

ORDER

28.02/2024

1. Learned counsel for the appellant present. Mr. Muhammad Jan, District Attorney for the respondents present. Arguments heard and record perused.
2. Vide our detailed judgment of today placed on file of service appeal No. 7264/2021 titled "Masood-Ur-Rehman versus, Government of Khyber Pakhtunkhwa, through Secretary Social Welfare, Special Education & Women Empowerment Department Peshawar & others, the instant service appeal is also dismissed. Costs shall follow the event. Consign.
3. *Pronounced in open Court at Peshawar and given under our hands and the seal of the Tribunal on this 28th day of February, 2024.*



(RASHIDA BANO)
Member (J)



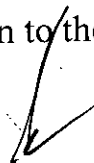
(MUHAMMAD AKBAR HAN)
Member (E)

Kamran

SCANNED
KPST
Peshawar

26.02.2024 1. Learned counsel for the appellant present. Mr. Muhammad Jan, District Attorney for the respondents present.

2. Arguments heard. To come up for order on 28.02.2024 before D.B. P.P given to the parties.



(Muhammad Akbar Khan)
Member (E)




(Rashida Bano)
Member (J)

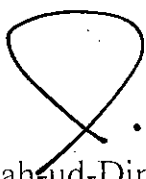
kaleemullah

13.11.2023

Learned counsel for the appellant present. Mr. Muhammad Jan, District Attorney for the respondents present.

In view of order sheet dated 12.10.2023, the appeal in hand be fixed before a special D.B comprising of one of us (Salah-ud-Din) Member (Judicial) as well as worthy Chairman. Learned counsel for the parties shall appear before the concerned D.B today i.e 13.11.2023.


(Fareeha Paul)
Member (E)



(Salah-ud-Din)
Member (J)

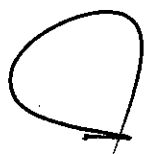
Naeem Amin

13th Nov: 2023

1. Learned counsel for the appellant and Mr. Habib Anwar, Additional Advocate General for the respondents present.
2. Former made a request for adjournment in order to prepare the brief. Adjourned. To come up for arguments on 26.02.2024 before D.B.

P.P given to the parties.


(Salah-Ud-Din)
Member (J)


(Kalim Arshad Khan)
Chairman

[SCANNED]
KPST
Peshawar

Mutazem Shah

4th Oct. 2023

1. Learned counsel for the appellant and Mr. Asif Masood Ali Shah learned Deputy District Attorney for the respondents present.
2. In view of the order sheet dated 30.05.2023, the matter was to be placed before the bench comprising the undersigned (Kalim Arshad Khan, Chairman) and Mr. Salah Ud Din (Member Judicial). The learned counsel for appellant requests that as the matter was heard by the concerned Bench, therefore, the same might be paced before the Special D.B, so that the matter could be decided. The office is directed to constitute Special D.B of the Chairman and Mr. Salah-Ud-Din, learned Member (Judicial) for hearing of this appeal on 12.10.2023 . P.P given to the parties.

SCANNED
KPST
Peshawar

Mutazem Shah

(Muhammad Akbar Khan)
Member (E)

(Kalim Arshad Khan)
Chairman

12.10.2023

1. Learned counsel for the appellant present. Mr. Muhammad Jan learned District Attorney. for the respondents present.
2. The appellant in hand was partially heard by a bench comprising of Worthy Chairman as well as Mr. Salah-Ud-Din learned Member (Judicial) therefore, the same may be fixed before the said. Adjourned. To come up for arguments before the said bench on 13.11.2023 before D.B. P.P given to the parties.

SCANNED
KPST
Peshawar

(Muhammad Akbar Khan)
Member (E)

(Rashida Bano)
Member (J)

Kaleem Ullah


30.05.2023

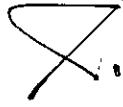
Learned counsel for the appellant present. Mr. Asad Ali Khan, Assistant Advocate General for the respondents present.

The appeal in hand was partially heard by a bench comprising of one of us (Salah-ud-Din) Member (Judicial) as well as Worthy Chairman, therefore, the same may be fixed before the said bench. Adjourned. To come up for arguments on 15.06.2023

before the concerned D.B. Parcha Peshi given to the parties.

SCANNED
KPST
Peshawar


(Fareeha Paul)
Member (E)


(Salah-ud-Din)
Member (J)


Naeem Amin

15th June, 2023

1. Clerk of learned counsel for the appellant present. Mr. Muhammad Jan, District Attorney for the respondents present.

2. Lawyers are on strike, therefore, case is adjourned. To come up for arguments on 04.10.2023 before the D.B. P.P given to the parties.

SCANNED
KPST
Peshawar


(Salah Ud Din)
Member (J)

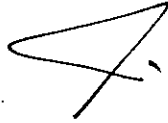

(Kalim Arshad Khan)
Chairman

*Mutazem Shah *

06th Mar, 2023

Learned counsel for appellant present: Mr. Riaz Khan
Paindakhel, Assistant Advocate General for the respondents
present.

Partial arguments heard. To come up for remaining
arguments on 14.03.2023 before D.B. PP given to the parties.



(Salah Ud Din)
Member (J)



(Kalim Arshad Khan)
Chairman

14.03.2023

Learned counsel for the appellant present. Mr. Fazal
Shah Mohmand, Additional Advocate General for
respondents present.

Due to paucity of time arguments not heard. To come
up for remaining arguments on 30.05.2023 before D.B. P.P
given to the parties.



(Salah-Ud-Din)
Member (J)



(Kalim Arshad Khan)
Chairman

SCANNED
K.P.B.T
Peshawar

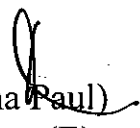
SCANNED
K.P.B.T
Peshawar


20.12.2022

Appellant alongwith counsel present. Muhammad Adeel Butt learned Additional Advocate General for respondents present.

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Peshawar

Written reply on behalf of respondents No. 1 to 3 & 7 have already been submitted, while respondents No. 4 to 6 & 8 were given last chance to submit written reply vide order sheet dated 28.04.2022 failing which their right for submission of written reply shall be deemed as struck off. Despite directions written reply was not submitted, therefore, right of submission of written reply of respondents No. 4 to 6 & 8 stands struck off. To come up for arguments on 06.02.2023 before D.B.



(Fareeha Paul)
Member (E)


(Rozina Rehman)
Member (J)

06.02.2023

Learned counsel for the appellant present. Mr. Azam Uzair Khan, Addl. AG for the respondents present.

Learned counsel for the appellant requested for adjournment in order to further prepare the brief. Granted. To come up for arguments on 06.03.2023 before the D.B.


(FAREEHA PAUL)
Member (E)


(ROZINA REHMAN)
Member (J)

SCANNED
KPST
Peshawar

19.07.2022

Proper Bench is not available, therefore, case is adjourned to 20.10.2022 for the same as before.



Reader

20th Oct, 2022

Learned counsel for the appellant present. Mr. Kabirullah Khattak, Addl: AG for respondents present.

Learned counsel for the appellant seeks adjournment on the ground that he has not prepared the case. To come up for arguments on 20 / 12 /2022 before D.B.


(Fareeha Paul)
Member(Executive)


(Kalim Arshad Khan)
Chairman

11.01.2022

Counsel for the appellant present. Mr. Kabirullah Khattak, Addl. AG alongwith Mr. Nabi Gul, Superintendent for respondents present.

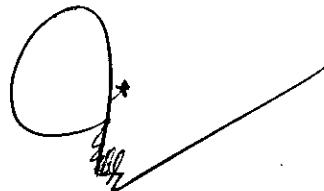
Reply/comments on behalf of respondents are still awaited. Representative of respondents sought time for submission of reply/comments. Last opportunity is granted to respondents to furnish reply/comments on or before next date, failing which their right to submit reply/comments shall be deemed as struck off by virtue of this order. To come up for arguments before the D.B on 28.04.2022.



(Atiq-Ur-Rehman Wazir)
Member (E)

28.04.2022

Learned counsel for the appellant present. Mr. Nabi Gul, Superintendent as representative on behalf of respondents No. 1, 2, 3 & 7 alongwith Mr. Kabirullah Khattak, Additional Advocate General present and submitted comments, which are placed on file and copy of the same handed over to learned counsel for the appellant. Learned Additional Advocate General requested for further time for submission of reply/comments on behalf of respondents No. 4, 5, 6 & 8. Last opportunity given, failing which right for submission of reply/comments of respondents No. 4, 5, 6 & 8 shall be deemed as struck off. To come up for submission of reply/comments on behalf of respondents No. 4, 5, 6 & 8 as well as arguments on 19.07.2022 before the D.B.



(Mian Muhammad)
Member (E)



(Salah-ud-Din)
Member (J)

Mohammad Ishaq 7265/2021

24.09.2021

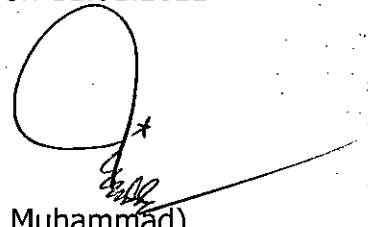
Counsel for the appellant present. Preliminary arguments heard.

Learned counsel for the appellant argued that correspondence of respondent No.6 dated 01.07.2020 addressed to respondent No. 7 has been challenged whereby the facility/payment of "Health Allowance" to the appellant has been stopped and recovery of the amount already drawn was ordered. The appellant preferred departmental appeal against the impugned order on 08.07.2020 which was not responded and the appellant went in writ petition No. 3207-P/2020 before the Peshawar High Court, Peshawar. However, the Peshawar High Court, Peshawar disposed of the said writ petition on 08.06.2021 on the ground of wrong/irrelevant forum, hence, the service appeal in hand filed in Service Tribunal on 09.08.2021. Learned counsel for the appellant was confronted with the question of limitation as per provisions of Section-4 of the Service Tribunal Act, 1974. It was contended that order bring void ab-initio issued without lawful authority and without jurisdiction the question of limitation therefore does not run against void order and reliance is placed on PLD 2002 SC 84, 2007 SCMR 729, 2009 SCMR 648 and PLD 2003 SC 724.

Points raised need consideration. The appeal is provisionally admitted to regular hearing, subject to all just and legal objections including limitation. The appellant is directed to deposit security and process fee within 10 days. File to come up for arguments on 11.01.2022 before the D.B.

Appellant Deposited
Security & Process Fee

28/9/21



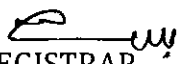

(Mian Muhammad)
Member(E)

Form- A

FORM OF ORDER SHEET

Court of _____

Case No.- 7265 /2021


S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1- SCANNED KPST Peshawar	09/08/2021	<p>The appeal of Mr. Muhammad Ishaq resubmitted today by Mr. Asif Hameed Qureshi Advocate may be entered in the Institution Register and put up to the Worthy Chairman for proper order please.</p> <p style="text-align: right;"> REGISTRAR</p> <p>This case is entrusted to S. Bench for preliminary hearing to be put up there on <u>24/09/21</u>.</p> <p style="text-align: right;"> CHAIRMAN</p>

The joint appeal of Najia Rehman, Masoor-ur-Rehman and Muhammad Ishaq received today i.e. on 04.08.2021 is in complete on the following score which is returned to the counsel for the appellants for completion and resubmission within 15 days.

- 1- Memorandum of appeal may be got signed by the appellants. ✓
- 2- Copies of reinstatement/adjustment order of in respect of appellant no.1&3 mentioned in para-1 of the memo of appeal are not attached with the appeal which may be placed on it. ✓
- 3- Copy of departmental appeal in respect of appellant no.1 is not attached with the appeal which may be placed on it. ✓
- 4- Sub-rule- 2 of rule-3 of the appeal rules 1986 requires that every affected civil servant shall prefer the appeal separately. Therefore, the appeal of the above named appellants may be filed separately/individually. ✓
- 5- Annexures of the appeal may be attested. ✓
- 6- Three copies/sets of the appeal along with annexures i.e. complete in all respect for Tribunal and one for each respondent in each appeal may also be submitted. ✓

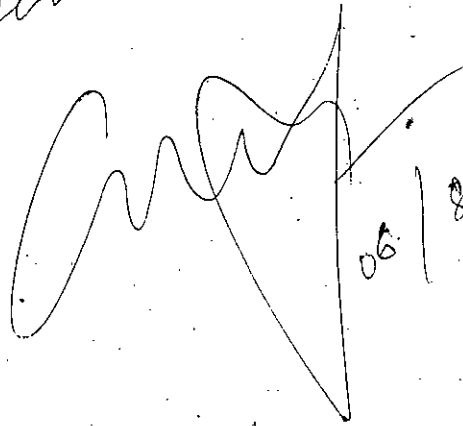
No. 1528 /S.T

Dt. 05/08 /2021


REGISTRAR
SERVICE TRIBUNAL
KHYBER PAKHTUNKHWA
PESHAWAR.

Mr. Asif Mehmood Qureshi Adv. Pesh.

*Re-submitted
after Compliance*


05/8/21

KHYBER PAKHTUNKHWA SERVICES TRIBUNAL, PESHAWAR
CHECK LIST

Muhammad Ishaq
..... Appellant

Versus

Govt: of KPK & others
..... Respondents

S NO	CONTENTS	YES	NO
1.	This appeal has been presented by: <u>Asif Hameed Qureshi Advocate Supreme Court</u>	✓	
2.	Whether Counsel/Appellant/Respondent/Deponent have signed the requisite documents?	✓	
3.	Whether appeal is within time?	✓	
4.	Whether the enactment under which the appeal is filed mentioned?	✓	
5.	Whether the enactment under which the appeal is filed is correct?	✓	
6.	Whether affidavit is appended?	✓	
7.	Whether affidavit is duly attested by competent Oath Commissioner?	✓	
8.	Whether appeal/annexures are properly paged?	✓	
9.	Whether certificate regarding filing any earlier appeal on the subject, furnished?	✓	
10.	Whether annexures are legible?	✓	
11.	Whether annexures are attested?	✓	
12.	Whether copies of annexures are readable/clear?	✓	
13.	Whether copy of appeal is delivered to AG/DAG?	✓	
14.	Whether Power of Attorney of the Counsel engaged is attested and signed by petitioner/appellant/respondents?	✓	
15.	Whether numbers of referred cases given are correct?	✓	
16.	Whether appeal contains cutting/overwriting?	x	
17.	Whether list of books has been provided at the end of the appeal?	✓	
18.	Whether case relate to this court?	✓	
19.	Whether requisite number of spare copies attached?	✓	
20.	Whether complete spare copy is filed in separate file cover?	✓	
21.	Whether addresses of parties given are complete?	✓	
22.	Whether index filed?	✓	
23.	Whether index is correct?	✓	
24.	Whether Security and Process Fee deposited? On _____		
25.	Whether in view of Khyber Pakhtunkhwa Service Tribunal Rules 1974 Rule 11, notice along with copy of appeal and annexures has been sent to respondents? On _____	✓	
26.	Whether copies of comments/reply/rejoinder submitted? On _____		
27.	Whether copies of comments/reply/rejoinder provided to opposite party? On _____		

It is certified that formalities/documentation as required in the above table have been fulfilled.

Name:- Asif Hameed Qureshi

Signature:- 

Dated:- 06/8/2021

Prayer in Appeal:-

By accepting the instant appeal, the impugned order dated 01/07/2020 of respondent No 6 may kindly be declared illegal, discriminatory and without lawful authority and the same may kindly be set by restoring the Health Allowance of the appellant from July, 2020 till the decision of this appeal.

Respectfully Sheweth:-

The facts pertaining to this appeal are as under:-

1. *That the appellant was initially appointed as KPO in the ADP Scheme on fixed pay in Directorate of Social Welfare & Women Development by the respondent No 1 vide order dated 23/02/2005 and vide order dated 30/06/2008 his service was regularized by respondent No 5 and vide office order dated 25/09/2019 the appellant was transferred to Nistar Special Education Center Kohat ^{as} devolved employee. (Copies of the above referred orders are attached as "A").*

2. *That the appellant was initially of Project Shaheed Banazir Bhutto Centers for Woman" in pursuance of the judgment of Honourable Peshawar High Court, Peshawar dated 08/02/2016 in Writ Petition No 1854/2012 and Writ Petition No 1880/2012, he has been re-instated and adjusted by the respondent No 1 vide order dated*

23/02/2018. (Copy of order of respondent No 1 dated 23/02/2018 is attached as annexure "A").

3. That vide order dated 25/11/2019 of respondent No 2 the appellant granted the Health Allowance from the date of devolution to Provincial Government. (Copy of the notification dated 25/11/2019 is attached as annexure "B").
4. That the respondent No 6 vide impugned order dated 01/07/2020 stopped the payment of Health Allowance to the appellant by declaring the appellants non devolved employees and also ordered to recover the drawn amount from the appellant. (Copy of the impugned order dated 01/07/2020 is attached as annexure "C").
5. That against the above said illegal act and order of the respondent No 6 the appellant filed Writ Petition No 3207-P/2020 before the Honourable Peshawar High Court, Peshawar, and the same was dismissed on 08/06/2021 being not maintainable with the observations to approach this Honourable Tribunal. (Certified copies of the Writ Petition and judgment dated 08/06/2021 are attached as annexure "D" & "E" respectively).

6. That in the light of above said order of Honourable Peshawar High Court , the appellant is filing the instant appeal against the impugned order of respondent No 6 dated 01/07/2020 on the following amongst other grounds:-

Grounds:-

- A. That the impugned order of the respondent No 6 for the stoppage of granted Health Allowance and recovery of drawn amount of the appellant is illegal vide ab-initio, discriminatory and without lawful authority, hence liable to be set aside.
- B. That the impugned order of respondent No 6 of depriving the appellant from getting his Health Allowance has been passed without any legal justification and reasons.
- C. That the Health Allowance had been granted to appellant by respondent No 2 in pursuance of judgment of August Supreme Court of Pakistan by rightly declared the appellant as developed employees, but the respondent No 6 without any legal justification/reasons stopped the Health Allowance of the appellant and this act of the respondent No 6 is totally unwarranted under the law, because until the granted allowance/order has not been cancelled/withdrawn by the competent authority, which should be the higher then the respondent No 6.

