

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

Misc Application No. 384 /2024

IN

Execution Petition No. 39/2023

Govt, of KP through Secretary E&SE Department & othersPetitioners.

VERSUS

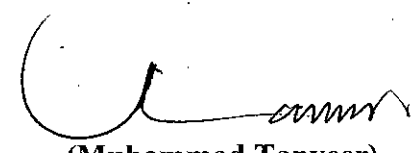
Shafiq ur Rehman SS GHSS Bodla District Abbottabad & others

.....Respondents

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Dated: _____-04-2024



(Muhammad Tanveer)
District Education Officer (M)
Abbottabad.
(Respondent No. 03)

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

Khyber Pakhtunkhwa Service Tribunal MISC Application No. 384 /2024

IN

No. 12863 Execution Petition No. 39/2023

Dated 17-05-2024

Govt, of KP through Secretary E&SE Department & othersPetitioners.

VERSUS

Shafiq ur Rehman SS GHSS Bodla District Abbottabad & others

.....Respondents

**OBJECTION PETITION UNDER SECTION-47 CPC 1908
AGAINST THE TILTED CASE IN TERMS OF:-**

- A. That the judgment 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.
- B. That the instant Execution Petition is hopelessly time barred under the Limitation Act No. IX of 1908.
- C. That the judgment of Peshawar High Court Peshawar passed in WP No 3081-P/2021 dated 14-06-2023 is judgment in personam and said judgment is also challenged before the August Supreme Court of Pakistan in CPLA No. 511-P/2023 titled Govt of Khyber Pakhtunkhwa Vs Saeedullah & Others is subjudice.

PRAYER:

On acceptance of instant objection petition in titled execution petitions may please be dismissed in terms of the above referred provision of law / grounds in favor of the applicants please.

Respectfully Sheweth:-

The applicants/ E&SE Khyber Pakhtunkhwa Peshawar submit as under: -

ON FACTS:

1. That the titled Execution Petition is pending before this Honorable Tribunal for implementation of the judgment dated 12-05-2009 regarding the Advance Increments on behalf of the Respondent Department which is fixed for hearing on dated 24-04-2024 for implementation report and the learned DDA raised question of limitation upon instant Execution Petition with the request that they are going to file objection petition in this respect. Hence, the Respondent Department further submit on the following grounds inter alia:

GROUND

- A. That the instant Execution Petition is hopelessly time barred under the Limitation Act No. IX of 1908. Hence, liable to be dismissed without any further proceedings.
- B. That the identical nature Implementation Petition No. 49/2012 was dismissed by this Honorable Tribunal dated 30-01-2013 and petitioner sought leave to appeal against the order dated 30-01-2013 before the August Supreme Court of Pakistan and same was also dismissed on 29-08-2013 passed in Civil Petition No. 360 of 2013 titled Muhammad Haroon Vs EDO & Others. The operative part of the judgment is reproduced as under:-

“A bare reading of the above Sections from Khyber Pakhtunkhwa Act No. IX of 2012 makes it crystal clear that whatever benefit the petitioner was claiming through the judgment dated 12-05-2009, has been nullified by the legislature through clear intendment in equivocal terms, while vires of the said Act have not been challenged before any forum. This being the position leave to appeal is refused and this petition is dismissed.”

(Copy of judgment dated 29-08-2013 annexed as **Annexure “A”**)

- C. That the Identical nature case was dismissed by the August Supreme Court of Pakistan in CP No. 172-P/2013 & 173-P/2013 dated 07-12-2018 and the operative part of the judgment is reproduced as under:-

“In the instant case petitioners are seeking arrears on the basis of Notification dated 11-08-1991 and in the light of section-2 of the

Act 2012, their claim cannot be entertained and is not justiciable. Reliance is placed on unreported judgment of this Court dated 29-08-2013 (mentioned in Ground B) passed in Civil Petition No. 360/2013. The Petitioners have not challenged the vires of the Act, therefore, these petitions stand abated under Act of 2012, as a result leave to appeal is declined and these petitions are dismissed.”

(Copy of judgment dated 07-12-2018 is annexed as Annexure “B”)

- D. 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. (Copy of Act 2012 is annexed as Annexure “C”)
- E. That the similar Execution Petitions regarding the same subject matters execution proceedings were adjourned sine die till the decision of August Supreme Court of Pakistan vide order dated 21-10-2020 by this Honourable Tribunal. (Copy of order 21-10-2020 is annexed as Annexure “D”)
- F. That the judgment of Peshawar High Court Peshawar passed in WP No. 3081-P/2021 dated 14-06-2023 is judgment in personam as respondents did not challenge the vires of the Act at any forum and judgment dated 14-06-2023 is also challenged before the August Supreme Court of Pakistan in CPLA No. 511-P/2023 titled Govt of Khyber Pakhtunkhwa Vs Saeedullah & Others is subjudice. (Copy of Civil Petition No. 511-P/2023 is annexed as Annexure “E”)
- G. That the instant execution petition is against the notification dated 27-10-2001 whereby, the basis of the claim of petitioners 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.

H. 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.

(Copy of order dated 02-06-2021 is annexed as **Annexure "F"**)

I. That copy of judgment dated 12-05-2009 is already annexed with instant Execution Petition as **Annexure "A"** at page No. 04 to 07 while copy of judgment dated 14-06-2023 passed by Honorable Peshawar High Court Peshawar is hereby annexed with instant objection Petition as **Annexure "G"**.

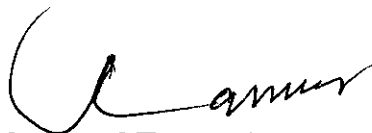
It is therefore, humbly requested that on the acceptance of this petition under section 47-CPC, 1908 the titled Execution Petitions may kindly be dismissed in favor of the respondents.



(Masood Ahmed)

Secretary

Elementary & Secondary Education Department
Khyber Pakhtunkhwa Peshawar
(Respondent No. 04)



(Muhammad Tanveer)

District Education Officer (M)
Abbottabad
(Respondent No. 03)

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

Application No. _____ /2024

IN

Execution Petition No. 39/2023

Govt, of KP through Secretary E&SE Department & othersPetitioners.

VERSUS

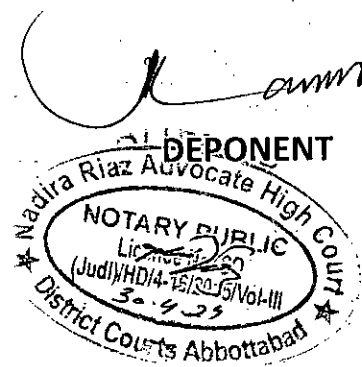
Shafiq ur Rehman SS GHSS Bodla District Abbottabad & others

.....Respondents

AFFIDAVIT

I, Mr. Muhammad Tanveer, District Education Officer (Male) Abbottabad, do hereby affirm and declared on oath that contents of forgoing petition under section 47 CPC 1908 are correct and true according to the best of my knowledge and belief and nothing has been suppressed from this Honorable Tribunal.

