

Restoration Application Nos. 754/2023, 755/2023, 756/2023, 757/2023, 758/2023, 759/2023, and 760/2023 in and along with Execution Petition Nos: 141/2018, 142/2018, 143/2018, 145/2018, 146/2018, 148/2018 and 149/2018 as well as Execution Petition Nos.: 142/2018, 143/2018, 145/2018, 146/2018, 148/2018, 149/2018, 83/2022, 84/2022, 102/2022, 103/2022, 104/2022, 105/2022, 106/2022, 107/2022, 108/2022, 126/2022, 128/2022, 151/2022, 317/2022, 574/2022, 620/2022, 710/2022, 736/2022, 11/2023, 39/2023, 155/2023, 630/2023, 740/2023, 16/2024 and 280/2024 as well as Execution Petition No.141/2018 titled "Qazi Masood ur Rehman Vs. Education Department", decided on 27.05.2024 by Single Bench comprising of Mr. Kalim Arshad Khan, Chairman. Khyber Pakhtunkhwa Service Tribunal, at Camp Court, Abbottabad.

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR
AT CAMP COURT, ABBOTTABAD

BEFORE: **KALIM ARSHAD KHAN.....CHAIRMAN**

Restoration Application Nos: 754/2023, 755/2023, 756/2023, 757/2023, 758/2023, 759/2023, and 760/2023

In

Execution Petition Nos: 141/2018, 142/2018, 143/2018, 145/2018, 146/2018, 148/2018 and 149/2018

AND

Execution Petition Nos: 141/2018, 142/2018, 143/2018, 145/2018, 146/2018, 148/2018, 149/201, 83/2022, 84/2022, 102/2022, 103/2022, 104/2022, 105/2022, 106/2022, 107/2022, 108/2022, 126/2022, 128/2022, 151/2022, 317/2022, 574/2022, 620/2022, 710/2022, 736/2022, 11/2023, 39/2023, 155/2023, 630/2023, 740/2023, 16/2024 and 280/2024

1. **Qazi Masood Ur Rehman** (in Execution Petition No.141/2018)
2. **Muhammad Haroon** (in Execution Petition No.142/2018)
3. **Navced** (in Execution Petition No.143/2018)
4. **Rashid Latif** (in Execution Petition No.145/2018)
5. **Shahid Iqbal** (in Execution Petition No.146/2018)
6. **Arshad Khan** (in Execution Petition No.148/2018)
7. **Muhammad Iqbal** (in Execution Petition No.149/2018)
8. **Saif Ur Rehman** (in Execution Petition No.83/2022)
9. **Syed Husnain Shah** (in Execution Petition No.84/2022)
10. **Jehanzeb Khan Awan** (in Execution Petition No.102/2022)
11. **Abdul Hameed** (in Execution Petition No.103/2022)
12. **Sajjad Ahmad** (in Execution Petition No.104/2022)
13. **Zahid Ur Rehman** (in Execution Petition No.105/2022)
14. **Shakil Ahmad** (in Execution Petition No.106/2022)
15. **Ahmad Farooq Khan** (in Execution Petition No.107/2022)
16. **Muhammad Saleem Abbasi** (in Execution Petition No.108/2022)
17. **Muhammad Kabria Khan** (in Execution Petition No.126/2022)
18. **Muhammad Khurshid** (in Execution Petition No.128/2022)
19. **Sher Afzal Khan & others** (in Execution Petition No.151/2022)
20. **Rab Nawaz & others** (in Execution Petition No.317/2022)
21. **Faheem Anwar & others** (in Execution Petition No.574/2022)
22. **Niaz Ahmad & others** (in Execution Petition No.620/2022)
23. **Altaf Hussain & others** (in Execution Petition No.710/2022)
24. **Gul Faraz & others** (in Execution Petition No.736/2022)
25. **Amanat Khan & others** (in Execution Petition No.11/2023)
26. **Shafiq Ur Rehman** (in Execution Petition No.39/2023)
27. **Saeed Rabbani & others** (in Execution Petition No.155/2023)
28. **Sardar Arshad Ali & others** (in Execution Petition No.630/2023)
29. **Tasleem Kousar & others** (in Execution Petition No.740/2023)

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30.Naheem Ur Rehman & other (in Execution Petition No.16/2024)

31.Kousar Shaheen & other (in Execution Petition No.280/2024)

Versus

Government of Khyber Pakhtunkhwa and others (Respondents in all petitions)

Date of Hearing.....27.05.2024

Date of Decision.....27.05.2024

Petitioners in Person In Execution Petition Nos: 141/2018, 142/2018, 143/2018, 145/2018, 148/2018, 149/2018, 83/2022, 84/2022, 102/2022, 103/2022, 104/2022, 105/2022, 106/2022, 107/2022, 108/2022, 126/2022, 128/2022, 151/2022, 317/2022, 574/2022, 620/2022, 710/2022, 736/2022, 155/2023, 630/2023, 740/2023, 754/2023, 39/2023, 16/2024, 280/2024