- D. *That the appellant is performing the same job, duties, functions and responsibilities, which the other officials/counter part are performing in the department, therefore, to treat the respondents different is not only illegal but discriminatory.*
- E. *That all the citizen of Pakistan are equal before the law and they are also equal protection of law, hence the impugned order of the respondent No 6 by stopping the Health Allowance of the appellant is clear cut violation of law laid down Apex Court of the Country "That all persons placed in similar circumstances must be treated alike".*
- F. *That the impugned order of respondent No 6 is also violation of fundamental rights guaranteed under the Articles 4, 8 & 25 of the Constitution.*
- G. *That Article 38 (C) of the Constitution of Pakistan, 1973 ensures reduction of disparity, income and earning of individual in various cadres of the service of Pakistan.*
- H. *That against the impugned order of respondent No 6 the appellant also preferred an appeal to respondent No 6, but till date the same has not been decided and this act of the*

appellate authority was also illegal and against the law laid down by Apex Court of the Country, reported in SCMR 2020 Peshawar 1957. (Copies of appeal and judgment are attached as annexure "F" & "G" respectively).

- I. *That pleas/contentions of the appellant is well supported by the law laid down by superior courts of the country and in this regard reliance is placed on 2014 SCMR 1687, 2002 PLC (CS) 427, 2004 PLC (CS) 1087, 2013 PLC (CS) 592, 2012 PLC (CS) 362 & 2014 PLC(CS) 1315.*
- J. *That the respondents No 5 & 6 have not exercised their power, authority and jurisdiction fairly and justly, therefore, the same is liable to be declared null and void and without lawful authority.*
- K. *That any other ground, which has not been specifically taken in the instant service appeal, may be argued at the time of arguments with the permission of this Honourable Tribunal.*

It is, therefore, most humbly prayed that on acceptance of this service appeal, the impugned order dated 01/07/2020 of respondent No 6 may kindly be declared illegal, discriminatory and without lawful

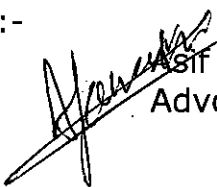
(7)

authority and the same may kindly be set aside by restoring the Health Allowance of the appellant from July, 2020 till the decision of this appeal.

Dated:- 06/08/2021

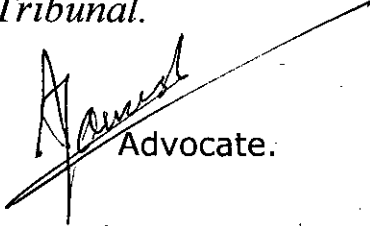

Appellant

Through:-


Asif Hameed Qureshi
Advocate Supreme Court

Certificate:-

It is certify that no such like Service Appeal has earlier been filed by the Appellant in this Honourable Tribunal.


Advocate.

BEFORE THE SERVICE TRIBUNAL KHYBER PAKHTUNKHWA,
PESHAWAR

Service Appeal No:- _____ /2021

Muhammad Ishaq

Versus

Govt: of KPK & others

..... Appellant

..... Respondents



AFFIDAVIT

I, Muhammad Ishaq, Computer Operator, Nastar Special Education, KDA, Kohat (The appellant) do hereby solemnly affirm and declare on oath that the contents of this accompanying Service Appeal are true and correct to the best of my knowledge and belief and nothing has been concealed from this Honourable Court.

DEPONENT

14202-1329445-1 ←

CNIC No:-

0333-9711005

Cell No:-

ATTESTED

9 07 08
2021



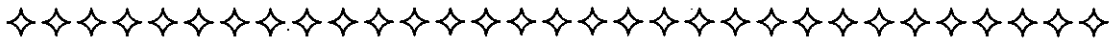
BEFORE THE SERVICE TRIBUNAL KHYBER PAKHTUNKHWA,
PESHAWAR

Service Appeal No:- _____/2021

Muhammad Ishaq
..... Appellant

Versus

Govt: of KPK & others
..... Respondents



APPLICATION FOR SUSPENSION OF THE IMPUGNED ORDER
DATED 01/07/2020 OF RESPONDENT NO 6, TILL THE
FINAL DECISION OF THE INSTANT SERVICE APPEAL.

Respectfully Sheweth:-

1. *That the above noted appeal has been filed in this Honourable Tribunal in which no date is yet fixed.*
2. *That the petitioner has got a prima facie case and hopeful for its success.*
3. *That the balance of convenience is also lies in his favour and if the impugned order is not suspended then the petitioner/appellant would suffer irreparable loss.*
4. *That for issuing interim relief, the contents of main appeal may kindly be considered as integral part of this application.*

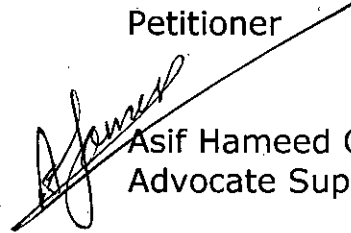
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It is, therefore, humbly prayed that on acceptance of this application, the impugned order of respondent No 6 dated 01/07/2020 may kindly be suspended, till the final decision of the titled appeal.

Dated:- 06/08/2021

Petitioner

Through:-


Asif Hameed Qureshi
Advocate Supreme Court

AFFIDAVIT

I, Muhammad Ishaq, Computer Operator, Nastar Special Education, KDA, Kohat, (The appellant) do hereby solemnly affirm and declare on oath that the contents of this accompanying application for suspension are true and correct to the best of my knowledge and belief and nothing has been concealed from this Honourable Court.

ATTESTED



DEPONENT
CNIC No:-
Cell No:-

14202-1329445-1

0333-9711005



90708
2021

4. That justice and equity demand that the delay may be condoned for the sake of justice.
5. That according to the law laid down by the Superior Courts of the Country that the cases should be decided on merits rather than on technicalities including the limitation. (Reliance is placed on 2004 PLe (CS) P.1014)
6. That the grounds of appeal may also be considered as part of this application for condonation of delay.

It is, therefore, humbly prayed that on acceptance of this application, the delay in filing of above titled appeal may kindly be condoned in the larger interest of justice.

Dated:- 06/08/2021

Petitioner

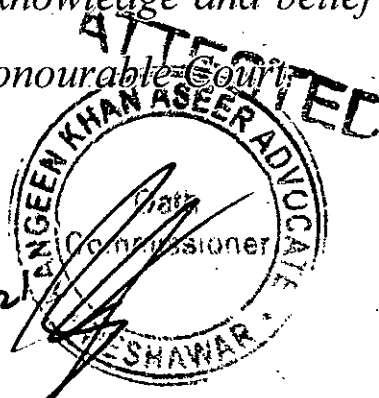
Through:-



Asif Hameed Qureshi
Advocate Supreme Court

AFFIDAVIT

I, Muhammad Ishaq, Computer Operator, Nastar Special Education, KDA, Kohat, (The appellant) do hereby solemnly affirm and declare on oath that the contents of this accompanying application for condonation of delay are true and correct to the best of my knowledge and belief and nothing has been concealed from this Honourable Court.

9 07 08
2021

ATTESTED
ANGEN KHAN ASEER ADVOCATE
Commissioner
PESHAWAR

DEPONENT.

CNIC No:- 14202-1329445-1

BEFORE THE SERVICE TRIBUNAL KHYBER PAKHTUNKHWA,
PESHAWAR

Service Appeal No:- _____/2021

Muhammad Ishaq

Versus

Govt: of KPK & others

..... Appellant

..... Respondents



ADDRESSES OF PARTIES

APPELLANT

Muhammad Ishaq, Computer Operator, Nastar Special Education, KDA, Kohat.


RESPONDENTS

1. Government of Khyber Pakhtunkhwa through Secretary Social Welfare, Special Education & Women Empowerment Department, Peshawar.
2. Government of Khyber Pakhtunkhwa through Secretary Finance Department, Peshawar.
3. Director Social Welfare, Special Education & Women Empowerment Department, Peshawar.
4. Accountant General, Government of Khyber Pakhtunkhwa, Peshawar.
5. Deputy Commissioner, Kohat.
6. Additional Deputy Commissioner (F&P), Kohat.
7. District Officer, Social Welfare, Special Education & Women Empowerment Department, Kohat.
8. District Comptroller of Accounts, District Complex, Gate No 2, KDA, Kohat.

Dated:- 06/08/2021

Appellant 

Through:-


Asif Hameed Qureshi
Advocate Supreme Court

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"A"

(14)

(4)

GOVERNMENT OF NWFP
DIRECTORATE OF SOCIAL WELFARE AND
WOMEN DEV: JAMRUD ROAD PESHAWAR.

Amex

ORDER

Dated Peshawar the 23/2/2005.