It is Certified that Judgment dated 12-05-2009 has already been annexed by the Petitioner, hence, there is no need to annex the same with instant objection Petition.



M. Tanveer
16/5/24
Assistant Advocate General
Khyber Pakhtunkhwa
Services Tribunal Peshawar

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

Application No. _____/2024

IN

Execution Petition No. 39/2023

Govt, of KP through Secretary E&SE Department & othersPetitioners.

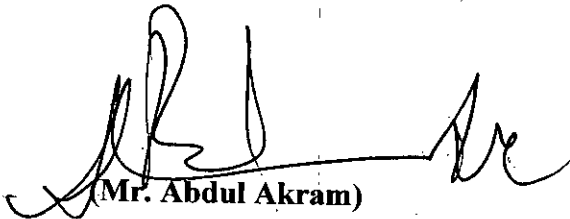
VERSUS

Shafiq ur Rehman SS GHSS Bodla District Abbottabad & others

.....Respondents

AUTHORITY LETTER

Mr. Sohail Ahmed Zeb, Litigation Officer, District Education Officer (Male) Abbottabad is hereby authorized to submit Objection Petition on behalf of Secretary Elementary and Secondary Education Khyber Pakhtunkhwa Peshawar in Execution Petition No. 39/2023 titled Govt, of KP through Secretary E&SE Department & others Vs Shafiq ur Rehman SS GHSS Bodla District Abbottabad & others.



(Mr. Abdul Akram)
ADDITIONAL SECRETARY

On behalf of
Mr. Masood Ahmad
SECRETARY E&SE DEPDTT;
(Respondent No. 04)

In the Supreme Court of Pakistan
(Appellate Jurisdiction)

Present:

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

Civil Petition No.360 of 2013.

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

Muhammad Haroon

...Petitioner

Versus

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

Petitioner: In person.

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

Date of hearing: 29.8.2013

JUDGMENT

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

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

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

District Education Officer
(Male) Abbottabad

ATTESTED

Superintendent
Supreme Court, Pakistan
ISLAMABAD

In the Supreme Court of Pakistan
(Appellate Jurisdiction)

Present:

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

Civil Petition No. 360 of 2013.

(on appeal from judgment of KPK Service Tribunal, Peshawar dated 30.01.2013, passed in implementation petition No. 49/2012)

Muhammad Haroon

.....Petitioner

Versus

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

.....Respondents

Petitioner :

In Person

For official respondents:

Mr. Naveed Akhtar Khan, Addl A.G KPK

Mr. Saeed-ur-Rehman, ADO (Edu.), Haripur

Date of Hearing

29.8.2013

JUDGMENT

Anwar Zaheer Jamali, J.- By this petition under Article 212 (3) of the Constitution of Islamic Republic of Pakistan, 1973, leave to appeal is sought by petitioner Muhammad Haroon against the order dated 30.01.201, passed by the Khyber Pakhtunkhwa Service Tribunal, Peshawar (in short "the Tribunal") whereby his implementation application No. 49/2012. In service Appeal No 506/2009, was dismissed in view of sections 1&2 of Khyber Pakhtunkhwa Cessation of payment of Arrears on Advance Increments on Higher Education Qualification Act, 2012 (Khyber Pakhtunkhwa Act No. IX of 2012.)

2. We have heard the arguments of petitioner. He has placed reliance on the earlier judgment of the Tribunal dated 12-05-2009, whereby he was held entitled for the benefit of advance increment on the bases of higher qualification. For this purpose, he has also placed reliance upon the judgment of this Court, reported as PIA Corporation v. Aziz-ur-Rehman Chaudhry (2011 SCMR 219).

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


**Assistant District
Education Officer (M)
Abbotabad**

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

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

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

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

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

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

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

District
(Male) Abbottabad

ATTESTED

Sub-Commissioner
Supreme Court

7

C.P 360 of 2013

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

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

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

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

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

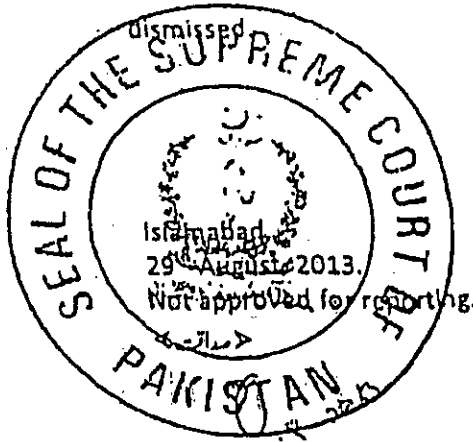
2. Cessation of payment of arrears on advance increments on higher educational qualification.---(1) Notwithstanding anything contained in any decision, judgment and order of any Tribunal or Court including High Court or Supreme Court of Pakistan, for the purpose of any claim for payment of arrears on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

(2) Any order made, instruction issued, decision, judgment or order of any Court or Tribunal including a High Court or the Supreme Court, implemented immediately before the commencement of this Act, shall be deemed to have been validly made, issued and implemented by the date of commencement of this Act, and any amount already paid thereunder 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."


Assistant District
Education Officer (M)
Abbottabad

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

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



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

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

10565/13

Case No.	Civil/Criminal
Date of Presentation	28.8.13
No. of Words	910
No. of Pages	5
Registration Fee Rs.	5.18
Copy Fee Rs.	10.18
Name of Counsel	4/9/13
Date of receipt	5-9-13
Signature	<i>[Signature]</i>

[Signature]
District Education Officer
(Male) Abbottabad

(28)

Legible Copy


C.P 360 of 2013.

5. A bare reading of the above sections from Khyber Pakhtunkhwa Act No. IX of 2012 makes it 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 equivocal terms, while vires of the said Act have been challenged before any forum.

