


FORM OF ORDER SHEET

Court of _____

Appeal No. 1387/2024

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1-	29-Aug-24	<p>The appeal of Mr. SHAH MAHMOOD presented today by Mr. Amjad Ali Mardan Advocate. It is fixed for preliminary hearing before Single Bench at Peshawar on 20-Sep-24. Parcha Peshi given to counsel for the appellant.</p> <p>By order of the Chairman</p> <p> REGISTRAR</p>

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

CHECK LIST

Case Title: Shah Mahmood Versus Govt of KP through
Secretary Industries and
others

S#	CONTENTS	YES	NO
1	This Appeal has been presented by: Shah Mahmood (appellant)	✓	
2	Whether counsel/appellant/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 file 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 counsel engaged is attested and signed by the 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 part? On _____		✓

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

Name: Shah Mahmood (appellant)

Shah Mahmood

Signature: _____

Dated: 28/08/2024

**BEFORE THE KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL PESHAWAR**

Service Appeal No. 1387 /2024

Shah Mahmood (Senior Clerk BPS-14 Consumer Court Mardan) S/O Sultan Mehmood R/O Lund Khwar Janga Distt Mardan **Appellant**

VERSUS

Govt of Khyber Pakhtunkhwa through Secretary Industries, Commerce and Technical Education Department KP, Civil Secretariat, Peshawar and others **Respondents**

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Sheh Mahmood

**Appellant
Through**

**Amjad Ali (Mardan)
Advocate**

Supreme Court of Pakistan

**& Muhammad Talha Khan (Mardan)
Advocate
High Court**

Amjad Ali
ADVOCATE
SUPREME COURT

Muhammad Talha Khan
ADVOCATE
HIGH COURT

Dated: 28.08.2024

(1)

**BEFORE THE KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL PESHAWAR**

Service Appeal No. 1387 /2024

Shah Mahmood (Senior Clerk BPS-14 Consumer
Court Mardan) S/O Sultan Mehmood R/O Lund
Khwar Janga Distt Mardan **Appellant**

VERSUS

1. Govt of Khyber Pakhtunkhwa through Secretary
Industries, Commerce and Technical Education
Department KP, Civil Secretariat, Peshawar
2. Secretary Finance, Govt of Khyber
Pakhtunkhwa, Civil Secretariat, Peshawar
3. Budget Officer-VIII, Finance Department, Govt
of Khyber Pakhtunkhwa, Civil Secretariat
Peshawar
4. Accountant General, Khyber Pakhtunkhwa, 10th
Fort Road, Peshawar Cantt, Peshawar
5. Accounts Officer (HAD), Accountant General KP
Office, 10th Fort Road, Peshawar Cantt,
Peshawar
6. District Accounts Officer Mardan, at District
Comptroller of Accounts Office, opposite District
Courts Mardan
7. Audit Officer Inspection, District Accounts Office
Mardan at District Comptroller of Accounts
Office, opposite District Courts Mardan
..... **Respondents**

Appeal under Section 4 of Service Tribunal Act 1974 against original order dated 08.04.2019 passed by respondent no 3 whereafter appellant filed departmental appeal dated 23.09.2020 which remained un-responded and therefore appellant filed writ petition no 4635-P/2020 against the said order wherein an interim order dated 08.06.2021 to the effect that respondents are restrained from the recovery of the amount already received by the appellant and vide judgment dated 23.11.2022 respondents were directed to pass a speaking order positively within a month, however, the respondents filed a review petition No 180-P/2022 which too was disposed of on 09.03.2023 in the terms that respondents themselves assured the Honorable Peshawar High Court Peshawar that appeal / representation is to be placed before Secretary Industry KP and thereafter, upon departmental appeal dated 23.09.2020, respondent no 5 passed order dated 31.07.2024 wherein

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(3)

recovery of judicial and utility allowance is restarted vide audit para drafted by respondent no 7 which are illegal against law and facts, non-speaking, without lawful authority, coram non-judice, arbitrary, whimsical and of no legal effect.

Respected Sir,

Appellant humbly submits as under:

- 1) That vide order dated 22.09.2020, appellant is appointed & working as Senior Clerk (BPS-14) **(Copy of appointment/posting order & monthly salary statement is Annex "A")**
- 2) That the Consumer Court has been established under KP Consumers Protection Act 1997. **(Copy of KP Consumers Protection Act is Annex "B")**
- 3) That the National Judicial Policy Making Committee (NJPMC) in its meeting held on 10.02.2007 under the Chairmanship of the Hon'ble Chief Justice of Pakistan NJPHC approved judicial allowance to subordinate Courts Staff to the extent of 20% of running basic pay and utility allowances to the extent of 10% of running basic pay, but not less than Rs.1000/- to the staff in BPS-1 to BPS-16.
- 4) That aforementioned decision of NJPMC was adopted by Govt. of NWFP, now KP and the above allowances were granted to Judicial

Officer as well as Staff of Subordinate Courts and judicial allowance is enhanced by KP Govt vide notification dated 02.04.2019 (**Copy of notification dated 02.04.2019 are Annex "C"**)

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- 5) That the above facility is provided to staff of Attorney General.
- 6) That the allowances were granted to the Advocate General KP Office as well.
- 7) That Lahore High Court in WP No.1484/2008 granted the same relief to employees of Federal Service Tribunal on the strength of decision of Attorney General. (**Copy of judgment dated 12.10.2012 of Hon'ble Lahore High Court is Annex "D"**)
- 8) That Hon'ble Peshawar High Court granted allowance vide judgment dated 18.09.2012 to employees of District Judiciary in District Peshawar, Mardan and all Districts of KP. (**Copy of judgment dated 18.09.2012 is Annex "E"**)
- 9) That Hon'ble Peshawar High Court, Peshawar granted the allowances to para-legal staff of Provincial Anti-Corruption Court, KP Service Tribunal, Labour Court. (**Copy of judgment dated 01.10.2013 & 12.12.2013 of Peshawar High Court is Annex "F"**)
- 10) That as a result of the writ petition No. 4141-P/2016, respondents granted the allowances and in presence of AAG vide order dated 10.04.2018 of Hon'ble Peshawar High Court, Peshawar as

the purpose was achieved. (**Copy of order dated 10.04.2018 is Annex "G"**)

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- 11) That in the year 2019, respondents stopped the payment of utility/ judicial allowance and started recovery from appellant vide order dated 08.04.2019 passed by respondent no 3, which is illegal, against law and facts. (**Copy of impugned order of recovery dated 08.04.2019 is Annex "H"**)
- 12) That Judge Consumer Court addressed letter dated 17.04.2019 to Budget Officer, but in vain. (**Copy of letter dated 17.04.2019 is Annex "I"**)
- 13) That the appellant filed departmental appeal dated 23.09.2020 to the Secretary Law/Industries, but in vain. (**Copy of departmental appeal to Secretary Law/ Industry dated 23.09.2020 is Annex "J"**)
- 14) That appellant filed W.P No 4635-P/2020 before the Honorable Peshawar High Court Peshawar wherein vide order dated 08.06.2021, the Honorable Peshawar High Court Peshawar restrained the respondents from recovery of the amount already received by the petitioners (**Copy of the writ petition along with order dated 08.06.2021 is Annex "K"**)
- 15) That vide judgment dated 23.11.2022, the Honorable Peshawar High Court Peshawar dispose of the writ petition in the following terms: (**Copy of the judgment dated 23.11.2022 is Annex "L"**)

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"Such being the case, we dispose of the instant petition in terms of directing the respondent No. 1 to decide the departmental appeal/representation of the petitioners in accordance with law through a speaking order positively within a month, after the receipt of the judgment of this Court. Thereafter, the petitioners may have recourse for the redressal of their grievance before the proper forum, if so advised."

- 16) That respondents filed review petition before the Honorable Peshawar High Court Peshawar which is disposed of vide order dated 09.03.2023 in the following terms: **(Copy of the review petition along with order dated 09.03.2023 is Annex "M")**

"2. The learned AAG, at the very outset, states that the same has been done administratively and presently, the appeal / representation of the petitioners is placed before the Secretary Industries KPK for its decision in accordance with law. We understand that there is no occasion for the Advocate General's Office to file review petition in such like matters.

3. Accordingly, this petition stands disposed of."

- 17) That respondent no 5 issued letter dated 31.07.2024 wherein staff of Consumer Court Mardan is held dis-entitled to judicial allowance and utility allowance which is illegal against law

and facts (**Copy of the impugned letter dated 31.07.2024 is Annex "N"**)

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- 18) That in pursuance of letter dated 31.07.2024, respondent no 7 vide audit para started recovery of the said allowances from the appellant which is illegal against law and facts (**Copy of the impugned audit para is Annex "O"**)
- 19) That finding no other efficacious remedy, appellant approaches this hon'ble Tribunal on following grounds:-

GROUND:

- A) Because admittedly judicial allowance, utility allowance is granted on the basis of judicial work as per notifications, judgments referred above.
- B) Because appellant is also performing judicial duties like the staff of District & Sessions Court, Service Tribunal, Labour Court, Anti-Corruption Court.
- C) Because as per letter dated 21.06.2021 issued by Accounts Officer Directorate of Industries & Commerce KP, the nature of job of the staff of Consumer Court is judicial and they observe the office timing, working days calendar issued by the Peshawar High Court (**Copy of the letter dated 21.06.2021 is Annex "P"**)
- D) Because as per letter dated 22nd June 2021, the Section Officer (litigation) of the Industries, Commerce and Technical Education Department KP has forwarded/referred the letter dated 21st

June 2021 (**Copy of the letter dated 22nd June 2021 is Annex "Q"**)



- E) Because appellant are also entitled for continuance of the same allowance as granted to other subordinate staff of other Courts in province and even in Pakistan.
- F) Because as per office order dated 07.05.2024, the appellant is performing judicial functions as per Chapter-II Section-5 (pages 285-205) of Judicial Esta Code (**Copy of the office order dated 07.05.2024 is Annex "R"**)
- G) Because in addition to the judicial duties as staff of Consumer Court, appellant is also assigned judicial duty of staff of Commercial Court by virtue of KP Resolution of Commercial Disputes Act 2022 wherein Consumer Court is also declared as Commercial Court (**Copy of the KP Resolution of Commercial Disputes Act 2022 is Annex "S"**)
- H) Because as per judgment dated 07.03.2013 passed by KP Service Tribunal Peshawar, the staff of Service Tribunal is held entitled to Service Tribunal allowance (**Copy of the judgment dated 07.03.2013 is Annex "T"**)
- I) Because as per judgment dated 16.05.2014, the judgment of the KP Service Tribunal Peshawar is upheld by the Honorable Supreme Court of Pakistan (**Copy of the judgment dated 16.05.2014 is Annex "U"**)
- J) Because as per 2024 SCMR 538 also reported in 2024 PLC (CS) 830, employees of Solicitor Office

working in Civil Secretariat are held entitled to reception of special allowance and utility allowance (**Copy of 2024 SCMR 538 is Annex "V"**)

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- K) Because as per 2011 PLC (CS) 1373, the staff of the High Court of Sindh is held entitled for judicial and utility allowance from the date of National Judicial Policy (**Copy of 2011 PLC (CS) 1373 is Annex "W"**)
- L) Because as per 2023 PLC (CS) 457, superior judicial allowance is even allowed to Provincial Ombudsman (Mohtasib) (**Copy of 2023 PLC (CS) 457 is Annex "X"**)
- M) Because as per 2019 PLC (CS) 238, employees of Provincial Criminal Prosecution Services are held entitled for the benefit of judicial allowance on the analogy of its reception by the staff of office of Advocate General (**Copy of 2019 PLC (CS) 238 is Annex "Y"**)
- N) Because as per 2016 GBLR 37, employees of Banking Court and Custom Courts are held entitled to Special Judicial Allowance/Judicial Allowance (**Copy of 2016 GBLR 37 is Annex "Z"**)
- O) Because as per 2016 PLC (CS) 1, the Honorable Sindh High Court directed the Government to re-calculate pension after giving effect to judicial allowance and start the future payment accordingly and arrears be also paid (**Copy of 2016 PLC (CS) 1 is Annex "AA"**)

- P) Because as per PLD 2019 Islamabad 591, the employees of Federal Shariat Court are held entitled for increase in utility allowance etc **(Copy of PLD 2019 Islamabad 591 is Annex "BB")**
- Q) Because the staff of the Consumer Court functions under the instructions of the Honorable Peshawar High Court wherein instructions regarding duty hours, vacations, uniform, institution of cases, scanning of court record etc are issued to the staff of Consumer Court **(Copies of the relevant orders of PHC are Annex "CC")**
- R) Because appellant is not dealt as per law, violating Article 4 of Constitution of Pakistan, 1973.
- S) Because appellant is discriminated, infringing Article 25/27 of the Constitution of Islamic Republic of Pakistan, 1973.
- T) Because Article 3 of the Constitution embodied to eliminate all sort of exploitations.
- U) Because as per PLD 1992 SC 207 1981 SCLR 523, PLD 1969 SC 407, 2010 PLC (CS) 1178 allowance once received by a civil servant, under a bonafide belief, can't be recovered as per principle of locus pointentiae **(Copy of PLD 1992 SC 207 1981 SCLR 523, PLD 1969 SC 407, 2010 PLC (CS) 1178 is Annex "DD")**
- V) Because respondents are estopped from denying the judicial allowance as well as utility allowance already granted & received by the appellant.

W) Because as per 1996 SCMR 1185 and 2009 SCMR 1, if a Tribunal or the Supreme Court decides a point of law relating to the terms and conditions of a civil servant who litigated, and there were other civil servants, who may not have taken any legal proceedings, in such a case, the dictates of justice and rule of good governance demand that the benefit of the said decision be extended to other civil servants also, who may, not be parties to that litigation, instead of compelling them to approach the Tribunal or any other legal forum. All citizens are equal before the law and entitled to equal protection of law as per Article 25 of the Constitution (**Copy of the judgment reported in 1996 SCMR 1185 & 2009 SCMR 1 is Annex "EE"**)

X) Because pay and pension is a recurring cause of action and no limitation runs in such like matters.

Y) Because impugned orders are without lawful authority.

Z) Because appellant requests for raising other grounds at the time of arguments.

PRAYER

It is, therefore, humbly prayed that, on acceptance of this appeal:-

- i. **The impugned original order dated 08.04.2019 passed by respondent no 3 & appellate order dated 31.07.2024 passed by respondent no 5 and audit para on the basis of the same drafted by respondent no 7 & stoppage / deduction / recovery of**

judicial allowance and utility allowance in the pay of the appellant may please be declared as illegal, without lawful authority, arbitrary, coram non-judice, whimsical and of no legal effect and consequently, may please be set-aside.

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- ii. Appellant may please be treated at par with other employees of Courts, Tribunals, subordinate legal staff and para-legal staff of all Courts in matter of judicial allowances and utility allowances by declaring appellant entitled to reception of judicial as well as utility allowance w.e.f date of posting at Consumer Court.
- iii. Any other relief deemed fit in the circumstances of the case may also be granted.

Shah mehmood

**Appellant
Through**

**Amjad Ali (Mardan)
Advocate
Supreme Court of Pakistan**

Amjad Ali
ADVOCATE
SUPREME COURT

**& Muhammad Talha Khan (Mardan)
Advocate
High Court**

Talha Khan

Muhammad Talha Khan
ADVOCATE
HIGH COURT

Dated: 28.08.2024

**BEFORE THE KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL PESHAWAR**

13

Service Appeal No. _____/2024

Shah Mahmood (Senior Clerk BPS-14 Consumer Court Mardan) S/O Sultan Mahmood R/O Lund Khwar Janga Distt Mardan **Appellant**

VERSUS

Govt of Khyber Pakhtunkhwa through Secretary Industries, Commerce and Technical Education Department KP, Civil Secretariat, Peshawar and others **Respondents**

AFFIDAVIT

I, **Shah Mahmood (Senior Clerk BPS-14 Consumer Court Mardan) S/O Sultan Mahmood R/O Lund Khwar Janga Distt Mardan (appellant)** do hereby solemnly affirm and declare that all the contents of this **service appeal** are true and correct to the best of my knowledge and belief and nothing has been concealed from this Tribunal.

Shah Mahmood

Deponent

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28/8/2024
[Signature]

**BEFORE THE KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL PESHAWAR**

14

C.M No. _____/2024

IN

Service Appeal No. _____/2024

Shah Mahmood (Senior Clerk BPS-14 Consumer Court Mardan). S/O Sultan Mehmood R/O Lund Khwar Janga Distt Mardan **Appellant**

VERSUS

Govt of Khyber Pakhtunkhwa through Secretary Industries, Commerce and Technical Education Department KP, Civil Secretariat, Peshawar and others **Respondents**

Application for restraining respondents from recovery of judicial and utility allowance till decision of the instant service appeal.

Respected Sir,

Applicant humbly submits as under:

1. That the aforementioned appeal has been filed today.
2. That the impugned orders passed by respondents are illegal order, in violation of the notifications and judgments referred in the service appeal as well as in violation of Article 3, 4, 25 and 27 of the Constitution of Pakistan 1973 and therefore the impugned orders are illegal order and not tenable in the eye of law.
3. That appellant/applicant has a strong prima facie case and is sanguine about its success.
4. That balance of convenience lies in favour of the appellant/applicant.

5. That there shall be irreparable loss to the appellant/applicant if the impugned orders are not suspended and respondents are not restrained from recovery of judicial and utility allowance.

(15)

6. That contents of the service appeal may please be treated as integral part of this application.

It is therefore humbly requested that respondents may please be restrained from recovery of judicial and utility allowance till decision of the instant service appeal.

Shah Mahmood

Appellant

Through

Amjad Ali
Amjad Ali (Mardan)

Advocate

Supreme Court of Pakistan

Amjad Ali
ADVOCATE
SUPREME COURT

Talha Khan

& Muhammad Talha Khan (Mardan)

Advocate

High Court

ADVOCATE
HIGH COURT

Dated: 28.08.2024

AFFIDAVIT

I, **Shah Mahmood (Senior Clerk BPS-14 Consumer Court Mardan) S/O Sultan Mehmood R/O Lund Khwar Janga Distt Mardan (appellant)** do hereby solemnly affirm and declare that all the contents of this **application** are true and correct to the best of my knowledge and belief and nothing has been concealed from this Tribunal.

Shah Mahmood

Deponent

28/8/2024
Shah Mahmood



DIRECTORATE OF
INDUSTRIES AND COMMERCE
KHYBER PAKHTUNKHWA, PESHAWAR

Ann (A)

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ORDER

On the recommendation of Departmental Promotion Committee of the Directorate of Industries and Commerce, Khyber Pakhtunkhwa, Peshawar, the following Junior Clerks (BPS-11) are hereby appointed to the post of Senior Clerk (BPS-14) on acting charge basis with immediate effect:-

1.	Mr. Zaid Ullah
2.	Mr. Shah Mahmood
3.	Syed Nasrullah Shah

On their appointment as Senior Clerk (BPS-14) on acting charge basis vide Notification No. 7185-91 dated 22.09.2020, the following transfer/posting is hereby ordered with immediate effect:-

S. No	Name & Designation	From	To
1.	Mr. Zaid Ullah, Senior Clerk (BPS-14) a.e.b.	Hqtrs Office, Peshawar	Hqtrs Office, Peshawar posted against the vacant post of Jr. Seale Stenographer (BPS-14)
2.	Shah Mahmood, Senior Clerk (BPS-14) a.e.b.	Office of IDO, Mardan	Consumer Court, Mardan posted against the vacant post of Senior Clerk (BPS-14)
3.	Syed Nasrullah Shah, Senior Clerk (BPS-14) a.e.b.	Consumer Court, Bannu	Consumer Court, Bannu posted against the vacant post of Senior Clerk (BPS-14)

Sd/- Director, IC,
Khyber Pakhtunkhwa.

Dated, 22/09/2020.

Endst:No. 7192-99 /1/70-DI-Admn:

Copy of the above is forwarded to:

1. The Accountant General, Khyber Pakhtunkhwa, Peshawar.
2. The Judge Consumer Courts, Bannu & Mardan.
3. The Registrar Consumer Courts Bannu & Mardan.
4. ✓ The District Accounts Officer, Bannu & Mardan.
5. The Accounts Officer Hqtrs Office, Peshawar.
6. The officials concerned.
7. The personal file of the officials concerned.
8. File No.1/33-DI-Admn.

Administrative Officer,
Directorate of Industries and Commerce
Khyber Pakhtunkhwa, Peshawar

Government of Khyber Pakhtunkhwa
District Accounts Office Mardan
Monthly Salary Statement (June-2024)

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Personal Information of Mr SHAH MAHMOOD d/w/s.of SULTAN MEHMOOD

Personnel Number: 00915466 CNIC: 1610234294283 NTN:
 Date of Birth: 01.03.1985 Entry into Govt. Service: 23.05.2019 Length of Service: 05 Years 01 Months 009 Days

Employment Category: Active Temporary

Designation: SENIOR CLERK 80003384-GOVERNMENT OF KHYBER PAKH
 DDO Code: MR4727-Consumer Protection Court, Mardan
 Payroll Section: 002 GPF Section: 010 Cash Center:
 GPF A/C No: 915466 2/153 Interest Applied: Yes **GPF Balance:** 143,100.00
 Vendor Number: -
Pay and Allowances: Pay scale: BPS For - 2022 Pay Scale Type: Civil BPS: 14 Pay Stage: 4

Wage type		Amount	Wage type		Amount
0001	Basic Pay	29,490.00	1001	House Rent Allowance 45%	3,321.00
1210	Convey Allowance 2005	2,856.00	1300	Medical Allowance	1,500.00
1584	Judicial Allowance	9,000.00	1874	Utility Allowance 2007	10,000.00
2315	Special Allowance 2021	3,500.00	2341	Dispr. Red All 15% 2022KP	2,628.00
2347	Adhoc Rel Al 15% 22(PS17)	2,628.00	2378	Adhoc Relief All 2023 35%	9,712.00

Deductions - General

Wage type		Amount	Wage type		Amount
3014	GPF Subscription	-3,900.00	3501	Benevolent Fund	-1,200.00
3534	R. Ben & Death Comp Fresh	-600.00	3609	Income Tax	-390.00

Deductions - Loans and Advances

Loan	Description	Principal amount	Deduction	Balance
6505	GPF Loan Principal Instal	70,000.00	-2,000.00	30,000.00

Deductions - Income Tax

Payable: 4,472.98 Recovered till June-2024: 4,473.00 Exempted: 0.02- Recoverable: 0.00

Gross Pay (Rs.): 74,635.00 Deductions: (Rs.): -8,090.00 Net Pay: (Rs.): 66,545.00

Payee Name: SHAH MAHMOOD
 Account Number: 258926185
 Bank Details: UNITED BANK LIMITED, 210780 HATHIAN HATHIAN.

Leaves: Opening Balance: Aailed: Earned: Balance:

Permanent Address: Domicile: - Housing Status: No Official
 City: SWABI
 Temp. Address: Email:
 City:

Amr (B)
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THE ¹[KHYBER PAKHTUNKHWA]
CONSUMERS PROTECTION ACT, 1997

(²[KHYBER PAKHTUNKHWA] ACT NO. VI OF 1997)

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Attorney
General
Supreme Court

¹Substituted vide Khyber Pakhtunkhwa Act No. IV of 2011

²Substituted vide Khyber Pakhtunkhwa Act No. IV of 2011

³Inserted vide Khyber Pakhtunkhwa Act No. XVII of 2015

⁴Inserted vide Khyber Pakhtunkhwa Act No. XVII of 2015

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23. Power to remove difficulties.

¹Substituted vide Khyber Pakhtunkhwa Act No. XVII of 2015

²Inserted vide Khyber Pakhtunkhwa Act No. II of 2005

³Inserted vide Khyber Pakhtunkhwa Act No. XVII of 2015

⁴Added vide Khyber Pakhtunkhwa Act No. XVII of 2015

⁵Substituted vide Khyber Pakhtunkhwa Act No. II of 2005

⁶Substituted vide Khyber Pakhtunkhwa Act No. II of 2005

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THE ¹[KHYBER PAKHTUNKHWA]
CONSUMERS PROTECTION ACT, 1997

(²[KHYBER PAKHTUNKHWA] ACT NO. VI OF 1997)

[First published after having received the assent of the Governor of the ³[Khyber Pakhtunkhwa] in the Gazette of ⁴[Khyber Pakhtunkhwa] (Extraordinary), dated the 27th November, 1997.]

AN
ACT

to provide for promotion and protection of the interest of consumers.

Preamble.—WHEREAS it is expedient to provide for healthy growth of fair Preamble, commercial practices, the promotion and protection of legitimate interests of consumers and speedy redressal of their complaints and matters arising out of or connected therewith:

It is hereby enacted as follows:

PART—I
PRELIMINARY

1. Short title, extent, commencement and application.—(1) This Act may be called the ⁵[Khyber Pakhtunkhwa] Consumers Protection Act, 1997.

(2) It shall extend to whole of the ⁶[Province of the Khyber Pakhtunkhwa].

(1) It shall come into force at once.

(4) Save as otherwise expressly exempted by Government through a notification ⁷[in the official gazette], this ⁸[Act] shall apply to all goods and services. services.

2. Definition.—In this Act, unless there is anything repugnant in the subject or context,-

¹Substituted vide Khyber Pakhtunkhwa Act No. IV of 2011

²Substituted vide Khyber Pakhtunkhwa Act No. IV of 2011

³Substituted vide Khyber Pakhtunkhwa Act No. IV of 2011

⁴Substituted vide Khyber Pakhtunkhwa Act No. IV of 2011

⁵Substituted vide Khyber Pakhtunkhwa Act No. IV of 2011

⁶Substituted vide Khyber Pakhtunkhwa Act No. IV of 2011

⁷Added vide Khyber Pakhtunkhwa Act No. II of 2005

⁸Substituted vide Khyber Pakhtunkhwa Act No. II of 2005

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- (a) ¹[Deleted]
- (b) "Complaint" means:-
 - (i) a consumer;
 - (ii) a voluntary consumer's association subject to such restrictions as may be prescribed; and
 - (iii) Government, concerned Council, concerned ²[a Local Government] and any person or agency authorized by the aforesaid on their behalf to lodge complaint before the ³[Court].
- (c) "Consumer" means any person ⁴[or entity] who:-
 - (i) buys goods for a consideration which has been paid or to promised or partly paid and partly promised to be paid or under any system of deferred payment including hire purchase and leasing and includes any user of such goods but does not include a person who obtains such goods for re-sale or for any commercial purpose; or
 - (ii) hires any goods or services for a consideration which has been paid or promised or partly paid and partly promised to be paid or under any system of deferred payment including hire purchase and leasing and includes any beneficiary of such services.-
- (d) "Council" means a Consumer Protection Council, established under Section-8;
- ⁵[(dd) "Court" means Consumer Courts established under section 11A]
- (e) "Defect" means any fault, imperfection or shortcoming in the quality, quantity, potency, purity or standard which, in relation to the goods, is required to be maintained by or under any law for the time being in force;

¹Deleted vide Khyber Pakhtunkhwa Act No. II of 2005

²Substituted vide Khyber Pakhtunkhwa Act No. II of 2005

³Substituted vide Khyber Pakhtunkhwa Act No. II of 2005

⁴Added vide Khyber Pakhtunkhwa Act No. XVII of 2015

⁵Inserted vide Khyber Pakhtunkhwa Act No. II of 2005

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Secretary
Supreme Court

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- (f) "Deficiency" means a deficiency or shortcoming in the standard of performance, quality and nature of a service which has been undertaken by a person providing the service to a consumer in pursuance of a contract or otherwise or is required to be maintained by or under any law while providing a particular service;
- ¹[(fa) "Directorate" means the Directorate of Industries and Commerce, Khyber Pakhtunkhwa;
- (fb) "Director" means the Director of Industries and Commerce, Khyber Pakhtunkhwa;
- (fc) "entity" means an organization that has a legal identity apart from its members;]
- (g) "Goods" means goods as defined in the Sale of Goods Act, 1930 (III of 1930);
- (h) "Government" means the Government of ² [Khyber Pakhtunkhwa];
- (i) "Laboratory" means a laboratory or organization recognized by Government including the Federal Government and includes any such laboratory or organization established by or under any law for the time being in force, which is maintained, financed or aided by Government including Federal Government for carrying out analysis or test of any goods with a view to determining whether such goods suffer from any defect;
- (J) "Manufacturer" includes a person who:-
 - (i) makes or manufactures any goods or parts thereof; or
 - (ii) does not make or manufacture any goods but assembles parts thereof made or manufactured by others and claims the end product to be goods manufactured by himself; or
 - (iii) puts or causes to be put his own mark on any goods made or manufactured by any other manufacturer and

¹Inserted vide Khyber Pakhtunkhwa Act No. XVII of 2015

²Substituted vide Khyber Pakhtunkhwa Act No. IV of 2011

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Supreme Court

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claims such goods to be goods made or manufactured by himself;

Explanation.---A branch office of a manufacturer shall not be deemed to be different manufacturer even though an assembly operation, ¹[formulation,] distribution and sale of goods is carried out at such branch office;

- (k) ²[Deleted]
- (l) "Prescribed" means prescribed by rules made under this Ad;
- (m) "Section" means a section of this Act;
- (n) "Services" includes services of any description which are made available to potential users and includes the provision of facilities in connection with banking, financing, insurance, transport, manufacturing, processing, accountancy, supply of electrical, mechanical or any other form of energy ³[including gas and petrol, water, telephone], boarding or lodging, entertainment, medicine, education, construction work, amusement, catering, security, or purveying news or other information and similar other services, but does not include the rendering of any service free of charge or under the contract of personal services; and
- (o) "Unfair trade practice" means a trade practice which a person for the purpose of sale, use or supply of any goods or provision of any service or for their promotion, adopts one or more of the following practices, causes loss or injury through hoarding, black-marketing, adulteration, selling of expired drugs, food items and commodities unfit for human consumption, or charging for the goods and services in excess of the price fixed by an ⁴[Court] authorized to do so under any law for the time being in force or in furtherance of such sale, use or supply makes any statement, whether orally or in writing or by chalking on walls or through sign-boards or neon-signs or by distributing pamphlets or by publication in any manner, including electronic media, by-

¹Added Substituted vide Khyber Pakhtunkhwa Act No. 11 of 2005
²Deleted Substituted vide Khyber Pakhtunkhwa Act No. 11 of 2005
³Inserted vide Khyber Pakhtunkhwa Act No. 11 of 2005
⁴Substituted vide Khyber Pakhtunkhwa Act No. 11 of 2005

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- (i) falsely representing that the goods or, as the case may be, services are of a particular standard, quality, quantity, grade, composition, model, style or mode;
- (ii) falsely representing any rebuilt, second-hand, renovated, reconditioned or old goods as new goods;
- (iii) falsely representing that the goods or, as the case may be, services have sponsorship or approval of the competent agency or authority or possess specified characteristics, performance, accessories, use or benefits which such goods or services do not have;
- (iv) falsely representing that the goods or services offered fulfill the prescribed standard fixed by local or international authorities;
- (v) giving misleading representation of the need for, or the usefulness of any goods or services;
- (vi) falsely giving to the public any warranty or guarantee of the performance, specification, required ingredients, efficacy or length of life of a product or any goods that is not based on an adequate or proper tests thereof;
- (vii) falsely offering for sale or on lease any premises, house, apartment shop or building with specified facilities or with the promise to deliver possession thereof within a specified period or without any escalation in price or by falsely representing that such premises, house, apartment shop or building is being sold, built or constructed in accordance with the approved plans, specification and approval of the concerned authorities;
- (viii) misleading the public concerning the price at which a product or products or goods or services have been or are ordinarily sold or provided;
- (ix) giving false or misleading facts regarding facilities available in the private educational institutions or falsely representing that such institutions have proper approval of the concerned authorities or affiliated with foreign organizations;

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- (x) falsely representing for provision of services by professionals and experts, including medical practitioners, engineers, architects, advocates, teacher [, spiritual healers] and Hakeems;
- (xi) giving false or misleading facts disparaging the goods, services or trade of another person, firm, company or business concern;
- (xii) advertising for the sale or supply, at a bargain price, or goods or services which are not intended to be offered for sale or supply at such price;
- (xiii) offering of gifts, prizes or other items with the intention of not providing them as offered or creating the impression that something is being given or offered free of charge when it is fully or partly covered by the amount charged in the transaction; and
- (xiv) falsely gives description of commodities and services offered through mail order.

3. Act not to supersede other law.---The provisions of this Act shall be in addition to and not in derogation or supersession of any other law for the time being in force.

4. Obligation of manufacturers.---(1) Every manufacturer shall publish or mark on every packet or container the maximum retail price, the nature, standard or type and other specifications of the goods therein, the weight, size or volume and date of manufacture and expiry where appropriate, as the case may be, having regard to the commercial practice in relation to those goods, the name and address of the manufacturer or in the case of a packer or importer, the trader thereof:

Provided that if any goods are not sold in packed form or in container, it shall be sufficient for the purposes of this subsection if the required information is exhibited conspicuously in the shop where the sale is being made:

Provided further that if the price or catalogue or vendor instructions for the consumer is issued in relation to any goods, it shall be sufficient for the purposes of this sub-section if the required information is published or marked on such catalogue or vendor instructions.

¹Added vide Khyber Pakhtunkhwa Act No. II of 2005

ALL INFORMATION CONTAINED
HEREIN IS UNCLASSIFIED

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(2) Any trader who sells any goods not marked with information required under sub-section (1), shall incur the liabilities of the disregard of sub-section (1), unless he proves that the manufacturer of the goods or some other person identified by him is responsible for the offence and the onus of proof shall lie on such trader.

5. Prices to be exhibited at business place.---In the absence of a price catalogue meant for the consumers, every trader shall exhibit conspicuously in his shop or display center a notice specifying the retail or wholesale price, as the case may be, of all goods available for sale in that shop or display center.

6. Receipt to be issued to purchaser.--- Every trader who sells any goods shall, on demand by purchaser, whether he is a consumer or otherwise, issue to the purchaser a receipt setting out,-

- (a) the date of sale;
- (b) the specifications and other identifying particulars of the goods sold;
- (c) the quantity and price of the goods;
- (d) the nature of sale, that is to say, whether wholesale or retail; and
- (e) the name and address of the seller:

Provided that if a trader uses an electronic machine for preparation of receipt in respect of the sale made, such receipt shall be taken as sufficient compliance with the requirements of this section.

7. Prohibition of false advertisement, etc.---(1) Notwithstanding anything contained in any other law for the time being in force, no company, firm or person shall advertise in any manner not authorized by law for the sale or hiring of goods or services or any property, movable or immovable, or solicit deposits for repayment at higher rates of profit or interest and thereby causes loss to any consumer, whether financial or otherwise.

(2) Notwithstanding any punishment provided for making misrepresentation, false or misleading advertisement in any other law for the time being in force, the company, firm or a person or undertaking making such advertisement shall be liable to pay such compensation as the [Court] may direct for causing loss to the person affected by such advertisement.

¹Substituted vide Khyber Pakhtunkhwa Act No. II of 2005

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17A. Duty of disclosure.—(1) Where the nature of goods or products details are such that the disclosure of its components, parts, quality, ingredients, or date of manufacturing and expiry is material to the decision of the consumer to enter into a contract of sale, the manufacturer shall disclose the same.

(2) Where the nature of service is such that disclosure of capabilities or qualification of the services provider or quality of the products that service provider intends to use, is material to the decision of the consumer to enter into contract, the services provider shall disclose the same.

(3) Notwithstanding anything contained in sub-sections (1) and (2), the Court or the Director may, by general or special order, require such disclosure in any case.

7B. Defective construction, composition or design.—A good or product shall be defective in construction, composition or design if, at the time of manufacturing, a material or design deviation was made by the manufacturer on specification whether known to the consumer or not.

7C. Prohibition.—The manufacturer, trader and goods or services provider shall not indulge in any unfair trade practices.]

PART-II

8. The Council.—(1) As soon as may be, after the commencement of this Act, Government may, by notification in the Official Gazette, establish a Consumers Protection Council ²[³at Provincial level] to devise policies for protecting the consumer from unfair trade practices].

(2) The Council shall consist of a Chairman and such other ⁴[official and non-official] members as Government may, by notification in the Official Gazette, specify.

(3) The existence of vacancy in, or defect in the constitution of the Council shall not invalidate any act or proceedings of the Council.

(4) The Council shall observe such procedure for conducting its business as may be presented.

9. Meeting of the Council.—(1) The Council shall meet as and when necessary and at such time and place as the Chairman may determine; provided that not more

¹Inserted vide Khyber Pakhtunkhwa Act No. XVII of 2015

²Substituted vide Khyber Pakhtunkhwa Act No. II of 2005

³Substituted vide Khyber Pakhtunkhwa Act No. XVII of 2015

⁴Added vide Khyber Pakhtunkhwa Act No. II of 2005

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than a period of two months shall intervene between the two meetings of the Council.

(2) In the absence of the Chairman, the Council shall elect one of its members to act as Chairman.

(3) The quorum of the meeting of the Council shall be two third of the total members.

¹**10. Functions of the Council.**---The Council shall-

- (a) be responsible for formulation of policies for the promotion and protection of the rights of the consumers, fair and honest trade practices by the manufacturers, producers and suppliers of goods and services in relation to interest of consumers and their effective implementation; and
- (b) coordinate between Government and manufacturer's producers, suppliers and consumers.]

11. Delegation of Powers.---(1) Government may, by notification in the official gazette, direct that all or any of the powers and functions conferred on the council shall, subject to such limitations, restrictions or conditions, as it may from time to time impose, be exercised and performed by such member or members of the council or by such officer or officers of Government as may be specified.

(2) Government may appoint such officers as it may deem necessary to assist the council in the performance of its duties and functions.

²**[11A. Establishment of Consumer Courts.**---Government may, by notification in the official Gazette, establish a Consumer Court in each District of the Province to be presided by a District and Session Judge ³[or Additional District and Sessions Judge.]

⁴**[PART-II-A
DISPOSAL OF COMPLAINTS
BY THE DIRECTOR**

11B. Manner in which complaint shall be made.---(1) The Director may, on his own motion or by reference from a consumer against any individual or entity under section 5, 6 and 7A, 7B and 7C of this Act shall, after conducting an inquiry under

¹Substituted vide Khyber Pakhtunkhwa Act No. XVII of 2015

²Inserted vide Khyber Pakhtunkhwa Act No. II of 2005

³Added vide Khyber Pakhtunkhwa Act No. XXII of 2017

⁴Inserted vide Khyber Pakhtunkhwa Act No. XVII of 2015

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section 11C, is satisfied that violation has been committed, may fine the violator with an amount, which may extend to fifty thousand rupees but not less than five thousand rupees and which may be recovered as arrears of land revenue.

(2) The Director may file a complaint before the court, for declaring a product or a service as faulty or defective under the provisions of this Act without proof of any damage actually suffered by a consumer but likely to be suffered keeping in view the general standard of that service or product.

11C. Inquiry and inspection.—(1) The Director, on receipt of a complaint or on his own motion or on the direction of the Court, may hold an inquiry as to defects in products or services, which contravene any of the provisions of this Act; provided that no prior notice shall be required to be given to a manufacturer or trader or service provider for holding an inquiry.

(2) While making an inquiry under this Act, the Director may,-

- (i) inspect at reasonable time with or without police assistance, any place where the activities or transaction of trade and commerce or services are carried out;
- (ii) have the power to take sample of goods, products, services and to check the defect, standard and purity through laboratory test or other means, as may be prescribed;
- (iii) require any manufacturer, trader or service provider or his employee or agent to produce before him for inspection, all product, items and record of documents;
- (iv) seize and detain any goods or products sold or delivered or caused to be sold or delivered alongwith record relating thereto in respect of which an offence under this Act has been committed or likely to be committed; and
- (v) seal any premises where an offence under this Act has been committed or is likely to be committed.

(3) The Director may delegate any of his powers to the subordinate officers of the Directorate with specified area of jurisdiction.]

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PART-III
Disposal of Complaints¹ [by Courts]

12. Jurisdiction of the² [Court].--- ³[Subject to the provisions of this Act, the Court shall have jurisdiction to entertain complaints within the local limits of whose jurisdiction,---]

- (a) the opposite party or each of the opposite parties, where there are more than one, at the time of the institution of the complaint, actually and voluntarily resides or carries on business or personally works for gain; or
- (b) any of the opposite parties, where there are more than one, at the time of the institution of the complaint, actually and voluntarily resides, or carries on business, or personally works for gain provided that in such case either the permission of the ⁴[Court] is given, or the opposite parties who do not reside, or carry on business, or personally work for gain, as the case may be, acquiesce in such institution; and
- (c) the cause of action wholly or in part arises.

13. Manner in which complaint shall be made.---(1) A complaint, in relation to any goods sold or delivered or any service provided, may be filed with the ⁵[Court] by-

- (a) the consumer to whom such goods are sold or delivered or such service is provided;
- ⁶[(b) Deleted]
- ