

901/14

21.03.2018

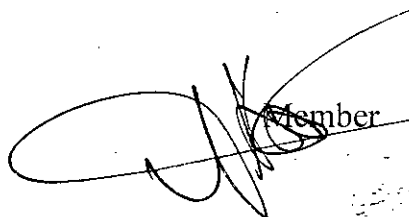
Appellant alongwith counsel and Mr. Usman Ghani, District Attorney alongwith Saquib Shahzad, Assistant and Malak Muhammad Haroon, AAO for the respondents present.

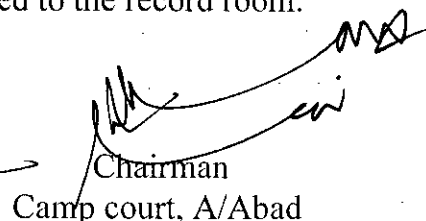
The learned counsel for the appellant submitted an application for withdrawal of the present service appeal with permission to submit fresh implementation petition for implementation of the judgment dated 12.05.2009 passed by this Tribunal.

The learned District Attorney objected to that part of this application in which the appellants seeks permission for implementation of the judgment of this Tribunal, inter-alia, on the grounds of limitation and resjudicata. In this appeal, the appellant has challenged the vires of Act No. IX of 2012 and that vires to the extent of retrospectivity has been decided by the Worthy Peshawar High Court in Writ Petition No. 913-P/2014, decided on 08.6.2017. According to the appellant after that judgment his grievance has been redressed and he can file a fresh application for the execution of the judgment of 2009 which was not executed due to that Act.

Since a question of law is involved which can be determined by the executing court only. However, this Bench has no objection on filing of execution petition subject to all legal and factual exceptions.

Consequently, the present appeal is dismissed as withdrawn. The appellant can seek all his legal rights available to him under the law. File be consigned to the record room.


Member


Chairman
Camp court, A/Abad

ANNOUNCED
21.03.2018

21.11.2017

Appellant in person and Addl. AG alongwith Sohail Ahmad Zaib, Assistant for the respondents present. This appeal is also having the same legal questions as that of Muhammad Fayaz etc. fixed for 18.01.2018. This appeal is also adjourned to 18.01.2018 for arguments alongwith the appeals of Muhammad Fayaz etc. before the D.B at camp court, Abbottabad.



Member


Chairman
Camp court, Abbottabad.

18.01.2018

Appellant in person and Mr. Usman Ghani, District Attorney alongwith Mr. Sohail Ahmad Zeb, Assistant for respondents present. Counsel for the appellant seeks adjournment. Adjourned. To come up for arguments on 21.02.2018 before D.B at camp court A/Abad.



Member


Chairman
Camp court, A/Abad.

21.02.2018

Appellant in person and Addl. AG alongwith Sohail Ahmad Zeb, ADO for the respondents present. Appellant seeks adjournment. To come up for arguments on 21.03.2018 before the D.B at camp court, Abbottabad.


Member


Chairman
Camp court, A/Abad.

19.06.2017

Appellant in person and Mr. Muhammad Siddique, Sr. GP alongwith Zubair Ali, ADO and Mr. Malik Haroon, AAO for respondents present. Both the parties have requested the court that similar nature cases are fixed before the Tribunal on 23.08.2017 and that this appeal may also be fixed alongwith those appeals. Requested is accepted. To come up for final hearing before the D.B on 23.08.2017 at camp court, Abbottabad.



Member


Chairman
Camp court, A/Abad

23.08.2017

Appellant in person and Mr. Muhammad Bilal, Deputy District Attorney alongwith Sohail Ahmad Zaib, Assistant for the respondents present. Appellant seeks adjournment. Adjourned. To come up for final hearing before the D.B on 23.11.2017 at camp court, Abbottabad.


Member


Chairman
Camp court, A/Abad

19.10.2017

Appellant in person and Mr. Muhammad Bilal, Deputy District Attorney for the respondents present. Seeks adjournment. To come up for arguments on 21.11.2017 before the D.B at camp court, Abbottabad.


Member


Chairman
Camp court, A/Abad.

19.11.2015

Appellant in person and Mr. Sohail Ahmad Zeb, Assistan
alongwith Mr .Muhammad Siddique, Sr.G.P for respondents present.
Arguments could not be heard due to non-availability of D.B. To come
up for final hearing before D.B on 20.6.2016 at Camp Court A/Abad.


Chairman
Camp Court A/Abad

20.06.2016

Appellant in person, M/S Malak Haroon, AAO and
Muhammad Irshjad, SO alongwith Mr. Muhammad
Siddique Sr.GP for the respondents present. Informed the
Tribunal that the matter is subjudice before the august
Supreme Court of Pakistan. Seeks Adjournment. To come up
for final hearing on 21.12.2016 before D.B at camp court,
Abbottbad.


Member


Chairman
Camp Court, A/Abad.

21.12.2016

Appellant in person and Mr. Sohail Ahmad Zaib,
Assistant alongwith Mr. Muhammad Siddique, Sr.GP for
the respondents present. Due to incomplete bench
arguments could not be heard. To come up for final
hearing on 19.06.2017 before D.B at camp court,
Abbottabad.


Chairman
Camp court, A/Abad

22.04.2015

Appellant in person and Mr.Sohail Ahmad Zeb, Assistant (lit) alongwith Mr.Muhammad Tahir Aurangzeb, G.P for official respondents present. Written reply by respondents No.1 to 4 submitted while respondents No.5 & 6 failed to submit the same. The appeal is assigned to D.B for rejoinder and final hearing for 22.7.2015 at Camp Court A/Abad.


Chairman
Camp Court A/Abad

22.7.2015

Appellant in person and Mr.Sohail Ahmad,Assistant alongwith Mr.Muhammad Tahir Aurangzeb, G.P for respondents present. Rejoinder submitted. Due to non-availability of D.B arguments could not be heard. To come up for final hearing before D.B at camp court A/Abad on 19.11.2015.


Chairman
Camp Court A/Abad



Appellant deposited process fee
A Security

was annulled through the said enactment. That the said Act was challenged by similar employees before the Hon'ble Peshawar High Court in different Writ Petitions including W.P No.159-A of 2014 (Annexure-D page 18) which was disposed of by the Hon'ble High Court with the observations that the remedy by way of appeal is available to the aggrieved parties before the Service Tribunal against the vires of the Act and hence the present appeal.

Points urged need consideration. Admt. Subject to deposit of security and process fee within 10 days, notices be issued to respondents for written reply for 16.3.2015 at camp court A/Abad.


Chairman
Camp Court A/Abad


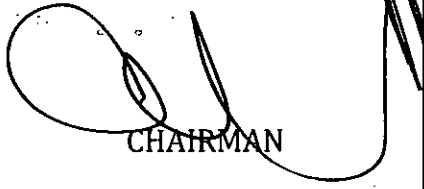
4. 16.3.2015 Appellant in person, M/S Irshad Muhammad, Supdt: for respondent No.1 and Zubair Ali, ADO for respondents No.2 to 4 alongwith Mr. Muhammad-Tahir Aurangzeb, G.P for all respondents present. Requested for adjournment. To come up for written reply/comments on 22.4.2015 before S.B at camp court A/Abad.


Chairman
Camp Court A/Abad

Form- A
FORM OF ORDER SHEET

Court of _____

Case No. 901/2014

S.No.	Date of order Proceedings	Order or other proceedings with signature of judge or Magistrate
1	2	3
1.	01/07/2014	<p>The appeal of Mr. Naveed resubmitted today by him may be entered in the Institution register and put up to the Worthy Chairman for preliminary hearing.</p> <p style="text-align: right;"> REGISTRAR</p>
2.	24-7-14	<p>This case is entrusted to Touring Bechh A.Abad for preliminary hearing to be put up there on <u>19-1-15</u></p> <p style="text-align: right;"> CHAIRMAN</p>
3.	19.01.2015	<p>Appellant present in person and heard. Contends that he is M.A M.Sc and serving against the post of PE and on the basis of higher qualification entitled to 4 increments which were not granted to the appellant for malafide reasons.. that the appellant instituted service appeal No. 1208 of 2008 before this Tribunal which was accepted vide judgment and order dated 12.5.2009 and appellant were granted 4 increments. that there-after the Provincial Govt. enacted "Khyber Pakhtunkhwa Act No.IX of 2012" (Khyber Pakhtunkhwa Cessation of Payment of Arrears on Advance Increments on Higher Educational Qualification Act, 2012) whereby the relief granted to the appellant</p>


Rehman

The appeal of Mr. Naveed son of Abdur Rashid Senior PET GHS Banda Pir Khan Abbottabad received today i.e. on 17.06.2014 is incomplete on the following score which is returned to the appellant for completion and resubmission within 15 days.

Copy of departmental appeal/review is not attached with the appeal which may be placed on it.

No. 9/69 /S.T.

Dt. 17/6 /2014.


REGISTRAR
SERVICE TRIBUNAL
KHYBER PAKHTUNKHWA
PESHAWAR.


Mr. Naveed SPET, GHS Banda Pir Khan
Abbottabad.

Resubmitted with the remarks/request that impugned Act (KPK ACT NO IX OF 2012 dated 15/05/2012) was promulgated.

Initially the impugned Act (KPK ACT NO IX OF 2012 dated 15/05/2012) was challenged in Constitutional Petition (Writ Petition) before High Court and on 25/03/2014, the Honourable High Court decided the law point in this respect at Para 04 of the its judgment that Service Tribunal has its own jurisdiction to decide the matter involved in said Act. Thus instant Service appeal is filed under the High Court Order.

Moreover the requirement of departmental appeal u/s 4 of the KPK Service Tribunal Act is not possible as final authority for promulgation of Act is Governor KPK and there is no appellate authority available in the department who entertained such departmental appeal, and the said issue is resolved by High Court in judgment dated 25/03/2014 which is already annexed with appeal.

