

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

BEFORE: **RASHIDA BANO ... CHAIRMAN**
MUHAMMAD AKBAR KHAN... MEMBER (E)

Service Appeal No. 7264/2021

Date of presentation of Appeal.....09.08.2021
Date of Hearing.....28.02.2024
Date of Decision.....28.02.2024

Mr. Masood ur Rehman, Senior Teacher, Nastar Special Education
KDA Kohat.....(*Appellant*)

Versus

1. Government of Khyber Pakhtunkhwa, through Secretary Social
Welfare, Special Education & Women Empowerment Department
Peshawar & others.....(*Respondents*)

Present:

ASIF MEHMOOD QURESHI,
Advocate

... For appellant

MUHAMMAD JAN,
District Attorney

... For respondents

JUDGMENT

MUHAMMAD AKBAR KHAN MEMBER (E):- Our this judgment single
judgment shall dispose of the instant service appeal as well as connected
service appeals bearing No. 7265/2021 titled "Muhammad Ishaq versus
Government of Khyber Pakhtunkhwa, through Secretary Social Welfare,
Special Education & Women Empowerment Department Peshawar & others"
& service appeal bearing No. 7266/2021 titled "Anila Rehman versus
Government of Khyber Pakhtunkhwa, through Secretary Social Welfare,
Special Education & Women Empowerment Department Peshawar & others"
as common question of law and facts are involved therein.


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02. Brief facts of the case are that the appellant was initially serving as project Employee and vide order dated 08.06.2016, passed by the Peshawar High Court in Writ Petition No. 1854/2012, he was adjusted/reinstated in service vide order dated 23.02.2018. That on 25.11.2019 Health Allowance was granted to the appellant which was stopped vide impugned order dated 01.07.2020 on the ground that the said allowance was for the devolved employees while the appellant was not a devolved employees. Feeling aggrieved, the appellant filed Writ Petition No. 3207-P/2020 before the Hon'ble Peshawar High Court, Peshawar and the Hon'ble Peshawar High Court, Peshawar vide order dated 08.06.2021 dismissed the petition being not maintainable with the observation to approach the Service Tribunal, hence preferred the instant service appeal on 09.08.2021.

03. Notices were issued to the respondents, who submitted their comments, wherein they refuted the assertions raised by the appellant in his appeal. We have heard arguments of learned counsel for the appellant and learned District Attorney and have gone through the record with their valuable assistance.

04. Learned counsel for the appellant contended that the impugned order of respondent No. 6 for the stoppage of Health Allowance and recovery of drawn amount of the appellant is illegal, void abinitio, discriminatory and without lawful authority, hence liable to be set aside. He further argued that the impugned order of respondent No. 6 of depriving the appellant from getting Health Allowance has been passed without any legal justification and reasons. He further argued that the Health Allowance has been granted to

appellant by respondent No. 2 in pursuance of judgment of august Supreme Court of Pakistan but the respondent No. 6 without any legal justification/reasons stopped the Health Allowance of the appellant and this act of the respondent No. 6 is totally unwarranted under the law, because until the granted allowance/order has not been cancelled/withdrawn by the competent authority, which should be the higher then the respondent No. 6. He further argued that the impugned order of respondent No. 6 is also violation of fundamental rights guaranteed under the Articles, 4, 8 & 25 of the Constitution. Article 38 of the Constitution of Islamic Republic of Pakistan, 1973 ensures reduction of disparity, income and earning of individual in various cadres of the service of Pakistan. He further argued that the respondents No. 5 & 6 have not exercised their power, authority and jurisdiction fairly and justly, therefore, the same is liable to be declared null and void and without lawful authority.



05. On the other hand, learned District Attorney contended that the respondent No. 2 granted Health Allowances to the devolved employees of Special Education institutions however, the appellant is not the initial appointee of Special Education Institution but he was initially appointed in a project namely "Shaheed Benazir Bhutto Women Center Kohat" under supervision of Federal Government of Pakistan & he was not serving in Special Education. According to Notification dated 25.11.2019 the Health allowance will be admissible only to the employees of Special Education of Khyber Pakhtunkhwa devolved under 18th Constitutional amendment. That the respondents are law abiding civil servants and respect the Constitution of Islamic Republic of Pakistan 1973 and did not violate any article of the

Constitution of Islamic Republic of Pakistan. Moreover, as per Notification of the Finance Department the appellant is not eligible for the said relief, therefore, the appeal may kindly be dismissed with cost.

06. During scrutiny of record it came to surface that Mr. Gul Zarif Khan and 285 others who were similarly placed employees had filed service appeal No. 1620/2020 titled "Gul Zarif Khan versus Government of Khyber Pakhtunkhwa through Chief Secretary Civil Secretariat, Peshawar and 04 others", which were dismissed by this Tribunal vide consolidated judgment dated 12.02.2024. Operative paras of the said judgment are reproduced below:-

6. *The claim of the appellants in these appeals is that benefit of notification dated 25.11.2019, issued by the Government of Khyber Pakhtunkhwa Finance Department should also be extended to them being employees of the same department having same posts, designations and qualification etc. The contents of said notification are reproduced below:*

"In pursuance of the Supreme Court of Pakistan Civil Appeal No. 811/2016 titled "Muhammad Atique-Ur-Rehman & Others v/s Federal Government of Pakistan through Secretary Capital Administration etc," the Government of Khyber Pakhtunkhwa (Provincial Cabinet) has been pleased to approve Health Allowance at the rate of one running basic pay to the devolved employees working in the Special Education Institutions from the date of their devolution to Provincial Government of Khyber Pakhtunkhwa.

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

7. *The above notification was shown to have been issued in pursuance of the judgment of Supreme Court of Pakistan reported as*

2018 PLC (CS) 669 titled "Federation of Pakistan through Secretary Capital Administration and Development Division, Islamabad and others-versus- Nusrat Tahir and others". The notification has approved Health Allowance at the rate of one running basic pay to the devolved employees working in the Special Education Institutions from the date of their devolution to Provincial Government of Khyber Pakhtunkhwa. In wake of 18th Constitutional Amendment. The only contention of learned counsel for the appellants was that there was no intelligible differentia between the services of the appellants and services of the employees devolved in wake of the 18th Constitutional Amendment, to whom the Health Allowance has been granted through the notification dated 25.11.2019. The said contention of learned counsel for the appellants is misconceived because the judgment of the supreme court of Pakistan had affirmed the grant of Health Allowance to the employees of the Directorate General of Special Education (DGSE) and its allied special education centers/institutions including National Trust for the Disabled Persons (NTD) and the National Council for Rehabilitation of Disabled Persons (NCRDP) on the analogy that they were covered under the definition of health personnel as defined in Section 2(b) of the Career Structure for Health Personnel Scheme Ordinance, 2011 which is as under:

"b) "health personnel" means a person who holds a post in any institute or organization delivering services in the health sector and included in Schedule-I, but does not include:

- i) a person who is on deputation to the Federal Government from any Province or other authority;
- ii) a person who is employed on contract, or on work charged basis or who is paid from contingencies."


8. Vide notification dated 25.11.2019, the Health Allowance at the rate of one running basic pay has been extended only to the employees of the Federal Government, who had devolved in wake of the 18th Constitutional Amendment and had become the employees of the province after the said Constitutional Amendment,


whereas the appellants are admittedly the provincial employees since their inception into service. What we have arrived at is that the devolved employees were extended the benefits on the analogy that they were also covered in the definition of 2(b) of the Career Structure for Health Personnel Scheme Ordinance, 2011, whereas there is no such Ordinance or law of the Government of Khyber Pakhtunkhwa, whereby the appellants could be treated alike. The contention of the appellants that they were being treated with discrimination is thus also misconceived. In this respect, wisdom derived from the judgment of Peshawar High Court reported as 2003 PLC (C.S.) 1057 titled "Fazli Haq Khan, Registrar and 26 others-versus- Government of N.W.F.P. through Secretary Finance, Peshawar and 3 others",

10. As a sequel to the above discussion, the instant appeal as well as clubbed appeals mentioned in appendix-A are dismissed. Attested copy of this judgment be placed on files of all the clubbed appeals mentioned in appendix-A. Parties are left to bear their own costs. File be consigned to the record room.

07. In view of the above consolidated judgment rendered by this Tribunal dated 12.02.2024 in Service Appeal No. 1620/2022 titled "Gul Zarif Khan versus Government of Khyber Pakhtunkhwa through Chief Secretary Civil Secretariat, Peshawar and 04 others", the instant service appeal as well as connected service appeals are dismissed. Costs shall follow the event. Consign.

08. Pronounced in open Court at Peshawar and given under our hands and the seal of the Tribunal on this 28th day of February, 2024.


RASHIDA BANO
Member (J)


MUHAMMAD AKBAR KHAN
Member (E)

Kamran

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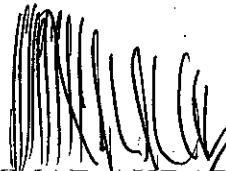
ORDER

28.02.2024

1. Learned counsel for the appellant present. Mr. Muhammad Jan, District Attorney for the respondents present. Arguments heard and record perused.
2. . Vide our detailed judgment of today separately placed on file, consisting of (06) pages, the instant service appeal as well as connected service appeals are dismissed. Costs shall follow the event. Consign.
3. *Pronounced in open Court at Peshawar and given under our hands and the seal of the Tribunal on this 28th day of February, 2024.*



(RASHIDA BANO)
Member (J)



(MUHAMMAD AKBAR HAN)
Member (E)


Kamran

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

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

(Muhammad Akbar Khan)
Member (E)



(Rashida Bano)
Member (J)


kaleemullah

13.11.2023

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

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


(Fareeha Paul)
Member (E)


(Salah-ud-Din)
Member (J)

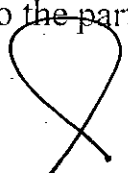
Nacem Amin


13th Nov, 2023

1. Learned counsel for the appellant and Mr. Habib Anwar, Additional Advocate General for the respondents present.

2. Former made a request for adjournment in order to prepare the brief. Adjourned. To come up for arguments on 26.02.2024 before D.B.

P.P given to the parties.


(Salah-Ud-Din)
Member (J)


(Kalim Arshad Khan)
Chairman

Munazem Shah

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Peshawar

Oct. 2023

1. Learned counsel for the appellant and Mr. Asif Masood Ali Shah learned Deputy District Attorney for the respondents present.

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

(Muhammad Akbar Khan)
Member (E)

(Kalim Arshad Khan)
Chairman

Mutazem Shah

SCANNED
12.10.2023
K.P.B.T
Peshawar

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

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

(Muhammad Akbar Khan)
Member (E)


(Rashida Bano)
Member (J)


30.05.2023

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

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

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Peshawar


(Fareeha Paul)
Member (E)



(Salah-ud-Din)
Member (J)


Naeem Amin

15th June, 2023 1. Clerk of learned counsel for the appellant present. Mr. Muhammad Jan, District Attorney for the respondents present.

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


(Salah Ud Din)
Member (J)


(Kalim Arshad Khan)
Chairman

*Mutazem Shah *

06th Mar, 2023

Learned counsel for appellant present. Mr. R
Paindakhel, Assistant Advocate General for the respondents
present.

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



(Salah Ud Din)
Member (J)

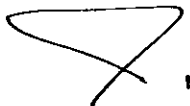


(Kalim Arshad Khan)
Chairman

14.03.2023

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

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



(Salah-Ud-Din)
Member (J)



(Kalim Arshad Khan)
Chairman

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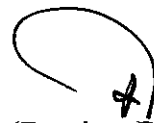
Appellant alongwith counsel present. Muhammad Adeel Butt learned Additional Advocate General for respondents present.

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

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(Fareeha Paul)
Member (E)



(Rozina Rehman)
Member (J)

06.02.2023

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

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

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Peshawar



(FAREEHA PAUL)
Member (E)



(ROZINA REHMAN)
Member (J)

19.07.2022

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




Reader


20th Oct, 2022

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

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



(Fareeha Paul)
Member(Executive)



(Kalim Arshad Khan)
Chairman

11.01.2022

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

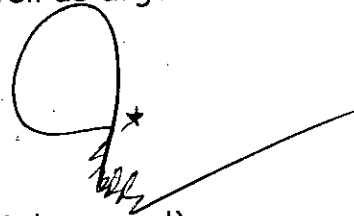
Reply/comments on behalf of respondents are still awaited. Representative of respondents sought time for submission of reply/comments. Last opportunity is granted to respondents to furnish reply/comments on or before next date, failing which their right to submit reply/comments shall be deemed as struck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



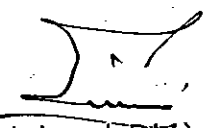
(Atiq-Ur-Rehman Wazir)
Member (E)

28.04.2022

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



(Mian Muhammad)
Member (E)



(Salah-ud-Din)
Member (J)

Masood Ur Rehman 7264/2021

24.09.2021

Counsel for the appellant present. Preliminary arguments heard.

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

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

Appellant Deposited
Security & Process Fee

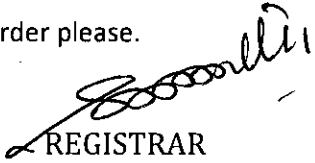

(Mian Muhammad)
Member(E)

Form- A

FORM OF ORDER SHEET

Court of _____

Case No.- 2264 /2021


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

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

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

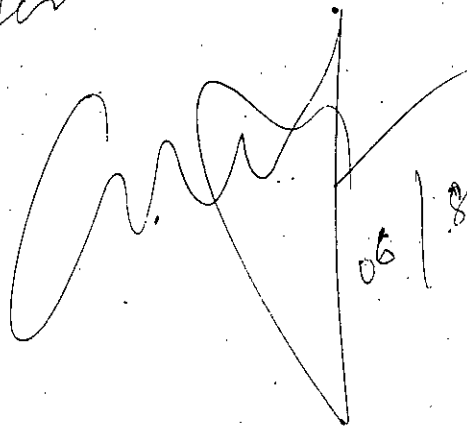
No. 1528 /S.T

Dt. 05/08 /2021


REGISTRAR
SERVICE TRIBUNAL
KHYBER PAKHTUNKHWA
PESHAWAR.

Mr. Asif Mehmood Qureshi Adv. Pesh.

*Re-submitted
after Compliance.*


06/8/21



KHYBER PAKHTUNKHWA SERVICES TRIBUNAL, PESHAWAR
CHECK LIST

Masood Ur Rehman
..... Appellant

Versus

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

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

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

Name:- Asif Hameed Qureshi

Signature:- _____

Dated:- 06/08/2021

BEFORE THE SERVICE TRIBUNAL KHYBER PAKHTUNKHWA,
PESHAWAR

Service Appeal No:- _____/2021

SCANNED
KPST
Peshawar

Masood Ur Rehman

Versus

Govt: of KPK & others

..... Appellant

..... Respondents



INDEX

S#	Description of the Documents	Annex	Pages
1.	<i>Grounds of Service Appeal with affidavit</i>	*	1-7
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3.	<i>Application for condonation of delay with affidavit</i>	*	10-11
4.	<i>Addresses of parties</i>	*	12
5.	<i>Copy of order of respondent No 1 dated 23/02/2018</i>	"A"	13-15
6.	<i>Copy of he notification dated 25/11/2019 of respondent No 2</i>	"B"	16
7.	<i>Copy of impugned order dated 01/07/2020 of respondent No 6</i>	"C"	17-18
8.	<i>Copy of Writ Petition No 3207-P/2020</i>	"D"	19-22
9.	<i>Copy of order of Honourable Peshawar High Court Peshawar dated 08/06/2021</i>	"E"	23-24
10.	<i>Copy of appeal to respondent No 5</i>	"F"	25-26
11.	<i>Copy of judgment 2020 SCMR Page 1957</i>	"G"	27-30
12.	<i>Wakalat Nama</i>		31

Dated:- 06/08/2021

Through:-

Appellant

Asif Hameed Qureshi
Advocate Supreme Court

0332-9874941

0333-6682044

←
Fueled

①

BEFORE THE SERVICE TRIBUNAL KHYBER PAKHTUNKHWA,
PESHAWAR

Khyber Pakhtunkhwa
Service Tribunal

Diary No. 7425

Dated 09/08/2021

Service Appeal No:- 7264 /2021

Masood Ur Rehman, Senior Teacher, Nistar Special Education,
KDA, Kohat.....Appellant

Versus

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



SERVICE APPEAL UNDER 4 OF THE KHYBER PAKHTUNKHWA
SERVICES TRIBUNAL ACT, 1974 AGAINST THE IMPUGNED
ORDER OF RESPONDENT NO 6 DATED 01/07/2020 BY
WHICH THE GRANTED HEALTH ALLOWANCE TO APPELLANT

Filed to - HAS BEEN STOPPED.

Registrar and filed. Re-submitted to -day

Registrar 9/8/2021

②

Prayer in Appeal:-

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

Respectfully Sheweth:-

The facts pertaining to this appeal are as under:-

1. *That the appellant was initially of Project Shaheed Banazir Bhutto Centers for Woman^{and} in pursuance of the judgment of Honourable Peshawar High Court, Peshawar dated 08/02/2016 in Writ Petition No 1854/2012 and Writ Petition No 1880/2012, he has been re-instated and adjusted by the respondent No 1 vide order dated 23/02/2018. (Copy of order of respondent No 1 dated 23/02/2018 is attached as annexure "A").*
2. *That vide order dated 25/11/2019 of respondent No 2 the appellant granted the Health Allowance from the date of devolution to Provincial Government. (Copy of the notification dated 25/11/2019 is attached as annexure "B").*
3. *That the respondent No 6 vide impugned order dated 01/07/2020 stopped the payment of Health Allowance to the*

(3)

appellant by declaring the appellants non devolved employees and also ordered to recover the drawn amount from the appellant. (Copy of the impugned order dated 01/07/2020 is attached as annexure "C").

4. That against the above said illegal act and order of the respondent No 6 the appellant filed Writ Petition No 3207-P/2020 before the Honourable Peshawar High Court, Peshawar, and the same was dismissed on 08/06/2021 being not maintainable with the observations to approach this Honourable Tribunal. (Certified copies of the Writ Petition and judgment dated 08/06/2021 are attached as annexure "D" & "E" respectively).

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

Grounds:-

A. That the impugned order of the respondent No 6 for the stoppage of granted Health Allowance and recovery of drawn amount of the appellant is illegal vide ab-initio, discriminatory and without lawful authority, hence liable to be set aside.

B. That the impugned order of respondent No 6 of depriving the appellant from getting his Health Allowance has been passed without any legal justification and reasons.

C. That the Health Allowance had been granted to appellant by respondent No 2 in pursuance of judgment of August Supreme Court of Pakistan by rightly declared the appellant as developed employees, but the respondent No 6 without any legal justification/reasons stopped the Health Allowance of the appellant and this act of the respondent No 6 is totally unwarranted under the law, because until the granted allowance/order has not been cancelled/withdrawn by the competent authority, which should be the higher than the respondent No 6.

D. That the appellant is performing the same job, duties, functions and responsibilities, which the other officials/counter part are performing in the department, therefore, to treat the respondents different is not only illegal but discriminatory.

E. That all the citizen of Pakistan are equal before the law and they are also equal protection of law, hence the impugned order of the respondent No 6 by stopping the Health Allowance of the appellant is clear cut violation of law laid

down Apex Court of the Country "That all persons placed in similar circumstances must be treated alike".

F. That the impugned order of respondent No 6 is also violation of fundamental rights guaranteed under the Articles 4, 8 & 25 of the Constitution.

G. That Article 38 (C) of the Constitution of Pakistan, 1973 ensures reduction of disparity, income and earning of individual in various cadres of the service of Pakistan.

H. That against the impugned order of respondent No 6 the appellant also preferred an appeal to respondent No 6, but till date the same has not been decided and this act of the appellate authority was also illegal and against the law laid down by Apex Court of the Country, reported in SCMR 2020 Peshawar 1957. (Copies of appeal and judgment are attached as annexure "F" & "G" respectively).

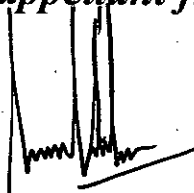
I. That pleas/contentions of the appellant is well supported by the law laid down by superior courts of the country and in this regard reliance is placed on 2014 SCMR 1687, 2002 PLC (CS) 427, 2004 PLC (CS) 1087, 2013 PLC (CS) 592, 2012 PLC (CS) 362 & 2014 PLC(CS) 1315.

J. That the respondents No 5 & 6 have not exercised their power, authority and jurisdiction fairly and justly, therefore, the same is liable to be declared null and void and without lawful authority.


K. That any other ground, which has not been specifically taken in the instant service appeal, may be argued at the time of arguments with the permission of this Honourable Tribunal.

It is, therefore, most humbly prayed that on acceptance of this service appeal, the impugned order dated 01/07/2020 of respondent No 6 may kindly be declared illegal, discriminatory and without lawful authority and the same may kindly be set aside by restoring the Health Allowance of the appellant from July, 2020 till the decision of this appeal.

Dated:- 06/08/2021

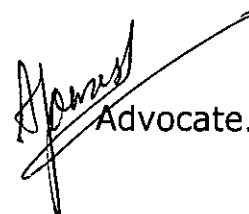

Appellant

Through:-


Asif Hameed Qureshi
Advocate Supreme Court

Certificate:-

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


Advocate.

BEFORE THE SERVICE TRIBUNAL KHYBER PAKHTUNKHWA,
PESHAWAR

Service Appeal No:- _____/2021

Masood Ur Rehman

Versus

Govt: of KPK & others

..... Appellant

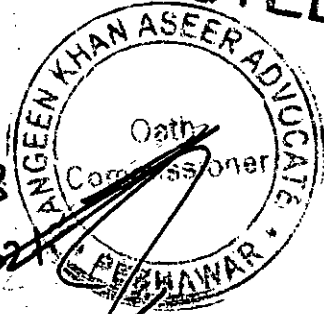
..... Respondents



AFFIDAVIT

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

ATTESTED



DEPONENT
CNIC No:- 14301 -2030355-7
Cell No:-

BEFORE THE SERVICE TRIBUNAL KHYBER PAKHTUNKHWA,
PESHAWAR

Service Appeal No:- _____/2021

Masood Ur Rehman
..... Appellant

Versus

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



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

Respectfully Sheweth:-

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

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

Dated:- 06/08/2021

Petitioner

Through:-

Asif Hameed Qureshi

Asif Hameed Qureshi
Advocate Supreme Court

AFFIDAVIT

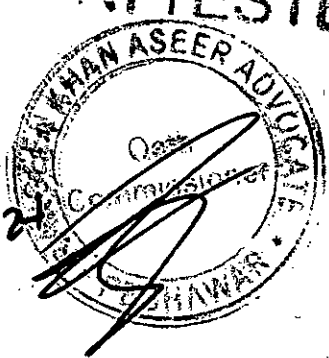
I, Masood Ur Rehman, Senior Teacher, Nastar Special Education, KDA, Kohat, (The appellant) do hereby solemnly affirm and declare on oath that the contents of this accompanying application for suspension are true and correct to the best of my knowledge and belief and nothing has been concealed from this

Honourable Court

ATTESTED

[Signature]

07/08/2021



DEPONENT
CNIC No:- 14301-2030355-7
Cell No:-

BEFORE THE SERVICE TRIBUNAL KHYBER PAKHTUNKHWA,
PESHAWAR

Service Appeal No:- _____/2021

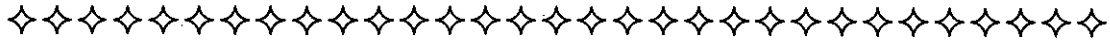
Masood Ur Rehman

Versus

Govt: of KPK & others

..... Appellant

..... Respondents



APPLICATION FOR CONDONATION OF DELAY IN FILING OF

ABOVE TITLED SERVICE APPEAL.

Respectfully Sheweth:-

- 1. That the above noted appeal has been filed in this Honourable Tribunal in which no date is yet fixed.*
- 2. That the impugned order of the respondent No 6 was void ab-initio without lawful authority and jurisdiction and therefore, the law laid down by august Supreme Court of Pakistan on the point that no limitation can run against void order, which is fully attracted to the case of petitioner, Reliance is placed on (PLD 2002 SC 84, 2007 SCMR 729 & 2019 SCMR 648, PLD 2003 SC 724).*
- 3. That valuable rights of the petitioner/appellant are involved in the case and in the interest of justice too the delay is condonable.*

11

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

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

Dated:- 06/08/2021

Petitioner

Through:-

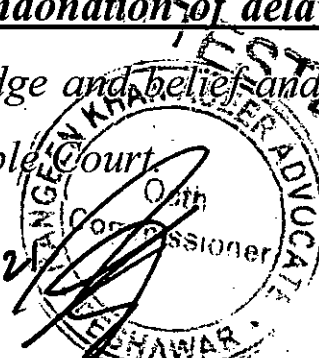


Asif Hameed Qureshi
Advocate Supreme Court

AFFIDAVIT

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

07/08/2021
Oath Commissioner
DEPONENT
CNIC No:-14301-2030355-7



BEFORE THE SERVICE TRIBUNAL KHYBER PAKHTUNKHWA,
PESHAWAR

Service Appeal No:- _____/2021

Masood Ur Rehman
..... Appellant

Versus

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



ADDRESSES OF PARTIES

APPELLANT

Masood Ur Rehman, Senior Teacher, Nastar Special Education,
KDA, Kohat.

RESPONDENTS

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

Dated:- 06/08/2021

Appellant

Through:-

Asif Hameed Qureshi
Advocate Supreme Court



(13) (18)
GOVERNMENT OF KHYBER PAKHTUNKHWA
ZAKAT, USHR, SOCIAL WELFARE, SPECIAL EDUCATION
& WOMEN EMPOWERMENT DEPARTMENT

Annex A

Dated Peshawar the 23rd February, 2018

NOTIFICATION:

No. SOII/SWD/II-206/2017/Vol-I/3201-09 In pursuance of the Peshawar High Court Judgment dated the 18th February-2016 in Writ Petition No. 1854-P/2012 and No. 1880-P/2012, and with the approval of the competent authority, the employees of project namely "Shaheed Benazir Bhutto Centres for Women" at Peshawar, Kohat, Abbottabad and Swat of Ministry of Women Development, Islamabad are hereby reinstated and adjusted against the vacant posts mentioned against each with immediate effect.

02. The re-instatement of the above mentioned officers are subject to provision of medical fitness certificate from authorized medical officer, and verification of their educational credential and character/antecedents.

S.No	Name of Employee	Previous designation with BPS	Adjustment / Re-instated as with BPS
01	Mst. Syeda-tun-Nisa Alia	Manager (BPS-18)	Manager (BPS-17), Women Crises Center Peshawar relieving Mr. Jamal Shah Mohmand, Assistant Director (B&A) Directorate of Social Welfare from the additional charge of the post of Manager Women Crises Center Peshawar
02	Mst. Nusrat iqbal	Manager (BPS-18)	Superintendent (BPS-17), Dar-UI-Aman Swat
03	Mst. Rabia Zakeer	Manager (BPS-18)	Superintendent (BPS-17), Dar-UI-Aman Abbottabad, relieving Mst Shamshad Begum District Officer Social Welfare Abbottabad from the additional charge of the post of Superintendent Dar-UI-Aman
04	Mst. Aneela Rahman	Manager (BPS-18)	Senior Special Education Teacher (BPS-17), Nishtar Special Education Center Kohat against the vacant post
05	Mr. Waheed Ullah	Law Officer (BPS-17)	Senior Special Education Teacher (BPS-17), Special Education Complex Hayatabad Peshawar, against the vacant post
06	Mr. Salim Zada	Law Officer (BPS-17)	Social Welfare Officer (BPS-17), Tehsil Head Quarter Hospital Chakdara Dir Lower, against the vacant post
07	Mr. Masood-Ur-Rahman	Law Officer (BPS-17)	Senior Special Education Teacher (BPS-17), Nishtar Special Education Center Kohat, against the vacant post

[Handwritten Signature]

**GOVERNMENT OF KHYBER PAKHTUNKHWA
ZAKAT, USHR, SOCIAL WELFARE, SPECIAL EDUCATION
& WOMEN EMPOWERMENT DEPARTMENT**

Dated Peshawar the 23rd February, 2018

NOTIFICATION:

No.SOII/SWD/II-206/2017/Vol-I/3801-09:- In pursuance of the Peshawar High Court Judgment dated the 18th February 2016 in Writ petition No.1854-P/2012 and No.1880-P/2012, and with the approval of the competent authority, the employees of project namely "Shaheed Benazir Bhutto Centres for Women" at Peshawar, Kohat, Abbotabad and Swat of Ministry of Women Development, Islamabad are hereby reinstated and adjusted against the vacant posts mentioned against each with immediate effect.

