

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

Service Appeal No. 1535/2023

**Muhammad Safi-Ud-Din S/o Sardar Khalil-Ur-Rehman Abbasi (CT) BPS-15
Government Higher Secondary School No.03 Abbottabad.**

.....APPELLANT

VERSUS

- 1. The Government of Khyber Pakhtunkhwa, through Director Elementary & Secondary Education Khyber Pakhtunkhwa, Peshawar.**
- 2. The District Education Officer (M) Elementary & Secondary Education Abbottabad.**
- 3. The District Accounts Officer, Abbottabad.**

.....RESPONDENTS

PARAWISE COMMENTS ON BEHALF OF RESPONDENT NO.3

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1	Comments along with affidavit	01 to 04	
2	Copies of Cessation of arrears on advance increments Act 2012 and judgment of Supreme Court of Pakistan	05 to 12	"A" & "B"

Dated: /04/2024



**Amanullah Khan
District Accounts Officer
Abbottabad.**

Respondent No.03

*25-04-2024
AT Abbottabad
S.B.*

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

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**Muhammad Safi-Ud-Din S/o Sardar Khalil-Ur-Rehman Abbasi (CT) BPS-15
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5. The District Education Officer (M) Elementary & Secondary Education Abbottabad.
6. The District Accounts Officer, Abbottabad.

.....RESPONDENTS

Khyber Pakhtunkhwa
Service Tribunal

PARAWISE COMMENTS ON BEHALF OF RESPONDENT NO. 03

Diary No. 12140

Preliminary Objections:-

Dated 05-04-2024

1. The chapter of advance increments in what so ever status are being closed on the promulgation of cessation of payment of arrears on advance increment Act 2012, Section 2 (1) as the same provision of law upheld by the Supreme Court of Pakistan in an identical case titled, Manzoor Ahmed etc Vs Govt of Khyber Pakhtunkhwa Education Department Civi Petition No.172-P & 173-P OF 2013, dated:07/12/2018. Copies of cessation of arrears on advance increments Act 2012 and judgment of Supreme Court of Pakistan dated: 07/12/2018 are attached as Annexure "A" and "B" respectively.
2. As and when the appellant was aggrieved he was required under the period of limitation to approach relevant forum as per law, but could not done in time and present appeal is badly time bared even after cut-off date.
3. Present retrenchment of increment done by the Accountant General Khyberpakhtunkhwa Pay Fixation Party, which is not respondent by the appellant.

Respectfully Sheweth:

Para wise comments on above mentioned case are submitted as under:-

1. Pertain to record.
- /

2. The appellant very vividly admitted that he was granted higher pay scale of B-09 on the basis of FA 2nd Division so as his prescribed qualification for PST post falling as F.A and higher qualification of B.A only qualify him for 2 advance increments vide Notification No.FD(PRC)1-1/89 dated: 11/08/1991. Therefore accordingly he is still drawing over & above his entitlement one further increment.
3. Pertain to record.
4. As per para No.2 above his qualification for the post of PST B-09 is FA and not Matric, while the matriculate PST were drawing Pay in Bps-07.
5. It is not correct as explained in para No.02 & 04 above.
6. Departmental appeal was required at the time of retrenchment of an entitlement increments, which he himself admitted, date is 01/07/2011 "not maintainable" in the eyes of law.


GROUND

- a. As per law the appellant was liable himself to approach proper forum, when he was aggrieved from an order/action.
- b. Appellant was not entitled for the same as one advance increment he also drawing over and above which is bound to repay to public exchequer.
- c. Correctly said so as he is not entitled for 4 advance increments instead of 2.
- d. Law of locus poententia only applicable as and when a wrong notification remained in the field till withdrawal of the same so as recover till withdrawal date is off.
- e. legal recovery has been made by the Pay Fixation Party of Accountant General K.P and appellant is still in outstanding for one another increment for the abiding of the law.



- (3)
- f. Appellant could not come with clean hands to this honorable tribunal and misleading the facts beside issue of maintainability and time bared.
 - g. The appellant was required to approach this honorable tribunal on refusal within time.
 - h. Appeal is not maintainable in the eyes of law.

It is therefore very humbly requested in the light of stated above that appeal may kindly be dismissed in lamine with cost.


Amanullah Khan
District Accounts Officer
Abbottabad.

Respondent No.3

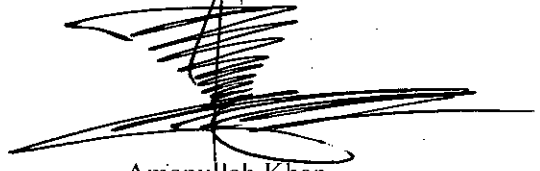
BEFORE THE HONORABLE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR CAMP COURT ABBOTTABAD.

Service Appeal No.1535/2023

AFFIDAVIT

I, Amanullah Khan, District Accounts Officer Abbottabad, do hereby solemnly affirm and declare that contents of forgoing comments are true and correct and nothing material has been suppressed from the honorable court.

It is further stated on oath that the making respondent has neither seen, place copy nor any other (Handwritten signature)



Amanullah Khan
District Accounts Officer
Abbottabad.

DEPONENT

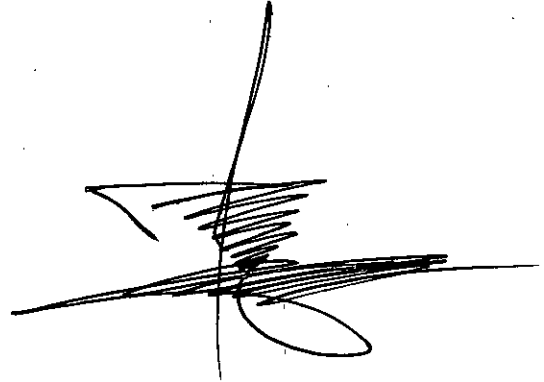


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AUTHORITY LETTER

It is certified that Mr. Faizan Afzal, CNIC No.13503-9878131-7 Sub-Accountant of this office is hereby authorized to submit the parawise comments in the Honorable Khyber Pakhtunkhwa Service Tribunal Peshawar, on behalf of this office in case of Service Appeal No.1535/2023, date fixed for 25 /04/2024 please.

Dated: /04/2024



**District Accounts Officer
Abbottabad**

**CHAPTER-III
MISCELLANEOUS***Amended - A*

23. **Saving.**—Nothing in this Act or in any rule shall be construed to limit or abridge the power of the Governor to deal with the case of any civil servant in such manner as may appear to him to be just and equitable:

Provided that, where this Act or any rule is applicable to the case of a civil servant, the case shall not be dealt with in any manner less favorable to him than that provided by this Act or such rules.

23A. **Indemnity.**—No suit, prosecution or other legal proceedings shall lie against a civil servant for anything done or intended to be done in good faith in his official capacity under this Act or the rules, instructions or direction made or issued thereunder.

23B. **Jurisdiction barred.**—Save as provided under this Act and the Service Tribunal Act, 1974 (Khyber Pakhtunkhwa Act No. 1 of 1974), or the rules made thereunder, no order made or proceedings taken under this Act, or the rules made thereunder by the Governor or any officer authorised by him shall be called in question in any Court and no injunction shall be granted by any Court in respect of any decision made, or proceedings taken in pursuance of any power conferred by or under this Act or the rules made thereunder.]

24. **Removal of difficulties.**— If any difficulty arises in giving effect to any of the provisions of this Act, the Governor may make such order, not inconsistent with the provisions of this Act, as may appear to him to be necessary for the purpose of removing the difficulty:

Provided that no such power shall be exercised after the expiry of one year from the coming into force of this Act.

25. **Appointment of persons on contract, etc.**— The Governor or any person authorised by the Governor in that behalf may, on such terms and conditions as he may specify in each case, appoint persons on contract basis, or on work-charged basis, or who are paid out of contingencies:

Provided that all such employees who were working in any such capacity immediately before the commencement of this Act shall continue to be so employed on the same terms and conditions on which they were appointed.