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

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

Islamabad
29th August 2013.
Not approved for reporting


Assistant District
Education Officer (M)
Abbottabad

Superintendent
Supreme Court of Pakistan
ISLAMABAD

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

Present:

Mr. Justice Qazi Faiz Isa
Mr. Justice Syed Mansoor Ali Shah

Civil Petition No. 172-P & 173-P of 2013
(as appeal from the judgment of KPK Service Tribunal, Peshawar dated 03.02.2013, rendered in Appeals No. 523 & 524 of 2010)

Mansoor Ahmad (In C.P. 172-P/2013)
Yameen Akhtar (In C.P. 173-P/2013)

--- Petitioners

Versus

The Secretary Education, Government of KPK, etc. (in both cases)

--- Respondents

Petitioners: In person (in both cases)
For the respondents: Mr. Mujahid Ali Khan, Addl. A.G. KPK
Date of hearing: 07.12.2018

JUDGMENT

Syed Mansoor Ali Shah, J. - The facts of the case are that petitioners in both the petitions were appointed as Primary School Teachers ("PST"). Mansoor Ahmad, petitioner in Civil Petition No.172-P/2013 ("Petitioner No.1"), however, retired from service on 01.02.2016, while Yameen Akhtar, petitioner in Civil Petition No.173-P/2013 ("Petitioner No.2") is still in service.

TESTED

[Signature]
District Education Officer
Abul Kalam

These petitions pertain to their claim regarding advance increments on the basis of acquiring higher educational qualification while in service. Petitioner No.1 was given five advance increments under Notification dated 24.08.1983 while petitioner No.2 was given three advance increments under the same Notification plus a move-over to BPS-09. Petitioners claim that as per subsequent Notification dated 11.08.1991 issued by the Finance Department, Government of KPK, petitioner No.1 ought to have been given 12 advance increments for obtaining higher educational qualification of F.A, B.A and M.A, while petitioner No.2 be given six advance increments, as per the same Notification for obtaining the qualification of F.A and B.A. It is submitted

[Signature]
District Education Officer
(Male) Abbottabad

Better Copy P-9

IN SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

Present:

Mr. Justice Qazi Faiz Isa
Mr. Justice Syed Mansoor Ali Shah

Civil Petition No. 172-P & 173-P of 2013

(An appeal from the judgment of KPK Service Tribunal, Peshawar dated 09-02-2013 fixed in appeal No. 523 & 524 of 2010)

Manzoor Ahmed (in CP. 172-P/2013)
Yasmeen Akhtar (in CP. 173-P/2013)

.....Petitioners

Versus

The Secretary Education Government of KPK etc (in both cases)

.....Respondents

Petitioner

In Person (in both cases)

For the respondent:

Mr. Mujahid Ali Khan, Add AG KPK

Date of hearing:

07-12-2018

JUDGEMENT

Syed Mansoor Ali Shah, J. :- The facts of the case are that petitioners in both the petition were appointed as Primary School Teachers ("PST"). Manzoor Ahmed, petitioner in Civil Petition No.172-P/2013 ("Petitioner No. 1") however, retired from service on 01-02-2016, while Yasmeen Akhtar, petitioner in Civil Petition No. 173-P/2013 ("Petitioner No.2") is still in service.

These petitioners pertain to their claim regarding advance increments on the basis of acquiring higher educational qualification while in service. Petitioner No.1 was given five advance increments under Notification dated 24-08-1983 while petitioner No.2 was given three advance increments under the same Notification plus a move-over to BPS-09. Petitioner claim that as per subsequent Notification dated 11-08-1991 issued by the Finance Department, Government of KPK, petitioner No.1 ought to have been given 12 advance increments for obtaining higher educational qualification of F.A. B.A and M.A. while petitioner No.2 be given six advance increments, as per the same Notification for obtaining the qualification of F.A and B.A. It is submitted


Assistant District
Education Officer (M).
Abbottabad

that the petitioners were appointed as PSTs when the qualification for the said post was matriculation.

3. Arguing the case for himself and for petitioner No.2, Mr. Mansoor Ahmad submitted that they were initially granted advance increments vide Notification dated 21.08.1983, however, subsequently through the Notification dated 11.08.1991, the number of advance increments were increased, inasmuch as, it was also granted for obtaining higher educational qualification of B.A. He submits that the said notification is applicable to PSTs and placed reliance on an unreported judgment of this Court dated 09.07.2007, passed in Civil Petition No.525/2007, as well as, the subsequent notification issued in the light of the said judgment i.e. Notification dated 13.05.2009, issued by the Elementary and Secondary Education Department, Government of KPK. The above cited judgment extends the benefit of

TESTED
State Registrar
Court of Pakistan
Peshawar

Notification dated 11.08.1991 to teachers.

Learned Additional Advocate General, KPK representing the Government, submits that the case of the petitioners is governed by Notification dated 21.08.1983, issued by the Finance Department, Government of KPK and as per clause 9 of the said notification, petitioner No.1 is entitled to five advance increments for obtaining F.A. and B.A., whereas, petitioner No.2 is entitled to three advance increments as she has already been granted the benefit of move-over to higher pay scale as per Notification dated 07.08.1991, issued by the Finance Department, Government of KPK. Learned law officer has placed reliance on an unreported judgment of this Court dated 08.9.2011, passed in Civil Petition No.1425/2011, which discusses the mode of calculation of advance increment granted for higher educational qualification. In this case, it was held that advance increment can only be granted for the highest educational qualification obtained, as advance increments for the degrees leading up to the final degree stand merged into advance increment prescribed for the highest qualification. In other words, advance increments for obtaining F.A (two advance increments) and B.A (four advance increments including two

that the petitioners were appointed as PSTs when the qualification for the said post was matriculation.

3. Arguing the case for himself and for petitioner No.2. Mr. Manzoor Ahmed submitted that they were literally granted *advance increments* vide Notification dated 01-08-1983, however, subsequently through the Notification dated 11-08-1991 the number of *advance increments* were increased. Increments as, it was also granted for obtaining higher educational qualification of M.A. He submits that said Notification be applicable to "PST" and placed reliance on unreported judgment of this Court dated 09-07-2007, passed in Civil Petition No. 525/2007, as well as, the subsequent notification issued in the light of the said judgment i.e Notification dated 13-05-2009, issued by Elementary and Secondary Education Department, Government of KPK. The above cited judgment extends the benefit of Notification dated 11-08-1991 to teachers.

Learned Additional Advocated General, KPK representing the Government, submits that the case of the petitioners is governed by Notification dated 21-08-1983, issued by the finance department, government of KPK and as per clause 9 of the said notification, petitioner No.1 is entitled to five advance increments for obtaining F.A and B.A, whereas, petitioner No.2 is entitled to three advance increments as she has already been granted the benefit of move-over to higher pay scale as per Notification dated 07-08-1991, issued by the Finance Department, Government of KPK. Learned law officer has placed reliance on an unreported judgment of this Court dated 08-09-2011, passed in Civil Petition No.1425/2011, which discusses the mode of calculation of advance increment granted for higher educational qualification. In this case it was held that advance increment can only be granted for the highest educational qualification obtained, as advance increments for the degrees lending up to the final degree stand merged into advance increments prescribed for the highest qualification. In other words, advance increments for obtaining F.A (two advance increments) and B.A (four advance increments including two


Assistant District
Education Officer (M)
Abbottabad

advance increments granted for P.A) stand merged into advance increments granted for obtaining M.A (six advance increments), therefore, providing two advance increment for each higher educational qualification.