02. The re-instatement of the above mentioned officers are subject to provision of medical fitness certificate from authorized medical officer and verification of their educational credential and character/antecedents.

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02	Mst Nusrat Iqbal	Manager (BPS-18)	Superintendent (BPS-17), Dar-UL-Aman Swat.
03	Mst Rabia Zakeer	Manager (BPS-18)	Superintendent (BPS-17), Dar-UL-Aman Abbotabad, relieving Mst Shamshad Begum District Officer Social Welfare Abbotabad from the additional charge of the post of Superintendent Dar-UL-Aman.
04	Mr. Aneela Rahman	Manager (BPS-18)	Senior Special Education Teacher (BPS-17), Special Education Center Kohat against the vacant post.
05	Mr. Waheed Ullah	Law Officer (BPS-17)	Senior Special Education Teacher (BPS-17), Special Education Complex Hayatabad Peshawar against the vacant post.
06	Mr. Salim Zada	Law Officer (BPS-17)	Social Welfare Officer (BPS-17), Tehsil Head Quarter Hospital Chakdara Dir Lower, against the vacant post.
07	Mr. Masood UR Rehman	Law Officer (BPS-17)	Senior Special Education Teacher (BPS-17), Nishtar Special Education Center Kohat, against the vacant post.

08	Mst. Saira Mushtaq	Law Officer (BPS-17)	Senior Special Education Teacher (BPS-17), Mentally Retarded & Physically Handicapped Children Abbottabad, against the vacant post
09	Mst. Rehana Farid	Social Welfare Officer (BPS-17)	Senior Special Education Teacher (BPS-17), Special Education Center for Heard Impaired Children Swat, against the vacant post
10	Mst. Bushra Parvez	Social Welfare Officer (BPS-17)	Social Case Worker (BPS-17), Nishtar Special Education Centre Kohat, against the vacant post
11	Mst. Shamim Akhtar	Social Welfare Officer (BPS-17)	Senior Special Education Teacher (BPS-17), Mentally Retarded & Physically Handicapped Children Haripur against the vacant post

03. Consequent upon adjustment of Mst. Nusrat Iqbal as Superintendent (BPS-17) Dar-ul-Aman, Swat Mr. Rahat Ullah is hereby transferred and posted as Rehabilitation Officer, Rehabilitation Centre for Drug Addicts Swat, relieving Mr. Asif Khan, District Officer Social Welfare Swat from the additional charge of the post of Rehabilitation Officer, Rehabilitation Centre for Drug Addicts Swat.

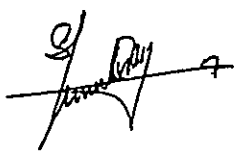
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Secretary to Govt: of Khyber Pakhtunkhwa
Zakat, Ushr, Social Welfare, Special Education & Women
Empowerment Department.

Endst: of Even No & Date:

Copy forwarded for information and further necessary action to the:-

1. Accountant General Office, Khyber Pakhtunkhwa Peshawar.
2. Principal Secretary to Chief Minister Govt. of Khyber Pakhtunkhwa.
3. Registrar, Peshawar High Court Peshawar.
4. Director Social Welfare, Special Education & Women Empowerment, Khyber Pakhtunkhwa
5. Deputy Director MIS, Social Welfare, Special Education & Women Empowerment Department.
6. Section Officer-VI, Social Welfare, Special Education & Women Empowerment Department
7. All the District Accounts Officers concerned.
8. All the District Officers Social Welfare concerned.
9. PS to Secretary, Zakat, Ushr, Social Welfare, Special Education & Women Empowerment Department.



(Muhammad Saud)
Section Officer-II

BETTER COPY

08	Mst Saira Mushtaq	Law Officer (BPS-17)	Senior Special Education Teacher (BPS-17), Mentally Retarded & Physically Handicapped Children Abbotabad, against the vacant post.
09	Mst. Rehana Farid	Special Welfare Officer (BPS-17)	Senior Special Education Teacher (BPS-17), Special Education Centre for Heard Impaired Children Swat, against the vacant post.
10	Mst Bushra Parvez	Special Welfare Officer (BPS-17)	Social Case Worker (BPS-17), Nishter Special Education Centre Kohat, against the vacant post.
11	Mst. Shamim Akhtar	Special Welfare Officer (BPS-17)	Senior Special Education Teacher (BPS-17), Mentally Retarded & Physically Handicapped Children Haripur against the vacant post.

03. Consequent upon adjustment of Mst. Nusrat Iqbal as Superintendent (BPS-17) Dar-ul-Aman, Swat Mr. Rahat Ullah is hereby transferred and posted as Rehabilitation Officer, Rehabilitation Centre for Drug Addicts Swat, relieving Mr. Asif Khan, District Officer Social Welfare Swat from the additional charge of the post of Rehabilitation Officer, Rehabilitation Centre for Drug Addicts Swat.

Sd/-

**Secretary to Govt: Of Khyber Pakhtunkhwa
Zakat, Ushr, Social Welfare, Special Education & Women
Empowerment Department**

Endst: of Even No. & Date:-

Copy forwarded for information and further necessary action to the:-

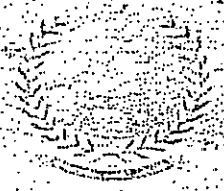
1. Accountant General Office, Khyber Pakhtunkhwa, Peshawar.
2. Principal Secretary to Chief Minister Govt of Khyber Pakhtunkhwa.
3. Registrar, Peshawar High Court, Peshawar.
4. Director Social Welfare, Special Education & Women Empowerment, Khyber Pakhtunkhwa.
5. Deputy Director MIS, Social Welfare, Special Education & Women Empowerment Department.
6. Section Officer-VI, Social Welfare, Special Education & Women Empowerment Department.
7. All the District Accounts Officers concerned.
8. All the District Officers Social Welfare concerned.
9. PS to Secretary, Zakat, Ushr, Social Welfare, Special Education & Women Empowerment Department.

(Muhammad Saud)
Section Officer-II

(15)

(1)

A/2



GOVERNMENT OF KHYBER PAKHTUNKHWA
ZAKAT, USHR, SOCIAL WELFARE, SPECIAL EDUCATION
& WOMEN EMPOWERMENT DEPARTMENT

Islamabad, the 10th Dec 2019

NOTIFICATION

No. SOI(SW) II-52/2016 The Government hereby orders the transfer of the following officers of Social Welfare, Special Education & Women Empowerment, Khyber Pakhtunkhwa on the date of publication of this notification.