26. **Rules.**—(1) The Governor or any person authorised by the Governor in this behalf, may make such rules as appear to him to be necessary or expedient for carrying out the purposes of this Act.

(2) Any rules, orders or instructions in respect of any terms and conditions of service of civil servants duly made or issued by an authority competent to make them and in force immediately before the commencement of this Act shall, in so far as such rules, orders or instructions are not inconsistent with the provisions of this Act, be deemed to be rules made under this Act.

27. **Repeal.**—The Khyber Pakhtunkhwa Civil servants Ordinance, 1973 (Khyber Pakhtunkhwa Ordinance No. VI of 1973), is hereby repealed.

Khyber Pakhtunkhwa Cessation of Payment of Arrears on Advance Increments on Higher Educational Qualification Act, 2012

(Khyber Pakhtunkhwa Act No. IX of 2012)

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

No. PA/Khyber Pakhtunkhwa/Bills/2012/20711, dated 17-05-2012.— The Khyber Pakhtunkhwa Cessation of Payment of Arrears on Advance Increments on Higher Educational Qualification Act, 2012. Bill Passed by the Provincial Assembly of Khyber Pakhtunkhwa on 8th May, 2012 and Assented by the Governor of the Khyber Pakhtunkhwa on 11th May, 2012. The Khyber Pakhtunkhwa Cessation of Payment of Arrears on Advance Increments on Higher Educational Qualification Act, 2012.

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

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

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

It is hereby enacted as follows:-

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

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

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

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

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

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.

**Khyber Pakhtunkhwa
(Appointment, Deputation, Posting and Transfer of
Teachers, Lecturers, Instructors and Doctors)
Regulatory Act, 2011**

(Khyber Pakhtunkhwa ACT NO. XII OF 2011)

AN ACT to regulate by law appointments, postings and transfers of teachers serving in primary, middle, secondary and higher secondary schools, lecturers in colleges and instructors in technical institutions and doctors in health facilities.

10th May 2011

Preamble.—WHEREAS it is expedient to regulate by law appointments, postings and transfers at local level, of teachers serving in primary, middle, secondary and higher secondary schools, lecturers in colleges and instructors in technical institutions and doctors in health facilities and to ensure the availability of teachers in schools, lecturers in colleges and instructors in technical institutions and the doctors in health facilities, and to regulate deputation of doctors abroad, and to provide for matters connected therewith or ancillary thereto;

It is hereby enacted as follows:

1. **Short title, application and commencement.**—(1) This Act may be called the Khyber Pakhtunkhwa (Appointment, Deputation, Posting and Transfer of Teachers, Lecturers, Instructors and Doctors) Regulatory Act, 2011.

(2) It shall apply to teachers serving in primary, middle, secondary and higher secondary schools, lecturers in colleges as well as commerce colleges and instructors serving in technical institutions and doctors serving in the health facilities in the Province of the Khyber Pakhtunkhwa.

(3) It shall come into force at once.

2. **Definitions.**—(1) In this Act, unless the context otherwise requires, the following expressions shall have the meanings hereby respectively assigned to them that is to say,—

- (a) "Commission" means the Khyber Pakhtunkhwa Public Service Commission;
- (aa) "college" means a degree college;
- (b) "doctor" means a doctor serving in the health facility;
- (c) "Government" means the Government of the Khyber Pakhtunkhwa;
- (d) "health facilities" mean all health facilities established and managed by Government to provide medical facilities to general public;
- (e) "lecturer" and "instructor" respectively means a lecturer or an instructor serving in a Technical Institution as well as in a college, as the case may be;
- (f) "prescribed" means prescribed by rules made under this Act;
- (g) "rules" mean the rules made under this Act;

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Annexure-B

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IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

Present:
Mr. Justice Qazi Faez Isa
Mr. Justice Syed Mansoor Ali Shah

Civil Petition No.172-P & 173-P of 2013.
(on appeal from the judgment of KPK Service Tribunal, Peshawar dated 06.02.2013, passed in Appeals No. 523 & 524 of 2010)

Manzoor Ahmad (in C.P. 172-P/2013)
Yasmeen 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"). Manzoor Ahmad, 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.