Under the above circumstances it is requested that instant service appeal may please be fixed for further legal process before Honourable Tribunal.


(Naveed)
Appellant in person

**BEFORE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR.**

Service Appeal No: 901 of 2014

Naveed S/O Abdur Rehman, Senior P.E.T teacher, Government High school
Banda Pir Khan Abbottabad, R/O Mohallah Musa Zai, Village Mirpur Kalan
Tehsil & District Abbottabad.

Appellant

Versus

Government of Khyber Pakhtunkhwa through Secretary Finance Department
Peshawar and 05 Other.


Respondents

SERVICE APPEAL

INDEX

S.No	DESC: OF DOCUMENTS	ANNEXURES	PAGE NO
1	Memo; of Service Appeal	----	1 to 5
2	Copy of Service Appeal No 1208 of 2008	A	6 to 9
3	Copy of relevant pages of Judgment Dated 12/05/2009	B	10 to 14
	Copy of Act (KPK ACT NO IX OF 2012 dated 15/05/2012)	C	15 to 17
4	Copy of Peshawar High Court order dated 25/03/2014	D	18 to 25a

Dated 12/06/2014


(Naveed)
Appellant in person

(1)

**BEFORE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR.**

Service Appeal No: 901 of 2014

895
17-6-14

Naveed S/O Abdur Rehman, Senior P.E.T teacher, Government High school
Banda Pir Khan Abbottabad, R/O Mohallah Musa Zai, Village Mirpur Kalan
Tehsil & District Abbottabad.

Appellant

Versus

- 1 Government of Khyber Pakhtunkhwa through Secretary Finance Department Peshawar.
- 2 Government of Khyber Pakhtunkhwa through Secretary (Elementary & Secondary Education), Department Peshawar.
- 3 Director of (Elementary & Secondary Education) Department, Khyber Pakhtunkhwa Peshawar.
- 4 District Education Officer, Elementary & Secondary Education Department District Abbottabad.
- 5 Accountant General Khyber Pakhtunkhwa Peshawar.
- 6 District Comptroller of Accounts, Abbottabad.

Respondents

SERVICE APPEAL IS BEING FILED WITH OUT DEPARTMENTAL APPEAL WHICH IS IMPOSSIBLE IN THE CIRCUMSTANCES OF THE CASE AND THE SAME LAW POINT IS ALSO DECIDED BY THE PESHAWAR HIGH COURT, ABBOTTABAD BENCH IN WRIT PETITION NO 159-A OF 2014 AT PAGE 6 OF THE JUDGMENT.

[Signature]
17/6/14

APPEAL UNDER SECTION 4 OF KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT 1974, AGAINST THE IMPUGNED "KHYBER PAKHTUNKHWA ACT NO. IX of 2012" (KHYBER PAKHTUNKHWA CESSATION OF PAYMENT OF ARREARS ON ADVANCE INCREMENTS ON HIGHER EDUCATIONAL QUALIFICATION ACT, 2012) WHICH IS UNCONSTITUTIONAL, WITHOUT LAWFUL AUTHORITY, ARBITRARY, PERVERSE, DISCREMINATORY' AGAINST THE PRINCIPAL OF NATURAL

[Signature]
17/6/2014

re-submitted to dtg
and filed.

JUSTICE AND INEFFECTIVE UPON THE APPELLANT'S RIGHTS OF 04 ADVANCE INCREMENTS, GRANTED IN SERVICE APPEAL NO 1208 OF 2008 ACCEPTED BY KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PASSED ON 12/05/2009 ALONG WITH ALL BACK BENEFITS WITH EFFECT FROM HIS RELEVANT DATE OF CLAIM.

PRAYER:-

ON ACCEPTANCE OF THE INSTANT SERVICE APPEAL, DECLARED THE SAID ACT (KHYBER PAKHTUNKHWA ACT NO.IX of 2012) AS ILLEGAL UNCONSTITUTIONAL INEFFECTIVE UPON THE APPELLANT'S RIGHTS OF 04 ADVANCE INCREMENTS AND RESPONDENTS BE GRACIOUSLY DIRECTED TO GRANT RELEVANT 04 ADVANCE INCREMENTS (ALREADY DECIDED ON 12/05/2009) TO THE APPELLANT WITH EFFECT FROM HIS RELEVANT DATES OF CLAIMS WITH ALL BACK BENEFITS.

Respectfully Sheweth,

FACTS

- 1) That appellant being school teacher was granted 04 advance Increments on his higher qualification of MA/MSc on the basis of acceptance of his individual Service Appeal by this Honourable Service Tribunal and passed a consolidated judgment on 12/05/2009 at Camp Court Abbottabad. Copy of service appeal and relevant pages of Judgment is annexed as "Annexure "A" & "B"".
- 2) That when respondents' after passing long time' did not implement the existing judgment of Service Tribunal, appellant filed execution petition before this Tribunal, but an Act "Khyber Pakhtunkhwa cessation of payment of arrears on advance increments on higher education qualification Act" (KPK ACT NO IX OF 2012 dated 15/05/2012) was promulgated/published by the respondents. Copy of Act no IX is annexed as "Annexure "C"".

- 3) That on the basis of said Act, all the cases (relating to Advance Increments) of execution/implementation of judgment of Service Tribunal in respect of appellant and others too was abated/filed by the Service Tribunal, and appellant has come to know on 10/06/2014 that the vires of said impugned Act was also challenged through Constitution Petition (Writ Petition) before Peshawar High Court and where it was decided on 25/03/2014 and High Court held that remedy by way of service appeal before the Service Tribunal is available to the aggrieved person (appellant) against the impugned Act. Copy of High Court Order is annexed as Annexure "D".
- 4) That in pursuance of law as decided by High Court in Writ Petition, the instant service appeal is being filed with out departmental appeal, as under the law, it is not possible because there is no appellate departmental authority available, above the Governor KPK who is the promulgating/issuing final authority of impugned Act, However High Court has already decided the matters in Para 06 of the judgment Hence this Service appeal inter alia on the following Grounds.

Grounds

- a) That it is undoubted fact that respondents illegally snatched the legal rights of the appellant in an uncivilized way in a very haste manner, which is against the equity and there is no single example is available in the civilized society.
- b) That it is admittedly proved that Service Tribunal passed its judgment on 12/05/2009 and respondents did not implement it after passing long period of 04 years, moreover Service Tribunal accepted the 267 service appeals through said single judgment dated 12/05/2009, while 90 % of cases has already been implemented, thus gross discriminatory treatment is involved in the case of appellant and the said Act is against Article 25 of the Constitution.

- c) That the action of respondents is admittedly arbitrary capricious unjust and against all norms of justice and against Tribunal Judgment and order as well as constitution of Pakistan.
- d) That impugned Act (Khyber Pakhtunkhwa Act No IX) is admittedly against the Article 25 of the Constitution as well as Constitution it self, according to said Act advance increments taken before issuance of Act (15/05/2012) would be legal, correct and valid but the same rights of advance increments (execution Petitions) would stand abated as per impugned Act, Such kind of target date of any Act/Notification /Memorandum/letter is not only illegal, against law but also against the Constitutional rights of the petitioners and in this respect the Learned larger bench of Supreme Court decided the same matters in **(1991 SCMR 1041)** (relevant at para 33 page 1092) thus liable to be declared illegal.
- e) That under the law provincial assembly has no power to neither change the nature of constitutional rights/Article nor pass any Act which is against to any Article of Constitution and the impugned Act cannot be passed in the presence of Article 25 of the Constitution.
- f) That Constitution cannot allow pick and choose types of colourful activities between the citizens thus impugned Act is unconstitutional.
- g) That it is an admitted fact that under question Act is the matter of great public importance.
- h) That appellant, who is once again dragged into litigation, that his grievances have been solved completely by this Honourable Tribunal by accepting his service appeal on 12/05/2009, but respondents published an illegal impugned Act, thus the conduct of the respondents is uncivilized in the civilized society and as such requires indulgence of this Honourable Tribunal by awarding appropriate punishment to the respondents

It is, therefore, respectfully prayed that on acceptance of the instant Service appeal, this Honourable Tribunal may please be declared the said Act (Khyber Pakhtunkhwa Act No. IX of 2012) as illegal unconstitutional and respondents be graciously directed to grant 04 advance increments of M.A/M.Sc to the appellant with effect from his relevant dates of claims, decided in service appeal no 1208 of 2008, with all back benefits in the interest of natural justice.

Any other relief for which the appellant is entitled, and the same is not asked/prayed specifically, may very kindly be granted in favour of the appellant.

Dated 12/06/2014

(Naveed)
Appellant in person

Affidavit

I, Naveed S/O Abdur Rehman, Senior P.E.T teacher, Government High school Banda Pir Khan Abbottabad, R/O Mohallah Musa Zai, Village Mirpur Kalan Tehsil & District Abbottabad, do here by affirm on oath that contents of instant appeal is correct and true according to my best knowledge and belief and nothing has been suppressed from this Honourable Tribunal and this instant appeal is first appeal & same nature of any other appeal is not pending before Honourable Tribunal

Dated 12/04/2014

(Naveed)
Appellant in person
DEPONENT



12/06/2014

Annexure A

6

BEFORE NWFP SERVICE TRIBUNAL PESHAWAR.

Service Appeal No: 1208 of 2008

Naveed S/O Abdur Rehman, P.E.T teacher, Government Middle School Banda Qazi, Abbottabad. R/O: Mohallah Musa Zai, Village Mir Pur Kalan, Post Office Mir Pur, District, ABBOTTABAD,

Appellant

Versus

- 1 Executive District Officer (Elementary & Secondary Education), Abbottabad.
- 2 District Coordination Officer, Abbottabad.
- 3 District Accounts Officer, Abbottabad.
- 4 Director of (Schools & Literacy) N.W.F.P Peshawar.
- 5 Secretary to Govt of N.W.F.P (Elementary & Secondary Education), Deptt: Peshawar.