Sr#	Name & Designation	From	To
1	Muhammad Younus, District Officer, Social Welfare, District Swat	District Officer, Social Welfare, District Swat	District Officer, Social Welfare, District Swat
2	M. Shabbir Khan, District Officer, Social Welfare, District Swat	District Officer, Social Welfare, District Swat	District Officer, Social Welfare, District Swat

Secretary to Govt. of Khyber Pakhtunkhwa
Zakat, Ushr, Social Welfare, Special Education & Women Empowerment Department

First of Even No. Date

Copy forwarded for information and further necessary action to the

1. President, General Khyber Pakhtunkhwa
2. Director Social Welfare, Special Education & Women Empowerment, Khyber Pakhtunkhwa
3. Deputy Director (MS) for Social Welfare, Special Education & Women Empowerment, Dera Ismail Khan
4. District Social Welfare Officer, Mardan and Kohat
5. District Social Welfare Officer, Chitral and Kohat
6. P.S. to Secretary, Zakat, Ushr, Social Welfare, Special Education & Women Empowerment Department
7. Officers concerned
8. Personal File
9. Master File

Section Officer II

FILE

c/c
copy

**GOVERNMENT OF KHYBER PAKHTUNKHWA
ZAKAT, USHR, SOCIAL WELFARE, SPECIAL EDUCATION
& WOMEN EMPOWERMENT DEPARTMENT**

Dated Peshawar the 4th Dec, 2019

Notification

No.SOI(SW)II-52/2016/- The competent authority is pleased to order the posting/transfer of the following officers of Social Welfare Special Education & Women Empowerment Khyber Pakhtunkhwa in the best public interest with immediate effect:-

Sr.#	Name & Designation	From	To
01.	Muhammad Younis Afridi, Social Welfare Officer (BS-17)	District Officer Social Welfare Charsadda	Deputy Director Nishter Special Education Complex Kohat against the vacant post.
02.	Mr. Shoaib Khan Social Welfare Officer (BS-17)	Office of the District Officer, Social Welfare Office Peshawar	District Officer Social Welfare Charsadda, vide Serial No.01

Sd/-

**Secretary to Govt: Of Khyber Pakhtunkhwa
Zakat, Ushr, Social Welfare, Special Education & Women
Empowerment Department**

Endst: of Even No. & Date:-

Copy forwarded for information and further necessary action to the:-

1. Accountant General Office, Khyber Pakhtunkhwa.
2. Director Social Welfare, Special Education & Women Empowerment, Khyber Pakhtunkhwa.
3. Deputy Director MIS cell, Social Welfare, Special Education & Women Empowerment Department.
4. District Social Welfare Officer Charsadda and Kohat.
5. District Accounts Officer Charsadda and Kohat.
6. PS to Secretary, Zakat, Ushr, Social Welfare, Special Education & Women Empowerment Department.
7. Officers concerned
8. Personal file
9. Master File.

Section Officer-II



c/c
any

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21

B



GOVERNMENT OF KHYBER PAKHTUNKHWA
FINANCE DEPARTMENT
(REGULATION WING)

Amendment

Dated Peshawar the 25-11-2019

NOTIFICATION

- 53

No.FD(SO5R-III)-7/2019, in pursuance of the Supreme Court of Pakistan Civil Appeal No 811/2016 titled 'Muhammad Ahsan-Ul-Rehman & Others v/s Federal Government of Pakistan through Secretary Capital Administration etc.' the Government of Khyber Pakhtunkhwa (Provincial Cabinet) has been pleased to approve Health Allowance at the rate of one running basic pay to the devolved employees working in the Special Education Institutions from the date of their devolution to Provincial Govt of Khyber Pakhtunkhwa

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

Secretary to Govt of Khyber Pakhtunkhwa
Finance Department

Encls: No. & Date Even

Copy is forwarded for information and necessary action to the :

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

SECTION OFFICER (SR-II)
FINANCE DEPARTMENT

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Attest

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GOVERNMENT OF KHYBER PAKHTUNKHWA
FINANCE DEPARTMENT
(REGULATION WING)

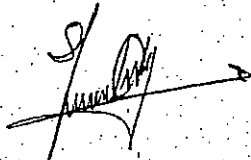
Dated Peshawar the 25.11.2019

NOTIFICATION

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

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

SECRETARY TO GOVT. OF KHYBER PAKHTUNKHWA
(FINANCE DEPARTMENT)


Attested

c/c
copy



OFFICE OF THE DEPUTY COMMISSIONER
KOHAT

NO. 6958 = /F&P/DC/KT

Dated 01/07/20

To

The District Officer
SW, SE & WE, Kohat

Subject: HEALTH PROFESSIONAL ALLOWANCE

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

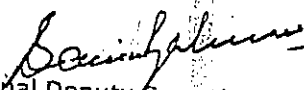
The Government of Khyber Pakhtunkhwa Finance Department vide their Notification No FD(SOSR-II)8-7/2019-53 dated 25-11-2019 has been pleased to approve Health Allowance at the rate of one running basic pay to the devolved employees working in the Special Education Institutions from the date of their devolution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

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

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

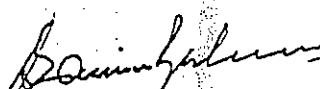
The above mentioned employees are not devolved employees and they are drawing the Health Allowance illegally as per notification.

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


Additional Deputy Commissioner (F&P)
Kohat

Copy forwarded for information to the:

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


Additional Deputy Commissioner (F&P)
Kohat

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

No. 7039 DO/SW/KT

Dated. 08/07/2020

To

The Deputy Commissioner, Kohat.

Subject: Health Professional Allowance

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

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

Copy for information to:

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

District Officer, SW, SE & WE, Kohat

[Signature]
District Officer, SW, SE & WE, Kohat

[Signature]
Attested

c/c my

BEFORE THE PESHAWAR HIGH COURT, PESHAWAR

W.P No. 3207 - P/ 2020



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

Versus

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

.....Respondents

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

ATTESTED
EXAMINER
Peshawar High Court

Respectfully Sheweth:

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

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

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

GROUND S:

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

ATTESTED
EXAMINER
Peshawar High Court

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- (3) (21) (21) D/2
- C) That because the impugned actions and inactions are against the principles ordained under Article 25 of the Constitution of Islamic Republic of Pakistan.
- D) That petitioner are providing same services and same nature of job within the same institute on the ground of which devolved employees of special Education getting "Health Allowance". Under the law petitioner are liable to be treated alike but this aspect of the case has been ignored by the respondents.
- E) That petitioner are also falling under the same category as they are providing the same services which the other person who are retaining "Health Allowance" which created great disparity amongst the employees inducted/ transferred by the Government of Khyber Pakhtunkhwa and Devolved Employees within the same institute (NSEC, Kohat) and a clear cut discrimination.
- F) That because the impugned actions and inactions are blatantly against all norms of justice and principles of reasonability.
- G) That employees of Special Education Devolved from Federal Government to Province under 18th Constitution Amendment absorbed with Social Welfare, Special Education and Woman Empowerment Department which is providing the same services to Special Children as provided by the Directorate General, Special Education (DGSE) at Federal Level. While later on the vacant post in these Devolved institute are filled by the Khyber Pakhtunkhwa Government by inducting / Transferred from Khyber Pakhtunkhwa Social Welfare, Special Education and Women empowerment Department. The Apex Court of Pakistan vide case reported as 1996 SCMR 1185 has held "rule of good governance" demand that benefits of the said decision to the other civil servants also who may not be party to this litigation, instead of compelling to approach the tribunal or other legal forum.
- H) That in view of the Judgments of Superior Judiciary it was incumbent upon respondent to have accorded the same benefits to all the officers similarly placed but they badly fails to discharge their responsibility thus indulgence of this Hon'ble Court is required in the matter.