ATTESTED

[Signature]
Assistant Registrar
Supreme Court of Pakistan

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

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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 Ahmad submitted that they were initially granted *advance increments* vide Notification dated 24.08.1983, 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 M.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 Notification dated 11.08.1991 to teachers.

ATTESTED

[Signature]
Assistant Registrar,
Supreme Court of Pakistan
Peshawar.

Learned Additional Advocate General, KPK representing the Government, submits that the case of the petitioners is governed by Notification dated 24.08.1983, 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

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CP No.172-P/2013, etc

advance increments granted for F.A) stand merged into *advance increments* granted for obtaining M.A (six 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 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 29.8.2013, 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 judgments of this Court dated 09.7.2007 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 justiciability of the claims in the light of Act of 2012. The preamble of Act of 2012 provides as under:-

ATTESTED

Assistant Registrar
Supreme 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 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.

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 from the said increments;

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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 there-under on account of advance increments or arrears thereof shall be deemed to have been validly paid and shall not be recoverable from the recipient Government employees."

ATTESTED
[Signature]
Assistant Registrar
Supreme Court of Pakistan
Peshawar.

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

[Signature]

CP 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 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.

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

[Handwritten signature]



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

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17/12/18

Certified to be true copy
[Signature]
Assistant Registrar
High Court of Pakistan
Peshawar

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¹ Black's Law Dictionary 9th Edition, page-124.

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**IN THE SUPREME COURT OF PAKISTAN
(APPELLATE JURISDICTION)**

SUBJECT: CIVIL PETITION NOS. 172-P AND 173-P OF 2018
Manzoor AhmadPetitioner(s)

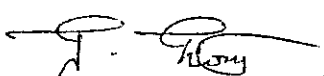
VERSUS

Secretary Education Govt. of K.P.
and othersRespondent(s)

Take notice that the above cited cases are fixed for hearing before the Court on **28.11.2018** at 09.00 am or soon thereafter as may be convenient to the Court in the Court House at Peshawar.

Take further notice that you are required to bring your Original Identity Card for purpose of verification of your identity for entrance in the premises of the Supreme Court Building.

Dated: Peshawar 14/11 /2018

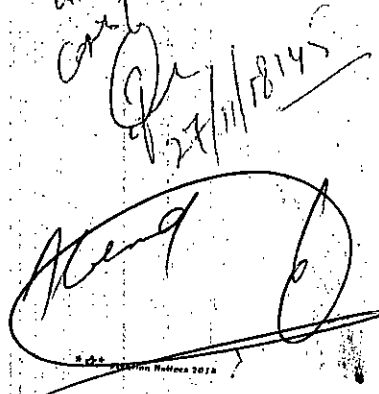

(ASSISTANT REGISTRAR)
Supreme Court of Pakistan
Branch Registry, Peshawar.

To:

1. Manzoor Ahmad son of Amir Jalal, Primary School Teacher, Govt. Primary School No.3 Kotha, Tehsil Topi, District Swabi. (Cell No.0345-9503142).
2. Yasmeen Akhtar wife of Manzoor Ahmad, Primary School Teacher, Govt. Girls Primary School No.3 Marghuz, Tehsil and District, Swabi.
3. The Secretary of Education, Govt. of K.P. Peshawar.
4. The Secretary of Finance Department, Govt. of K.P. Peshawar.
5. The Director of Education, Elementary & Secondary Education, K.P. Peshawar.
6. The Accountant General, K.P. Peshawar.
7. The Executive District Officer (E & S) Education, District Swabi.
8. The District Accounts Officer, District Swabi.

C/o District Police Officer, Swabi who is requested to serve the notice upon the above named person(s) by obtaining his/her/their signatures/thumb impressions through the process serving agency under his control which may please be served upon him/them and a copy thereof in token of service may be returned to this Court on OR before 26.11.2018 through fax No.091-9213599.

ADD
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with
copy


27/11/2018
Yacub
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