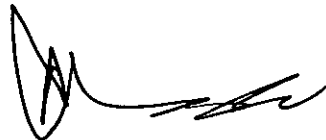
Mr. Abdul Rauf Chohan, Advocate..... For Petitioner in
Execution Petition No.11/2023

Mr. Shoaib Ali, Assistant Advocate General.....For the respondents

**RESTORATION OF EXECUTION PETITIONS AND
EXECUTION PETITIONS FOR IMPLEMENTATION OF
JUDGMENT DATED 12.05.2009 PASSED BY THE KHYBER
PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR
(CAMP COURT, ABBOTTABAD)**

CONSOLIDATED JUDGMENT

KALIM ARSHAD KHAN CHAIRMAN: Through this single judgment, Restoration Application Nos:754/2023, 755/2023, 756/2023, 757/2023, 758/2023, 759/2023, and 760/2023 are accepted and the Execution Petition Nos:141/2018, 142/2018, 143/2018, 145/2018, 146/2018, 148/2018 and 149/2018 are allowed and the above execution petitions are restored for



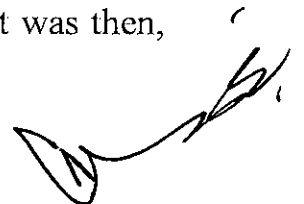
Restoration Application Nos. 754/2023, 755/2023, 756/2023, 757/2023, 758/2023, 759/2023, and 760/2023 in and along with Execution Petition Nos: 141/2018, 142/2018, 143/2018, 145/2018, 146/2018, 148/2018 and 149/2018 as well as Execution Petition Nos.: 142/2018, 143/2018, 145/2018, 146/2018, 148/2018, 149/2018, 83/2022, 84/2022, 102/2022, 103/2022, 104/2022, 105/2022, 106/2022, 107/2022, 108/2022, 126/2022, 128/2022, 151/2022, 317/2022, 574/2022, 620/2022, 710/2022, 736/2022, 11/2023, 39/2023, 155/2023, 630/2023, 740/2023, 16/2024 and 280/2024 as well as Execution Petition No.141/2018 titled "Qazi Masood ur Rehman Vs. Education Department", decided on 27.05.2024 by Single Bench comprising of Mr. Kalim Arshad Khan, Chairman, Khyber Pakhtunkhwa Service Tribunal, at Camp Court, Abbottabad.

decision of these and all other pending execution petitions, all filed for implementation of judgment dated 12.05.2009.

2. The above mentioned restored execution petitions as well as the Execution Petition Nos:83/2022, 84/2022, 102/2022, 103/2022, 104/2022, 105/2022, 106/2022, 107/2022, 108/2022, 126/2022, 128/2022, 151/2022, 317/2022, 574/2022, 620/2022, 710/2022, 736/2022, 11/2023, 39/2023, 155/2023, 630/2023, 740/2023, 16/2024 and 280/2024 all are also decided through this judgment as all are for implementation of the same consolidated judgment of this Tribunal passed on 12.05.2009 in Service Appeal No.1276/2007 titled "Muhammad Akram Vs. District Coordination Officer, Abbottabad" and other appeals.

3. Through these petitions, the petitioners are seeking implementation of the judgment dated 12.05.2009 passed by this Tribunal in Service Appeal No.1276/2007. Petitioners of the Execution Petitions No.103/2022, 104/2022, 106/2022, 107/2022, 108/2022, 126/2022, 128/2022 and 151/2022 are appellants of the appeals decided vide the judgment in question while the remaining petitioners were not appellants but seek extension of the benefits of the said judgment saying that to be a judgment in rem.

4. At the time of passage of the judgment (12.05.2009), the Tribunal had no power to execute its judgment. It was then,



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some of the petitioners, Muncceb Ur Rehman & others had filed Writ Petition No.22 of 2010 in the Peshawar High Court, which, according to the petitioners, was sent to the Tribunal for implementation and here, it was given No.84 of 2012. Execution Petition No.84 of 2012 was decided by the Tribunal on 18.11.2013 in the following manner:

"The respondents have brought to the notice of the Tribunal that the Provincial Government has promulgated the Khyber Pakhtunkhwa Cessation of Payment of Arrears on Advance Increments on Higher Educational Qualification Act, 2012 (Khyber Pakhtunkhwa Act No.IX of 2012), thereby revoking any order, letter, office memoranda, notification, instructions and other instruments issued before 01.12.2001, whereby, payment of advance increments were allowed on acquisition of higher educational qualification. At the same time, in section 2 of Act No.IX of 2012 it has been clearly provided that all cases in respect of such claims pending in any Court or Tribunal including High Court and Supreme Court of Pakistan shall stand abated.