ATTESTED
EXAMINER
Peshawar High Court

(4) (10) (22) D/3


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

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

INTERIM RELIEF

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

Petitioners
Through


SHAHID QAYUM KHATTAR
Advocate, Supreme Court
of Pakistan

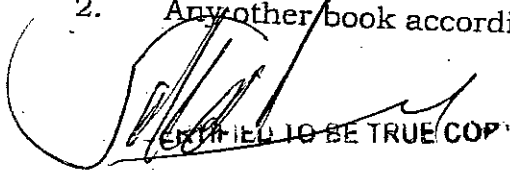
Certificate:-

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


Advocate

List of Books:-

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


EXAMINER
Peshawar High Court, Peshawar
Authorised Under Article 87 of
The Constitution of Pakistan Order 198

12 JUN 2021


Advocate

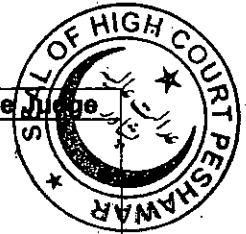
(25) (23)

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PESHAWAR HIGH COURT, PESHAWAR.

FORM 'A'
FORM OF ORDER SHEET

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



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ATTESTED

EXAMINER

Peshawar High Court

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

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

JUDGE

JUDGE

CERTIFIED TO BE TRUE COPY

EXAMINER
Peshawar High Court, Peshawar
Authorised Under Article 57 of
The Pakistan Shariat Ordinance 1980

12 JUN 2021

No. 37492
Date of Presentation of Application 10/6/2021
No of Pages 62
Copying fee
Total
Date of Preparation of Copy 12/6/2021
Date of Delivery of Copy 12/6/2021
Received By

etc
any

Deputy Commissioner
Kohat

Through Proper Channel (District Officer, Social Welfare Kohat)

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

Respect Sir,

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

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

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

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

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

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

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

1. Muhammad Younas Afridi Deputy Director

[Signature]
6-7-2020

2. Masood ur Rehman Senior Teacher

[Signature]
8-7-2020

3. Anila Rehman Senior Teacher

[Signature]
8-7-20

4. Muhammad Ishaq Computer Operator

[Signature]
03/07/2020

5. Zia ur Rehman Driver

Zia -

6. Mubsher Iqbal Naib Qasid

مبشر اقبال

7. Zahid Attendant

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Copy for information and necessary action to:-

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

[Signature]

Attested

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[Signature]

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

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

The exception in Giles v Rhind

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

Conclusion

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

MWA/6/UKSC

Appeal allowed.

2020 S.C.M.R. 1957

[Supreme Court of Pakistan]

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

LAHORE DEVELOPMENT AUTHORITY
and another—Appellants

versus

MUHAMMAD TARIQ NIAZI—Respondent

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

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

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

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

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Authority')—Legality—Admittedly the plaintiff participated in the open auction qua the subject plot, and during the bidding proceedings he was declared the highest bidder—Plaintiff deposited Rs. 1,50,000/- at the time of bid and later on he deposited Rs.1,18,500/- as 1/3rd of the bid—Authority never denied the fact that the plaintiff visited the Authority's office various times in order to complete the bidding process by depositing the rest of the amount to discharge his liability qua payment of amount of auction—After the auction was complete the Authority enhanced the price of bid belatedly on the pretext that a third party, which had not participated in the open auction, had made a higher offer for the subject plot than the plaintiff—Plaintiff even agreed to meet such enhanced offer, under protest, which enhanced offer did not have sanction of any law—Despite plaintiff agreeing with the enhanced offer, the Authority gave public notice in a newspaper for re-auction of the plot—Such enhanced offer made belatedly by a third party could not be made basis for re-auction of the plot and such practice seemed to be un-precedented being without any lawful authority—Authority was grossly unjustified to issue another proclamation for public auction relating to the subject plot, once its valid acceptance was made by the plaintiff—Suit filed by plaintiff against the Authority had been rightly decreed—Appeal filed by Authority was dismissed. [pp. 1960, 1961] A, B & C

(b) Public functionary—

—Public functionaries were expected to perform their duties well within the prescribed limits of the law of the land—Any act by a public functionary against the dictates of justice might frustrate public confidence qua public functionaries which might be detrimental to uphold the public order which was paramount to keep the society peaceful. [p. 1962] D

Ch. Waseem Arif Bhaddar, Advocate Supreme Court and M. Sabir, Deputy Director for Appellants.

Ahmad Waheed Khan, Advocate Supreme Court for Respondent.

Date of hearing: 27th August, 2020.

JUDGMENT

SAYYED MAZAHAR ALI AKBAR NAQVI, J.—Civil appeal, by leave of the Court under Article 185(3) of Constitution of Islamic Republic of Pakistan, 1973, is directed against the impugned judgment of Lahore High Court, Lahore dated 24.06.2002 passed in R.F.A. No.180 of 1994.

2. The facts leading to file the instant civil appeal are that the respondent/plaintiff filed a suit for declaration/specific performance with consequential relief qua an agreement on the basis of which an offer was made by the appellant to respondent/plaintiff. The said offer was in response to an open public action proceedings published in a newspaper dated 06.10.1980 regarding a plot bearing No.193/B, Upper Mall Lahore. The respondent/plaintiff was one of the participants in the open auction proceedings while depositing Rs.5000/- in lieu of terms and conditions. The respondent/plaintiff was declared as highest bidder of the auction proceedings which was declared Rs.3,56,000/- per Kanal. As the respondent was highest bidder by all standards, therefore, the appellant formally invited the respondent to make 1/3 of the total auction price as per legal requirement at the spot. Consequently, Rs.1,50,000/- was deposited and he was further directed to deposited an amount of Rs.1,18,500/- in view of the acceptance of the bid. All such requirements were fulfilled accordingly and as such receipt of the same was duly issued. The respondent visited the office of the appellant time and again while seeking demand notice to make the rest of the amount payable against total auction amount. It is a matter of surprise that letter bearing No.707 dated 18.10.1980 was sent by the appellant/defendant wherein the respondent/plaintiff was intimated to contact the appellant/ defendant. Subsequently, the respondent/plaintiff was informed on 11.12.1980 that a third party (not participated in auction proceedings) had offered them higher price of Rs.3,85,000/- per Kanal and as such showed their unwillingness to hand over the plot, the subject matter of auction proceedings to the respondent/plaintiff. Although the subsequent development was squarely unjustified, however, the respondent/plaintiff showed his inclination to pay the enhanced price to meet the offer and as such intimated the appellant through a letter which was incorporated in diary of the appellant on 11.12.1980. The appellant in lieu of the offer made to the respondent/plaintiff directed him verbally to deposit the remaining amount within seven days, but in the meantime another public notice for open auction was published in "Daily Pakistan Times" dated 16.11.1980 wherein the same plot bearing No. 193/B Upper Mall Lahore was made the subject matter which was already auctioned in favour of the respondent/plaintiff.

