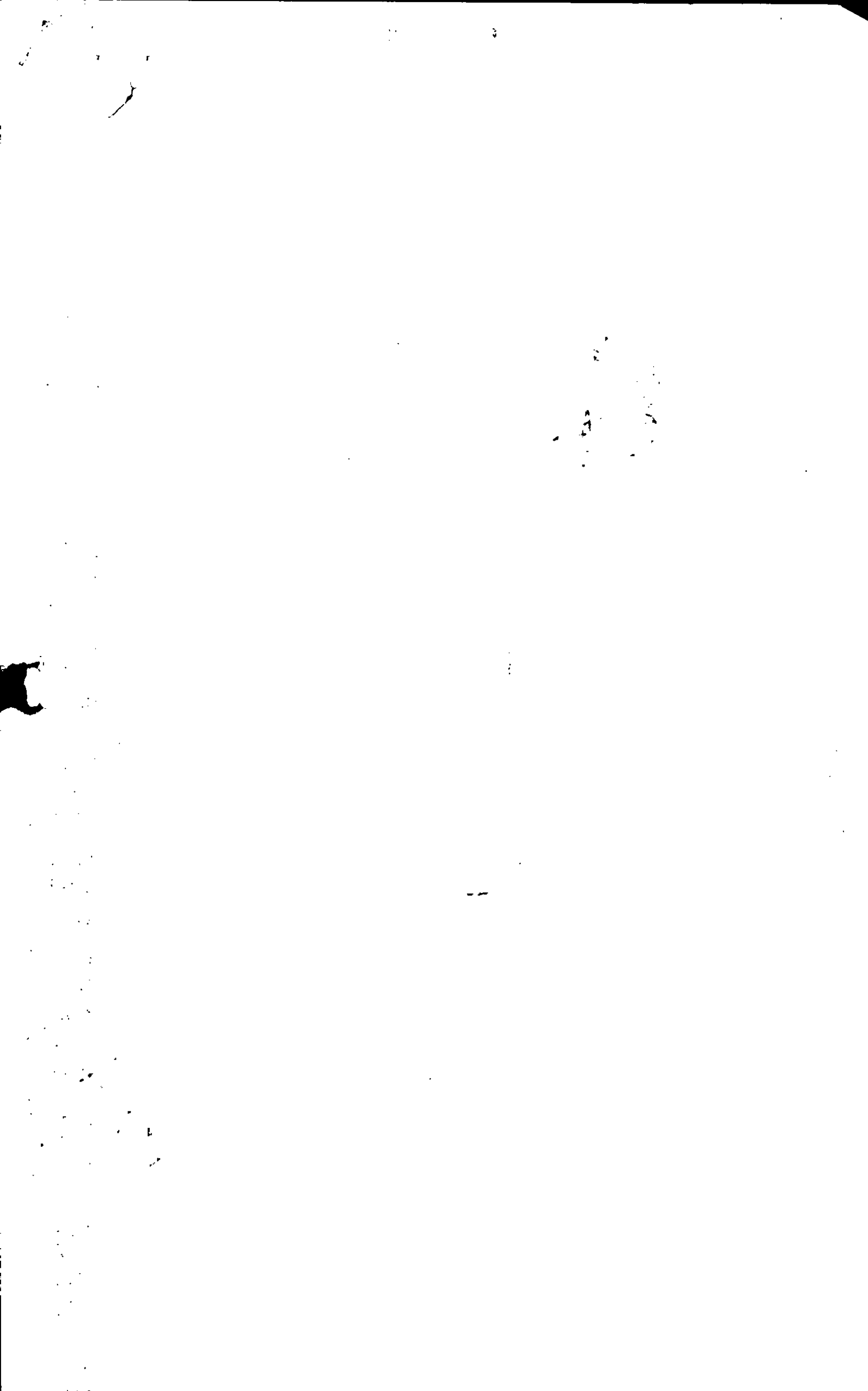
ATTESTED

to be true copy
Advocate

PAKISTAN SERVICE LAW PUBLICATIONS

9-Fane Road, Lahore.

Price Rs. 600/-



F. R. 82. The following provisions apply to vacation departments only:

- (a) A local Government may make rules specifying the departments or parts of departments which should be treated as vacation departments, and the conditions in which a Government servant should be considered to have availed himself of a vacation.
- (b) Vacation counts as duty, but the periods of total leave in rules 77, 81 (a) and 81 (b) should ordinarily be reduced by one month for each year of duty in which the Government servant has availed himself of the vacation. If a part only of the vacation has been taken in any year, the period to be deducted will be a fraction of a month equal to the proportion which the part of the vacation taken bears to the full period of the vacation.
- (c) In cases of urgent necessity, when a Government servant requires leave and no leave is due to him, the periods in rules 77 and 81 (a), as reduced by clause (b) of this rule, may be increased by one month for every two years of duty in a vacation department.
- (d) When a Government servant combines vacation with leave, the period of vacation shall be reckoned as leave in calculating the maximum amount of leave on average pay which may be included in the particular period of leave.

Government order.—In the case of a Government servant who, at the time of going on leave, has not completed a full year of duty and has not for that reason enjoyed any portion of a vacation but who enjoys the next vacation in continuation of the leave it has been decided that, for the purpose of clause (b) of this rule as explained in item (3) of 'Audit Instructions' a deduction of 1/12th may be made for the period for which 1/11th is credited. If subsequently it is found that the vacation has not been enjoyed, the deduction already made can be suitably corrected.

[Ar. G.'s letter No. 170-A/109-32, dated the 22nd July, 1932.]

Audit Instructions:—

(1) The restrictions on the combination of leave and vacation which were imposed by Article 278, Civil Service Regulations are not perpetuated under the Fundamental Rules. Such combination is, however, under the latter rules, subject to the condition mentioned in F. R. 82 (d), and it is thus permissible to allow a vacation to intervene between two periods of leave. Similarly vacations may be prefixed or affixed to leave or both prefixed and affixed.