6. He further submits that at this stage the claim of the petitioners cannot be entertained in the light of section 2 of the Khyber Pakhtunkhwa Cessation of Payment of Arrears on Advance Increments on Higher Educational Qualification Act, 2012 ("Act of 2012"), by virtue of which the instant petitions cannot proceed and stand abated. He placed reliance on an unreported judgment of this Court dated 29.11.2013, passed in Civil Petition No. 300/2013.

7. We have heard the parties at some length and have gone through the record of the case. While the argument of the petitioners might have some merit with regard to grant of one advance increment in the case of petitioner No.1 and four advance increments in case of petitioner No.2 in the light of Notification dated 11.08.1991, read with the unreported judgments of this Court dated 09.2.2007 passed in Civil Petition No. 525/2007 and dated 08.9.2011 passed in Civil Petition No. 1425/2011. However, before going into the merits of the case, we need to first examine the justifiability of the claims in the light of Act of 2012. The preamble of Act of 2012 provides as under:-

TESTED
 [Signature]
 Dy Registrar
 Court of Pakistan

"The Khyber Pakhtunkhwa Cessation of Payment of Arrears on Advance Increments on Higher Educational Qualification Bill 2012 having been passed by the Provincial Assembly of Khyber Pakhtunkhwa on 04th May, 2012 and assented to by the Governor of the Khyber Pakhtunkhwa on 14th May, 2012 is hereby published as an Act of the Provincial Legislature of the Khyber Pakhtunkhwa.

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

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

And whereas due to financial constraints, it is not possible for Provincial Government to pay the claimed and unclaimed arrears accrued

District Education Officer
 (Male) Abbottabad

advance increments granted for F.A) and merged into advance increments granted for obtaining M.A (fix advance increments), therefore, providing two advance increment for each higher educational qualification.

5. He further submits that at this stage the claim of the petitioners cannot be entertained in the light of section 9 of the Khyber Pakhtunkhwa Cessation of Payment of Arrears on Advance Increments on Higher Educational Qualification Act, 2012 ("Act of 2012"), by the virtue of which the instant petitioner cannot proceed and stand abated. He placed reliance on an unreported judgment of this Court dated 29.8.2013, passed in Civil Petition No. 360/2013.

6. We have heard the parties at some length and have gone through the record of the case. While the argument of the petitioners might have some merit with regard to grant of one advance increment in the case of petitioner No.1 and four advance increments in case of petitioner No.2 in the light of Notification dated 11.08.1991 read with the unreported judgment of this Court dated 09.02.2007 passed in Civil Petition No.8129/2011. However, before going into the merits of the case, we need to first examine the justiciability of the claims in the light of Act of 2012. The preamble of Act of 2012 provides as under:-

"The Khyber Pakhtunkhwa Cessation of Payment of Arrears on Advance Increments on Higher Educational Qualification Bill 2012 having been passed by the Provincial Assembly of Khyber Pakhtunkhwa on 8th May, 2012 and assented by the Governor of the Khyber Pakhtunkhwa on 8th May, 2012 is hereby published as an Act of the Provincial Legislature of the Khyber Pakhtunkhwa.

Whereas advance increments have been granted in certain Provincial Government employees on the basis of acquiring or possessing higher educational qualification over and above the prescribed educational qualification from time to time.

And whereas the Provincial Government vide Notification No. (PRC): 1/2001, dated 27.10.2001 had already discontinued the scheme of advance increments on higher educational qualification.

And whereas due to financial constraints, it is not possible for Provincial Government to pay the claimed and unclaimed arrears accrued


Assistant District
Education Officer (M).
Abbotabad

It is hereby enacted as follows:-* (emphasis supplied)

While section-2 reads as under:-

"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 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."

TESTED

[Signature]
District Registrar
Court of Pakistan
Peshawar.

(emphasis supplied)

7. Plain reading of the above provisions show that the claim of advance increments on obtaining higher educational qualification was discontinued by the Provincial Government on 27.10.2001. Section-2 of the Act of 2012 provides that claim for payment of arrears of advance increments shall be deemed non-existent 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 shall stand abated. Sub-section 2 provides that any amount of advance increment or arrears thereof already paid before the commencement of the Act of 2012 shall be deemed to have been validly paid and shall not be recoverable from the recipient government employees.

8. The scope of Act of 2012 is that after the promulgation of the Act i.e. w.e.f. 11.05.2012, no government employee can claim arrears on account of advance increments for higher educational qualification and advance

District Education Officer
(Male) Abbottabad

It is hereby enacted as follows; (*emphasis supplied*)

While section-2 reads as under:-

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

(2) Any order made, instruction issued, decision, judgment or order of any Court or Tribunal including a High Court or the Supreme Court, implemented immediately before the commencement of this Act, shall be deemed to have been validly made, issued and implemented by the date of commencement of this Act, and any amount already paid thereunder 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."
(*emphasis supplied*)

7. Plain reading of the provisions show that the claim of advance increments on obtaining higher educational qualification was discontinued by the Provincial Government on 27.10.2001 Section-2 of the Act of 2012 provides that the claim for payment of arrears of Advance Increments shall be deemed non-existent 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 Supreme Court shall stand abated. Sub-section 2 provides that any amount of advance increment or arrears thereof already paid before the commencement of the Act of 2012 shall be deemed to have been validly paid and shall not be recoverable from the recipient government employees.

8. The scope of Act 2012 is that after the promulgation of the Act i.e w.e.f 11.05.2012, no government employee can claim arrears on account of advance increment for higher educational qualification and advanced

Assistant District
Education Officer (M)
Abbottabad

increments and arrears already paid shall not be recoverable from the recipient government employee. "Arrears" includes payment of a debt or the discharge of an obligation. In this case, claim of the petitioners for *advance increment* under Notification dated 11.8.1991 is an outstanding arrear. Reference to the deeming commencement date under section-1(3) of the Act is simply to identify the cutoff date for the purposes of tabulating arrears as mentioned in section-2, which, if outstanding on 11.5.2012, will not be payable and no claim relating to the same can be entertained.

9. In the instant case petitioners are seeking arrears on the basis of Notification dated 11.08.1991 and in the light of section-2 of the Act of 2012, their claim cannot be entertained and is not justiciable. Reliance is placed on unreported judgment of this Court dated 29.08.2013 passed in Civil Petition No.360/2013. The petitioners have not challenged the vires of the Act, therefore, these petitions stand abated under Act of 2012, as a result leave to appeal is declined and these petitions are dismissed.