Respondents

Appeal under Section 4 of NWFP Service Tribunal Act 1974
For grant of 04 Four advance increments of M.A w. e. f. 25/04/2000
(date of Passing P.E.T Course) with all back benefits on the basis of
Para 5(i) (c) of the Notification No FD (PRC) 1-1 /89 dated 11-08-
1991 issued by (Finance Department N.W.F.P, Peshawar) and in pursuance
of Judgments/Law passed by Supreme Court of Pakistan.


PRAYER

It is respectfully prayed before this Honourable Tribunal that the instant appeal may graciously be accepted, and the appellant may be granted 04 advance increments of MA w.e.f. 25/04/2000 with all back benefits

Respectfully Sheweth,

FACTS

- 1) That appellant had appointed against P.E.T post as an Untrained ^{P.E.T} teacher on 20/11/1994, in Education Department, after that appellant had also passed his professional P.E.T training during his Service on 25/04/2000, thus his regular Service had also started from the date of his passing Professional P.E.T Course i.e. 25/04/2000. Now a day's appellant is working as P.E.T teacher in BPS No 14 in the Education Department. A Certificate in this respect issued by concerned authority is annexed as Annexure A.

Attest


- 2) That appellant had passed his B.A examination before his service as P.E.T teacher, and being B.A 2nd Division has placed in BPS No 14 against P.E.T post with effect from 25/04/2000 (date of regular Service), on the basis of Notification No FD(PRC)1-1/89 dated 07/08/1991, issued by Finance Department, N.W.F.P, Peshawar. Copy of said Notification No FD (PRC)1-1/89 dated 07/08/1991 is Annexure B.
- 3) That appellant during his Service, had also passed his M.A examination on 18/10/1997, and was entitled for Four (04) Advance Increments with effect from 25/04/2000 (date of passing P.E.T Course) in pursuance of Para 5 (i) (c) of the Notification No FD(PRC)1-1/89 dated 11/08/1991, issued by Finance Department, N.W.F.P, Peshawar, but these four (04) advance increments were not given to the appellant by the respondents in their office routine, until now. Copy of said Notification No FD (PRC)1-1/89 dated 11/08/1991 is Annexure C.
- 4) That appellant being teacher in Education Department was/is a member of Civil Employees (BPS-1-15) of the Provincial Government of N.W.F.P and was/is entitled advance increments in pursuance of Notification 11/08/1991 referred above, whose Para # 5, Clause (c) caters for the grant of Four Advance Increments M.A/M.Sc against P.E.T post because Prescribed Qualification of the said post was/is also F.A/F.Sc with P.E.T Course, So appellant was/is entitled the same and Respondents did not give his Constitutional rights.
- 5) That now, In the Meanwhile, Honourable Supreme Court Of Pakistan has also decided the same matters in CPLA No 525,526 of 2007 on 19/07/2007, and ultimately declared that teachers (appellant) in Education Department is also Entitled for their Advanced Increments given in Para 5 (1) of Notification No FD(PRC)1-1/89 Dated 11/08/1991 without any change/exception. Copy of Supreme Court judgment is annexed as Annexure D.
- 6) That Honourable Supreme Court of Pakistan has been pleased to dismiss the Civil Review Petitions No 216 & 217 of 2007, filed by Finance Department, N.W.F.P, Peshawar, on 29/01/2008, which were filed against the judgment, dated 19/07/2007, passed in C.P.L.A No 525 & 526 of 2007, and now the matters of Advance Increments attained its finality and there is no way before the respondents to withhold/deny the rights of appellant. Copy of Supreme Court judgment passed in C.R.P No 216 & 217 of 2007 is annexed as Annexure E.

Attested


8
5 B

7) That the petitioner of C.P.L.A. No 525 of 2007 (Mr: Rashid Iqbal Khan CT, GMS Tarhana, Abbottabad) has now been received his 04 Advance Increments of M.A/M.Sc along with his all arrears with effect from its qualifying date, i.e. 15/09/1997, through an order issued on 26/02/2008, by the Education Department, in compliance of the Judgments of Honourable Supreme Court of Pakistan, dated 19/07/2007 & 29/01/2008, passed in CPLA No 525/2007 & CRP No 216/2007. Copy of Order dated 26/02/2008, of 04 Advance Increments of MA/MSc is annexed as **Annexure F.**

8) That when the above Judgments of the Supreme Court dated 19/07/2007 & 29/01/2008, and above order of Education Department dated 26/02/2008 (Annexure F) came into the notice of appellant, in the light of the same, he submitted his departmental representation to respondent no 1 on 20/05/2008, and it is undecided within the statutory period of 90 days. Copy of representation is **Annexure G.** Hence this appeal inters - alia on the following ground, and appellant's appeal is within 120 days from the submission of his departmental representation dated 20/05/2008.

Grounds

- a) That the impugned action of respondent no 01 not deciding the appellant's representation dated 20/05/2008 is arbitrary, unjust, and against all the norms of justice and equity and violated the Articles 25, 189 and 190 of the Constitution, as petitioner of CPLA (Mr: Rashid Iqbal Khan) has got his same relief of 04 advance increments of MA/MSc.
- b) That the impugned action of respondent no 01 not deciding the appellant's representation, is against law, facts of the case, also against letter and spirit of the Judgments of Honourable Supreme Court of Pakistan dated 19/07/2007 passed in CPLA No 525, 526 & 590 of 2007 and also dated 29/01/2008 in Civil Review Petition No 216 & 217 of 2007.
- c) That the Policy contained in Notification/Circular dated 11/08/1991 at its Para 5 was/is passed by N.W.F.P Provincial Assembly in their Budget Session 1991-92 and then Hon. le Governor approved the same and Finance Department issued the said Circular after completing the legal requirements
- d) That all the Respondents neither have power nor any jurisdiction to change, withheld/deny the Government Policy contained in Circular/Notification dated 11/08/1991 and cannot apply according to their own wishes and whims against the said policy.
- e) That the said Circular (**Annexure C**) was/is issued for Civil Provincial Employees of N.W.F.P (BPS-1-15) and appellant being teacher(Education Department) falls under the

Attested


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same and fully entitled for the relief of Advanced Increments along with back benefits as claimed by him.

- f). That the case of appellant is the same nature in pursuance of Para 5 (i) of Notification, which was decided by Supreme Court of Pakistan on 19/07/2007 passed in CPLA No 525,526 of 2007 (Annexure D).
- g). That under the law appellant's case is quite Clear after the Judgment passed in CPLA No 525,526 of 2007 by Supreme Court, and refusal/dismissal of appellant's representation is illegal, without jurisdiction and unconstitutional.
- h). That there is now no dispute available in the case of appellant as Honorable Supreme Court of Pakistan has decided all the disputed matters involved in the instant appeal on 19/07/2007, similarly now Honourable Service Tribunal N.W.F.P has been pleased to admit to full hearing the same nature numerous Cases/service appeals.
- i). That appellant's service appeal is maintainable and appellant's post is P.E.T and prescribed qualification of the said post was/is F.A and appellant is now working in BPS # 14 against P.E.T post and Instant Case falls under Para 5(1) (c) of the Circular dated 11/08/1991(Annexure C)

It is there fore respectfully prayed that, appellant's appeal may kindly be accepted and 4 advance increments of M.A w.e.f. 25/04/2000 (date of passing P.E.T Course), along with all back benefits may graciously be granted to the appellant in the interest of justice.

Attested

(Naveed)
Appellant in person

Affidavit

I do here by affirm on-oath that contents of instant appeal is correct and true according to my best knowledge and belief and nothing has been suppressed from this Honourable Tribunal and this instant appeal is first appeal & same nature of any other appeal is not pending before Honourable Tribunal

Attested

SHARFA AHMED ADVOCATE
TAX PUNJAB
LAHORE
19/07/2007
Abbottabad Pakistan

(Naveed)
DEPONENT

Annexure B

10

BEFORE NWFP SERVICE TRIBUNAL PESHAWAR.

Service Appeal No. 1208/ of 2008

Naveed S/O Abdur Rehman, P.E.T teacher, Government Middle School Banda Qazi, Abbottabad. R/O: Mohallah Musa Zai, Village Mir Pur Kalan, Post Office Mir Pur, District, ABBOTTABAD,

N.W.F. Province Appellant
Service Tribunal

Versus

Diary No. 1791
dated 25/2/08

- 1 Executive District Officer (Elementary & Secondary Education), Abbottabad
- 2 District Coordination Officer, Abbottabad.
- 3 District Accounts Officer, Abbottabad.
- 4 Director of (Schools & Literacy) N.W.F.P Peshawar.
- 5 Secretary to Govt of N.W.F.P (Elementary & Secondary Education), Deptt: Peshawar.

Respondents

Appeal under Section 4 of NWFP Service Tribunal Act 1974
For grant of 04 Four advance increments of M.A w. e. f. 25/04/2000
(date of Passing P.E.T Course) with all back benefits on the basis of
Para 5(i) (c) of the Notification No FD (PRC) 1-1 /89 dated 11-08-
1991 issued by (Finance Department N.W.F.P, Peshawar) and in pursuance
of Judgments/Law passed by Supreme Court of Pakistan.

Attested

PRAYER

It is respectfully prayed before this Honourable Tribunal that the instant appeal may graciously be accepted, and the appellant may be granted 04 advance increments of MA w.e.f. 25/04/2000 with all back benefits

Respectfully Sheweth,

FACTS

That appellant had appointed against P.E.T post as an Untrained P.E.T teacher on 20/11/1994, in Education Department, after that appellant had also passed his professional P.E.T training during his Service on 25/04/2000, thus his regular Service had also started from the date of his passing Professional P.E.T Course i.e. 25/04/2000. Now a day's appellant is working as P.E.T teacher in BPS No 14 in the Education Department. A Certificate in this respect issued by concerned authority is annexed as Annexure A.

Filed to-day

1)
25/2/08

PET



10a

Serial No. of Order or Proceeding	Date of Order or Proceedings	Order or other Proceedings with Signature of Judge or Magistrate and that of parties or counsel where necessary
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13.5.2009

Appellant in person, Arshad Alam A.G.P
 alongwith representative of respondents present.
 Vide our detailed judgment of today, in Appeal
 No. 1276/2007, this appeal is also accepted. The
 parties are, however, left to bear their own costs.
 File be consigned to the record.

ANNOUNCED
12.05.2009.

Adl. Member *Adl. Member*

Attested

23/6/09
11/11/09
10/10/09
10/10/09

11

BEFORE THE NWFP SERVICE TRIBUNAL, CAMP COURT ABBOTTABAD.

Appeal No. 1276/2007

Date of institution - 27.12.2007
Date of decision - 12.05.2009

Muhammad Akram, S/O Sikandar Khan, C.T. Teacher, Government High School,
Kuthwal, Abbottabad.....(Appellant)

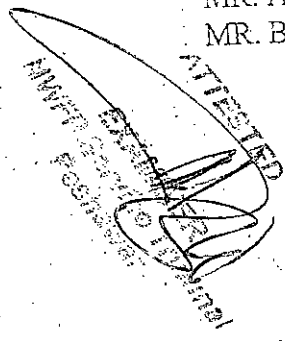
VERSUS

1. District Coordination Officer, Abbottabad.
2. Executive District officer (S &L) Abbottabad.
3. District Accounts Officer, Abbottabad.
4. Director (S&L) Department, Peshawar.
5. Secretary to Government of NWFP (S&L) Department Peshawar.
6. Accountant General NWFP Peshawar.
7. Secretary to Government of NWFP Finance Department, Peshawar.

Attested

Appellant in person present.
Arshad Alam, A.G.P..... For respondents.

MR. ABDUL JALIL..... MEMBER.
MR. BISMILLAH SHAH..... MEMBER.



JUDGMENT:

ABDUL JALIL, MEMBER: This judgment/order will dispose of this Service Appeal No. 1276 of 2007, by Muhammad Akram and the following Service Appeals. The reason is that the broad facts and the legal issues in all the below mentioned appeals are the same, and need consolidated judgment and joint disposal.

Sr. No.	Appeal No.	Name of appellant.
1.	1277/2007	Saidur Rahman,
2.	1278/2007	Munibur Rahman,
3.	1279/2007	Muhammad Siddique,
4.	01/2008	Maroof Khan
5.	02/2008	Amjad Hussain Awan

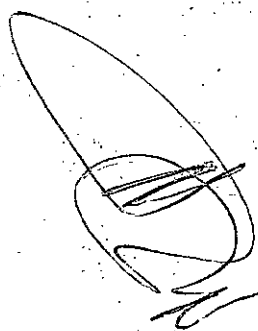
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- | | | |
|-------------|-----------|----------------------------|
| 114. | 1135/2008 | Muhammad Hamayun, |
| 115. | 1136/2008 | Shahid Farooq |
| 116. | 1137/2008 | Abdul Waheed, |
| 117. | 1206/2008 | Naseem Akhtar, |
| 118. | 1207/2008 | Syed Arshad Hussain Shah, |
| <u>119.</u> | 1208/2008 | Naveed, |
| 120. | 1209/2008 | Sadaqat Ali, |
| 121. | 1234/2008 | Saeed Akhtar, |
| 122. | 1235/2008 | Anwar-ul-Haq, |
| 123. | 1236/2008 | Syed Husnain Ali Shah, |
| 124. | 1242/2008 | Muhammad Niaz, |
| 125. | 1243/2008 | Muhammad Anwar, |
| 126. | 1268/2008 | Syed Sadaqat Hussain Shah, |
| 127. | 1274/2008 | Shah Jehan, |
| 128. | 1355/2008 | Ahmad Farooq, |
| 129. | 1356/2008 | Muhammad Younas, |
| 130. | 1357/2008 | Muhammad Shafique, |
| 131. | 1379/2008 | Tariq Mehmood, |
| 132. | 1380/2008 | Muhammad Yousaf, |
| 133. | 1381/2008 | Waqar Ahmad, |
| 134. | 1382/2008 | Muhammad Azhar, |
| 135. | 1383/2008 | Muhammad Aftaz Aziz, |
| 136. | 1384/2008 | Muhammad Assad, |
| 137. | 1385/2008 | Rashid Khan, |
| 138. | 1386/2008 | Mirza Yasir Jamil Baig, |
| 139. | 1387/2008 | Javed Ibrahim, |
| 140. | 1388/2008 | Muhammad Nawaz, |
| 141. | 1402/2008 | Fida Muhammad, |
| 142. | 1403/2008 | Shah Faisal Khan, |
| 143. | 1404/2008 | Nasir Bakhtiar Khan, |
| 144. | 1405/2008 | Tahir Mahmood, |
| 145. | 1406/2008 | Ajmal Nazir, |
| 146. | 1407/2008 | Uzair Jadoon, |
| 147. | 1425/2008 | Muhammad Adnan Khan, |
| 148. | 1426/2008 | Zahoor Khan, |
| 149. | 1427/2008 | Wajid Ali Shah, |

Attested



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257.	504/2009	Muhammad Shamraiz
258.	505/2009	Ali Bahadur
259.	506/2009	Muhammad Haroon
260.	523/2009	Naureena Maqsood
261.	524/2009	Yasmeen Akhtar
262.	525/2009	Shabana Nazir
263.	681/2009	Nighat Bibi
264.	682/2009	Waseem Sultan
265.	683/2009	Bibi Hajra
266.	684/2009	Abdul Razaq
267.	685/2009	Fatiha Gul

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2. The appellant of Service Appeal No. 1276 of 2007, contended that he was appointed as untrained P.E.T. Teacher in Education Department on 27.6.1990. The appellant being C.T trained, was adjusted against the C.T post on 06.05.1996 on regular basis. He acquired higher qualification of M.A on 25.08.1999. The appellant was entitled to advance increments in the light of the Finance Department notification dated 11.8.1991. The same was not given to him. Some of the teachers came to this Tribunal whose Service Appeals were dismissed in Service Appeal No. 498 of 2006 decided on 24.4.2007. The August Supreme Court of Pakistan, while deciding C.P.L.A No. 525 of 2007 and CPLA No. 526 of 2007 decided that all the teachers were entitled to the advance increments like all other civil servants. On the request of the appellant, the same benefit was not given to him. Hence, he filed the present Service Appeal. As already mentioned, the broad facts and the legal issues in all other appeals are almost on the same lines.

Attested

3. The respondents contested the appeal and contended that either the appellants had not submitted applications or their applications were time-barred. And there was no judgment in favour of the appellants.

4. We heard the arguments and perused the record.

5. The judgment in CPLA Nos. 525 of 2007 and 526 of 2007 is as under:-

"3. Learned Additional Advocate General attempted to argue that in view of the higher scale granted to Elementary School Teachers in

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pursuance of the circular letter dated 07.8.1991, which was personal to them, the petitioners would not be entitled to the incentive of advance increments contemplated by circular letter dated 11.8.1991 but he is unable to cite any principle of law or authority for placing this interpretation. We find that, while circular letter dated 7.8.1991 exclusively deals with the scales of pay of school teachers in different categories, circular letter dated 11.8.1991, provides for the revision of basic pay scales and grant of annual increments and advance increments for all Provincial civil servants in NWFP without any exception. Since the teachers or the employees in Education Department have never been expressly or impliedly excluded from the operation of the circular letter, view taken by the Tribunal being erroneous cannot be sustained at law. In fact, it suffers from clear misconception of law and misconstruction of the circular letter (supra)."

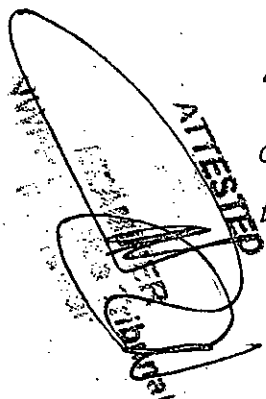
While disposing of the C.R.P No. 216 and 217 of 2007 in C.P Nos. 525 and 526 of 2007, the August Supreme Court of Pakistan held:-

"The learned Addl. Advocate General has contended that this Court while interpreting the circular in question has taken a view contrary to the correct legal position, according to which private respondents were not entitled to the benefit of advance increments. We are afraid, the learned Addl. A.G instead of pointing out any mistake of law and fact in the judgment made an attempt to re-open the case on merits. The scale of review is very limited and the points already considered in the judgment under review cannot be allowed to be re-agitated in review jurisdiction. These review petitions being without any substance are accordingly dismissed."

While disposing of Crl. O.P. No. 65 & 67 of 2007, it was held by the August Supreme Court of Pakistan:-

"The learned Addl. A.G. has given an undertaking for implementation of the judgment of this Court within a period of two weeks and in view thereof, this criminal original is disposed of with the direction that the

Attested

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judgment should be implemented in letter and spirit within two weeks under intimation to the Registrar of this Court."

6. In the above circumstances, and in view of the judgment in rhyme by the August Supreme Court of Pakistan, and keeping in view the provisions of Article 189 of the Constitution of Islamic Republic of Pakistan, we have no other alternative but to declare that all the appellants, after ascertainment that they are the persons similarly placed with the appellants who had previously litigated and in whose favour the judgment mentioned above was given by the August Supreme Court of Pakistan, are entitled to the same benefits as have been given to the appellants of the judgments quoted above. The appeals of such similarly placed persons, after such ascertainment, stands accepted without costs. Each party will bear the cost of the litigation.

7. The official respondents in the above mentioned appeals as well as the other concerned officers/officials in the province are directed to follow the above quoted judgments in their true letter and spirit and without compelling the respective right holders to enter into litigation with the respective official respondents, otherwise the costs of their litigation shall be recovered from the pay and pension as well as person and property of the defaulting concerned officer, though after fixation of responsibility on them as a result of proper enquiry.

8. The remaining similarly placed persons may submit applications/representations to their concerned authorities directly, who shall have to decide their cases as above within a reasonable time.

ANNOUNCED.
12.05.2009.

Sd/- *Abdul Jalil*
member
Sd/- *Biswillah Sheikh*
member

[Signature]
Sd/- *[Signature]*
Sd/- *[Signature]*

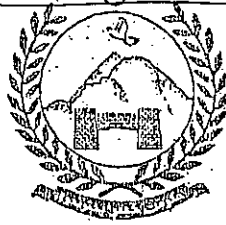
EXTRAORDINARY

GOVERNMENT

Annexure (C)

(15) Annex-

REGISTERED NO. PIII



GAZETTE

KHYBER PAKHTUNKHWA

Published by Authority

PESHAWAR, TUESDAY, 15TH MAY, 2012.

PROVINCIAL ASSEMBLY SECRETARIAT
KHYBER PAKHTUNKHWA

NOTIFICATION

Dated Peshawar, the 15th May, 2012.

No. PA/Khyber Pakhtunkhwa/Bills/2012/20711.—The Khyber Pakhtunkhwa Cessation of Payment of Arrears on Advance Increments on Higher Educational Qualification Bill, 2012 having been passed by the Provincial Assembly of Khyber Pakhtunkhwa on 8th May, 2012 and assented to by the Governor of the Khyber Pakhtunkhwa on 11th May, 2012 is hereby published as an Act of the Provincial Legislature of the Khyber Pakhtunkhwa.

**THE KHYBER PAKHTUNKHWA CESSATION OF PAYMENT OF ARREARS ON
ADVANCE INCREMENTS ON HIGHER EDUCATIONAL QUALIFICATION
ACT, 2012.**

(KHYBER PAKHTUNKHWA ACT NO. IX OF 2012)

*(first published after having received the assent of the Governor of the Khyber
Pakhtunkhwa in the Gazette of the Khyber Pakhtunkhwa
(Extraordinary), dated the 15th May, 2012).*

Attested

AN
ACT

*to cease the payment of arrears accrued on account of advance increments on
higher educational qualification.*

WHEREAS advance increments have been granted to certain Provincial Government employees on the basis of acquiring or possessing higher educational qualification over and above the prescribe educational qualification from time to time;

AND WHEREAS the Provincial Government vide Notification No. (PRC)1-1/2001, dated 27.10.2001, had already discontinued the scheme of advance increments on higher educational qualification;

AND WHEREAS due to financial constraints, it is not possible for Provincial Government to pay the claimed and unclaimed arrears accrued from the said increments;

It is hereby enacted as follows:-

1. **Short title, application and commencement.**— (1) This Act may be called the Khyber Pakhtunkhwa Cessation of Payment of Arrears on Advance Increments on Higher Educational Qualification Act, 2012.

(2) It shall apply to all the employees of the Provincial Government, who were entitled to received advance increments on higher educational qualification.

(3) It shall come into force at once and shall be deemed to have taken effect on and from 1st day of December, 2001.

2. **Cessation of payment of arrears on advance increments on higher educational qualification.**—(1) Notwithstanding anything contained in any decision, judgment and order of any Tribunal or Court including High Court or Supreme Court of Pakistan; for the purpose of any claim for payment of arrears on account of advance increments on higher educational qualification sanctioned in pursuance of any order, letter, office memoranda, notification, instructions and other instruments issued before 1.12.2001, such orders, letters, office memoranda, notifications, instructions and other instruments shall be deemed to be non-existent, ceased or revoked and no further claim whatsoever on the basis of these instruments shall be entertained and all cases in respect of such claims pending in any Court or Tribunal including High Court and Supreme Court of Pakistan shall stand abated.

(2) Any order made, instruction issued, decision, judgment or order of any Court or Tribunal including a High Court or the Supreme Court, implemented immediately before the commencement of this Act, shall be deemed to have been validly made, issued and implemented by the date of commencement of this Act, and any amount already paid there-under on account of advance increments or arrears thereof shall be deemed to have been validly paid and shall not be recoverable from the recipient Government employees.

Attested



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3. **Removal of difficulties.**— If any difficulty arises, in giving effect to the provisions of this Act, the Provincial Government may make such orders as it may deem just and equitable.

4. **Repeal.**— The Khyber Pakhtunkhwa Cessation of Payment of Arrears on Advance Increments on Higher Educational Qualification Ordinance, 2012 (Khyber Pakhtunkhwa Ordinance NO. I of 2012), is hereby repealed.

BY ORDER OF MR. SPEAKER

PROVINCIAL ASSEMBLY OF KHYBER
PAKHTUNKHWA

(AMANULLAH)

Secretary

Provincial Assembly of Khyber Pakhtunkhwa

Printed and published by the Manager,
Stafy. & Ptg. Deptt., Khyber Pakhtunkhwa, Peshawar

Attested



Annexure D,

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1

BEFORE THE PESHAWAR HIGH COURT ABBOTTABAD BENCH

Writ Petition No. 159/A of 2014

- 1) Muhammad Fayaz Awan S/O Muhammad Urfan, Junior Pharmacy Technician, Ayub Teaching Hospital, Abbottabad. R/O: House No K: 240/10, Kunj Jadeed, Abbottabad.
- 2) Muhammad Daud Qureshi S/O Masood Ur Rehman, Junior Pharmacy Technician, Ayub Teaching Hospital, Abbottabad. R/O: House No (1452) Behind Masjid Abu Bakkar, Khola Kehal, Teh; & Distt; Abbottabad.
- 3) Arshad Khan S/O Mir Afzal Khan C.T teacher Government High School No 3 (English Medium), Abbottabad R/o village, Ghumawan, Post Office Nawan Shehr, Tehsil & District Abbottabad.
- 4) Samiullah S/O Gul Badshah, Director Physical Education, Government Higher Secondary School Nawan Shehr Abbottabad, R/O Village Dallokhel Teh & District Lakhi Marwat, presently Nawan Shehr Abbottabad.
- 5) Hafiz Muhammad Iqbal Khan Qureshi, S/O Muhammad Yousaf Qureshi, Theology Teacher, (T.T) Government Centennial Model Secondary (GHS No 02) Abbottabad R/O: KL 166, Mohallah Upper Kehal, Tehsil & District, Abbottabad.
- 6) Qazi Masood-ur-Rehman S/O Qazi Ghulam Jilani, (Ex PTC teacher) C.T teacher, Government Middle School Khoi Maira, Haripur. R/O: Village & Post Office Khoi Nara, Tehsil & District, Haripur.
- 7) Nazira Begum D/O Jhangir Khan, (w/o Jamshed Khan) D.M teacher Government Girls High School Kuthiala, District Abbottabad. R/O: Village and Post Office Kuthiala, Tehsil & District, Abbottabad.

Petitioners

Versus

1. Government of Khyber Pakhtunkhwa through Secretary Finance Department, Peshawar.
2. Government of Khyber Pakhtunkhwa through Secretary Health Department, Peshawar.
3. Government of Khyber Pakhtunkhwa through Secretary (Elementary & Secondary Education), Department Peshawar.
4. Accountant General Khyber Pakhtunkhwa Peshawar.
5. Director General, Health & Services Khyber Pakhtunkhwa, Peshawar.

Verified to be True Copy

3/13/14
Peshawar High Court
Abbottabad Bench
Authorized under Sec 75 Act 1973

- 6 Director of (Elementary & Secondary Education) Department, Khyber Pakhtunkhwa Peshawar.
- 7 Chief Executive, Ayub Medical Complex, Abbottabad.
- 8 Medical Superintendent, Ayub Teaching Hospital, Abbottabad.
- 9 Director Finance, Ayub Teaching Hospital, Abbottabad.
- 10 District Education Officer, Elementary & Secondary Education Department Abbottabad.
- 11 District Education Officer, Elementary & Secondary Education Department Haripur.
- 12 District Accounts Officer Abbottabad.
- 13 District Accounts Officer Haripur.

Respondents

WRIT PETITION UNDER ARTICLE 199 OF THE CONSTITUTION OF ISLAMIC REPUBLIC OF PAKISTAN 1973, FOR DECLARATION THAT "KHYBER PAKHTUNKHWA CESSATION OF PAYMENT OF ARREARS ON ADVANCE INCREMENTS ON HIGHER EDUCATIONAL QUALIFICATION ACT, 2012. (KHYBER PAKHTUNKHWA ACT NO.IX of 2012) IS INEFFECTIVE UPON THE RIGHTS OF THE PETITIONERS, UNCONSTITUTIONAL, WITHOUT LAWFUL AUTHORITY, ARBITRARY, PERVERSE, DISCREMINATORY AND AGAINST THE PRINCIPAL OF NATURAL JUSTICE AND LAW AS SETTLED BY SUPREME COURT AND INEFFECTIVE UPON THE RIGHTS OF ADVANCE INCREMENTS OF THE PETITIONERS WHICH IS GRANTED BY KHYBER PAKHTUNKHWA SERVICE TRIBUNAL IN THEIR INDIVIDUAL SERVICE APPEALS WITH EFFECT FROM THEIR RELEVANT DATES OF CLAIM.

Attested



PRAYER:-

ON ACCEPTANCE OF THE INSTANT WRIT PETITION, THIS HONOURABLE COURT BE DECLARED THE SAID ACT (KHYBER PAKHTUNKHWA ACT NO.IX of 2012) AS ILLEGAL UNCONSTITUTIONAL AND RESPONDENTS BE GRACIOUSLY DIRECTED TO GRANT ADVANCE INCREMENTS TO THE PETITIONERS WITH EFFECT FROM THEIR RELEVANT DATES OF CLAIMS WITH ALL BACK BENEFITS.

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Registrar
Peshawar High Court
Abbottabad Bench

Issued Under Section 49 of Ordinance

Judgment Sheet

IN THE PESHAWAR HIGH COURT,
ABBOTTABAD BENCH.

JUDICIAL DEPARTMENT

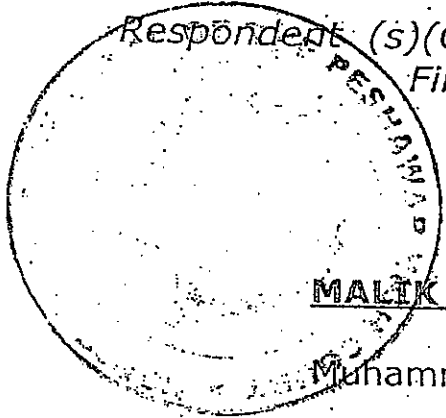
WP No.159-A of 2014

JUDGMENT

Date of hearing.....25/03/2014.....

Petitioner(s)(Muhammad Fiaz Awan and others)
Petitioner No.1 in person.....

Respondent (s)(Govt. of KPK through Secretary
Finance Department etc).....



MALIK MANZOOR HUSSAIN, J:-

Muhammad Fiaz Awan and six others

petitioners seek the constitutional

jurisdiction of this Court praying that:

*"It is, therefore, respectfully
prayed that on acceptance of
instant Writ Petition, this
Honourable Court may please
be declared the said Act
(Khyber Pakhtunkhwa Act
No.IX of 2012) as illegal,
unconstitutional and
respondents be graciously
directed to grant advance
increments of higher
qualification to the
petitioners with effect from
their relevant dates of claims*

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Examiner
Peshawar High Court
Abbottabad Bench
Authorized Under Section 10 of the

with all back benefits in the interest of natural justice."

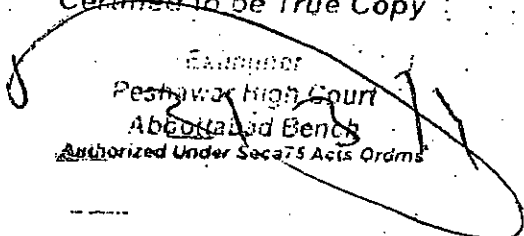
2. Admittedly, petitioners are Government employees, serving in Health and Education departments of the Government of KPK, as Junior Pharmacy Technician and Teachers Computer Operator at Abbottabad and Haripur. The petitioners have earlier filed separate appeals before the Khyber Pakhtunkhwa Service Tribunal, Peshawar, praying for grant of advance increments on acquiring higher qualification, which were accepted vide order dated 12.05.2009, 21.07.2009 and 21.12.2009. The respondents did not file appeal against the said decisions of the Tribunal. However, when the said judgments of the KPK Tribunal could not be implemented, the petitioners filed petitions for implementation of the said decisions before the Tribunal and in the meanwhile, the respondents promulgated '*Khyber Pakhtunkhwa Cessation of Payment of Arrears on Advance Increments on*

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EXAMINER
Peshawar High Court
Abbottabad Bench
Authorized Under Sec 75 Acts Ordms



Higher Education Qualification Act, 2012' (Khyber Pakhtunkhwa Act No.IX of 2012) published in the Gazette of the Khyber Pakhtunkhwa (Extraordinary) dated 15th May, 2012. Thereafter, the apex Court in Civil Petition No.360 of 2013 involving similar dispute of implementation of judgment passed by Service Tribunal has given the following observation:-

"A bare reading of the above sections from Khyber Pakhtunkhwa Act No.IX of 2012 makes it crystal clear that whatever benefit the petitioner was claiming through the judgment dated 12.5.2009, has been nullified by the legislature through clear intendment in unequivocal terms, while vires of the said Act have not been challenged before any forum."

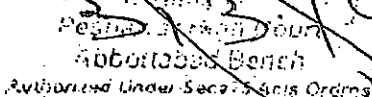
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(Emphasis provided)

The petitioners in view of the said observation, withdrawn their implementation / execution petitions pending before Service Tribunal with a view to challenge the vires of said Act through instant Constitutional petition.

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 Authorized Under Section 4(1) of the
 Public Accession Order

3. The submissions made by petitioner No.1 in person and on behalf of other petitioners have been considered and the available record thoroughly perused.

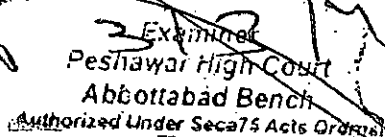
4. The main grievance of the petitioners is that they have discriminately treated by the respondents in awarding advance increments on acquiring higher qualifications and have not been considered at par with those, who have been granted such relief and they were prevented on the basis of the Act (ibid), which was against the spirit of constitution and violation of the Fundamental Rights of the petitioners guaranteed in Article 25 of the Constitution of Islamic Republic of Pakistan, 1973. This Court, in view of the clear enunciation of the Honourable Supreme Court of Pakistan in I.A. Sharwani v. Government of Pakistan (1991 SCMR 1041), and the bar contained in Article 212 of the Constitution of Islamic Republic of Pakistan, 1973 would not dilate upon the merits of the case that may prejudice the case of

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Examiner
Peshawar High Court
Abbottabad Bench
Authorized Under Sec 75 Acts Ord 1974

petitioners before the Service Tribunal, who is competent legal forum to decide the grievance of the petitioners. In the aforementioned case, the apex Court has observed that:

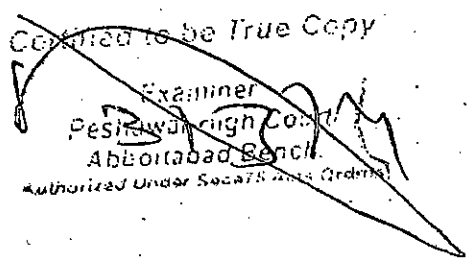
"From the above-cited cases, it is evident that it has been consistently held inter alia by this Court that a civil servant if is aggrieved by a final order, whether original or appellate, passed by a departmental authority in respect of his terms and conditions, his remedy, if any, is by way of an appeal before the Service Tribunal even where the case involves vires of a particular Service Rule or a notification or the question, whether an accused civil servant can claim the right to be represented by a counsel before the Enquiry Officer. We are inclined to hold that if a statutory rule or a notification adversely affects the terms and conditions of a civil servant, the same can be treated as an order in terms of subsection (1) of section 4 of the Act in order to file an appeal before the Service Tribunal. However, in the present case, the petitioner's case is founded solely on the ground of discriminatory treatment in violation of Article 25 of the Constitution and not because of any breach of any

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Examiner
Peshawar High Court
Abbottabad Bench
Authorized Under Section 7B of Ordinance



provision of the Civil Servants Act or any service rule. Furthermore, the question involved is of public importance as it affects all the present and future pensioners and, therefore, falls within the compass of clause (3) of Article 184 of the Constitution. However, we may clarify that a civil servant cannot by-pass the jurisdiction of the Service Tribunal by adding a ground of violation of the Fundamental rights. The Service Tribunal will have jurisdiction in case which is founded on the terms and conditions of the service even if it involves the question of violation of the Fundamental Rights."

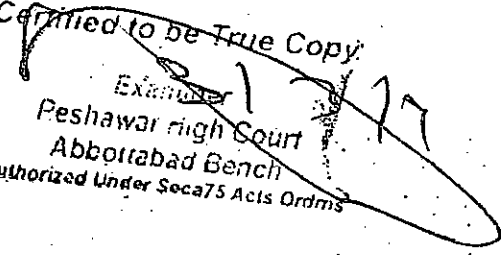
(Emphasis provided)

In view of the aforementioned principle laid down by the apex Court, the petitioners may approach to the Service Tribunal, if so advised. This Court in Constitutional Jurisdiction under Article 199 of the Constitutional of Islamic Republic of Pakistan, 1973 and the bar contained in Article 212 of the Constitution of, 1973, as the matter relates to 'terms and conditions' of the service of the petitioners is not competent to assume jurisdiction, when

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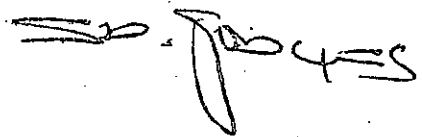

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 Examiner
 Peshawar High Court
 Abbottabad Bench
 Authorized Under Sec 75 Acts Ordms



25a

remedy by way of appeal before the Service Tribunal is available to the petitioners against the vires of the Act (ibid) or infringement of fundamental rights guaranteed in Article 25 of the Constitution.

5. Accordingly, for the reasons stated hereinabove, this petition is disposed of in the above terms.



Announced:
Dt.25.03.2014.

Attested



M.S.Awan/

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31.3.14
Examiner
Peshawar High Court
Abbottabad Bench
(Authorized Under Section 75 of the Ordinance)

28

**BEFORE THE HONORABLE KHYBER PAKHTUNKHWA SERVICE
TRIBUNAL PESHAWAR/CAMP COURT ABBOTTABAD**

✓
Appeal No. 901/14

NaveedAppellant

VERSUS


Govt: of Khyber Pakhtunkhwa & Others....Respondents

Para wise Comments on behalf of Respondents No. 1 to 4.