No.E-17/65/DSWI. 398-404 On the recommendation of Departmental Section Committee Muhammad Ishaq S/O Khial Faraz Resident of Village Tappi Tehsil and District Karak is hereby appointed as KPO in the ADP scheme of the Department titled "Welfare Home Bannu" on the following terms and conditions:

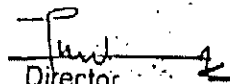
- I- That this appointment shall be purely on fixed pay basis initially for the period upto 30th June, 2005, however is likely to be extendible on yearly basis.
- II- That the official shall be entitled to get pay Rs. 4320/- (Four Thousand Three Hundred and Twenty only) per month.
- III- That the contract can be terminated without assigning any reasons.
- IV- That the contract can be terminated at one month written notice from either side.
- V- That this appointment shall automatically be terminated on abolition of the Project.
- VI- That no TA / DA shall be admissible for joining the duty.
- VII- That this appointment is subject to medical fitness.
- VIII- That this appointment is subject verification of documents/testimonials
- IX- On expiry / completion of the contract / project, services of the appointee in the project shall stand terminated and shall not confer on the individual any right of absorption elsewhere or regularization of his/her services.
- X- Rest of terms and conditions will be the same as mentioned in the agreement deed to be properly executed between the appointee and the Directorate of Social Welfare & Women Development NWFP Peshawar.
- XI- That the appointee is required to join his/her duty within 15 days of this offer letter failing which the contract will be automatically cancelled.

(Dr. Fakhr-ul-Islam)
Director
Social Welfare & Women
Development NWFP.

Enclst: No. & date even.

Copy forwarded to:

- 1- The Account Office, Bannu
- 2- The District Officer, Social Welfare Department, Bannu
- 3- The Planning Officer, Directorate of Social Welfare NWFP Peshawar.
- 4- The Section Officer- (II), Social Welfare Department NWFP Peshawar.
- 5- PS to Secretary Social Welfare & WDD, Peshawar.
- 6- Supdt Welfare Home Bannu
- 7- Official Concerned


Director
Social Welfare & Women
Development NWFP.

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OFFICE OF THE
DISTRICT COORDINATION OFFICER,
DISTRICT GOVT: BANNU
No 5294-5301 DCO(BU)/DO(SW)
Dated Bannu the 30.6.08

OFFICE ORDER.

Consequent upon shifting Establishment of Child Welfare Home Bannu from ADP scheme to regular budget and on creation of post on current budget side w.e.f 01-07-2008 vide Finance Department Notification No. BOV III /FD/1-5/2007-08/SNE Peshawar dated 16-04-2008 and Govt: of NWFP Directorate of Social Welfare & Women Development Department letter No. DSW/PO/Regularization/06/07/1762-66 dated 07-04-08, the Services of the following existing staff of Child Welfare Home Bannu are hereby regularized with effect from 01-07-2008 and are adjusted against the said posts.

S.No	Name	F/Name	Designation	BPS
1.	Muhammad Ishaq	Khial Faraz	Key Punch Operator	12
2.	Tasleem Akhtar	Sher Daraz Khan	Vocational Teacher	09
3.	Muhammad Rahman Shah	Gul Rahman Shah	Teacher	09
4.	Abdul Wahab Khasn	Abdul Aziz Khan	Teacher	09
5.	Qamer Ali Khan	Gul Nawaz Khan	N/Qasid	01
6.	Umer Ali Khan	Ghazi Marjan	Chowkidar	01
7.	Muhammad Rashid Khan	Ahmad Ali Khan	Chowkidar	01
8.	Gul Tiaz Khan	Muhammad Rafi	Cook	01
9.	Khalid Khan	Mir Sadiq Shah	Sweeper	01

Terms & Conditions.

- i. The services of the above persons will be liable to termination with or without any reason on two months notice from either side. In case of termination without notice by the employers or two months notice from the employee for resignation, two months pay and allowances shall be paid by the Government or refunded by the employee as the case may be. The above appointments will be subject to the following terms & conditions:
- ii. They will not be entitled of pension/gratuity benefits.
- iii. They will not contribute towards G.P Fund, however, they will contribute to C.P fund @ 10% of minimum of pay scale and an equal amount of 10% contribution will be made by the Governments as per rules.
- iv. They will be allowed for usual allowance as admitted under the rules.
- v. They will be entitled to facility of Benevolent Fund as per new recruitment policy.

Sd/-
District Coordination Officer,
Bannu

No. & Date

Copy to.

1. The Accountant General, NWFP Peshawar.
2. The Director, Social Welfare Department NWFP Peshawar.
3. The District Accounts Officer, Bannu.
4. ✓ The District Officer, Social Welfare Department Bannu.
5. The PS to Minister, Social Welfare Zakat Ushr Deptt: NWFP Peshawar.
6. The PS to Secretary Social Welfare Zakat Ushr NWFP Peshawar.
7. Official Concerned.
8. Executive of the District Finance Officer Bannu.

1806
District Coordination Officer,
Bannu



091-9216099

Government of Khyber Pakhtunkhwa
Directorate of Social Welfare, Special Education and
Women Empowerment Jamrud Road Peshawar.

Dated Peshawar the 26, 9, 2017

ORDER

No. E-11/217/DSW/6060-65. With immediate effect and until further order, Mr. Muhammad Ishaq Computer Operator (BPS-12) Welfare Home Bannu, is hereby transferred and posted against the vacant post of Vocational Computer Instructor (BPS-14) at Nishtar Special Education Centre Kohat, in his own pay scale. *NOTA/DIA 20/10/17*

This issue with the approval of DSW.

Assistant Director
(Establishment)

Copy forwarded to:

- 1- The District Officer, Social Welfare, Bannu.
- 2- The District Officer, Social Welfare, Kohat.
- 3- Superintendent, Welfare Home Bannu.
- 4- Principal Nishtar Special Education Centre Kohat.
- 5- District Account Officer, Bannu.
- 6- District Account Officer, Kohat.
- 7- Deputy Director MIS Social Welfare KPK Peshawar.
- 8- PA to Director Social Welfare Khyber Pakhtunkhwa.
- 9- The official concerned.

11/10/17
Assistant Director
(Establishment)

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GOVERNMENT OF KHYBER PAKHTUNKHWA
DIRECTORATE OF SOCIAL WELFARE, SPECIAL EDUCATION AND
WOMEN EMPOWERMENT JAMRUD ROAD PESHAWAR.

Dated Peshawar the 10-5-2018

ORDER

No. E-11/ /217-DSW/ 10510-14 Mr. Muhammad Ishaq
Computer Operator-16 who was posted Vide No. E-11/217/ DSW/4060-65
dated 25-09 2014 against the post of Computer Instructor BPS-14 at Nishtar
Special Education Centre Kohat in his own pay scale in hereby permanently
adjust as Computer Operator BPS-16 at the same station/centre being his
original post

The issue will the approval of DSW

Sd/---
Director
Social Welfare, Spl: Edu: & WE
Khyber Pakhtunkhwa

Copy forwarded to:

1. District Accounts Officer Kohat
2. The District Officer, Social Welfare Kohat,
3. Vice Principal Nishtar Special Education Centre Kohat
4. PA to Director Social Welfare Khyber Pakhtunkhwa
- ✓ 5. The Official concerned.

Assistant Director (Estab)

CFC

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SECTION OFFICER (SR-II)
FINANCE DEPARTMENT

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

Copy is forwarded for information and necessary action to the ?

Encl: No. & Date Even

Secretary to Govt of Khyber Pakhtunkhwa
Finance Department

Special Education Institutions of Khyber Pakhtunkhwa devolved under 18th Constitutional Amendment

The above said allowance will be admissible only to the employees of Education Institutions from the date of their devolution to Provincial Govt of Khyber Pakhtunkhwa. In pursuance of the Supreme Court of Pakistan Civil Appeal No. 8112/2019 dated 14/04/2019, the Government of Khyber Pakhtunkhwa (Provincial Cabinet) has been pleased to approve Health Allowance at the rate of one month basic pay to the devolved employees working in the Special Education Institutions from the date of their devolution to Provincial Govt of Khyber Pakhtunkhwa.

NOTIFICATION

Dated Peshawar the 25-11-2019

(OFFICIAL SEAL)

GOVERNMENT OF KHYBER PAKHTUNKHWA
FINANCE DEPARTMENT



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BETTER COPY

GOVERNMENT OF KHYBER PAKHTUNKHWA
FINANCE DEPARTMENT
(REGULATION WING)

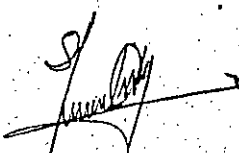
Dated Peshawar the 25.11.2019

NOTIFICATION

NO. FD(SOSR-II)8-7/2019:- In pursuance of the Supreme Court of Pakistan Civil Appeal NO. 811/2016 titled " Muhammad Atique -ur-Rehman & others V/s Federal Government of Pakistan (Provincial Cabinet) has been please to approve Health Allowance at the rate of one running basic pay to the devolved employees working in the Special Education Institution from the date of their devolution to Provincial Govt of Khyber Pakhtunkhwa.

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

SECRETARY TO GOVT: OF KHYBER PAKHTUNKHWA
(FINANCE DEPARTMENT)


Attested

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OFFICE OF THE DEPUTY COMMISSIONER
KOHAT

NO. 4958 = /F&P/DC/KT

Dated 01/07/20

To

The District Officer
SW, SE & WE, Kohat

Subject: HEALTH PROFESSIONAL ALLOWANCE

Please refer to your letter No. DG/SW/KT/HPA 6925 dated 6-2-2020 and this office letter No 4283/F&P/DC/KT dated 24-2-2020 on the subject noted above.