Sd/- Qazi Faez Ishaq, J.
Sd/- Syed Mansoor Ali Shah, J.



Peshawar,
07th December, 2018.
Not approved for reporting.
Sadaqat

Certified to be true copy

Assistant Registrar
Supreme Court of Pakistan
Peshawar.

P. 172
14.12.18

ATTESTED
MAN SAAD
Advocate
Peshawar

District Education Officer
(Male) Abbonabad

C.P No. 172-P/2013, etc

Increments and arrears already paid shall not be recoverable from the recipient government employee "Arrears" includes payment of a debt or the discharge of an obligation. In this case, claim of the petitioners for *advance increment* under Notification dated 11.8.1991 is an outstanding arrear. Reference to the deeming commencement date under section-1(3) of the Act is simply to identify the cutoff date for the purpose of tabulating arrears as mentioned in section-2, which, if outstanding on 11.5.2012, will not be payable and no claim relating to the same can be entertained.

9. In the instant case petitioners are seeking arrears on the basis of Notification dated 11.8.1991 and in the light of section-2 of the Act of 2012, their claim cannot be entertained and is not justiciable. Reliance is placed on unreported judgment of this Court dated 29.8.2013 passed in Civil Petition No.360/2013. The petitioners have not challenged the vires of the Act, therefore, these petitions stand abated under Act of 2012 as a result leave to appeal is declined and these petitions are dismissed.

Peshawar,
07th December 2018
Not approved for reporting
Sadaqat

Sd/- Qazi Faez Isa, J.
Sd/- Syed Mansoor Ali Shah, J.

Certified to be true copy

*Assistant Registrar
Supreme Court of Pakistan
Peshawar*

*Assistant District
Education Officer (M)
Attock*

EXTRAORDINARY
GOVERNMENT



14
Anx - C
REGISTERED NO. P.III

GAZETTE

KHYBER PAKHTUNKHWA

Published by Authority

PESHAWAR, TUESDAY, 15TH MAY, 2012.

PROVINCIAL ASSEMBLY SECRETARIAT
KHYBER PAKHTUNKHWA

NOTIFICATION

Dated Peshawar, the 15th May, 2012.

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

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

(KHYBER PAKHTUNKHWA ACT NO. IX OF 2012)

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

AN
ACT

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

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

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District Education Officer
(Male) Abbottabad

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

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

It is hereby enacted as follows:-

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

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

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

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

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

District Education Officer
(Male) Abbottabad

- 3. **Removal of difficulties.**— If any difficulty arises, in giving effect to the provisions of this Act, the Provincial Government may make such orders as it may deem just and equitable.
- 4. **Repeal.**— The Khyber Pakhtunkhwa Cessation of Payment of Arrears on Advance Increments on Higher Educational Qualification Ordinance, 2012 (Khyber Pakhtunkhwa Ordinance NO. 1 of 2012), is hereby repealed.

**BY ORDER OF MR. SPEAKER
PROVINCIAL ASSEMBLY OF KHYBER
PAKHTUNKHWA**

**(AMANULLAH)
Secretary
Provincial Assembly of Khyber Pakhtunkhwa**

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

(Signature)
**District Education Officer
(Male) Abbottabad**

E.T. 17/2018

21.10.2020

Petitioner in person present.



17

Asst-D

Usman Ghani learned District Attorney alongwith Sohail Ahmad Zeb

Litigation Assistant for respondents present.

From the record, it is evident that the present petitioner and others filed service appeals U/S 4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974 for grant of advance increments with all back benefits on the basis of Para-05(I) (c) of the Notification No. FD (PRC) 1-1 /89. dated 11.08.1991 issued by Finance Department and in pursuance of judgment passed by the August Supreme Court of Pakistan and vide judgment dated 12.05.2009 in appeal No.1276/2007, all the appeals were accepted. In the meanwhile, Khyber Pakhtunkhwa Cessation of Payment of Arrears on Advance Increments on Higher Qualification Bill 2012 having been passed by the Provincial Assembly Khyber Pakhtunkhwa on 8th May, 2012 and assented to by the Governor Khyber Pakhtunkhwa on 11th May, 2012 was published as an Act of the Provincial Legislature of Khyber Pakhtunkhwa. This Act was challenged before the Service Tribunal as well as in the August High Court. Appeals pending in the Service Tribunal were withdrawn by the appellants vide order dated 21.03.2018 of this Tribunal. Writ Petitions were allowed vide order dated 08.06.2017 and the official respondents were directed to provide the benefits of advance increments according to the notification dated 11.08.1991 on attaining higher qualification during service. The respondent departments challenged the said order in the August Supreme Court of Pakistan and vide order dated 18.12.2019 of the August Supreme Court of Pakistan, leave was granted and the impugned judgment passed by the Hon'ble Peshawar High Court was suspended.

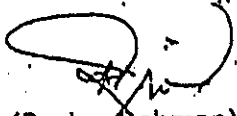
Certified

(Male) Abdullah


In view of the above discussion, the instant execution proceedings are adjourned sine die till the decision by the August Supreme Court of Pakistan. Petitioner is at liberty to seek its restoration after the decision by the August Supreme Court of Pakistan. File be consigned to the record room.

Certified to be true copy

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar


(Rozina Rehman)
Member (J)
Camp Court, A/Abad

Date of Presentation: 03/10/23
Number of Words: 28
Copying Fee: 10/-
Urgent: 5/15
Total: 15/-
Name of Ctg: _____
Date of Comp: 03/10/23
Date of Delivery of Copy: 03/10/23


District Education Officer
(Male) Abbottabad

19 Annex - E

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

C.P.A No. 511-P/2023

Government of Khyber Pakhtunkhwa through Secretary Establishment
Department, Peshawar & others

————— PETITIONERS

VERSUS

Saadullah & others

————— RESPONDENTS

Appeal from : Hon'ble Peshawar High Court, Peshawar
Counsel for Petitioner : Advocate General, Khyber Pakhtunkhwa
Peshawar
Instituted by : Mian Saadullah Jandoli, AOR

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4.	Ground of Writ petition No. 5253-P/2014	23-06-2014	13-20
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8.	KP cessation of payment of arrears on advance increments on higher educational qualification Ordinance 2012	27-03-2012	29-31
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10.	Judgment in CA No. 1225 of 2007	20-06-2013	35-39
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District Education Officer
(Male) Abbottabad

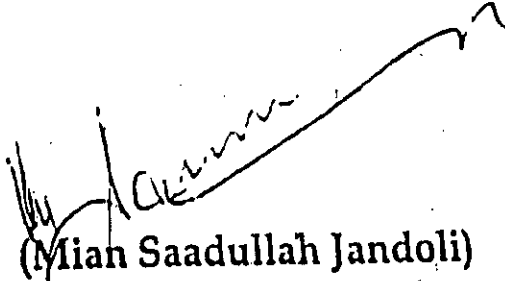


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13.	Copy of letter No. FD(SRI)2-123/02007	03-01-2009	47
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CERTIFIED that the paper book has been prepared in accordance with the rules of the Court and all the documents necessary for due appreciation of the court have been included in it. Index is complete in all respect.