[Para. 20 (i), Chap. X, Sec. I of Manual of Audit Instructions (Reprint).]

(2) The reduction by one month for each year of duty in which the Government servant has availed himself of the vacation as required to be made under Rule 82 (b) is intended to be made in respect of leave earned and vacation taken from 1st January, 1922.

Thus, in the case of Government servants of vacation departments, the leave credited to their leave account under Fundamental Rule 77 will be—

- (1) privilege leave at their credit on 1st January 1922, i.e., privilege leave earned under Articles 272 to 275, Civil Service Regulations, plus
- (2) one-eighth (or one-twelfth) of the period spent on duty or vacation (or privilege leave) up to 31st December 1922, plus
- (3) five-twenty-seconds (or two-elevenths) of the period spent on duty or vacation from 1st January, 1922.

From this, a reduction will be made of one month for each year of duty in which the Government servant avails himself of the vacation after 1st January, 1922. Similarly the total leave admissible under Fundamental Rules 81 (a) and 81 (b) will be reduced by one month for each year of duty in which the vacation is taken after 1st January, 1922.

[Para. 20 (ii), Chap. X, Sec. I of Manual of Audit Instructions (Reprint).]

(3) The term "each year of duty" should be interpreted to mean, not a calendar year in which duty is performed, but twelve months of actual duty in a vacation department. If the Government servant has enjoyed such vacation as falls within a period of twelve months beginning on the day on which he begins his duty on return from leave or otherwise, then one month should be deducted from his leave account. It does not matter whether the day on which this year ends, falls in a vacation in the succeeding calendar year. The only question is whether the Government servant has enjoyed such vacation as fell within the period of one year as interpreted above.

If, to take an example, a Government servant before going on leave has not completed a full year of duty (including vacation) during the course of the second calendar year, then the fraction of one month which should be deducted from the leave account is the fraction which the period of duty, including vacation, bears to the whole year. If, to take a further complication, he has not enjoyed the whole of the vacation which fell during that period of less than a year, then the amount which should be deducted is the proportion of the period, which the proportion of vacation actually enjoyed bears to the whole period of vacation which fell within that period.

In the case of Government servants who are allowed two vacations in the year instead of one, the periods of the two vacations should be regarded as combined into one.

[Para. 20 (iii), Chap. X, Sec. I of Manual of Audit Instructions (Reprint).]

(4) The amount credited to the leave account under Rule 82 (c) as well as that added to the maximum under Rule 81 (a) should be the actual amount of additional leave taken under the former Rule and not the total amount theoretically permissible, viz., one month for every two years of duty.

[Para. 20 (iv), Chap. X, Sec. I of Manual of Audit Instructions (Reprint).]

8

ATTESTED
to be true copy
Advocate

(5) A Government servant of a vacation department may be granted the additional leave which is credited under Fundamental Rule 82(c) even though he has a debit balance in his leave account due to the fact that leave not due has not been liquidated as required by Fundamental Rule 81 (c).

The credit of one month under Fundamental Rule 82(c) is for every completed two years of duty and no fractional credit for a period of less than two years is permissible.

[Para. 20 (v), Chap. X, Sec. I of Manual of Audit Instructions (Reprint) as inserted by C.S. No. 7, dated the 1st April, 1938.]

(6) For the purposes of the orders at item (1) of the Government orders below F. R. 81 in this Section, a Government servant of a vacation department who combines vacation with leave on average pay can count as service for pension only a total period of four months on each occasion; except in cases where the total amount of vacation taken is four months or more, in which cases the full amount of vacation and no leave, will count as service.

[Para. 16 (ii), Sec. III of Manual of Audit Instructions (Reprint).]

Auditor General's decision.—As under Fundamental Rule 82(d) a Government servant of a vacation department can combine vacation with leave on average pay subject only to the condition that the vacation so combined should be treated as leave for the purpose of determining the maximum period of leave on average pay which can be had in one spell, the limit of leave on average pay ordinarily admissible when it is combined with vacation by a Government servant of a vacation department subject to the ordinary leave rules will be either the credit in column 6 of the leave account plus the period of vacation or 4 months, whichever is less.

(Ar. G.'s letter No. T. 824-A/199-31, dated the 13th July, 1932.)

F. R. 83. (1) Subject to the conditions hereinafter specified a local Government may grant special disability leave to a Government servant who is disabled by injury intentionally inflicted or caused in, or in consequence of, the due performance of his official duties or in consequence of his official position.

(2) Such leave shall not be granted unless the disability manifested itself within three months of the occurrence to which it is attributed, and the person disabled acted with due promptitude in bringing it to notice. But the Governor-General, if he is satisfied as to the cause of the disability, may permit leave to be granted in cases where the disability manifested itself more than three months after the occurrence of its cause.

(3) The period of leave granted shall be such as is certified by a medical board to be necessary. It shall not be extended except on the certificate of a medical board, and shall in no case exceed 24 months.

(4) Such leave may be combined with leave of any other kind.

(5) Such leave may be granted more than once if the disability is aggravated or reproduced in similar circumstances at a later date but not more than 24 months of such leave shall be granted in consequence of any one disability.

(6) Such leave shall be counted as duty in calculating service for pension and shall not, except as provided in rule 78(b), be debited against the leave account.

(7) Leave-salary during such leave shall, be equal—

- (a) for the first four months of any period of such leave, including a period of such leave granted under clause (5) of this rule, to average pay, and
- (b) for the remaining period of any such leave to half average pay, or at the Government servant's option, for a period not exceeding the period of average pay which would otherwise be admissible to him, to average pay.

Provided that **[] the minima specified in the table in Rule 90 shall apply when leave-salary during such leave is equal to half average pay subject to the conditions stated in that rule and in the notes thereunder.

