

(B)

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

RESTORATION APPLICATION No. 754/2023

IN

EP No. 146/2018

IN

SA No. 1276/2007

Shahid IqbalAppellant

VERSUS

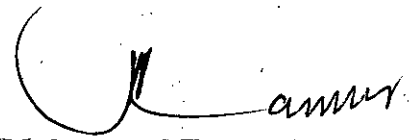
District Education Officer (E&SED) Abbottabad & Others.....Respondents

REPLICATION TO RESTORATION APPLICATION ON BEHALF OF THE
RESPONDENTS No. 01, 04 & 05

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Dated: 11-03-2024



(Muhammad Tanveer)

District Education Officer (M)

Abbottabad.

(Respondent No. 01)

24-04-24

A. Abee

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Respectfully Sheweth:-

The reply on behalf of respondents No. 01, 04 & 05 are submitted as under:-

Preliminary Objections:-

1. That the judgments of August Supreme Court of Pakistan and this Honourable Tribunal have lost their efficacy for the purpose of implementation by clear intendment through section 2 (1) of Khyber Pakhtunkhwa Cessation of Payment of Arrears on Advance Increments on Higher Educational Qualification Act No. IX of 2012 & vires of the Act have not been challenged before any forum.
2. That the instant Restoration Application is premature as the vires of Khyber Pakhtunkhwa Cessation of Payment of Arrears on Advance Increments on Higher Educational Qualification Act No. IX of 2012 have not been challenged and the same is still in field.
3. That the petitioner has got no cause of action to file the instant execution petition.
4. The Act was passed by the Provincial Assembly and assented by the Governor Khyber Pakhtunkhwa. The answering respondents are

bound to obey the will of the legislature & cannot deviate from any provision of enactment.

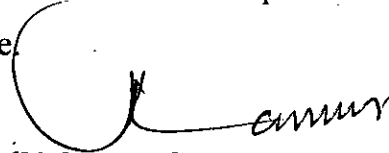
5. That the legislator has authority to legislate as they have mandate to do so by a recognize process and services law do not provides the provision of judicial review, hence, execution petition is not tenable.
6. **That the petitioner is at liberty to join service after due process of law equivalent to his qualification & the Government is not bound to pay advance increment.**
7. That the instant execution petition is time barred under the Limitation Act No. IX of 1908. Hence, liable to be dismissed without any further proceedings.
8. **That the instant execution petition is against the notification dated 27-10-2001 whereby, the basis of the claim of petitioner stood erased. In the year 2012 the Khyber Pakhtunkhwa Cessation of Payment of Arrears on Advance Increments on Higher Educational Qualification Act No. IX of 2012 was promulgated which was made retrospective from 2001. Hence, the instant application is liable to be dismissed on this score alone.**
9. That the instant Restoration Application & Execution Petition is not maintainable in its present form.
10. **That the judgment of Honorable Peshawar High Court regarding the Khyber Pakhtunkhwa Cessation of Payment of Arrears on Advance Increments on Higher Educational Qualification Act No. IX of 2012 has been set-aside on 02-06-2021 and the matters are remanded to the High Court for re-deciding the writ petition afresh by the August Supreme Court of Pakistan and Honorable Peshawar High Court Peshawar in WP No. 3081-P/2021 & 06 other Writ Petitions having similar question of law and facts disposed on 14-06-2023 with the direction to respondent department to consider the case of petitioners only and others cannot claim such benefits having not agitated the matter at the**

relevant time. Hence, present petitioners cannot claim such benefits as they were not petitioners in that very writ petitions.

Factual objections:-

1. In reply to Para No. 1, of the instant restoration application & execution petition pertains to record.
2. That the Para No. 2, of instant the restoration application & execution petition is correct.
3. That the Para No. 3, of the instant restoration application & execution petition as composed incorrect hence, denied. As per order dated 21-10-2020 of this Honorable Tribunal passed in EP No. 146/2018 petitioner cannot re-open the matter till the decision of the August Supreme Court of Pakistan and petitioner is relying on the judgment dated 14-06-2023 of Honorable PHC Peshawar which is judgment in personam. (Copy of the judgment dated 14-06-2023 is already annexed with instant restoration application as **Annexure "B"**)

Therefore, in view of the above submission it is humbly requested that this Honorable Tribunal may kindly be pleased to dismissed the titled application in favor of the Respondents in the interest of justice please being premature.



(Muhammad Tanveer)
District Education Officer (M)
Abbottabad
(Respondent No. 01)



(Samina Altaf)
Director
Elementary & Secondary Education
Khyber Pakhtunkhwa
Peshawar
(Respondent No. 04)



(Masood Ahmed)
Secretary
Elementary & Secondary Education Department
Khyber Pakhtunkhwa
Peshawar
(Respondent No. 05)

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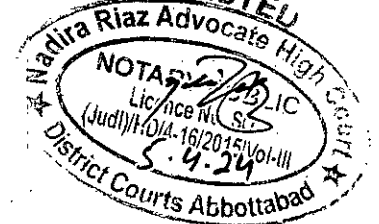
I, Muhammad Tanveer, District Education Officer (M) Abbottabad, do hereby affirm and declare on oath that the contents of forgoing comments are correct and true according to the best of my knowledge and belief and nothing has been suppressed from this Honorable Tribunal.

It is further stated that the answering respondents have neither been placed ex-parte nor their defence has been struck off.

[Handwritten Signature]

DEPONENT

ALISTEU



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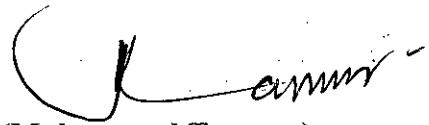
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AUTHORITY LETTER

*Mr. Sohail Ahmed Zeb, Legal Representative, District Education Office
(M) Abbottabad do hereby authorized to submit Reply in the subject titled Application on
behalf of respondents.*



(Muhammad Tanveer)
District Education Officer (M)
Abbottabad.
(Respondent No. 01)