INDEX

Sr.No	Description	Page Nos	Annexures
1	Comments alongwith affidavit.	1 to 3	
2	Copy of judgment.	4 to 6	"A"

Dated: /03/15


District Education Officer (M)
Abbottabad.
(Respondent No. 4)

0-5
22.04.15

37

**BEFORE THE HONORABLE KHYBER PAKHTUNKHWA SERVICE
TRIBUNAL PESHAWAR/CAMP COURT ABBOTTABAD**

Appeal No. 901/14

Naveed VERSUS Govt: of Khyber Pakhtunkhwa & Others

Para wise Comments on behalf of Respondents No. 1 to 4.

Respectfully Sheweth:-

Comments on behalf of respondents are submitted as under:-

PRELIMINARY OBJECTION:-

1. That the appellant has no cause of action to file the instant appeal.
2. That the appeal of the appellant is time barred. Hence liable to be dismissed.
3. That the instant appeal is not maintainable as there is no final order.
4. That the appellant has filed the present appeal to pressurize the respondents.
5. That the appellant has not come to this Honorable tribunal with clean hands.
6. That the appellant is estopped to sue due to his own conduct.
7. That the instant appeal is not maintainable due to non-joinder and mis-joinder of necessary parties.
8. That this Honorable Tribunal hasn't got jurisdiction to entertain the present petition/ appeal as this Honorable Tribunal is not a Constitutional Court, hence this appeal is liable to be dismissed.
9. That the vires of Act were challenged in the appeal, the Act was promulgated in the best public interest & the advance increments were not settled to be paid at the time of joining of service.
10. That the legislator has authority to legislate as they have mandate to do so by a recognize process and services law do not provides the provision of judicial review, hence appeal is not tenable.
11. That the appellant is at liberty to join service after due process of law equivalent to his qualification & the Government is not bound to pay advance increment.

Factual objections:-

1. In reply to Para No.1 of the appeal it is submitted that judgment of honorable tribunal has lost its efficacy for the purpose of implementation by clear intendment through sections 1 & 2 of Khyber Pakhtunkhwa cessation of payment arrears on advance increments on higher education qualification Act No. IX of 2012.
2. That para No.2 of the appeal is incorrect as composed hence, denied. The Act was passed by the Provincial Assembly and assented by the Governor KPK who isn't party in the present appeal. The answering respondents are bound to obey the will of the legislature & cannot deviate from any provision of enactment.
3. In reply to para No. 3, it is submitted that due to the promulgation of Khyber Pakhtunkhwa cessation of payment arrears on advance increments on higher

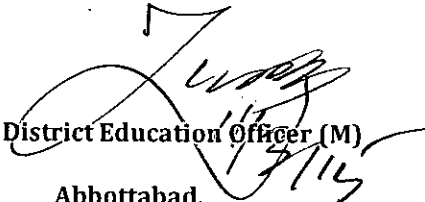
education qualification Act No. IX of 2012, all the execution/implementations petitions were dismissed by this honorable tribunal. It is further submitted that Mr. Muhammad Haroon had filed Civil Petition No 360 of 2013' before the August Supreme Court of Pakistan against the order dated 30/01/2013, passed by this Honorable tribunal and the same was dismissed on 29/08/2013. Copy of the said judgment is annexed as Annexure "A".

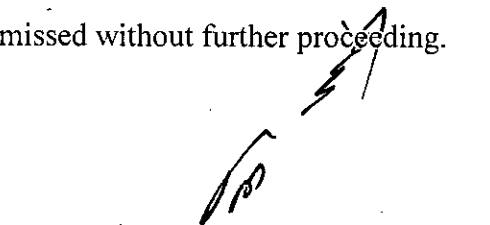
4. That para No. 4 of the appeal is subject to proof. Further added that it is the rule of the administration of justice that things should be done in particular manner & not by any other means, any deviation from the same amounts illegality.
5. That the respondents seek leave of this Honorable tribunal to agitate additional grounds at the time of arguments.

Grounds:

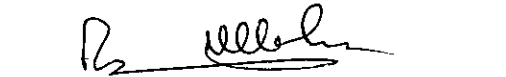
- a. That ground a. is incorrect hence, denied. Respondents have never snatched any legal rights of the appellant.
- b. That complete reply has already been given in above para No. 1 of the factual objections.
- c. That ground c. is incorrect hence, denied.
- d. That ground d. does not relate to answering respondents.
- e. That ground e. does not relate to answering respondents.
- f. That ground f. does not relate to answering respondents.
- g. That ground g. does not relate to answering respondents.
- h. That complete reply has already been given in above para No. 3 of the factual objections.
- i. That all grounds mentioned in the appeal are baseless and having no legal force, hence vehemently denied.

Under the circumstances, it is humbly prayed that the instant appeal is meritless against the law and facts, hence liable to be dismissed without further proceeding.


District Education Officer (M)
Abbottabad.
(Respondent No. 4)


Director (E&SED) Khyber Pakhtunkhwa
Peshawar.
(Respondent No. 3)

Secretary ((E&SED) Khyber Pakhtunkhwa
Peshawar. (Respondent No. 2)


Finance
Secretary (E&SED) Khyber Pakhtunkhwa
Peshawar. (Respondent No.1)

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Found Correct & Vettled
11/03/13

**BEFORE THE HONORABLE KHYBER PAKHTUNKHWA SERVICE
TRIBUNAL PESHAWAR CAMP COURT ABBOTTABAD.**

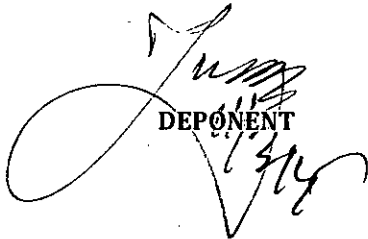
Appeal No. 901/124

Naveed VERSUS Govt: of Khyber Pakhtunkhwa & Others

Para wise Comments on behalf of Respondents No. 2 to 4.

AFFIDAVIT

I, Mr.Zia-ud-Din, District Education Officer (M) Abbottabad, do hereby affirm and declare that contents of forgoing comments are correct and true according to the best of my knowledge and belief and nothing has been suppressed from this Honorable Court.


DEPONENT

Annexure "A"

In the Supreme Court of Pakistan
(Appellate Jurisdiction)

Present:
Mr. Justice Anwar Zaheer Jamali
Mr. Justice Khilji Arif Hussain
Mr. Justice Ijaz Ahmed Chaudhry

Civil Petition No.360 of 2013.
(on appeal from judgment of KPK Service Tribunal, Peshawar
dated 30.1.2013, passed in Implementation Petition No.49/2012)

Muhammad Haroon ...Petitioner

Versus
Executive District Officer, Elementary & Secondary Education Dept. Haripur, etc.
... Respondents

Petitioner: In person.

For official respondents: Mr. Naveed Akhtar Khan, Addl.A.G. KPK.
Mr. Saeed-ur-Rehman, ADO (Edu.), Haripur.

Date of hearing: 29.8.2013

JUDGMENT

Anwar Zaheer Jamali, J.- By this petition under Article 212(3) of the Constitution of Islamic Republic of Pakistan, 1973, leave to appeal is sought by petitioner Muhammad Haroon against the order dated 30.1.2013, passed by the Khyber Pakhtunkhwa Service Tribunal, Peshawar (in short "the Tribunal"), whereby his implementation application No.49/2012, in service Appeal No.506/2009, was dismissed in view of sections-1 & 2 of Khyber Pakhtunkhwa Cessation of Payment of Arrears on Advance Increments on Higher Educational Qualification Act, 2012 (Khyber Pakhtunkhwa Act No.IX of 2012).

2. We have heard the arguments of petitioner. He has placed reliance on the earlier judgment of the Tribunal dated 12.5.2009, whereby he was held entitled for the benefit of advance increments on the basis of higher qualification. For this purpose, he has also placed reliance upon the judgment of this Court, reported as PIA Corporation v. Aziz-ur-Rehman Chaudhry (2011 SCMR 219).

3. As against it, learned Additional Advocate General KPK, Mr. Naveed Akhtar Khan, strongly contends that benefit of earlier judgment dated 12.5.2009,

ATTESTED

Superintendent
Supreme Court Pakistan
ISLAMABAD

through implementation application No.49/2012 filed before the Tribunal, cannot be allowed to the petitioner in view of the clear language of section-1 of Khyber Pakhtunkhwa Act No.IX of 2012, which has made its section-2 applicable with retrospective effect from 01.12.2001 and, thus, made the said judgment unimplementable.

4. We have considered the above noted submissions made before us by the petitioner and the learned Addl. A.G KPK and seen that indeed as per judgment of the Tribunal dated 12.5.2009, the petitioner was held entitled for the benefit of advance increments on the basis of his higher qualification, but such judgment has lost its efficacy for the purpose of implementation by clear intendment through sections 1 and 2 of Khyber Pakhtunkhwa Act No.IX of 2012, which read as under:-

"1. Short title, application and commencement. - (1) This Act may be called the Khybder Pakhtunkhwa Cessation of Payment of Arrears on Advance Increments on Higher Educational Qualification Act, 2012.

(2) It shall apply to all the employees of the Provincial Government, who were entitled to received advance increments on higher educational qualification.

(3) It shall come into force at once and shall be deemed to have taken effect on and from 1st day of December, 2001.

2. Cessation of payment of arrears on advance increments on higher educational qualification. - (1) Notwithstanding anything contained in any decision, judgment and order of any Tribunal or Court including High Court or Supreme Court of Pakistan, for the purpose of any claim for payment of arrears on account of advance increments on higher educational qualification sanctioned in pursuance of any order, letter, office memoranda, notification, instructions and other instruments issued before 1.12.2001, such orders, letters, office memoranda, notifications, instructions and other instruments shall be deemed to be non-existent, ceased or revoked and no further claim whatsoever on the basis of these instruments shall be entertained and all cases in respect of such claims pending in any Court or Tribunal including High Court and Supreme Court of Pakistan shall stand abated.

(2) Any order made, instruction issued, decision, judgment or order of any Court or Tribunal including a High Court or the Supreme Court, implemented immediately before the commencement of this Act, shall be deemed to have been validly made, issued and implemented by the date of commencement of this Act, and any amount already paid there-under on account of advance increments or arrears thereof shall be deemed to have been validly paid and shall not be recoverable from the recipient Government employees."

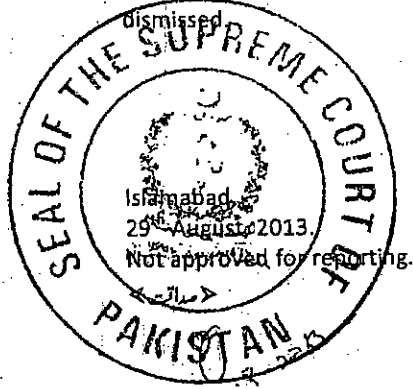
ATTESTED

Superintendent
Supreme Court
ISLAMABAD

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5. A bare reading of the above sections from Khyber Pakhtunkhwa Act No.IX of 2012 makes it crystal clear that whatever benefit the petitioner was claiming through the judgment dated 12.5.2009, has been nullified by the legislature through clear intendment in unequivocal terms, while vires of the said Act have not been challenged before any forum.

6. This being the position, leave to appeal is refused and this petition is



Sd/- Anwar Zaheer Jamali, J
Sd/- Khilji Arif Hussain, J
Sd/- Ijaz Ahmed Chaudhry, J
Certified to be True Copy

[Signature]
4/9/13
Superintendent
Supreme Court of Pakistan
ISLAMABAD

10565/13

CR No:		Civil/Criminal
Date of Presentation:	28.8.13	
No. of W.L. ds:	3	700
No. of Fulls:		
Requisition Fee Rs:	5.00	
Copy Fee Rs:	5.00	
Court Fee Rs:	10.00	
Date of Completion:	4/9/13	
Date of receipt:	5/9/13	
Received by:	<i>[Signature]</i>	

①

**BEFORE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR.**

ORIGINAL

Service Appeal No: 901 of 2014

Naveed S/O Abdur Rehman, Senior P.E.T teacher, Government High school Banda Pir Khan Abbottabad, R/O Mohallah Musa Zai, Village Mirpur Kalan Tehsil & District Abbottabad.

Appellant

Versus

Government of Khyber Pakhtunkhwa through Secretary Finance Department Peshawar and 05 Other.

Respondents

**REJOINDER (REPLICATION) ON THE COMMENTS
(REPLY) OF THE RESPONDENTS NO 1 TO 4.**

Respectfully Sheweth,

Appellant submits the following rejoinder.

ON PRELIMINARY OBJECTIONS

- 1-3) That appellant has good cause of action to file instant appeal before this Honourable Court, it is not time bared but filed well in time, there is no limitation against Pay matters, and cause of action arises every month when the appellant receives his pay slip, it is legally and factually maintainable, and according to law, the impugned Act would itself treated as final order, Moreover the instant service appeal is filed, in pursuance of the Judgment dated 25/03/2014 (Annexure D) passed by Peshawar High Court, which is now final, as respondents has not filed any review petition before High Court, nor filed any Petition/appeal before Supreme Court of Pakistan.
- 4-6) That appellant filed his appeal according to law, for his valuable rights, which was snatched illegally by the respondents and it is fundamental & constitutional right of appellant to file instant appeal, thus plea of pressurizing, is incorrect and denied,

appellant did not conceal any fact from this Honourable Tribunal and came to this Honourable Tribunal with clean hands and appellant has got good locus standi to challenge the impugned Act, and there is no estoppel in this regard.

7-8) That there is no question of misjoinder and nonjoinder of necessary parties, all the necessary parties are already included in the panel of respondents and no one is left, respondents in para-8 themselves admitted that, this Honourable Tribunal is not a Constitutional Court, Government of KPK through Secretaries (Departments) have already been arrayed as party, the jurisdictional point is decided and well settled by Supreme Court and specifically by High Court on 25/03/2014 which is worth perusal, In this Tribunal, the vires of impugned Act is challenged through instant appeal, which is filed on the basis of law, decided by Peshawar High Court in Writ Petition on 25/03/2014, which attained its finality, and binding upon respondents.

9-11) That the right of advance increments was given/decided by this Honourable Tribunal vide its judgment dated 12/05/2009 and respondents were arrayed as party and they appeared, filed comments, and fully contested the same, and legally no law (Act) was promulgated against the fundamental and constitutional rights of the appellant, no one has any such power to make such law which is against the spirit & Articles of the Constitution of Islamic Republic of Pakistan.

ON FACTUAL OBJECTIONS

1) That respondents in reply of Para no 1 of the service appeal,

“the judgment of Honourable Tribunal -----
----- Act No IX of 2012”

have reproduced the para No 04 of the Judgment dated 29/08/2013 passed by Supreme Court of Pakistan in CP No 360

of 2013, but deliberately concealed the real factual position of the case, as a matter of facts, under the next Para no 05 of the same judgment of Supreme Court of Pakistan, in pursuance of observation/guidance of Apex court, the Writ Petition was decided by High Court on 25/03/2014 and instant service appeal is filed under the same law.

- 2) That under the law provincial assembly has no power to change the nature of constitutional rights/Article nor pass any Act which is against to any Article of Constitution and the impugned Act cannot be passed in the presence of Article 25 of the Constitution, and such law/matters was decided by the Learned larger bench of Supreme Court in (1991 SCMR 1041) (relevant at para 33 page 1092), Further more all necessary parties are arrayed in service appeal and same appeal is directly filed under the specific law as decided by High Court in Writ Petition on 25/03/2014, which is binding upon respondents and attained its finality and never challenged by respondents before proper forum on the question/point of necessary party.
- 3) That respondents stated the factual position of the case before the Judgment dated 25/03/2014 passed by Peshawar High Court, but they did not point out any law, or gave any thing that how appellant can be restricted from his legal right on the subject? , while it was decided on 25/03/2014 and High Court held **that remedy by way of service appeal before the Service Tribunal is available to the aggrieved person (appellant) against the impugned Act**, respondents side tracked the real issue, because they have no defense in the presence of law, settled by Supreme Court and High Court.
- 4) That respondents did not submit their reply to the point and tried to hush up the matter, factually case of appellant is quite clear and filed according to law decided by Supreme Court of Pakistan and the Peshawar High Court Abbottabad Bench, and the

Jurisdiction point of law on the subject subjudice before this Honourable Tribunal, is finally settled by larger Bench of Supreme Court of Pakistan, in her reported Judgment (1991 SCMR 1041) (relevant at para 33 page 1092), after the relevant law, respondent have no way to deny the rights of the appellant in any way.

- 5) That Appellant seeks the leave of this Honourable Tribunal to request additional grounds according to situation at the time of arguments.

ON GROUNDS

a-c) That the reply of the respondents are totally incorrect and ambiguous, also not relevant to the points raised in the appeal, appellant reiterated the position taken in Para a-c of his appeal.

d-h) That the case of appellant is very much clear and it is directly based on Supreme Court Judgment and comments of the respondents are totally incorrect, also not relevant to the points raised in appeal, and it is admitted facts that reply of respondents is totally incorrect and claim of appellant cannot be denied by the respondents in the presence of Supreme Court Judgment as referred above, thus the position taken in Para (d-h) in appeal by appellant is reiterated.

It is humbly prayed that this appeal may kindly be accepted along with all back benefits.

Dated 22/07/2015



(Naveed)
Appellant in person

BEFORE THE KHYBER PAKHTUNKHWA,
SERVICE TRIBUNAL, PESHAWAR

M
21/3/18

Service Appeal No.901-A/2014

Naveed son of Abdur Rehman, Senior P.E.T Teacher, Govt. Higher Secondary School, Bandi Dhundan, Abbottabad, resident of Mohallah Musazai, Village Mirpur Kalan, Tehsil & District, Abbottabad.

...APPELLANT

VERSUS

Govt. of Khyber Pakhtunkhwa, through Secretary, Finance Department, Peshawar & others.

...RESPONDENTS

SERVICE APPEAL

APPLICATION FOR WITHDRAWAL OF INSTANT SERVICE APPEAL WITH PERMISSION TO BRING FRESH IMPLEMENTATION PETITION FOR IMPLEMENTATION OF JUDGMENT DATED 12/05/2009 PASSED BY THIS HONOURABLE TRIBUNAL (CAMP COURT, ABBOTTABAD).

Respectfully Sheweth;-

1. That appellant's service appeal relating to advance increments on his higher qualification was accepted by this Honourable Service Tribunal on 12/05/2009 at Camp Court, Abbottabad, during its implementation petition, an Act "Khyber Pakhtunkhwa Cessation of

Payment of Arrears on Advance Increments on Higher Education Qualification Act" (KPK Act NO.IX of 2012 dated 15/05/2012 was promulgated/ published by the respondents.

2. That appellant's previous execution petition was abated and he challenged the vires of impugned Act through instant service appeal, during its pendency the involved matter in the titled service appeal has been solved and settled through writ petition, as Peshawar High Court has finally declared the said Act as null and void and accepted the rights of appellant.
3. That in the prevailing situation, there is no need to continue the matters in the titled service appeal and appellant wants to withdraw it with permission to file fresh execution petition under the law. In case, the execution petition is not entertained by this Tribunal, the appellant may be allowed to file fresh service appeal on the same subject.

It is, therefore, humbly prayed that this application for withdrawal of service appeal with permission to bring fresh execution petition may graciously be accepted in the interest of justice.



...APPELLANT

Through

Dated: 21-03-2018


(Muhammad Arshad Khan Tanoli)
Advocate High Court, Abbottabad