(8) In the case of a person to whom the Workmen's Compensation Act, 1923, applies, the amount of leave-salary payable under this rule shall, with effect from the 1st July 1924, be reduced by the amount of compensation payable under section 4(1) (d) of the said Act.

(9) The provisions of this rule apply to a civil servant disabled in consequence of service with a military force, if he is discharged as unfit for further military service, but is not completely and permanently incapacitated for further civil service, and to a civil servant not so discharged who suffers a disability which is certified by a medical board to be directly attributable to his service with a military force; but in either case, any period of leave granted to such a person under military rules in respect of that disability shall be reckoned as leave granted under this rule for the purpose of calculating the period admissible.

Late Secy. of State's decision.—The intention of old Fundamental Rule 83 (c) [corresponds to new F. R. 83 (9)] is not that special disability leave should be given to cover any portion of an officer's military service, but that it should be admissible only after the officer's discharge as unfit for further military service.

(G.I., F.D., No. F./21/II-C.S.R./24, dated the 30th July, 1924.)

Government decision.—Deleted.

Audit Instruction.—See item (3) of the Audit Instruction below F. R. 81 in this Section.

Auditor General's decision.—The Auditor-General has decided with the approval of the Government that in the case of an officer who has served under more than one Government, the special disability leave granted under Fundamental Rule 83 (7) (b) half of which

** Deleted with effect from the 8th May, 1958.

9

ATTESTED
to be true copy

"B"
10

BEFORE THE CHIEF MINISTER KPK PESHAWAR.

Subject: - Representation/Departmental Appeal for allowing the appellant to receive the conveyance allowance during Summer and Winter vacations being employee of the vacation department with recovery of deducted amount made illegally from the appellant.

Respectfully Submitted:-

1. That the appellant was appointed as Lecturer BPS-17 on 19-09-1989 BPS-17 in the Higher Education Department Govt. of KPK, was promoted as Associate Professor, BPS-19 and since then is serving as such and since then he performed his duties with honesty and full devotion with spotless service career.
2. That the department in which the appellant is serving is a vacation department and the conveyance allowance is deducted from the appellant during Summer and Winter vacations in violation of **Rule 82 (b)** of the Fundamental Rules 1922, according to which vacation counts as duty, hence deduction of conveyance allowance during the Summer and Winter vacations is illegal and against the **Rule 82 (b)** of the Fundamental Rules 1922. (Copy of the Rule 82 (b) of Fundamental Rules is enclosed as Annexure A).
3. That even this issue was agitated before the Sindh Service Tribunal in Service Appeal No 1231 which appeal was accepted on 23-12-2015 and consequently it was held that all the civil servants serving in the vacations departments are allowed to receive the conveyance allowance during Summer and Winter vacations and even that judgment has been implemented by the Accountant General vide Circular dated 16-06-2016. (Copy of the Circular dated 16-06-2016 is enclosed as Annexure B).

Office of the PSCM
Diry No. 1373

Dated 28-6-2016

mm2
28/6/2016

ATTESTED

to be true copy
Advocate

(11)

4. That the deduction of the conveyance allowance during Summer and Winter vacations, is as such illegal, unlawful without lawful authority and of no legal effect as the department in which the appellant is serving is vacation department and according to **Rule 82 (b)** of the Fundamental Rules 1922, **vacation counts as duty**, as such the deduction of conveyance allowance is illegal.

5. That it is pertinent to mention here that during the Summer and Winter vacations the teaching faculty perform various types of duties, including preparation for and managing various examinations, admissions to new classes, looking after affairs of BS programs etc and as such they are all the time at duty.

6. That even after the decision of Sindh Service Tribunal and its implementation by the Accountant General Sindh, it amounts to discrimination, which is against the very spirit of the constitution of the land.

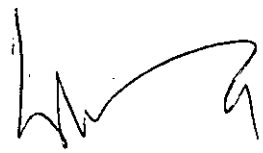
7. That the deductions of the conveyance allowance during the Summer and Winter vacations is causing monetary loss to the appellant in violation of law and rules on the subject.

8. That the appellant is as such punished without any omission or commission on his part besides, as the vacation is not any sort of leave, rather a holiday, and as such too the appellant is entitled to be paid the conveyance allowance During Summer and Winter vacations.

ATTESTED
to be true copy
Advocate

9. That the appellant has about 27 years of service with unblemished service record.

It is therefore prayed that on acceptance of this Representation/Departmental Appeal conveyance allowance may kindly be ordered to be paid to the appellant during Summer and Winter vacations with recovery of deducted amount made illegally from the appellant.



Dated:-27-06-2016.

Sabz Ali Khan, Associate Professor,
(History cum Civics) BPS-19, Govt.
College Peshawar.

ATTESTED
to be true copy
Advocate

13

BEFORE THE SINDH SERVICE TRIBUNAL AT KARACHI

PRESENT:-

JUSTICE (R) MUJEEBULLAH SIDDIQUI, CHAIRMAN
AWAER FAISAL, MEMBER-I

APPEAL NO. 1231 OF 2015

Zahid Hussain Hilio,
S/o Noor Muhammad,
Subject Specialist @ Government Pilot
Higher Education Secondary School
Larkana.....Appellant.

VERSUS

1. Chief Secretary to Government to Sindh,
Sindh Secretariat,
Karachi.
2. Finance Secretary Government of Sindh,
Sindh Secretariat,
Karachi.
3. Secretary Education & Literacy Department,
Government of Sindh,
Sindh Secretariat,
Karachi.
4. Accountant General Sindh, Karachi,
Accounts & Audit Complex,
Nipa Chowangi, University Road,
Karachi.....Respondents

CANCELLED

Zahid Hussain Hilio, appellant present in person.

Mr. S. Kamil Shah, AAG Sindh alongwith Mr. Khalid Malik,
Section Officer, Finance Department for respondents.