District Education Officer
(Male) Abbottabad


(Mian Saadullah Jandoli)
Advocate-on-Record
Supreme Court of Pakistan
For Government/Petitioner

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

CPLA NO. 5H-P /2023

Government of Khyber Pakhtunkhwa through Secretary Establishment
Department, Peshawar & others

—————PETITIONERS

VERSUS

Saeedullah & others

—————RESPONDENTS

CONCISE STATEMENT

1	Subject matter and the law	Claim for advance increments on higher qualification
2	Controversy between the parties	The respondents challenged the vires of the Act of Khyber Pakhtunkhwa Cessation of payment of arrears on advance increments on higher education which was later on abandon and claims of advance increments in the letter dated 11/08/1991 and if they fulfill the conditions mentioned therein for the grant of advance increments they be consider for the same.
3	Which side has filed this petition	Government / petitioners

4	Court / Forum	Date of a) Institution b) Decision	Who filed it and with what result
5.	Hon'ble Peshawar High Court, Peshawar	a) 23/06/2014 b) 08/06/2017	Respondents filed writ petition which has been accepted.
6.	Supreme Court of Pakistan	a) 16/08/2017 b) 02/06/2021	Petitioners filed CPLA which was converted into Appeal and the same was allowed by remanding the matter back to High Court for decision afresh.
7.	Hon'ble Peshawar High Court, Peshawar	a) 23/06/2014 b) 14/06/2023	Respondents filed writ petition which has been accepted.

6	Points noted in the impugned Judgment	Treatment of points in the impugned judgment
	In all these petitions, the respondents have mainly questioned the vires of the Khyber Pakhtunkhwa Cessation of Payment of Arrears on Advance Increments on Higher Educational Qualification Act, 2012,	In view of above, we, without commenting upon the vires of "the Act" and in view of the statement of the Learned Advocate General, Khyber Pakhtunkhwa, dispose of this and the connected writ petitions and direct the petitioners to consider the case of the respondents in the light of circular letter dated

District Education Officer
(Male) Abbonabad

<p>(hereinafter to be referred as "the Act"</p> <p>Comments were called from the petitioners who furnished the same, wherein, they opposed the issuance of desired writ asked for by the respondent</p>	<p>11/08/1991 and in case, they fulfill the condition mentioned therein for the grant of advance increments prior to the cut-of-date, they be allowed such benefits. It is, however, clarified that only the case of the present respondents shall be considered and that others cannot claim such benefits, having not agitated the matter at the relevant time.</p>
---	---

- | | |
|---|---|
| 7 | Question requiring consideration & decision by the Supreme Court |
| <ul style="list-style-type: none"> ➤ Whether the Provincial Government had already discontinued the scheme of Advance Increments on Higher Educational Qualification form time to time vide Notification No. (PRC) 1-12001 dated 27/10/2001, which was later on converted into proper law promulgated by the Provincial Assembly? ➤ Whether the legislature has no authority to nullify the judgment of superior Court through proper and competent legislation? ➤ Whether the respondents have lost the claim after passing of Cessation of Advance Increments on Higher Education Qualification Act, 2012? ➤ Whether after abandoning the prayer to challenge the varies of law, the claims of respondents did not remained in filed with any prayer and the relief granted by the High Court to the respondent is beyond the pleading? | |

8. **LAW/RULING ON THE SUBJECT**

FOR		AGAINST	
1.	CONSTITUTION OF ISLAMIC REPUBLIC OF PAKISTAN 1973		NIL
	KHYBER PAKHTUNKHWA CIVIL SERVANT CESSATION OF ADVANCE INCREMENT ACT, 2012		
	PLD 2012 SC 1923		

CERTIFICATE

Certified that, we, the undersigned prepared the above concise statement which is correct.

(Signature)
 (Main Saadullah Jandoli)
 Advocate-on-Record
 Supreme Court of Pakistan
 For Government/Petitioners

(Additional Advocate General)
 Khyber Pakhtunkhwa
(Signature)
 District Education Officer
 (Males) Abbottabad

L

(23)

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

CPLA NO. 511-P /2023

1. Government of Khyber Pakhtunkhwa through Secretary S&GAD, Civil Secretariat, Peshawar (Now Govt of Khyber Pakhtunkhwa through Secretary Establishment Department, Peshawar)
2. Secretary to Government of Khyber Pakhtunkhwa, Finance Department, Civil Secretariat, Peshawar
3. Secretary, Elementary & Secondary Education, Civil Secretariat, Peshawar
4. Executive District Officer, Elementary & Secondary Education, Buner (Now District Education Officer (Male), Buner)
5. Executive District Officer, Elementary & Secondary Education, Swabi (Now District Education Officer (Male), Swabi)

—————PETITIONERS

VERSUS

1. Saeedullah S/o Rizwan Ullah, District Swabi, PET, GHS Panjmand.
2. Abdul Raziq S/o Muhammad Jamil, District Swabi, AT, GHS, Panjmand.
3. Fazal Hadi S/o Rahim Ullah, CT, GMS, Agarai (Jica) District Buner, Presently residing at Danish Abad, House No.10, Stree-D, Peshawar.
4. Ali Gohar Khan S/o Mardan Shah, PET, GMS Kawaga, District Buner Presently Rashakal, district Nowshera.
5. Mukhtar Ahmad S/o Said wahab PET, GMS Agarai (Jica) District Buner presently at Eid Gah colony, Gul Bahar, Peshawar.
6. Ajbar Khan S/o Abdul Rahim, PET, GHS Nawagai, District Buner, presently at Ghani Plaza, Top floor, Khyber Super Market, Peshawar Cantt.
7. Muhammad Faqir S/o Gulab Khan, PET, GHS Jangai, district Buner, presently at Ghani Plaza, Top Floor Khyber Super Market, Peshawar Saddar.
8. Hussan Malook S/o Taj Malook appointed as PST on 18-05-1995, GPS Agarai (Jica) District Buner.
9. Nazarul Islam S/o Abdul Maula appointed as AT on 16-7-2007, GMS Chalindarai, Buner.
10. Said Faqir S/o Habib shah appointed as CT on 30-6-2009 GHS Kawaga, Buner.
11. Israr Ullah S/o Ikram Shah appointed as CT on 5-4-1999, GHS Kawga, Buner.
12. Safiq Ahmad S/o Muhammad Yaqoob, AT GHS, Asharrai, District Buner.