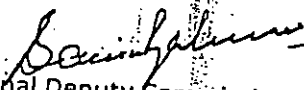
The Government of Khyber Pakhtunkhwa Finance Department vide their Notification No FD(SOSR-II)8-7/2019-53 dated 25-11-2019 has been pleased to approve Health Allowance at the rate of one running basic pay to the devolved employees working in the Special Education Institutions from the date of their devolution to Provincial Govt of Khyber Pakhtunkhwa. (copy attached)

However, the following employees mentioned in your letter are appointed / adjusted / transferred in the Special Education Center Kohat. (copy attached)

- | | |
|---------------------------|-------------------|
| 1. Muhammad Younas Afridi | Deputy Director |
| 2. Masood ur Rehman | Senior Teacher |
| 3. Anila Rehman | Senior Teacher |
| 4. Muhammad Ishaq | Computer Operator |
| 5. Zia ur Rehman | Driver |
| 6. Mubshir Iqbal | Naib Qasid |
| 7. Zahid | Attendant |

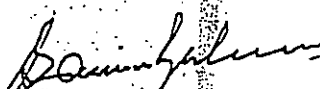
The above mentioned employees are not devolved employees and they are drawing the Health Allowance illegally as per notification.

It is therefore requested to immediately stop the payment of Health Allowance to the non-devolved employees and make a mechanism to recover the illegally drawn amount from the employees.


Additional Deputy Commissioner (F&P)
Kohat

Copy forwarded for information to the

1. Deputy Commissioner, Kohat.
2. District Comptroller of Accounts, to stop the payment to non devolved employees.
3. Accountant General, Govt of Khyber Pakhtunkhwa, Peshawar.
4. PS to Special Secretary, Finance Department, Khyber Pakhtunkhwa.
5. Deputy Director NSEC, Kohat with this letter No 1-11/SEC/KT/2012-343 dated 12th FEB, 2020.
6. PA to Director Social Welfare, Peshawar.


Additional Deputy Commissioner (F&P)
Kohat



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OFFICE OF THE DISTRICT OFFICER SOCIAL WELFARE, SE & WE DEPARTMENT: KOHAT

No. 7039 DO/SW/KT

Dated. 08/07/2020

To

The Deputy Commissioner, Kohat.

Subject: Health Professional Allowance

Please refer to the letter No.4958/F&P/DC/KT dated 01/07/2020 and this office letter No.7036/DO/SW/KT dated 07/07/2020 on the subject cited above address to Deputy Director (NSEC, Kohat).

A self explanatory appeal for sanction of "Health Allowance" to the adjusted/transferred employees of KPK Govt. to the Devolved Institute (NSEC, Kohat) is attached for further necessary action please.

Copy for information to:

- 1- Director, Social Welfare Spl. Edu. WED, Kohat
- 2- District Comptroller of Accounts, Kohat

District Officer, SW, SE & WE, Kohat

District Officer, SW, SE & WE, Kohat

Attested

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BEFORE THE PESHAWAR HIGH COURT, PESHAWAR

W.P No. 3207 - P/ 2020



1. Masood-ur-Rehman Senior Teacher, Nastar Special Education, KDA, Kohat.
2. Muhammad Younis Deputy Director, Nastar Special Education, KDA, Kohat.
3. Anila Rehman Senior Teacher, Nastar Special Education, KDA, Kohat.
4. Muhammad Ishaq Computer Operator, Nastar Special Education, KDA, Kohat.Petitioners

Versus

1. Government of Khyber Pakhtunkhwa through Secretary Social Welfare, Special Education & Women Empowerment Department, Peshawar
2. Government of Khyber Pakhtunkhwa through Secretary Finance Department, Peshawar.
3. Director Social Welfare, Special Education & Women Empowerment Department, Peshawar
4. Accountant General, Government of Khyber Pakhtunkhwa, Peshawar
5. Additional Deputy Commissioner (F& P) Kohat
6. District Officer, Social Welfare, Special Education & Women Empowerment Department, Kohat
7. District Comptroller of Accounts, District Complex, Gate No. 2 KDA, Kohat.

.....Respondents

**WRIT PETITION UNDER ARTICLE 199 OF THE
CONSTITUTION OF ISLAMIC REPUBLIC OF
PAKISTAN, 1973**

ATTESTED
EXAMINER
Peshawar High Court

Respectfully Sheweth:

1. That the Government of Khyber Pakhtunkhwa Finance Department Issue a notification bearing No. FD(SOSR-II)8-7/2019 Dated 25/11/2019 wherein Health Allowance at the rate of one running basic pay has been awarded to devolved employees working in the

② ②② D/1 ②/11

Special Education Institutions from the date of devolution to Provincial Government. (Copy of the Notification is attached as Annexure "A")

2. That petitioners being transferred /posted in the said department have also been granted the same health allowance from the date of their joining duties in the Special Education Institution.
3. That respondent No. 5 send letter dated 01/07/2020 to respondent No. 7 vide which the benefits receiving by the petitioner have been declare illegal and order for stoppage of the same and recovery of the already drawn amount. (Copy of the letter is attached as Annexure "B")
4. That petitioner are performing the same duties which are performing by the others who are held entitled for the health allowance and thus petitioners are discriminated and thus indulgence of this Hon'ble Court is required and thus petitioner having being aggrieved and dissatisfied by the actions and inactions, misuse of power, excess of power and discrimination of the respondents, and having no other alternative remedy seek the indulgence of this of this Hon'ble Court, inter alia, on the following grounds:

GROUND S:

- A) That respondents are violating the clear cut directions of Higher Judicial forum of the country regarding discrimination amongst the employees of the same department, thus the impugned actions and inactions violate the mandate provided under Article 4 & 25 of the Constitution of Pakistan.
- B) That respondent are legally bound to treat the petitioner at par with the others who has been held entitled for health allowance but the petitioners have been discriminated by the respondents although the August Supreme Court has clearly directed respondent department to treat all the person holding the same post alike, hence the manner in which the petitioner has been treated need indulgence of this Hon'ble Court.

ATTESTED
EXAMINER
Peshawar High Court

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- C) That because the impugned actions and inactions are against the principles ordained under Article 25 of the Constitution of Islamic Republic of Pakistan.
- D) That petitioner are providing same services and same nature of job within the same institute on the ground of which devolved employees of special Education getting "Health Allowance". Under the law petitioner are liable to be treated alike but this aspect of the case has been ignored by the respondents.
- E) That petitioner are also falling under the same category as they are providing the same services which the other person who are retaining "Health Allowance" which created great disparity amongst the employees inducted/ transferred by the Government of Khyber Pakhtunkhwa and Devolved Employees within the same institute (NSEC, Kohat) and a clear cut discrimination.
- F) That because the impugned actions and inactions are blatantly against all norms of justice and principles of reasonability.
- G) That employees of Special Education Devolved from Federal Government to Province under 18th Constitution Amendment absorbed with Social Welfare, Special Education and Woman Empowerment Department which is providing the same services to Special Children as provided by the Directorate General, Special Education (DGSE) at Federal Level. While later on the vacant post in these Devolved institute are filled by the Khyber Pakhtunkhwa Government by inducting / Transferred from Khyber Pakhtunkhwa Social Welfare, Special Education and Women empowerment Department. The Apex Court of Pakistan vide case reported as 1996 SCMR 1185 has held "rule of good governance" demand that benefits of the said decision to the other civil servants also who may not be party to this litigation, instead of compelling to approach the tribunal or other legal forum.
- H) That in view of the Judgments of Superior Judiciary it was incumbent upon respondent to have accorded the same benefits to all the officers similarly placed but they badly fails to discharge their responsibility thus indulgence of this Hon'ble Court is required in the matter.

ATTESTED
EXAMINER
Peshawar High Court

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It is, therefore, respectfully prayed that on accepting this Writ Petition respondents may please be directed to act in the matter in accordance to law and petitioners being similarly placed and providing same services and same nature of job within the same institute thus entitled to "Health Allowance" which the other employees are drawing and thus the letter bearing No. 4958/ F & P/DC/KT dated 01/07/2020 may please be declare illegal, against the judgments of superior Court, based on discrimination and thus liable to be struck down.

Any other relief not specifically prayed for deem appropriate in the circumstance of the case may also be granted.

INTERIM RELIEF

To safe guard the right of the petitioner the operation of the impugned letter dated 01/07/2020 may please be suspended.

Petitioners
Through


SHAHID QAYUM KHATTAR
Advocate, Supreme Court
of Pakistan

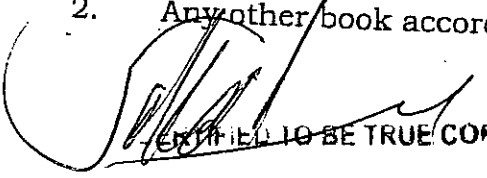
Certificate:-

Certified (as per information provided by petitioner) that no such Writ Petition has previously been filed by the petitioner before this Hon'ble court.


Advocate

List of Books:-

1. Constitution of Islamic Republic of Pakistan, 1973
2. Any other book according to need.


CERTIFIED TO BE TRUE COPY

EXAMINER
Peshawar High Court, Peshawar
Authorized Under Article 8.7 of
the Constitution of Pakistan

12 JUN 2021


Advocate

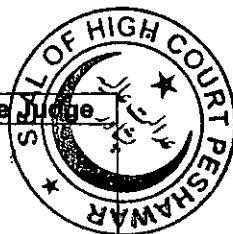
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PESHAWAR HIGH COURT, PESHAWAR.