Date of Hearing:- 16.12.2015

Date of Judgment:- 23.12.2015

ATTESTED
to be true copy
Advocate

JUDGMENT



JUSTICE (R) MUJEEBULLAH SIDDIQUI, CHAIRMAN:

The appellant is a Subject Specialist at Government Pilot Higher

Secondary School, Larkana. According to him Conveyance Allowance was granted to the government employees serving within territorial jurisdiction of Larkana City at the prescribed rates as admissible to the government employees posted at Karachi, Hyderabad and Sukkur within terms and conditions. The notification dated 15.07.2008 is reproduced below:-

No.FD (SR-III) 5/20-228

Government of Sindh
Finance Department

Karachi dated the 15 July 2013

From,

Ghulam Ali Shah Pasha,

Additional Chief Secretary,

To,

1. The Chief Secretary to Government of Sindh.

2. All Additional Chief Secretaries in Government of Sindh.

3. The Senior Member Board of Revenue, Sindh.

4. All Administrative Secretaries to Government of Sindh.

5. All Members Board of Revenue of Sindh.

6. The Principal Secretary to Chief Minister Sindh.

7. The Principal Secretary to Government of Sindh.

8. The Secretary to Provincial Assembly Sindh.

9. All Heads of Attached Departments Sindh.

10. All Regional Heads of Departments Sindh.

11. All Districts & Sessions Judges Sindh.

12. The Registrar, High Court of Sindh.

13. All District Coordination Officers in Sindh.

14. The Registrar Sindh Service Tribunal, Karachi.

15. The Secretary, Sindh Public Service Tribunal, Karachi.

16. The Secretary, Provincial Ombudsman Secretariat Sindh, Karachi.

Subj: -

ENTITLEMENT OF HOUSE RENT ALLOWANCE CONVEYANCE ALLOWANCE TO EMPLOYEES POSTED IN THE JURISDICTION OF LARKANA MUNICIPAL CORPORATION.

Sir,

I am directed to refer to the subject noted above and to state that with the approval of the Competent Authority i.e. Chief Minister Sindh has been pleased to allow the following facilities to the Government employees performing their duties under the jurisdiction of Larkana Municipal Corporation with immediate effect on the following, on the analogy of the Sukkur Municipal Corporation:-
(i) House Rent Allowance at the rate of 15% of the minimum of their pay scales.
(ii) Conveyance Allowance at the prescribed rates, as admissible to the government employees posted at Karachi, Hyderabad and Sukkur.

HOJAL AHMED AL SHAIKH,

Deputy Secretary (SR-III)

For Secretary to Government of Sindh



ATTESTED
to be true copy
Advocate

14

It is further contended that the Conveyance Allowance was extended to all the civil servants in BPS-01 to BPS-16 across the Sindh vide Notification dated 16.01.2011. The grievance of the appellant is that the Finance Department, Government of Sindh vide its letter No.FD(SR-III-I)/Conveyance/2013 issued a clarification to the effect that Conveyance Allowance is not admissible to the teaching staff during summer vacation in Sindh. The letter reads as follows:-

No.FD(SR-III-I)/ Conveyance/ 2013
GOVERNMENT OF SINDH
FINANCE DEPARTMENT

Karachi dated the 3rd December/2013

The Accountant General Sindh,
P&A Complex near NIPA Chowranghi, University Road,
Gulshan-elqba,
The District Accounts Officers (ALL),
In Sindh,
The Treasury Officer,
Karachi.

SUBJECT:- DEDUCTION OF CONVEYANCE ALLOWANCE DURING SUMMER VACATION FROM TEACHING STAFF

I am directed to refer to the subject noted above and to clarify that the conveyance allowance is not admissible to the teaching staff as usual relates to the Educational Institution during Summer Vacation in Sindh.

Sd/-
(SYED NISAR AHMED SHAH)
SECTION OFFICER-(SR-III)

ATTESTED
to be true copy
Advocate

It is contended that this clarification is discriminatory and is infringement of fundamental rights. It is pleaded that the deduction of conveyance allowance during vacation in respect of teachers from primary to college level amounts to snatching basic right of living. The appellant preferred appeal which remained un-decided and hence this appeal before Tribunal.



3. In the grounds of appeal it is submitted that the deduction of conveyance allowance during summer vacation/winter vacation in respect of teachers tant amounts to a major penalty. He has further placed reliance on rule 737. According to this rule a vacation department, is subject to the exceptions and to the extent stated in rule 735, a department or part of the department to which regular vacation are allowed during which government servants serving in the department are permitted to be absent from duty. In rule 738 classes of government servants serving in vacation department when the condition of rule 737 are fulfilled are specified.

The following are included in it:-

"Officers and inferior Government servants of the Educational Department including the staffs in schools and Colleges, both Arts and Professional except Administrative and Inspecting officers and their establishments and the educational staff of their establishments and the educational staff of the Criminal Tribes Settlement Schools."

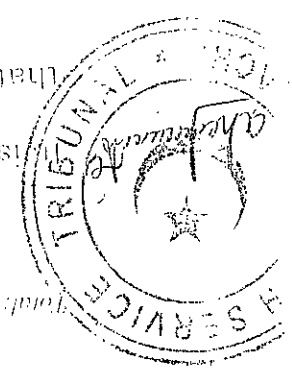
He has further placed reliance on rule 747 according to which vacation counts as duty. The appellant has prayed to set-aside the notification dated 03.12.2013 containing deduction of conveyance allowance during summer vacation in respect of teaching staff related to the educational institutions serving in Sindh, being without authority and of no legal effect because the vacation is holiday which is not leave of any kind.

4. The respondent No.1, Chief Secretary to the Government of Sindh and respondent No.4, Accountant General Sindh have not filed written statements. The appeal has proceeded ex-parte against them. The respondent Nos. 2 & 3 have filed their written statements. The respondent No.3, Secretary, Education & Literacy Department is merely referred to the impugned clarification issued by the Finance Department.



ATTESTED
 to be true copy
 Advocate

that teachers are availing 82 days leave out of which 72 days leave is
 is further contended that from the above comparison it emerges



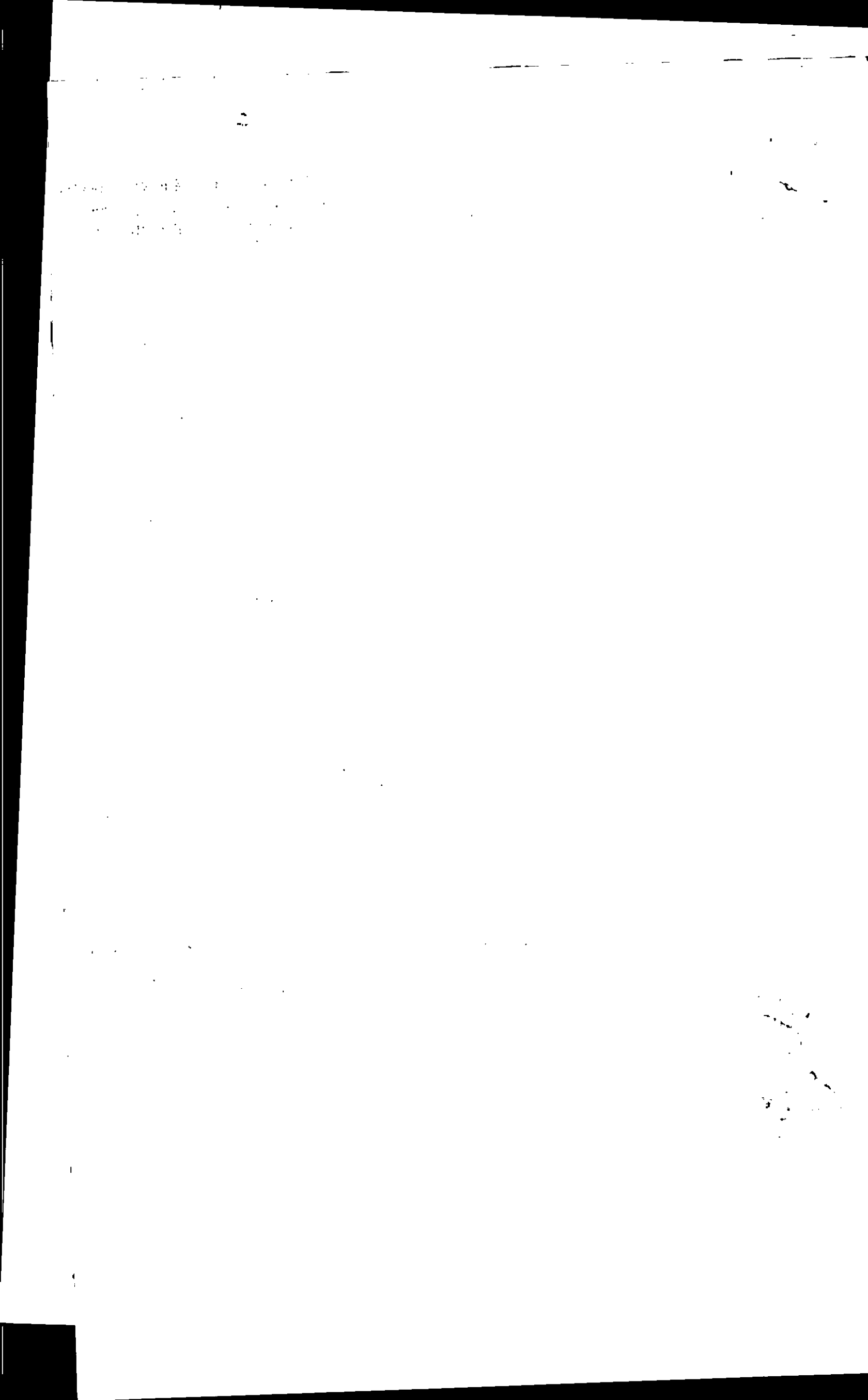
COPY

3. The respondent No. 2, Finance Secretary has admitted that the conveyance allowance was granted to the government employees serving within the territorial jurisdiction of Barakia City at the prescribed rates as admissible to the government employees posted at Karachi, Hyderabad and Sukkur. It is further admitted that the benefit of conveyance allowance was extended to all the civil servants in BPS-01 to 15 across the Sindh wide notification dated 16.07.2011. It is further admitted that the Finance Department issued the impuned clarification. It is contended that in summer/winter vacation schools and colleges are closed hence there is no point of performing duty during such vacation. It is further contended in the written statement of respondent No. 2, the Finance Secretary that the conveyance allowance is not admissible during any kind of leave except casual leave. The respondent No. 2 has produced copy of office memorandum regarding teaching allowance to all teachers of Education Department Sindh. It is stated in the letter dated 09.09.2014 that the department's office memorandum dated 22.07.2014 regarding entitlement of the teaching allowance is kept in abeyance till further orders. It is not explained as to what is the relevance of this letter which pertains to the teaching allowance. It is further contended that the vacation availed by the teachers during summer/winter season is alternate of leave granted to other government servants. A comparison is given which is reproduced below:

Leave Admissible to Teachers	60 Days Leave Summer Vacation	10 Days Leave Winter Vacation	12 Days Casual Leave	82 Days Leave
Leave Admissible to Government Servants	48 Days Earned Leave	24 Days Casual Leave	22 Days Leave	

ATTESTED
 A true copy
 as per original
 is being
 submitted
 for
 file

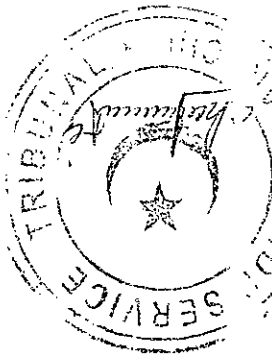
(17)



on account of summer/winter vacations whereas other government servants are availing 72 days leave out of which 48 days are earned leave. According to respondent No.2, the Secretary Finance, a period of 70 days leave availed by teachers during summer/winter vacation are ultimate of earned leave. According to the Finance Secretary teachers are availing 10 days leave in excess. It is further asserted that the government servants performing duties are entitled to compensatory allowance, however, no duty is performed in vacation. It is admitted that the conveyance allowance is included in the compensatory allowance. It is reiterated that during vacation neither any work/job is performed nor any financial loss is incurred on account of attending office/job, hence deduction is justified. It is further averred that the teachers are allowed to be absent from duty. The only reason that teachers are allowed salary/pay. The only deduction being made in the salary is the conveyance allowance. It is further stated in the written statement that the conveyance means act of taking or carrying someone or something from one place to another. In this case, the transportation of government servants from home to school/college for performing duty. It is contended that request of appellant that grant of conveyance allowance during leave on account of summer/winter vacations merits no consideration.

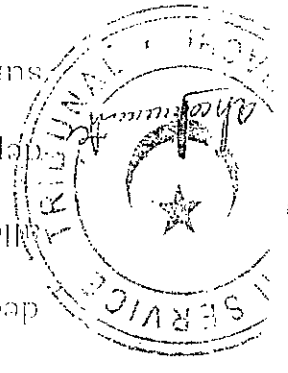
6. We have heard the appellant in person and the learned AAG assisted by Mr. Khalid Malik, Section Officer, Finance Department. The appellant as well as the learned AAG and Section Officer, Finance Department, have mainly reiterated the contentions contained in the memo of appeal and the written statement.

7. The reason prevailing with the Finance Department for issuing impugned clarification to the effect that conveyance allowance is not admissible to the teaching staff during the summer vacations is that it amounts to leave for the reason that during summer



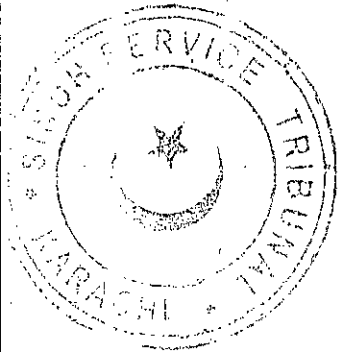
ATTESTED
 to be true copy
 to be approved

vacation no duty performed. However, the learned AAG and the Section Officer present were not able to rebut the contention of the appellant that under rule 747 (a) the vacation counts as duty and that in case of government servants subject to the special and ordinary rules the period of total leave in rule 732, 736 (a) & 736 (b) shall ordinarily be reduced by one month for each year of duty in which the government servants have availed himself of the vacation. If a part only of the vacation have been taken in any order, the period to be deducted will be a fraction of the month equal to the proportion which the part of the vacation taken bears to the full period of the vacation. Thus the sole effect is that vacation is to be treated as duty and not as leave but the period to which a government servants availing vacation shall have the effect of reducing the leave entitlement. When rule 747 (a) itself states that the vacation is to be counted as duty the Finance Department has no authority to hold that the vacation is the alternate of the leave granted to other government servants. The comparison given under the written statement is totally un-called for and misconceived. The impugned clarification is violative of the rules contained in the Sindh Civil Service Rules Manual Volume-I. It is not sustainable in law which is hereby declared to be violative of the Sindh Civil Service Rules and is consequently set-aside. It is held that the appellant and all the civil servants serving in vacation departments are allowed to receive the conveyance allowance during summer vacation and winter vacation. The vacation is a holiday and is not a leave of any kind and the conveyance allowance during the vacation is not permitted to be deducted. The respondents are directed to pay the conveyance allowance to the appellant and all the employees of the vacation departments who are entitled to the conveyance allowance during the summer and winter vacations.



ATTESTED
 to be true copy
 Advocate

The appeal is allowed accordingly. The respondent No.2, Finance Secretary, Government of Sindh, Respondent No.3, Secretary, Education & Literacy Department, Government of Sindh and Respondent No.4, Accountant General Sindh, Karachi, are directed to circulate copy^s of this judgment to all the District Accounts Officers in Sindh and the Treasury Officer, Karachi with the direction to comply with and implement this judgment forthwith.



Sd/-
 (JUSTICE (R) MUJEEBULLAH SIDDIQUI)
 CHAIRMAN
 Sd/-
 (AMEER FAISAL)
 MEMBER-I

COPY APPLIED FOR ON 4-8-2016
 FEES ESTIMATED ON 4-8-2016
 ESTIMATED FEES DEPOSITED ON 4-8-2016
 STAMPS SUPPLIED CN 4-8-2016
 COPY CERTIFIED CN 4-8-2016
 COPY DELIVERED ON 8-8-2016

*** AQAS***

COPYING FEE RS. 24/-
 URGENT FEE RS. 1/-
 COMPARING FEE RS. -
 PAPER CHARGES RS. -

TOTAL RS. 25/-

TYPED BY: photo
 COMPARED BY

CERTIFIED TRUE COPY
 ISSUED THIS THE 04th
 DAY OF August 2016
 Registrar

ATTESTED
 to be true copy
 Advocate

417



OFFICE OF THE

ACCOUNTANT GENERAL SINDH

Pakistan Audit & Accounts Complex, University Road
Near NIPA Chorangi, Guishan-e-Iqbal, Block-11, Karachi

Phone: 021-99239452

Fax: 021-99244756

Web: www.agsindh.gov

No DAG/LEGAL/2015-16/CIRCULARS/30

Dated 16-06-2016

CIRCULAR

Subject:- JUDGMENT OF HONORABLE SINDH SERVICE TRIBUNAL APPEAL NO. 1231 DATED 23.12.2015 & 02.05.2016

In compliance to orders of Honorable Sindh Service Tribunal dated 23.12.2015 and 02.05.2016 regarding payment of conveyance allowance during summer/winter vacation to the employees of vacation departments. The Accountant General Department Sindh has been please to order for implementation of the above orders in letter and spirit. The operative part of judgment dated 23.12.2015 is reproduce below.

"It is held that the appellants and all the civil servants serving in vacation departments are allowed to receive the conveyance allowance during summer vacation and winter vacation. The vacation is a holiday and is not leave of any kind and the conveyance allowance during the vacation is not permitted to be deducted. The respondents are directed to pay the conveyance allowance to the appellants and all the employees of the vacation departments who are entitled to the conveyance allowance during the summer and winter vacation".

This issues with the approval of Accountant General Sindh.

MOHSIN ALI SOOMRO
Deputy Accountant General

Copy for information:

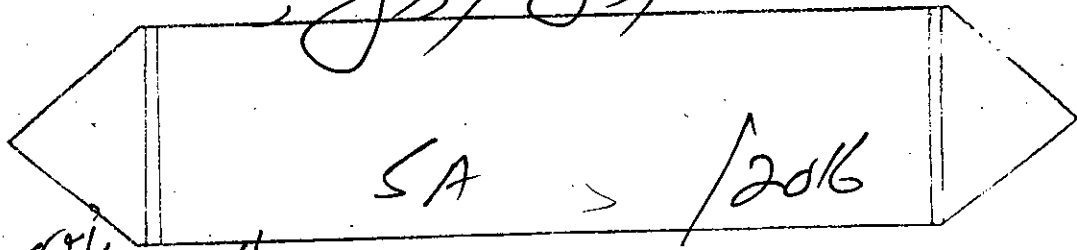
1. The Registrar, Sindh Service Tribunal, Sindh Secretariat, Karachi.
2. The Secretary, Finance Department, Sindh Secretariat, Karachi.
3. The Secretary, Education & Literacy Department, Sindh Secretariat, Karachi.
4. PS to AG
5. PA to Addl. AG's
6. PA to DAG's
7. The District Accounts office (All) _____

Conveyance Allowance for the Employees during summer/ winter vacations

Conveyance Allowance for the Employees during summer/ winter vacations
Share This:

ATTESTED
to be true copy
Advocate

پتھرالت سروس ٹریڈنگ کمپنی (22) اور



2016ء پنجاب ہائی کورٹ
سینئر جج صاحبان

موزخہ
مقدمہ
دعویٰ
جرم

باعث تحریر آنکے

کوریج

مقدمہ مندرجہ عنوان بالا میں اپنی طرف سے واسطے پیروی و جواب دہی وکل کاروائی متعلقہ آن مقام کے تیار کیا جاتا ہے۔ کہ صاحب موصوف کو مقدمہ کی کل کاروائی کا کامل اختیار ہوگا۔ نیز دیکل صاحب کو رائٹس نامہ کرنے وقت شرائط فیصلہ برحلاف دیئے جواب دہی اور اقبال دعویٰ اور بصورت ڈگری کرنے اجراء اور وصولی چیک دروپید اور عرضی دعویٰ اور درخواست ہر قسم کی تصدیق زبائیں پر دستخط کرانے کا اختیار ہوگا۔ نیز بصورت عدم پیروی یا ڈگری یکطرفہ یا اپیل کی برادگی اور منسوخی نیز دائر کرنے اپیل نگرانی و نظر ثانی و پیروی کرنے کا اختیار ہوگا۔ از بصورت ضرورت مقدمہ مذکور کے کل یا جزوی کاروائی کے واسطے اور وکیل یا مختار قانونی کو اپنے ہمراہ لیا اپنے بجائے تقرر کا اختیار صاحب مقرر شدہ کو بھی وہی جملہ مذکورہ با اختیار حاصل ہوں گے اور اس کا ساتھ پر داخستہ منظور قبول ہوگا۔ دوران مقدمہ میں جو خرچہ درجانہ التوائے مقدمہ کے سبب سے وہ ہوگا۔ کوئی راس دینی مقام دورہ پر ہو یا حد سے باہر ہو تو وکیل صاحب پابند ہوں گے۔ کہ پیروی نہ لکھ کر کریں۔ لہذا وکالت نامہ لکھو یا کہ مندرجہ۔

19 اکتوبر 2016

19

انترام

واہ القہ

کے لئے منظور ہے۔

نفاور

بمقام

Attested & Accepted
Call (Adv)

سینئر جج صاحبان

Before the Khyber Pakhtunkhwa Service Tribunal Peshawar

Appeal No. 1085/2016

Sabzali Khan.....Appellant.

V/S

Chief Secretary, Government of Khyber Pakhtunkhwa, and others.....Respondents.

(Reply on behalf of respondent No.4)

Preliminary Objections.

- 1). That the appellant has no cause of action.
- 2). That the appellant has no locus standi.
- 3). That the appeal in hand is time barred.
- 4). That the appellant is bad due to joinder and misjoinder of necessary parties.
- 5). That Finance Department Peshawar is the most necessary party in the instant case which the appellant has not made as respondent.

Respectfully Sheweth:-

Para No. 1 to 4:-

It is submitted that the matter is totally administrative in nature and concerned with respondent No. 2 & 3, and they are in better position to satisfy the grievances of the petitioner.

It is also pertinent to mention here that Finance Department of Khyber Pakhtunkhwa is the competent authority in such like cases. Because without the sanction of the Finance Department Government of Khyber Pakhtunkhwa any such matter cannot be entertained.

Keeping in view the above mentioned facts, it is therefore, humbly prayed that the appeal in hand, having no merits, may be dismissed with cost.


**ACCOUNTANT GENERAL
KHYBER PAKHTUNKHWA**

BEFORE THE HONOURABLE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR.

Service Appeal No.1085/2016

Mr.Sabz Ali Khan.....Appellant.

VERSUS

Govt; of Khyber Pakhtunkhwa,

Through Chief Secretary,Secretary and Director,

Higher Education Department and Others.....Respondents.