3. Being aggrieved by the conduct of the appellant, the respondent/plaintiff filed a declaratory suit and specific performance with consequential relief while calling in question the re-auction of the plot already auctioned in favour of respondent/plaintiff. The learned trial court after recording of evidence of both the parties decreed the suit of the respondent/plaintiff vide judgment and decree dated 27.03.1994. The appellant challenged the judgment and decree of learned trial court

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BEFORE THE SERVICE TRIBUNAL KHYBER PAKHTUNKHWA PESHAWAR

Service Appeal No. 7264/2021

Masood Ur Rehman, Senior Teacher, Nishtar Special Education,
Kohat.....

SCANNED
KDA
Peshawar
Appellant
Raj

VERSUS

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

Respectfully Sheweth:

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

PRE-LIMINARY OBJECTIONS:

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

FACTS:

1. Correct.
2. Correct to the clarification that the respondent No. 2 granted the Health Allowances to the devolved employees of special education institutions however the appellant is not the initial appointee of Special Education Institution but he was initially appointed in a project namely "Shaheed Benazir Bhutto Women Center Kohat" under supervision of Federal Government of Pakistan & he was not serving in Special Education. That the Finance Department issued a notification vide NO FD(SOSR)-7/2019-53 dated 25-11-2019 (**Annex-I**) to the employees working in the Special Education devolved institution of the Federal Govt of Pakistan which states that:

"In pursuance of the Court order the competent authority issued Notification No FD/(SOSR-II)8-7/2019-53 dated 25-11-2019 in pursuance of the case titled Muhammad Atique ur Rehman and others vs Federal Government through Secretary Capital Administration etc, the Government of Khyber Pakhtunkhwa has approved health allowance at the rate of one basic pay to the devolved employees working in the special education institutions from the date of the devolution to provincial Government of Khyber Pakhtunkhwa.

Thus the above said allowance is admissible only to the employees of the special education institutions of Khyber Pakhtunkhwa devolved under the 18th constitutional amendment." (Annex-I) While the appellant was not the employees of Special Education but they were devolved from the ADP scheme by the Federal Govt which was later on regularized through a Court case and adjusted/reinstated in the Special Education etc against various posts.

3. Para No. 3 related to respondent No. 5 & 6.
4. Correct with the clarification that the Honorable High Court dismissed the writ petition of the appellant the relevant para in the judgment is reproduce as under " for what has been discussed above, the petition in hand is hereby dismissed in limine for the being not maintainable before this court, leaving the petitioners at liberty to approach the Services Tribunal for the redressal of their grievance, if so advised" (Annex-II).
5. Pertains to record.

GROUNDS

- A. Related to respondent No. 5 & 6.
- B. Related to respondent No.5 & 6.
- C. Incorrect, hence denied. Factual position has been explained in the preceding para.
- D. Incorrect hence denied. According to Notification dated 25-11-2019 para 2 " The above said allowance will be admissible only to the employee of Special Education of Khyber Pakhtunkhwa devolved under 18th Constitutional amendment" (Annex-I).
- E. Related to respondent No.5 & 6.
- F. Related to respondent No.5 & 6.
- G. That the respondents are Law abiding civil servants and respect the Constitutional of Islamic Republic of Pakistan 1973 & the respondents did not violate any article of the Constitution of Islamic Republic of Pakistan moreover as per Notification of the Finance Department the appellant is not eligible the said relief.
- H. Related to respondent No. 5 & 6.
- I. That respondents produce relevant Law & decision of the superior courts in support of their comments/reply in the time of arguments
- J. Related to respondent No. 5 & 6.
- K. That any other grounds which has not been specifically taken in the mention comments/reply, may be argued at the time of arguments with the permission of this Honorable Tribunal.

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

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

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

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

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



GOVERNMENT OF KHYBER PAKHTUNKHWA
FINANCE DEPARTMENT
(REGULATION WING)

Annex I

Dated Peshawar the 25-11-2019

NOTIFICATION

- 53

No. FDISOSR-1118-7/2019, in pursuance of the Supreme Court of Pakistan Civil Appeal No 811/2010 titled "Muhammad Alique-Ur-Rehman & Others v/s Federal Government of Pakistan through Secretary Capital Administration etc." the Government of Khyber Pakhtunkhwa (Provincial Cabinet) has been pleased to approve Health Allowance at the rate of one running basic pay to the devolved employees working in the Special Education Institutions from the date of their devolution to Provincial Govt of Khyber Pakhtunkhwa

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

Secretary to Govt of Khyber Pakhtunkhwa
Finance Department

Encl: No. & Date Even.

Copy is forwarded for information and necessary action to the:

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

SECTION OFFICER (SR-II)
FINANCE DEPARTMENT

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(17) (27) (29) Annex 11 28
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BEFORE THE PESHAWAR HIGH COURT, PESHAWAR

W.P No. 3207 - P/2020



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

Versus

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

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

ATTESTED
EXAMINER
Peshawar High Court

Respectfully Sheweth:

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

CFC
[Signature]

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Present
Amended
30/11

PESHAWAR HIGH COURT, PESHAWAR.

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



Date of order.	Order or other proceedings with the order of the Judge
08.06.2021	<p data-bbox="656 488 938 519"><u>W.P.No.3207-P of 2020.</u></p> <p data-bbox="656 544 1317 607">Present: Mr. Shahid Qayum Khattak, advocate for the petitioners.</p> <p data-bbox="794 632 1170 695">Mr. Khaled Rehman, AAG for the respondents.</p> <p data-bbox="656 750 1325 1254"><u>LAL JAN KHATTAK, J.-</u> Petitioners through the instant petition under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973 seek issuance of an appropriate writ directing the respondents to act in the matter in accordance with law entitling them to the Health Allowance being drawn by similarly placed employees and also to declare letter dated 01.07.2020 as illegal, against the judgments of superior courts, discriminatory and thus same be struck down.</p> <p data-bbox="656 1287 1224 1317">2. Arguments heard and record gone through.</p> <p data-bbox="656 1350 1325 1917">3. Perusal of the case record would show that the petitioners are civil servants and the matter qua grant of the Allowance as claimed by them through the instant petition is one of the terms and conditions of their service and if any term and condition of service of a civil servant is violated by his department, then in that eventuality, he can approach the Services Tribunal established by the Government for that purpose and on no count he can come to this court for the enforcement of any of the terms and conditions of his service keeping in view the bar</p>

Jain

ATTESTED
EXAMINER
Peshawar High Court

clerk

2 (29) (24) 31/5/21

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

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

RECORDED
KPST
Shahwar

[Signature]
JUDGE

[Signature]
JUDGE

[Signature]
CERTIFIED TO BE TRUE COPY

EXAMINER
Shahwar High Court, Peshawar
Authorized Under Article 57 of
The Courts & Judicial Officers Order, 1947

12 JUN 2021

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سربراہان کو درخواست ہے کہ اس سروس کو برقرار رکھیں

SCANNED
KPST
Peshawar

موضوع: گزشتہ سال کے سرویس ایبلٹی
یہ 21/4/91-7091 قلیل الرکنڈ باجم حکومت

میں سروسز سرکٹ کے طور پر 28/4/22
جو آرڈر کن کے تحت اس سروس (D.B)

Alleged کا یہ سہ کارہ تھا،

فرسٹ، جو سروس اینڈ اینج 8/7/22

D.B

20/5/22 انکم وٹوم

Handwritten signature

DGHS (Handwritten)

Allowed as per rules

Handwritten signature

20/5/22