**FORM 'A'
FORM OF ORDER SHEET**

Date of order.	Order or other proceedings with the order of the Judge
08.06.2021	<p style="text-align: center;"><u>W.P.No.3207-P of 2020.</u></p> <p>Present: Mr. Shahid Qayum Khattak, advocate for the petitioners.</p> <p>Mr. Khaled Rehman, AAG for the respondents.</p> <p style="text-align: center;">—</p> <p><u>LAL JAN KHATTAK, J.-</u> Petitioners through the instant petition under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973 seek issuance of an appropriate writ directing the respondents to act in the matter in accordance with law entitling them to the Health Allowance being drawn by similarly placed employees and also to declare letter dated 01.07.2020 as illegal, against the judgments of superior courts, discriminatory and thus same be struck down.</p> <p>2. Arguments heard and record gone through.</p> <p>3. Perusal of the case record would show that the petitioners are civil servants and the matter qua grant of the Allowance as claimed by them through the instant petition is one of the terms and conditions of their service and if any term and condition of service of a civil servant is violated by his department, then in that eventuality, he can approach the Services Tribunal established by the Government for that purpose and on no count he can come to this court for the enforcement of any of the terms and conditions of his service keeping in view the bar</p>



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ATTESTED
EXAMINER
Peshawar High Court

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contained in Article 212 of the Constitution of Islamic Republic of Pakistan, 1973.

4. For what has been discussed above, the petition in hand is hereby dismissed in limine for its being not maintainable before this court, leaving the petitioners at liberty to approach the Services Tribunal for the redressal of their grievance, if so advised.

[Signature]
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JUDGE

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EXAMINER
Peshawar High Court, Peshawar
Authorised Under Article 87 of
The Constitution of Pakistan
12 JUN 2021

No. 37992
Date of Presentation of Application 10/6/2021
No of Pages 62
Copying fee
Total
Date of Preparation of Copy 12/6/2021
Date of Delivery of Copy 12/6/2021
Received By *[Signature]*

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Deputy Commissioner
Kohat

Through Proper Channel (District Officer, Social Welfare Kohat)

SUBJECT: APPEAL FOR SANCTION OF HEALTH ALLOWANCE TO THE INDUCTED/
TRANSFERRED EMPLOYEES OF KPK GOVT. TO THE DEVOLVED INSTITUTE
(NSEC, KOHAT)

Respect Sir,

It is humbly submitted in your kind honour and your attention is invited to the subject cited above and to state that primarily the "Health Allowance" was allowed to the employees of Directorate General Special Education and Allied institutions/Centers w.e.f 01-01-2012, in light of the Federal Service Tribunal Decision dated 18-07-2017 (Annex-A) and Supreme Court of Pakistan decision Dated 17-01-2018 (Annex-B) which is very much clear that the employees of Directorate General Special education (DGSE) allied institutions/Centers, NCRDP etc are entitled for "Health Allowance".

The Finance Department Khyber Pakhtunkhwa recent Notification FD(SOSR-1108-7/2019/53 dated 25-11-2019 (Annex-C) all the employees of Nistar Special Education Center Kohat (Devolved and inducted/ Transferred by KPK Govt.) submitted the Case for honoring "Health Allowance" along with arrear within the stipulated period of the individual which was honored accordingly.

Now as per reference No-4958/F&P/DC/KT Dated 01-07-2020 Additional Deputy Commissioner (F&P) Kohat mentioned that the employees inducted/ Transferred by KPK Govt: in the Devolved Institute NSEC, Kohat are not devolved employees and are getting "Health Allowance" illegally and issue direction to District Comptroller of Accounts Kohat, to Stop the payment of "Health Allowance" and make mechanism for recovery to the non devolved employees of (NSEC, Kohat) vide Notification No. FD(SOSR-1108-7/2019/53 dated 25-11-2019.

Sir we are providing same services and same nature job within the same institute (NSEC, Kohat) on the ground of which devolved employees of Special Education retained "Health Allowance" we also fall in the category of Health personal. Sir this has created extreme disappointment among employees inducted/transferred by the Govt: of KPK and Devolved employees within the same institute (NSEC, Kohat) and seems to be discriminatory offending Article 4 and 25 of the constitution of Islamic Republic of Pakistan 1973 Section 2(b) entitle all pay and allowances as prescribed by Federal and Provincial Govt: employees without any discrimination.

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Similarly the honorable Apex Court vide its judgment in the case reported as 1996 SCMR 1185 has already held "rule of good governance" demands that benefits of the said decision to the other civil servants also who may not be party to this litigation, instead of compelling to approach the tribunal or other legal forum.

The employees of Special Education Devolved from Federal Govt: to Province under 18th Constitution Amendment absorbed with Social Welfare, Special Education and Women Empowerment Department which is providing the same services to Special children as provided by the Directorate General, Special Education (DGSE) at Federal level. While later on the vacant Post in these Devolved institute are filled by the KPK Govt: by inducting/Transferred from KPK Social Welfare, Special Education and Women empowerment Department.

In view of the above factual position it is humbly requested to accord approval of "Health Allowance" to all the staff/employees of Devolved institute and stop recovery from the following inducted/transferred employees to Devolved institute (NSEC, Kohat) and reinstate ("Health Allowance") as to other devolved employees of the Center (NSEC, Kohat).

- 1. Muhammad Younas Afridi Deputy Director
- 2. Masood ur Rehman Senior Teacher
- 3. Anila Rehman Senior Teacher
- 4. Muhammad Ishaq Computer Operator
- 5. Zia ur Rehman Driver
- 6. Mubsher Iqbal Naib Qasid
- 7. Zahid Attendant

[Signature]
8-7-2020

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8-7-2020

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8-7-2020

[Signature]
03/07/2020

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Copy for information and necessary action to:-

- 1- The Director, SW, SE & WE Department, Khyber Pakhtunkhwa.
- 2- The District Comptroller of Accounts, Kohat.

[Signature]

Attested

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Annexure "G"

2020] Lahore Development Authority v. Muhammad Tariq Niaz (Sayed Mazahar Ali Akbar Naqvi, J) 1957

their reasoning. For the reasons given above, I would hold that the reflective loss principle, if it exists, does not apply in the present case.

The exception in Giles v Rhind

212. In view of my conclusion that the reflective loss principle does not apply in this case, the question regarding the ambit of the exception to that principle which was identified in *Giles v Rhind* does not arise. However, it is worth pointing out that the exception was identified in an effort to achieve practical justice against the backdrop of an assumption that the reflective loss principle stated in *Prudential* was valid. If *Prudential* is held to lay down a bright line rule of law deeming reflective loss not to be a loss, whatever the true position on the facts, and that bright line rule is endorsed, cases such as *Giles v Rhind*, exemplifying the dissonance between the rule and practical justice on the facts, will continue to arise. This will put pressure on the acceptability of the rule itself.

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Conclusion

213. For the reasons set out above, I would allow Marex's appeal and permit it to proceed with its OBG claim and Lumley v Gye claim directly against Mr Sevilleja.

Amint 33

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Appeal allowed.

2020 S C M R 1957

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[Supreme Court of Pakistan]

Present: Ijaz ul Ahsan, Amin-ud-Din Khan and Sayyed Mazahar Ali Akbar Naqvi, JJ

LAHORE DEVELOPMENT AUTHORITY

and another—Appellants

versus

MUHAMMAD TARIQ NIAZ—Respondent

Civil Appeal No. 152-L of 2010, decided on 27th August, 2020.

(Against the judgment of Lahore High Court, Lahore dated 24.06.2002 passed in R. F. A. No.: 180/1994)

(a) *Specific Relief Act (I of 1877)*—

—Ss. 12 & 42—Suit for declaration and specific performance—Open public auction—Plot bought by highest bidder in open public auction put up for re-auction by the (Lahore) Development Authority (the

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BEFORE THE SERVICE TRIBUNAL KHYBER PAKHTUNKHWA PESHAWAR

Service Appeal No. 7265/2021

Muhammad Ishaq, Computer Operator, Nishtar Special Education, Kohat.....
Kohat.....
Appellant

SCANNED
KODAT
Peshawar

VERSUS

1. Govt. of Khyber Pakhtunkhwa through Secretary Zakat, usher, Social Welfare & Women Empowerment Department Peshawar.
2. Govt. of Khyber Pakhtunkhwa through Secretary Finance Department Peshawar.
3. The Director, Social Welfare, Special education & Women Empowerment Department, Peshawar.
4. Accountant General, Khyber Pakhtunkhwa
5. Deputy Commissioner, Kohat.
6. Additional Deputy Commissioner (F&P) Kohat
7. The District Officer Social Welfare Kohat.
8. District Controller of Accounts, District Complex, Kohat..... (Respondents)

Respectfully Sheweth:

PARA-WISE COMMENT ON BEHALF OF RESPONDENTS NO. 1 TO 3 & 7.