PARAWISE COMMENTS ON BEHALF OF RESPONDENTS NO 1, 2, and 3.

Preliminary objections.

Respectfully Sheweth,

1. That the Appellant has got no cause of action/locus standi to file the instant Service Appeal.
2. That the honourable Service Tribunal lacks jurisdiction to entertain the instant Service Appeal.
3. That the instant service Appeal is bad for non- joinder of necessary party like Finance Department.
4. That the Appellant has not come to the Tribunal with clean hands.
5. That the instant Service appeal is based on mis-conception/mis-statement of facts, hence liable to be dismissed.
6. That the instant Service appeal is time barred.
7. That the Appellant is trying to conceal material facts from the Honourable Tribunal.

Facts.

1. Correct that the appellant is working as Associate Professor in the Higher Education Department.
2. Correct to the extent that the appellant is working in vacation department and the conveyance allowance has been deducted from all the Teaching Faculty of the Department during winter and summer vacations. While the rest of the para is related to office of Accountant General, Khyber Pakhtunkhwa, Peshawar because the Conveyance allowance is deducted by their office.
3. Pertains to record.
4. Pertains to the office of Accountant General, Khyber Pakhtunkhwa, Peshawar.


Grounds.

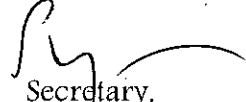
- A. Incorrect. The respondents have not committed any illegal omission and commissions in respect of the Appellant.
- B. Incorrect. The Respondents are the law abiding civil servants and treated the Appellant in accordance with law and rules.
- C. This para is related to the office of Accountant General, Khyber Pakhtunkhwa, Peshawar.
- D. Pertains to the record.
- E. Incorrect. The decision of Sindh Service Tribunal is not applicable to the case of the Appellant.
- F. This para is related to the office of Accountant General, Khyber Pakhtunkhwa, Peshawar.


- G. Correct to the extent that some teaching staff of the college, perform various duties during summer and winter vacations. But it is pertinent to mention here that the number of such teaching staff is usually very little and majority of staff enjoying vacations at their homes.
- H. This para is related to the office of Accountant General, Khyber Pakhtunkhwa, Peshawar.
- I. Needs no comments.
- J. That the respondents may be allowed to raise additional grounds at the time of hearing.

.Prayer.

It is, therefore, humbly prayed that the instant service appeal is based on misconception/mis-statement and, hence, may graciously be dismissed with costs.


Chief Secretary,
Govt. of Khyber Pakhtunkhwa
Respondent No.1,


Secretary,
Higher Education Department.
Respondent No.2


Director,
Higher Education Department.
Respondent No.3

Before the Khyber Pakhtunkhwa Service Tribunal, Peshawar

Service Appeal No. 1085/2016


Sabz Ali Khan..... (Petitioner)

VERSUS

Secretary Higher Education Department and others..... (Respondents)

AFFIDAVIT

I, Asif Khan, Assistant Director (Litigation), Higher Education Department Government of Khyber Pakhtunkhwa, do hereby declare and affirm on oath, that the contents of the Para-wise Comments are correct to the best of my knowledge and belief and that nothing has been concealed from this Hon'ble Court.


Deponent

CNIC No. 17301-6043213-9

BEFORE THE SERVICE TRIBUNAL KPK PESHAWAR.

Service Appeal No 1085/2016

Sabz Ali Khan.....Appellant.

V E R S U S

Govt. & Others.....Respondents

REPLICATION ON BEHALF OF THE APPELLANT.

REPLY TO PRELIMINARY OBJECTIONS.

M
20/17

All the preliminary objections raised by the respondents are incorrect and as such denied. The appellant has got a valid cause of action and locus standi to file instant appeal, which is maintainable and competent in its present form. Instant appeal is well within time, in which all necessary parties have been impleaded and the appellant is not estopped by his conduct to file instant appeal.

REPLY TO FACTS/GROUNDS

Comments of the respondents are full of contradictions and are based on malafide. Respondents have failed to show that the claim of the appellant is incorrect. The comments amount to admissions on part of the respondents, as they have failed to deny the plea of the appellant. Respondents have admitted that the allowance is deducted without any law and lawful authority. Respondents have also admitted that the matter has been decided by the Sindh Service Tribunal and has also been implemented.

In the circumstances the appellant is punished without any omission or commission on his part and the appellant could not be punished for the fault of the respondents. The respondents have failed to substantiate their version and bring anything on record in support of their version.

It is therefore prayed that appeal of the appellant may kindly be accepted as prayed for in the heading of the appeal.

Dated:-20-12-2017

[Signature]
Appellant

Through

[Signature]
Fazal Shah Mohmand

Advocate Peshawar

A F F I D A V I T

I, Sabz Ali Khan Associate Professor (BPS-19) (History Cum Civic), Govt. College Peshawar, (The Appellant), do hereby solemnly affirm and declare on oath that the contents of this **Replication** are true and correct to the best of my knowledge and belief and nothing has been concealed from this honorable Tribunal.

Identified by

[Signature]
DEPONENT

[Signature]
Fazal Shah Mohmand

Advocate Peshawar.



KHYBER PAKHTUNKWA SERVICE TRIBUNAL, PESHAWAR

No. 991 /ST

Dated 20-03 / 2020

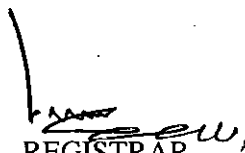
To

The Secretary Higher Education,
Government of Khyber Pakhtunkhwa,
Peshawar.

Subject: - JUDGMENT IN APPEAL NO. 1085/2016, MR. SABZ ALI KHAN.

I am directed to forward herewith a certified copy of Judgement dated 19.02.2020 passed by this Tribunal on the above subject for strict compliance.

Encl: As above


REGISTRAR,
KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL
PESHAWAR