District
(Male) Abberabad

24

Ans - F

SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

PRESENT

Mr. Justice Qulnar Ahmed, CJ
Mr. Justice Mazhar Alam Khan Munktel
Mr. Justice Bayyed Mazahar Ali Akbar Naqvi

CIVIL APPEALS NO. 2109 TO 2143 OF 2019 AND 986 OF 2020
AND
CIVIL PETITION NO. 2-P OF 2020

[Against the judgments dated 8.6.2017, 20.6.2019, 29.10.2019 and 23.10.2019, passed by the Peshawar High Court, Peshawar, in W.Pa. No.2053 of 2014, 913-P of 2014, 1418 of 2014, 3081-P of 2012, 1182-P of 2018, 2326-P of 2019 and 4713-P of 2018, respectively]

CA.2139 of 2019 Government of Khyber Pakhtunkhwa through Secretary Establishment Department, Peshawar and others Vs. Saeedullah and others

CA.2140 of 2019 Government of Khyber Pakhtunkhwa through Secretary Finance, Peshawar and others Vs. Muhammad Iqbal and others

CA.2141 of 2019 Government of Khyber Pakhtunkhwa through Secretary Elementary & Secondary Education, Peshawar and others Vs. Moini Muhammad and others

CA.2142 of 2019 Government of Khyber Pakhtunkhwa through Chief Secretary, Peshawar and others Vs. Anyat Ullah Khan and others

CA.2143 of 2019 Government of Khyber Pakhtunkhwa through Chief Secretary, Peshawar and others Vs. Muhammad Rehman and others

CA.986 of 2020 Government of Khyber Pakhtunkhwa through Secretary Elementary & Secondary Education, Peshawar and others Vs. Muhammad Anwar

CP.2-P of 2020 Provincial Police Officer, Khyber Pakhtunkhwa, Peshawar and others Vs. Muhammad Akbar Khan and others

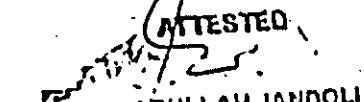
TESTED



Advocate General
Supreme Court of Pakistan

For the Appellants
and Petitioners

: Mr. Zahid Yousaf Qureshi,
Additional Advocate General,

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TESTED

ANJAN SAJJADULLAH JANDOLI
Advocate-on-Record
Supreme Court Of Pakistan
For Govt. Of K.P.K. Peshawar


District Education Officer
(Male) Abbottabad

(In all cases)

Khyber Pakhtunkhwa
Puzale Khallq,
Lit. Officer/DEO Swabi
Iftikhar Ohani, DEO (M) Bunir
Shukir Ullah, S.O. (Lit),
F. Department, KPK

For Respondents : Mr. Muhammad Ishaq Khan Khull, ASC
No.1, 2, 4 to 9, 12 to 14, 16 to 32 in CA.2139 of 2019

Respondents in : Nemo
CA.2140 of 2019

For Respondents : Mr. Anjad Ali, ASC a/w
No.2 to 5 in CA.2141 Mr. Anis Muhammad Shahzad, AOR
of 2019 and 29, 32 and 33 in CA.2142 of 2019

For Respondent No.1 : Mr. Muhammad Amir Malik, ASC
in CA.2143 of 2019 Syed Rifaqat Hussain Shah, AOR

Sole respondent in : Mr. Misbah Ullah Khan, ASC
CA.986 of 2020

Respondent in CP.2- : N.R.
P of 2020

Remaining : Nemo
Respondents in all C.As.

Date of Hearing : 02.06.2021

ORDER

GULZAR AHMED, CJ. The learned Additional Advocate General, Khyber Pakhtunkhwa (AAG), contends that in the very writ petitions filed before the Peshawar High Court, Peshawar (the High Court), the respondents have challenged the vires of the Khyber Pakhtunkhwa Cessation of Payment of Arrears

ATTESTED on Advance Increments on Higher Educational Qualification Act (Act No.IX) of 2012 (the Act of 2012), but no notice under Order

Senior Court Associate
Senior Court of Pakistan
Abbottabad

XXVII-A CPC was issued to the Advocate General, Khyber

District Education Officer
(Male) Abbottabad

Pakhtunkhwa, which is the mandatory requirement of law in terms of judgment passed by a 14-Member Bench of this Court reported as Federation of Pakistan through Secretary, Ministry of Law, Justice and Parliamentary Affairs, Islamabad and others v. Aftab Ahmad Khan Sherpao and others (PLD 1992 SC 723). He further relies upon the judgments of this Court in the cases of Superintendent Central Jail, Adyala, Rawalpindi v. Hammad Abbasi (PLD 2013 SC 223) and Federal Public Service Commission and others v. Syed Muhammad Afag and others (PLD 2002 SC 167).

2. The learned counsel appearing for the respondents were confronted with the issue, as raised by the AAG, who were unable to show that the High Court may have passed order complying with the mandatory requirement of Order XXVII-A CPC. The issuance of notice to the Advocate General being itself a mandatory requirement of law, as laid down in the above cited judgments of this Court, the High Court deciding the writ petitions without issuing of such notice and also declaring Section 2 of the Act of 2012, as ultra vires the Constitution was, therefore, not in accordance with the law, rather contrary to law as laid down by this Court in the above cited cases.

3. In view of the above, the impugned judgments are set aside and the matters are remanded to the High Court for re-deciding the writ petitions afresh, after issuing of notice under Order XXVII-A CPC to the Advocate General, Khyber

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of Court Associate Pakhtunkhwa, in accordance with law.
the Court of Pakistan

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4. The appeals stand allowed, while the civil petition is converted into appeal and allowed, in the above terms.

5. As the matters are quite old, it is expected that the High Court will decide the same expeditiously, preferably within a period of four months.

Sd/-HCJ

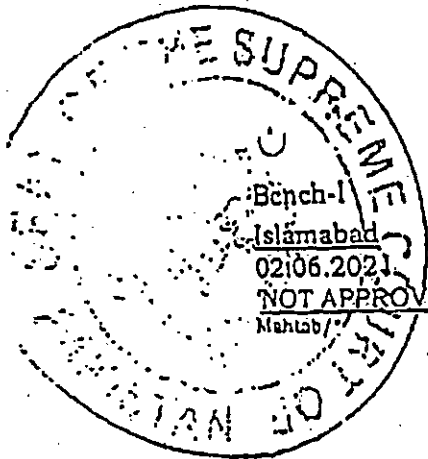
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Sr

Senior Court Associate
Supreme Court of Pakistan
Islamabad



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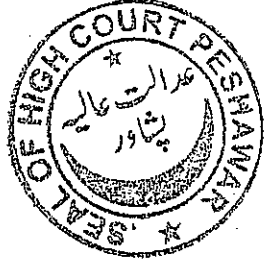
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JUDGMENT SHEET
PESHAWAR HIGH COURT, PESHAWAR
JUDICIAL DEPARTMENT



W.P. No.3081-P/2012 with CM No.1672-P/2022

Anayat Ullah Khan and others

Vs.