PRE-LIMINARY OBJECTIONS:

1. The appellant has got no cause of action to file this appeal.
2. That the appeal is not maintainable in its present form.
3. That the appellant has no locus standi or cause of action to file the present appeal.
4. The appeal is badly time bard. Therefore the appeal is not maintainable.

FACTS:

1. Incorrect, hence denied. The appellant was initially appointed as Key Punch Operator (KPO) in ADP Scheme of the Department Titled "Welfare Home Bannu" on fixed pay vide order No. E-17/65/DSW/398-404 dated 23-02-2005 (Annex-I). The appellant was regularized vide No. 5294-5301/DCO(BU)/DOSW) dated 30-06-2008.(Annex-II). Moreover the Finance Department issued a notification vide NO FD(SOSR)-7/2019-53 dated 25-11-2019 (Annex-III) only to the employees working in the Special Education devolved institution of the Federal Govt of Pakistan in compliance to court judgment which states that

"In pursuance of the court order the competent authority issued notification No FD/(SOSR-II)8-7/2019-53 dated 25-11-2019 in pursuance of the case titled Muhammad Atique ur Rehman and others vs Federal Government through Secretary Capital Administration etc, the Government of Khyber Pakhtunkhwa has approved health allowance at the rate of one basic pay to the devolved employees working in the special education institutions from the date of the devolution to provincial Government of Khyber Pakhtunkhwa. Thus above said allowance will be admissible only to the employees of the special education institutions of Khyber Pakhtunkhwa devolved under the 18th constitutional amendment." (Annex-IV)

2. Incorrect, hence denied. The factual position has been explained in the preceding para.
3. Incorrect, hence denied. The appellant has not the devolved employee of this Department.
4. Related to respondent No. 5 & 6.
5. Correct with clarification that the Honorable High Court dismissed the writ petition of the appellant & the relevant para of the judgment is reproduce as under **“for what has been discussed above, the petition in hand is hereby dismissed in limine for the being not maintainable before this court, leaving the petitioners at liberty to approach the Services Tribunal for the redressal of their grievance, if so advised”.**(Annex-IV)
6. Pertains to record.

GROUNDS

- A. Related to respondent No. 5 & 6.
- B. Related to respondent No. 5 & 6.
- C. Related to respondent No. 5 & 6.
- D. That the Respondents are Law abiding civil servants and respect the Constitution of Islamic Republic of Pakistan 1973 & the respondents did not violate any article of the Constitution of Islamic Republic of Pakistan. Moreover, as per Notification of the Finance Department the appellant is not eligible for the said relief.
- E. Related to respondent No. 5 & 6.
- F. Related to respondent No. 5 & 6.
- G. That the Respondents are Law abiding civil servants and respect the Constitution of Islamic Republic of Pakistan 1973 & the respondents did not violate any article of the Constitution of Islamic Republic of Pakistan. Moreover, as per Notification of the Finance Department the appellant is not eligible for the said relief.
- H. Related to respondent No. 5 & 6.
- I. That Respondents produce relevant Law & decision of the superior courts in support of their comments/reply in the time of arguments
- J. Related to respondent No. 5 & 6.
- K. That any other grounds which has not been specifically taken in the above mentioned comments/reply maybe argued at the time of arguments with the permission of this Honorable Tribunal

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



SECRETARY to
Government of Khyber Pakhtunkhwa
Social Welfare, Special Education &
Women Empowerment Department
Peshawar
(Respondent No. 1)



SECRETARY to
Government of Khyber Pakhtunkhwa
Finance Department
Khyber Pakhtunkhwa
(Respondent No. 2)



DIRECTOR
Social Welfare, Special Education &
Women Empowerment
Peshawar
(Respondent No. 3)



DISTRICT OFFICER
Social Welfare, Special Education &
Women Empowerment
Kohat
(Respondent No. 7)

Annex I ①

GOVERNMENT OF NWFP
DIRECTORATE OF SOCIAL WELFARE AND
WOMEN DEV: JAMRUD ROAD PESHAWAR.

Dated Peshawar the 23/2/2005.

ORDER

No.E-17/65/DSWI. 398-404 On the recommendation of Departmental Section Committee Muhammad Ishaq S/O Khial Faraz Resident of Village Tappi Tehsil and District Karak is hereby appointed as KPO in the ADP scheme of the Department titled "Welfare Home Bannu" on the following terms and conditions:

- I- That this appointment shall be purely on fixed pay basis initially for the period upto 30th June, 2005, however is likely to be extendible on yearly basis.
- II- That the official shall be entitled to get pay Rs. 4320/- (Four Thousand Three Hundred and Twenty only) per month.
- III- That the contract can be terminated without assigning any reasons.
- IV- That the contract can be terminated at one month written notice from either side.
- V- That this appointment shall automatically be terminated on abolition of the Project.
- VI- That no TA / DA shall be admissible for joining the duty.
- VII- That this appointment is subject to medical fitness.
- VIII- That this appointment is subject verification of documents/testimonials
- IX- On expiry / completion of the contract / project, services of the appointee in the project shall stand terminated and shall not confer on the individual any right of absorption elsewhere or regularization of his/her services.
- X- Rest of terms and conditions will be the same as mentioned in the agreement deed to be properly executed between the appointee and the Directorate of Social Welfare & Women Development NWFP Peshawar.
- XI- That the appointee is required to join his/her duty within 15 days of this offer letter failing which the contract will be automatically cancelled.

Received.

M. J. [Signature]
2/3/05

[Signature]
(Dr. Fakhur-ul-Islam)

Director
Social Welfare & Women
Development NWFP.

Endst: No. & date even.

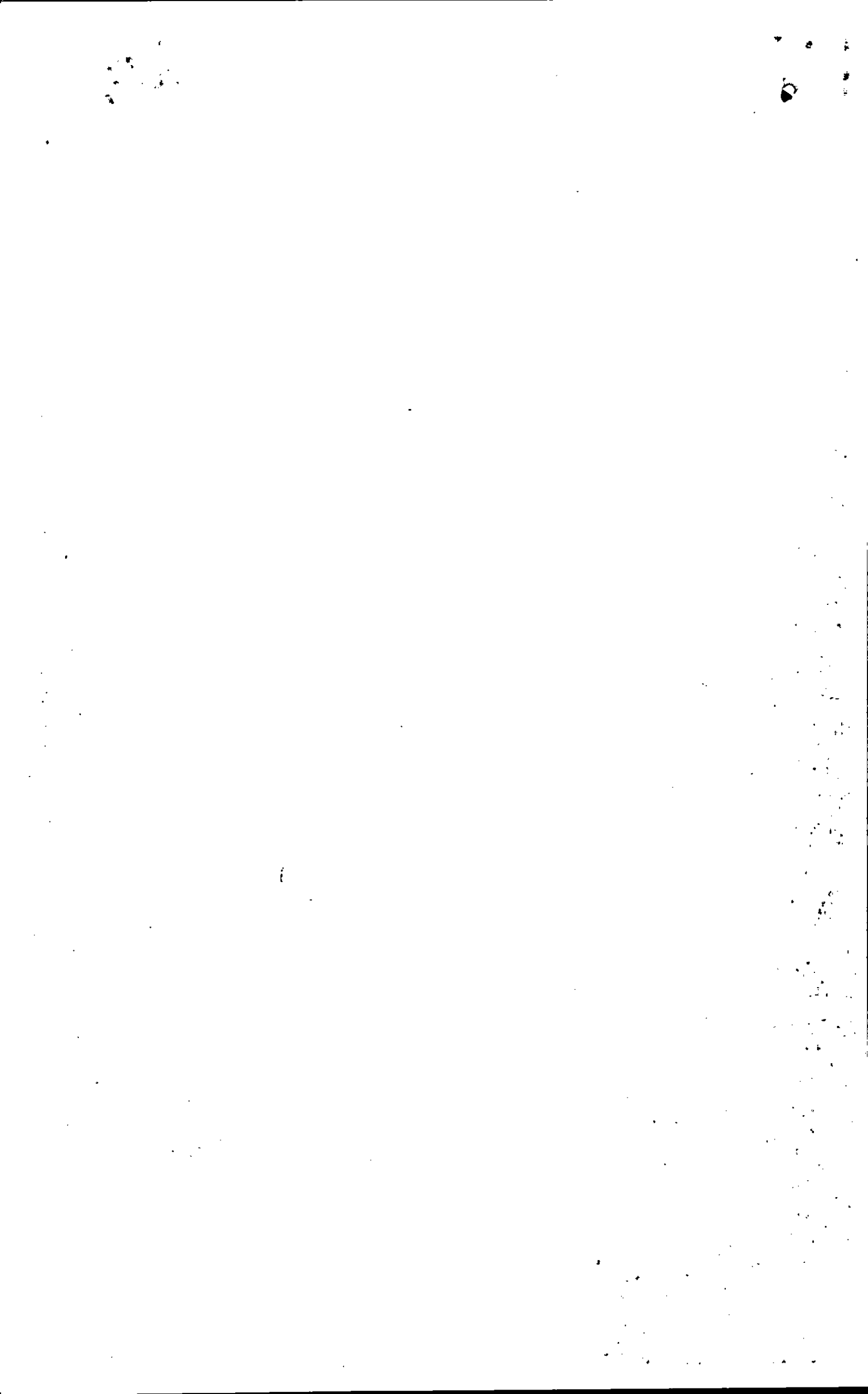
Copy forwarded to:

- 1- The Account Office, Bannu
- 2- The District Officer, Social Welfare Department, Bannu
- 3- The Planning Officer, Directorate of Social Welfare NWFP Peshawar.
- 4- The Section Officer- (II), Social Welfare Department NWFP Peshawar.
- 5- PS to Secretary Social Welfare & WDD, Peshawar.
- 6- Supdt Welfare Home Bannu
- 7- Official Concerned

[Signature]
Director

Social Welfare & Women
Development NWFP.

