

BEFORE THE KPK SERVICE TRIBUNAL,
PESHAWAR

Mst. Kousar Jehan SST GGHS Shohal
Najaf Khan.....**Applicant**

Versus

Government of Khyber Pakhtunkhwa
through Director E&SE Department &
others.....**Respondents**


RESTORATION APPLICATION NO.
473/2023 IN SERVICE APPEAL NO.
7823/2021

PARA-WISE COMMENTS ON BEHALF
OF RESPONDENTS NOS. 1&2

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Dated /04/2024


REHANA YASMIN
DEO (Female) Mansehra/
Respondent No. 2

25/4/2024
15-4-24
Peshawar

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BEFORE THE KPK SERVICE TRIBUNAL,
PESHAWAR

Mst. Kousar Jehan SST GGHS Shohal
Najaf Khan.....**Applicant**

**Khyber Pakhtunkhwa
Service Tribunal**

Versus

Diary No. 12271

Dated 18/4/24

Government of Khyber Pakhtunkhwa
through Director E&SE Department &
others.....**Respondents**

RESTORATION APPLICATION NO. 473/2023
IN SERVICE APPEAL NO. 7823/2021

PARA-WISE COMMENTS ON BEHALF
OF RESPONDENTS NOS. 1&2

PRELIMINARY OBJECTION

- 1) That, the appellant has got no cause of action to file the instant appeal.
- 2) That, the appellant has not come to this Honourable Tribunal with clean hands.
- 3) That, the appeal in hand is liable to be dismissed due to non joinder and mis-joinder of the necessary parties.
- 4) That, this Tribunal has got no jurisdiction to entertain the appeal in hand.
- 5) That, appellant has applied for advance increments after a lapse of period of 15 years after his appointment which shows that she had waited to draw a huge amount on account of advance increments.

- 6) That, the policy of the Government has been changed from time to time and the appellant applied for advance increments when the policy was changed and no one was allowed to withdraw the arrears.
- 7) That, in case of dismissal the respondent is entitled for special compensatory cost.

ON FACTS

- 1) Para (1) is correct.
- 2) Para (2) needs to be proved being the government servant it was the duty of applicant.
- 3) Para No. (3) needs to be proved as pertain to record.
- 4) Para No. (4) needs to be proved as pertain to record.
- 5) Para No. (5) is correct.
- 6) Para No. (6) to the extent of approaching is correct. Infact the answering respondent contact with the high-ups for the resolution of matter, but the matter could not be solved that according to the decision of Honourable Peshawar High Court in writ petition No. 2053-P/2024 that *"Now it has been decided that those who although entitled but have not availed the same facilities so far will not be given advance increments in future"*. Thus the appellant is not entitled to avail such opportunity. In this respect decision of Supreme Court in civil petition No. 360/2013 can be relied.

(Copies of judgments of Supreme Court and High Court are attached as Annexure "AA" & "BB")

- (3)
- 7) That, para No. (7) is incorrect. Hence denied, explained above.
 - 8) That, para No. (8) is incorrect. Hence denied, explained above.
 - 9) That, para No. (9) is incorrect. Hence denied. No such appeal has been received in the office of answering respondents

ON GROUNDS: -


- a) That, para No. (a) is incorrect and jumble of lie.
- b) Para No. (b) needs no reply.
- c) Para No. (c) incorrect. The answering respondent has used the powers which were conferred according to law and never acted against the law and rules. Hence para is denied.
- d) That, para No. (d) is incorrect.
- e) That, para No. (e) is correct. The appellant has treated equally then the other government employees, but due to her own part she delayed the matter and later-on the policy was changed. Hence the appellant is not entitled for any kind of relief as per law.
- f) That, para No. (f) is incorrect.
- g) That, para No. (g) is incorrect.
- h) That, para No. (h) is incorrect and jumble of lies.
- i) That, para No. (i) is needs no comments.
- j) That para No. (j) is incorrect.


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k) That, para No. (k) is incorrect.

In view of the above circumstances and facts it is requested that the appeal may kindly be dismissed with special heavy cost.

Dated /04/2024


SAMINA ALTAF
Director E&SE Peshawar/
Respondent No. 1


REHANA YASMIN
DEO (Female) Mansehra/
Respondent No. 2

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BEFORE THE KPK SERVICE TRIBUNAL,
PESHAWAR

Mst. Kousar Jehan.....Applicant


Versus

Government of Khyber Pakhtunkhwa
through Secretary E&SE Department &
others.....Respondents

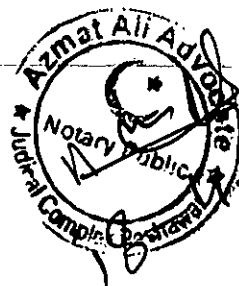
R/APPLICATION NO. 473/2023 IN
SERVICE APPEAL NO. 7823/2021

AFFIDAVIT

I, REHANA YASMIN, DEO(FEMALE)
MANSEHRA DO HEREBY SOLEMNLY AFFIRM
AND DECLARE ON OATH THAT ALL THE
CONTENTS OF THE FORE-GOING PARA-WISE
COMMENTS ARE TRUE AND CORRECT TO
THE BEST OF MY KNOWLEDGE AND BELIEF
AND NOTHING HAS BEEN CONCEALED OR
SUPPRESSED FROM THIS HONOURABLE
TRIBUNAL AND FURTHER STATED ON OATH
THAT IN THIS APPEAL THE ANSWERING
RESPONDENTS HAVE NEITHR BEEN PLACED
EX-PARTE NOR THEIR DEFENCE HAS BEEN
STRUCK OFF.


DEPONENT
CNIC#13303-1493277-0

ATTESTED



BEFORE THE KPK SERVICE TRIBUNAL,
PESHAWAR

Mst. Kousar Jehan SST GGHS Shohal
Najaf Khan.....**Applicant**

Versus

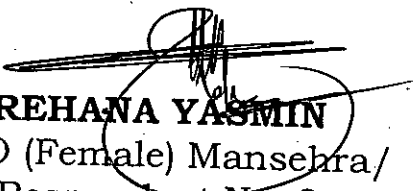
Government of Khyber Pakhtunkhwa
through Secretary E&SE Department &
others.....**Respondents**

RESTORATION APPLICATION NO.
473/2023 IN SERVICE APPEAL NO.
7823/2021

PARA-WISE COMMENTS ON BEHALF
OF RESPONDENTS NOS. 1&2

AUTHORITY LETTER

Mr. Muhammad Usman, Legal
Representative, District Education Officer
(Female) Mansehra do hereby authorized
to submit reply in the titled application on
behalf of respondents Nos. 1&2


REHANA YASMIN
DEO (Female) Mansehra/
Respondent No. 2

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.

REGISTERED

Supreme Court of Pakistan
Peshawar

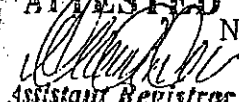
These petitions pertain to their claim regarding *advance increments* on the basis of acquiring higher educational qualification while in service. Petitioner No.1 was given five *advance increments* under Notification dated 24.08.1983 while petitioner No.2 was given three *advance increments* under the 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

MS
M. Ali

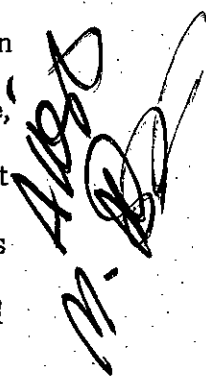
that the petitioners were appointed as PSTs when the qualification for the said post was matriculation.

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


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


Additional Advocate General
KPK

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:-

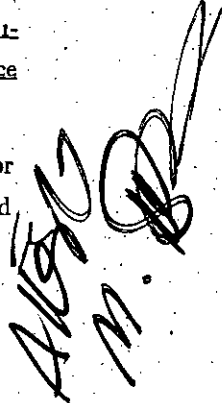
"The Khyber Pakhtunkhwa Cessation of Payment of Arrears on Advance Increments on Higher Educational Qualification Bill 2012 having been passed by the Provincial Assembly of Khyber Pakhtunkhwa on 8th May, 2012 and assented to by the Governor of the Khyber Pakhtunkhwa on 11th May, 2012 is hereby published 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)1-1/2001, 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;

ATTESTED

Assistant Registrar
Supreme Court of Pakistan


M. B.

AA (9)

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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.

(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.

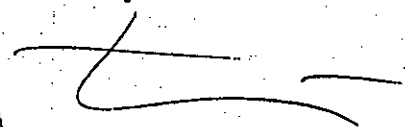
8. The scope of Act of 2012 is that after the promulgation of the Act i.e. w.e.f. 11.05.2012, no government employee can claim arrears on account of advance increments for higher educational qualification and advance

[Signature]
M. A.

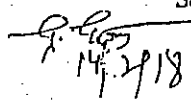
increments and arrears already paid shall not be recoverable from the recipient government employee. "Arrears" includes payment of a debt or the discharge of an obligation¹. In this case, claim of the petitioners for *advance increment* under Notification dated 11.8.1991 is an outstanding arrear. Reference 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.

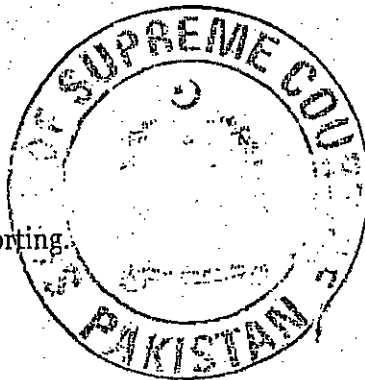
9. In the instant case petitioners are seeking arrears on the basis of Notification dated 11.08.1991 and in the light of section-2 of the Act of 2012, their claim cannot be entertained and is not justiciable. Reliance is placed on unreported judgment of this Court dated 29.08.2013 passed in Civil Petition 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.

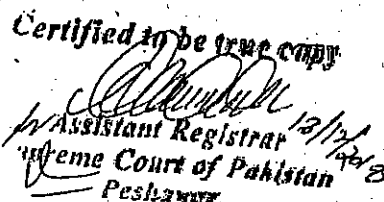
Sd/- Qazi Faez Isa, J.
Sd/- Syed Mansoor Ali Shah, J.

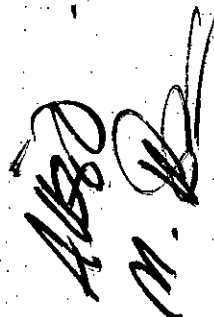


Peshawar,
07th December, 2018.
Not approved for reporting
Sadaqat


14/3/18



Certified to be true copy

Assistant Registrar
Supreme Court of Pakistan
Peshawar


M. R.

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

BB (6)
(11)

2018 P L C (C.S.) Note 174

[Peshawar High Court]

Before Waqar Ahmad Seth and Muhammad Younis Thaheem, JJ

MUHAMMAD IQBAL and 2 others

Versus

GOVERNMENT OF KHYBER PAKHTUNKHWA through Secretary to Government, Finance Department, Peshawar and 3 others

W.P. No.913-P of 2014, decided on 8th June, 2017.

Khyber Pakhtunkhwa Cessation of Payment of Arrears on Advance Increments on Higher Educational Qualification Act (IX of 2012)---

---S. 2---Notification No. FD (PRC)1-1/89 dated 11-08-1991---Grant of advance increments on attaining higher educational qualification---Legislation to nullify the effect of judgment of court of law---Scope--- Constitutional petition praying for grant of two advance increments on attaining higher educational qualification was accepted but the government promulgated Khyber Pakhtunkhwa Cessation of Payment of Arrears on Advance Increments on Higher Educational Qualification Act, 2012---Employees who suffered, filed representation for grant of two advance increments on the basis of higher educational qualification but same were refused---Contention of employees was that Khyber Pakhtunkhwa Cessation of Payment of Arrears on Advance Increments on Higher Educational Qualification Act, 2012 was not retrospective in effect---Validity---Civil servant of Provincial Government Department who attained higher qualification during service was entitled for two advance increments---Many civil servants had already been benefited from Notification No. FD (PRC)1-1/89 dated 11-08-1991---Said relief was not extended to the petitioners-employees despite their representations to the competent authorities and judgments of the High Court and the Supreme Court---Government by issuing the notification had nullified the effect of Notification No.FD (PRC)1-1/89 dated 11-08-1991---Impugned notification had been declared null and void by the High Court---Employees were entitled for the benefits arising out of the Notification No. FD (PRC)1-1/89 dated 11-08-1991 and judgments passed by the High Court and Supreme Court on the subject Department was not authorized to deprive the petitioners-employees from the beneficial effects of Notification No.FD (PRC)1-1/89 dated 11-08-1991 and the judgments of the Superior Courts through impugned Khyber Pakhtunkhwa Cessation of Payment of Arrears on Advance Increments on Higher Educational Qualification Act, 2012 before first removing the cause i.e. entitlement and beneficial effects of judgment of Superior Courts---Promulgation of impugned piece of legislation and giving it retrospective effect was nothing but to destroy, annul and make the judgments of the High Court as well as the Supreme Court ineffective---High Court declared S.2 of Khyber Pakhtunkhwa Cessation of Payment of Arrears on Advance Increments on Higher Educational Qualification Act, 2012 as null and void to the extent of its retrospective effect and struck down the same from the Act---Government was directed to provide the benefits of two advance increments according to Notification No.FD (PRC)1-1/89 dated 11-08-1991 to the employees---Constitutional petition was allowed accordingly. [Paras. 7, 14 & 15 of the judgment]

2013 SCMR 1752 and 2013 SCMR 1749 rel.

Fazal Shah Mohmand for Petitioners.

Syed Qaiser Ali Shah, AAG for Respondents.

Date of hearing: 8th June, 2017.

MS
M. R.

JUDGMENT

MUHAMMAD YOUNIS THAHEEM, J.---Through this single judgment we propose to decide the instant writ petition along with connected W.P. No.1418-P/2014 titled Molvi Muhammad and 4 others v. Government of KPK through Secretary Education (E&S), Peshawar and others and W.P. No.2053-P/2014 titled Saeed Ullah and 32 others v. Government of KPK through Secretary S&GAD and others, as in all

BR/12

above petitions common question of law and facts regarding non-granting of two advance increments on attaining higher educational qualifications, granted under Notification No. FD(PRC)I-1/89 dated 11.08.1991 Paragraph 5 are involved. Brief facts of the instant writ petition and connected petitions are separately given below:

i) W.P. No.913-P/2014:

The petitioners served in police department and retired as Inspectors, claimed above said relief after attaining higher educational qualifications by acquiring LL.B Degrees, they filed W.P. No.3600/2010 which was allowed by this Court vide judgment dated 28.10.2010 and were declare entitled for the benefit of two advance increments already given to other civil servants but inspite of favourable judgment of this Court in their favour, the petitioners were refused relief, therefore, they filed contempt of Court petition bearing C.O.C. No.201-P/2013, wherein this Court after hearing the parties passed an order for the implementation of judgment instead Khyber Pakhtunkhwa Cessation of Payment of Arrears on Advance Increments on Higher Educational Qualification Act IX, 2012 was promulgated, which has been challenged on the ground that it is to nullify the effects of judgment dated 28.10.2010 in W.P. No.3600/2010 titled as Muhammad Iqbal and others v. Provincial Police Officers, K.P.K Police and others by giving it retrospective effect from 01.12.2001 so to the extent of retrospectivity given in Section 2 of the ibid impugned Act is liable to be truck down.

ii) W.P. No.1418-P/2014:

The petitioners are employees of Education Department working on the posts of AT and TT who attained Master Degrees during service, so claimed same relief as were deprived, so filed W.P. No.1791/2009 which was decided by this Court vide order dated 08.09.2009 with the direction to decide the matter of advance increments within 03 months, but respondents gave deaf ear to the grievance of the petitioners rather to make the aforesaid judgment as effectless, promulgated enactment known as Khyber Pakhtunkhwa Cessation of Payment of Arrears on Advance Increments on Higher Educational Qualification Act-IX of 2012 which is ineffective upon the rights of petitioners, so be declared as null and void and its retrospectivity given in section 2 be expunged.

iii) W.P. No.2053-P/2014:

The petitioners in the above referred petition are provincial government civil servants in different capacity from BPS-1 to BPS-15 in the education department who also during service attained higher qualifications, so sought relief provided vide notification dated 11.08.1991. The petitioners approached respondent No.4 by filing representation/departmental appeal for the grant of two advance increments but their said representation has not been considered but took shelter in the notification dated 03.01.2009 which contemplates as following:

"Now it has been decided that those who are although entitled but have not availed the same facilities so far will not be given advance increments in future"

but said notification dated 03.01.2009 has been declared discriminatory and violative of law by Honourable Supreme Court in judgments passed in C.P.L.A. No.525 of 2007 titled as Rashid Iqbal Khan v. District Coordination Officer, Abbottabad and others and C.P.L.A. No.526 of 2007 titled as Muhammad Haroon Qureshi v. District Coordination Officer, Abbottabad and others decided on 19.07.2007. Moreover, the petitioners have also challenged the vires of ibid KPK Act IX of 2012.

2. The petitioners in all the above said petitions have invoked the constitutional jurisdiction of this Court for the relief regarding grant of two advance increments on attaining higher educational qualifications and in this regard the notification dated 03.01.2009 has been set aside in W.P. No.368/2009. Petitioners have also challenged the vires of K.P.K Cessation of Arrears on Advance Increments on Higher Educational Qualification (hereinafter called impugned Act IX of 2012) to the extent of giving it retrospective effect before 01.12.2001 as against law with prayer to declare it null and void and it be expunged to the extent of retrospectivity.

3. Comments from respondents were called who submitted the same wherein they took stance that the petitioners have no any vested rights in view of notification dated 03.01.2009 and new enactment said K.P.K. Cessation of Arrears Act IX of 2012 and notification dated 03.01.2009. Respondents contended that the existing scheme of advance increments has been discontinued w.e.f. 03.01.2009 and vide section

2 of ibid impugned Act before 01.12.2001 and have given it retrospective effect which is within legislative powers of Pakhtunkhwa Assembly.

4. The learned counsel for the petitioners argued that issuance of notification dated 03.01.2009 and giving retrospective effect to the impugned enactment K.P.K. Cessation Act, 2012 is only aimed to nullify the beneficial effects of judgment of this Court in W.P. No.3600/2010 vide which notification dated 03.01.2009 has been set aside by this Court and by Honourable Supreme Court in above mentioned CPLAs decided on 19.07.2007, so this Court can examine the constitutionality of the piece of legislation by ibid impugned section 2 of K.P.K. Cessation Act IX of 2012 to the extent of giving it retrospective effect. He added that so many civil servants of provincial government had been benefited earlier from the notification dated 11.08.1991 but petitioners have been deprived, so the impugned enactment is mala fide to nullify the judgment of this Court and prayed for striking it down to the extent of section 2 of impugned ibid Act by giving it retrospective effect before 01.12.2001.

5. On the other hand learned counsel for the respondents supported the impugned notification dated 03.01.2009, relied on their comments and impugned Act. He further argued that this enactment is neither aimed at to nullify the judgment of this Court nor that of Honourable Supreme Court. He lastly argued that petitioners are not entitled for the advance increments due to aforesaid notification dated 03.01.2009 and ibid impugned Act IX of 2012.

6. Arguments heard and record perused.

7. From the perusal of record it is admitted position that vide paragraph 5 of the notification dated 11.08.1991 issued by Finance Department, it was provided that any civil servant of Provincial Government Department who attained higher qualifications during service, would be entitled for two advance increments and due to said notification admittedly so many civil servants had already been benefited. However, above said relief has not been extended to petitioners despite of representations to their higher competent authorities and judgment passed by this Court as well as by Honourable Supreme Court particularly in W.P. No.1791/2009 decided on 08.09.2009 vide which direction was given to the respondents to decide the representation of the petitioners within 03 months but neither the respondents have decided the matter nor given said advance increments, on this inaction, petitioner filed COC Petition No.133/2010 which was disposed of vide order dated 11.10.2012 as abated in the light of impugned Act, IX of 2012 known as Khyber Pakhtunkhwa Cessation of Payment of Arrears on Advance Increments on Higher Educational Qualification Act, 2012 in the light of provision by giving it retrospective effect before 01.12.2001, so the petitioners feeling aggrieved have challenged the vires of above said notification and impugned enactment to the extent of giving it retrospective effect.

8. In brief the reliefs sought by the petitioners in all petitions is, one for the grant of two advance increments in purview of notification dated 11.08.1991, second for the implementation of beneficial judgments in W.P. No.368/2009 dated 24.03.2009 and W.P. No.3600/2010 dated 28.10.2010 and in third to declare the retrospective effect of impugned ibid Act, IX of 2012 as null and void and for expunction.

9. The question for determination before this Court is as to whether impugned enactment passed by the Pakhtunkhwa Assembly with legislative nomenclature as Khyber Pakhtunkhwa Cessation of Payment of Arrears on Advance Increments on Higher Educational Qualification Act, IX of 2012 is to nullify the effects of aforesaid judgments passed by this Court and to annul the beneficial effects of notification dated 11.08.1991 from which earlier so many civil servants of different departments of Khyber Pakhtunkhwa have been benefited.

10. We examined the impugned notification dated 03.01.2009 and whole of impugned ibid Act IX of 2012 by giving it retrospective effect before 01.12.2001. A query was put to the learned counsel for respondents as to whether before promulgation of impugned Act, its cause was removed and as whether that same provision in the impugned legislation would not amount to nullify the effects of judgment passed by this Court in the light of judgment of Honourable Apex Court cited as 2013 SCMR 1752, on this learned counsel for the respondents failed to provide some reasonable and rational explanation for giving the impugned Act as retrospective effect before 01.12.2001. The Honourable Supreme Court while taking cognizance about the anomaly and miscarriage of justice caused to other civil servants in the Sindh Province for giving out of turn promotions by way of deputation and absorption of different officers in the province of Sindh through legislation by way of amending Sindh Civil Servants (Amendment) Act, 2013 and Sindh Civil Servants (Second Amendment) Act, 2013 but said piece of

enactment in aforesaid enactment through amendment was struck down in the referred judgment i.e. 2013 SCMR 1752 (Contempt Proceedings case).

11. In the above cited judgment the Honourable Supreme Court held that Supreme Court either on its own or on petition by party is vested with the judicial power to examine, review and expunge the vires of such piece of legislation/amendment relating to the rights of civil servants and having public importance.

12. The Honourable Supreme Court vide above said judgment set aside the piece of legislation promulgated by the Sindh Assembly with regard to out of turn promotions of some officers by way of deputation /absorption. In the said judgment certain principles have been enunciated regarding instruments/piece of legislation which had nullified the effects of the judgments passed by Honourable Apex Court as well as of Honourable Sindh High Court. In this respect paragraphs Nos.165, 166 and 167 of said cited judgment are reproduced below:

165. The leading judgment on the subject issue, which our Courts have approvingly referred to the case of Indira Nehru Gandhi v. Raj Narain (AIR 1975 SC 2299) which relates to amendment in the Election Laws of India. In the said judgment Paras 190 and 191 are importance and reproduced hereunder:-

"190. A declaration that an order made by a Court of law is not a formally part of the judicial function and is not a legislative function

191. The position as it prevails in the United States, where guarantee of due process of law is in operation, is given on pages 318-19 of Vol. 46 of the American jurisprudence 2d as under:

"The general rule is that the legislature may not destroy, annul set aside, vacate, reverse, modify, or impair the final judgment of a Court of competent jurisdiction, so as to take away private rights which have become vested by the judgment. A statute attempting to do so has been held unconstitutional as an attempt on the part of the legislature to exercise judicial power, and as to violation of the constitutional guarantee of due process of law. The legislature is not only prohibited from reopening cases previously decided by the Courts, but is also forbidden to affect the inherent attributes of a judgment. That the statute is under the guise of an act affecting remedies does not alter the rule. It is worthy of notice, however, that there are cases in which judgments requiring acts to be done in the future may validly be affected by subsequent legislation making illegal that which the judgment found to be illegal, or making legal that which the judgment found to be illegal."

13. Similarly Paragraphs Nos.166 and 167 of the cited judgment (2013 SCMR 1749) are reproduced as under:

"166. This Court in the case of Fecto Belarus Tractor Ltd. v. Government of Pakistan through Finance Economic Affairs and others (PLD 2005 SC 605) has held that when a legislature intends to validate the tax declared by a Court to be illegally collected under an individual law, the cause for ineffectiveness or invalidity must be removed before the validation can be said to have taken place effectively .

167. In order to nullify the judgment of the Court, unless basis for judgment in favour of a party is not removed, it could not affect the rights of a party in whose favour the same was passed. The issue of effect of nullification of judgment has already been discussed in the case of Mobashir Hassan reported in (PLD 2010 SC 265), Para-76 discusses the effect of nullification of a judgment by means of a legislation. In the said case, the view formed is identical to the one in the case of Indira Nehro Gandhi v. Raj Narain (AIR 1975 SC 2299) and Fecto Belarus Tractor Ltd. v. Government of Pakistan through Finance Economic Affairs and others (PLD 2005 SC 605) and it was observed that the legislature cannot nullify the effect of the judgment and there are certain limitations placed on its powers including the one i.e. by amending the law with retrospective effect on the basis of which the order or judgment has been passed thereby removing basis of the decision."

(Underlining are ours for emphasis)

14. In the petitions in hand the Government of Pakhtunkhwa by means of issuing notification dated 03.01.2009 had nullified the effect of notification dated 11.08.1991 and same notification dated

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03.01.2009 had been declared null and void by this Court in judgment passed in W.P. No.3600/2010 dated 28.10.2010 and Honourable of Supreme Court in above referred C.P.L.As. No.525 and 526 of 2007. So the petitioners were and are entitled for the benefits arising out of notification dated 11.08.1991 and the judgments passed by this Court, therefore, respondents were not legally authorized to deprive the petitioners from the beneficial effects of the aforesaid notification dated 11.08.1991 and aforesaid judgments through impugned ibid Act, IX of 2012 before first removing the cause that is entitlement and the aforesaid beneficial effects of judgments in the impugned notification dated 03.01.2009 and through the impugned ibid Cessation of Advance Increments Act IX of 2012.

15. Thus in view of above discussion, we are of the firm view that by promulgating impugned piece of legislation and giving it retrospective effect is nothing but to destroy, annul and make the judgments of this Court as well as of Honourable Supreme Court as effectless, therefore, to the extent of section 2 by giving it retrospective effect before 1.12.2001 is declared null and void so is hereby expunged and struck down from the aforesaid impugned Act IX of 2012. Hence, these petitions are allowed and the respondents are directed to provide them the benefits of two advance increments according to notification dated 11.08.1991 on attaining higher qualifications during service within the period of two months from the receipt of this judgment according to prescribed manner under the law then in field.

ZC/209/P Petition allowed.

M. B.