Government of Khyber Pakhtunkhwa through Chief Secretary, Peshawar and others

Date of hearing 14.06.2023
Petitioner(s) by: M/s. Noor Muhammad Khattak and L. Nawab Ali Noor, Advocates.
Respondent(s) by: Mr. Amir Javed, Advocate General Khyber Pakhtunkhwa and Barrister Muhammad Yaseen Raza Khan, Addl: Advocate General a/w Mr. Fazl-e-Khaliq, Litigation Officer, DEO (M&F), Swabi.

JUDGMENT

IJAZ ANWAR, J. Through this single judgment, we intend to decide the instant writ petition and Writ Petitions, listed below, since in all these cases, similar questions of law and facts are involved. The connected writ petitions are:-

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- i. *W.P. No.913-P/2014 titled, Muhammad Iqbal and others Vs. Government of Khyber Pakhtunkhwa through Secretary to Government, Finance Department, Peshawar and others.*
- ii. *W.P. No.1418-P/2014 titled, Molvi Muhammad and others Vs. Government of Khyber Pakhtunkhwa through Secretary Elementary & Secondary Education Department, Peshawar and others*
- iii. *W.P. No.2053-P/2014 titled, Saeed Ullah and others Vs. Government of Khyber Pakhtunkhwa through Secretary S&GAD, Peshawar and others*
- iv. *W.P. No.1182-P/2018 titled, Muhammad Rehman and others Vs. Government of Khyber Pakhtunkhwa through Chief Secretary, Peshawar and others*
- v. *W.P. No.2326-P/2019 titled, Muhammad Anwar Vs. Government of Khyber*

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Pakhtunkhwa through Secretary Education, Peshawar and others
vi. *W.P. No.1680-P/2021 titled, Ghandal Khan Vs. District Education Officer (Male), Peshawar and others*

2. In the instant writ petition, the petitioners have prayed for the following relief:-

"It is, therefore, humbly prayed that on acceptance of this writ petition, this Hon'ble Court may be pleased to declare the act as against the basic norms of law & rules repugnant to constitution, law and practice/policy as such no legal effect liable to be set-aside".


3. In all these petitions, the petitioners have mainly questioned the vires of the Khyber Pakhtunkhwa Cessation of Payment of Arrears on Advance Increments on Higher Educational Qualification Act, 2012 (hereinafter to be referred as "the Act").

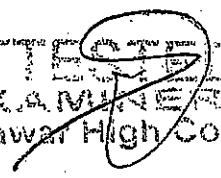
4. Comments were called from the respondents who furnished the same, wherein, they opposed the issuance of desired writ asked for by the petitioners.

5. Arguments heard and record perused.

6. Perusal of the record transpires that the petitioners have questioned the vires of "the Act" on the ground that promulgation of "the Act" had defeated the judgments of the superior Courts. He further contended that vested rights of the petitioners have accrued in the matter and placed reliance on the judgments reported as "PECTO Belarus Tractor Ltd Vs. Government of Pakistan through Finance Economic Affairs and others (PLD 2005 SC 605), 2013

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SCMR 1749, 2013 SCMR 1752 (Contempt of Court Proceedings case) and AIR 1975 SC 2199".

7. On the other hand, the learned Advocate General, Khyber Pakhtunkhwa has referred to a recent judgment of the Hon'ble Supreme Court of Pakistan passed in the case titled "The Divisional Superintendent, Pakistan Railways, Rawalpindi and others Vs. Syed Irshad Ali Abid (2021 PLC (C.S.) 277)" and contended that the grant of increments on higher educational qualification has since been discontinued through Notification dated 13.09.2001, as such, it is a past and closed transaction and that necessary time was granted to the employees who have any claim, albeit, when they failed to claim the same for long ten years, as such, "the Act" in question was promulgated. He has also produced a letter dated 29.04.2010 issued by the Additional Secretary (Regulation), Government of Khyber Pakhtunkhwa Finance Department (Regulation Wing), whereby, clarification was given about the advance increments on higher educational qualification and according to which, a period of sixty days was provided for the remaining claims and argued that even then, petitioners have failed to claim the advance increments at the relevant time.

8. During the course of hearing, learned counsel for the petitioners has produced letters/applications which were duly placed on file and contended that the rights of the petitioners to the grant of advance increments were secured

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and guaranteed by a Government's circular letter dated 11.08.1991 and that the case of the petitioners was matured at the relevant time before the cut-of-date i.e. 13.09.2001 when the grant of such increments was discontinued. He also referred to a judgment of the Hon'ble Supreme Court of Pakistan passed in "CPLAs No.525 and 526/2007 decided on 19.07.2007".

9. At this stage, the learned Advocate General, Khyber Pakhtunkhwa, representing the respondents, contended that the civil servants, who were holding higher educational qualification prior to discontinuation of advance increments in the year, 2001, are entitled for the benefit flowing from circular letter dated 11.08.1991, however, those who have improved their qualification after the notification dated 13.09.2001, under no circumstances, can claim the same benefit and that the bar created through "the Act" would be equally applicable.

10. In view of the above, we, without commenting upon the vires of "the Act" and in view of the statement of the learned Advocate General, Khyber Pakhtunkhwa, dispose of this and the connected writ petitions and direct the respondents to consider the case of the petitioners in the light of circular letter dated 11.08.1991 and in case, they fulfill the condition mentioned therein for the grant of advance increments prior to the cut-of-date, they be allowed such benefit. It is, however, clarified that only the case of the present petitioners shall be

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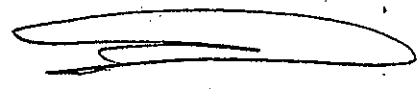
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considered and that others cannot claim such benefits, having not agitated the matter at the relevant time.

Announced
Dt:14.06.2023



JUDGE




JUDGE

(DB) Hon'ble Mr. Justice Ijaz Anwar and Hon'ble Mr. Justice Syed Muhammad Attique Shah

Mokhammad Rafiq

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EXAMINER
Peshawar High Court, Peshawar
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the Qanun-e-Shahadat Act 1984
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