E-15/240/Assec. [Signature]



Annex II

OFFICE OF THE
DISTRICT COORDINATION OFFICER,
DISTRICT GOVT. BANNU
No. 5294-5301 DCO(BU)/DO(SW)
Dated Bannu the 30.6.08

OFFICE ORDER.

Consequent upon shifting Establishment of Child Welfare Home Bannu from ADP scheme to regular budget and on creation of post on current budget side w.e.f 01-07-2008 vide Finance Department Notification No. BOV-III/FD/1-5/2007-08/SNE Peshawar dated 16-04-2008 and Govt. of NWFP Directorate of Social Welfare & Women Development Department letter No. DSW/PO/Regularization/06/07/1762-66 dated 07-04-08, the Services of the following existing staff of Child Welfare Home Bannu are hereby regularized with effect from 01-07-2008 and are adjusted against the said posts.

S.No	Name	F/Name	Designation	BPS
1.	Muhammad Ishaq	Khial Faraz	Key Punch Operator	12
2.	Tasleem Akhtar	Sher Daraz Khan	Vocational Teacher	09
3.	Muhammad Rahman Shah	Gul Rahman Shah	Teacher	09
4.	Abdul Wahab Khasn	Abdul Aziz Khan	Teacher	09
5.	Qamer Ali Khan	Gul Nawaz Khan	N/Qasid	01
6.	Umer Ali Khan	Ghazi Marjan	Chowkidar	01
7.	Muhammad Rashid Khan	Ahmad Ali Khan	Chowkidar	01
8.	Gul Tiaz Khan	Muhammad Rafi	Cook	01
9.	Khalid Khan	Mir Sadiq Shah	Sweeper	01

Terms & Conditions.

- i. The services of the above persons will be liable to termination with or without any reason on two months notice from either side. In case of termination without notice by the employers or two months notice from the employee for resignation, two months pay and allowances shall be paid by the Government or returned by the employee as the case may be. The above appointments will be subject to the following terms & conditions:
- ii. They will not be entitled of pension/gratuity benefits.
- iii. They will not contribute towards G.P Fund, however, they will contribute to C.P fund @ 10% of minimum of pay scale and an equal amount of 10% contribution will be made by the Governments as per rules.
- iv. They will be allowed for usual allowance as admitted under the rules.
- v. They will be entitled to facility of Benevolent Fund as per new recruitment policy.

Sd/-
District Coordination Officer,
Bannu

11/2/17

cc. & Date
Copy to

1. The Accountant General, NWFP Peshawar.
2. The Director, Social Welfare Department NWFP Peshawar.
3. The District Accounts Officer, Bannu.
4. The District Officer, Social Welfare Department Bannu.
5. The PS to Minister, Social Welfare Zakat Ushr Deptt: NWFP Peshawar.
6. The PS to Secretary Social Welfare Zakat Ushr NWFP Peshawar.
7. Official Concerned.
8. Executive of the District Finance Officer Bannu.

file

7/17

17/65

Sd/-
District Coordination Officer,
Bannu

5301
7-07-08



GOVERNMENT OF KHYBER PAKHTUNKHWA
FINANCE DEPARTMENT

Annex III

(REGULATION WING)

Dated Peshawar the 25-11-2019

NOTIFICATION

- 53

No. FDISOSR-II/18-7/2019, in pursuance of the Supreme Court of Pakistan Civil Appeal No 811/2018 titled "Muhammad Alique-Ur-Rohman & Others v/s Federal Government of Pakistan through Secretary Capital Administration etc." the Government of Khyber Pakhtunkhwa (Provincial Cabinet) has been pleased to approve Health Allowance at the rate of one running basic pay to the devolved employees working in the Special Education Institutions from the date of their devolution to Provincial Govt of Khyber Pakhtunkhwa

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

Secretary to Govt of Khyber Pakhtunkhwa
Finance Department

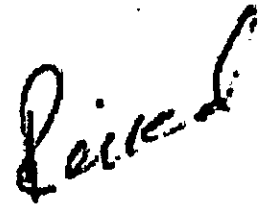
Encl: No. & Date Even.

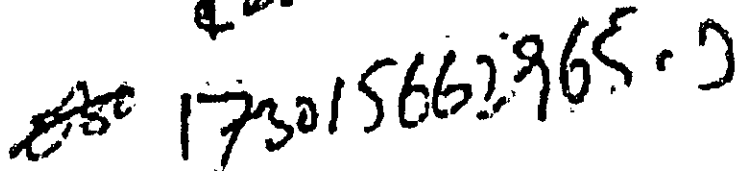
Copy is forwarded for information and necessary action to the:

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


SECTION OFFICER (SR-II)
FINANCE DEPARTMENT






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Annex IV
Amended
①

BEFORE THE PESHAWAR HIGH COURT, PESHAWAR

W.P No. 3807 - P/ 2020



1. Masood-ur-Rehman Senior Teacher, Nastar Special Education, KDA, Kohat.
2. Muhammad Younis Deputy Director, Nastar Special Education, KDA, Kohat.
3. Anila Rehman Senior Teacher, Nastar Special Education, KDA, Kohat.
4. Muhammad Ishaq Computer Operator, Nastar Special Education, KDA, Kohat.Petitioners

Versus

1. Government of Khyber Pakhtunkhwa through Secretary Social Welfare, Special Education & Women Empowerment Department, Peshawar
2. Government of Khyber Pakhtunkhwa through Secretary Finance Department, Peshawar.
3. Director Social Welfare, Special Education & Women Empowerment Department, Peshawar
4. Accountant General, Government of Khyber Pakhtunkhwa, Peshawar
5. Additional Deputy Commissioner (F& P) Kohat
6. District Officer, Social Welfare, Special Education & Women Empowerment Department, Kohat
7. District Comptroller of Accounts, District Complex, Gate No. 2 KDA, Kohat.Respondents

WRIT PETITION UNDER ARTICLE 199 OF THE CONSTITUTION OF ISLAMIC REPUBLIC OF PAKISTAN, 1973

ATTESTED
EXAMINER
Peshawar High Court

Respectfully Sheweth:

1. That the Government of Khyber Pakhtunkhwa Finance Department Issue a notification bearing No. FD(SOSR-II)8-7/2019 Dated 25/11/2019 wherein Health Allowance at the rate of one running basic pay has been awarded to devolved employees working in the

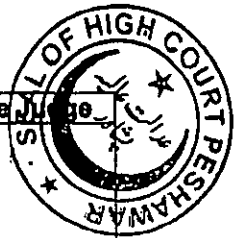
CAC
WJ

(28) (25)

Amendment
1/30

PESHAWAR HIGH COURT, PESHAWAR.

FORM 'A'
FORM OF ORDER SHEET



Date of order.	Order or other proceedings with the order of the Judge
08.06.2021	<p><u>W.P.No.3207-P of 2020.</u></p> <p>Present: Mr.Shahid Qayum Khattak, advocate for the petitioners.</p> <p>Mr.Khaled Rehman, AAG for the respondents.</p> <p style="text-align: center;">---</p> <p><u>LAL JAN KHATTAK, J.-</u> Petitioners through the instant petition under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973 seek issuance of an appropriate writ directing the respondents to act in the matter in accordance with law entitling them to the Health Allowance being drawn by similarly placed employees and also to declare letter dated 01.07.2020 as illegal, against the judgments of superior courts, discriminatory and thus same be struck down.</p> <p>2. Arguments heard and record gone through.</p> <p>3. Perusal of the case record would show that the petitioners are civil servants and the matter qua grant of the Allowance as claimed by them through the instant petition is one of the terms and conditions of their service and if any term and condition of service of a civil servant is violated by his department, then in that eventuality, he can approach the Services Tribunal established by the Government for that purpose and on no count he can come to this court for the enforcement of any of the terms and conditions of his service keeping in view the bar</p>

Gyan

ATTESTED
EXAMINER
Peshawar High Court

*c/c
my*

2 (29) (24) 31
E/A

contained in Article 212 of the Constitution of Islamic Republic of Pakistan, 1973.

4. For what has been discussed above, the petition in hand is hereby dismissed in limine for its being not maintainable before this court, leaving the petitioners at liberty to approach the Services Tribunal for the redressal of their grievance, if so advised.

SCANNED
KF3
Peshawar

[Signature]
JUDGE

[Signature]
JUDGE

[Signature]
CERTIFIED TO BE TRUE COPY

EXAMINER
Peshawar High Court, Peshawar
Authorized Under Article 47 of
The Courts of Sessions Order 1951
12 JUN 2021

No. 37992
Date of Presentation of Application 10/6/2021
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