In pursuance of the said Act, this Tribunal vide judgment/order dated 30.01.2013, rejected/filed implementation petition No.49 of 2012 in Service Appeal No.506 of 2009 titled "Muhammad Haroon vs EDO E&SE, Haripur and others". The petitioner in the above referred petition lodged appeal in the august Supreme Court of Pakistan, which too met the same fate and leave to appeal was refused and petition dismissed vide judgment of the august Supreme Court of Pakistan dated 29.08.2013.

In view of the aforementioned clear provision of law and judgments/orders of this Tribunal as well as august Supreme Court of Pakistan in support thereof, this petition for implementation stands abated and is accordingly filed at this stage. File be consigned to the record."

5. One of the appellants/petitioners namely Muhammad Haroon, who had filed Appeal No.267/2008 and decided vide



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the same/above judgment dated 12.05.2009, had separately filed Implementation Application No.49/2012 which was also dismissed vide order dated 30.01.2013 in view of Sections 1 & 2 of the Khyber Pakhtunkhwa Cessation of Payment of Arrears on Advance Increments on Higher Educational Qualification Act, 2012. He then challenged the above order before the Supreme Court of Pakistan in Civil Petition No.360/2013, which was dismissed by the Supreme Court vide judgment dated 29.08.2013 in the following manner:

"4. We have considered the above noted admissions made before us by the petitioner and the learned Addl. A.G KPK and seen that indeed as per judgment of the Tribunal dated 12.05.2009, 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 thekp Act No.IX of 2012 which read as under:-

"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 receive 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 01.12.2001, 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.

5. A bare reading of the above sections from the 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."

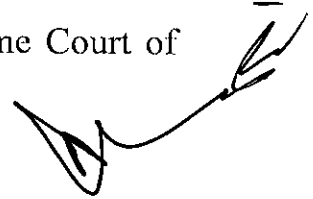
6. The Supreme Court of Pakistan has already held in the above judgment that the judgment (12.05.2009) of the Tribunal, passed in the said appeal, had lost efficacy for the purpose of implementation by clear intendment of provisions of the above referred Act, also terming the judgment to be un-implementable. The Hon'ble Supreme Court of Pakistan in Para-5 of the judgment has also held that the provisions of the above Act were



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crystal clear that, whatever benefit the petitioner was claiming through the judgment dated 12.05.2009, had been nullified by the legislature through clear intendment in unequivocal terms, while vires of the said Act have not been challenged before any forum.

7. Learned counsel for the petitioners referred to two different judgments of the Peshawar High Court. One from the Principal Seat and the other from the Abbottabad Bench and submitted that vide judgment passed by the Peshawar High Court at the Principal Seat, the above Act was set aside. He, however, very fairly informed the Tribunal that the said judgment of the Peshawar High Court was set aside by the Supreme Court of Pakistan in Civil Appeal No.2139 of 2019 vide order dated 02.06.2021, remanding the matter to the Peshawar High Court for re-deciding the writ petitions after issuing notice to the Advocate General Khyber Pakhtunkhwa. It was then the Peshawar High Court decided the writ petition vide judgment dated 14.06.2023 without commenting upon the vires of the Act. Nothing more has been said about the Act by the Peshawar High Court in its judgment dated 14.06.2023. The Act is, therefore, still in the field and earlier execution applications of some of the petitioners, were dismissed on promulgation of the Act, which order was maintained by the Supreme Court of



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Pakistan as discussed above. Therefore, the instant petitions have no force and are dismissed. (Copies of this order be placed in all connected petitions). Consign.

8. *Pronounced in open Court at Abbottabad and given under my hand and seal of the Tribunal on this 27th day of May, 2024.*



KALIM ARSHAD KHAN
Chairman
Camp Court, Abbottabad

Mutazem Shah



Restoration Application No.758/2022

In Execution Petition No.141/2018

ORDER

27th May. 2024 **Kalim Arshad Khan, Chairman:** Petitioner in person present.

Mr. Shoaib Ali, Assistant Advocate General alongwith Mr. Naseeb Khan, Section Officer and Mr. Sohail Ahmad Zeb, Litigation Officer for the respondents present.

2. Vide consolidated judgment of today, instant petition is accepted and the main execution petition stands restored, however, the execution is dismissed with costs vide the same judgment. Consign.

3. *Pronounced in open Court at Abbottabad and given under my hand and seal of the Tribunal on this 27th day of May, 2024.*



(Kalim Arshad Khan)

Chairman
Camp Court, Abbottabad

Mutazem Shah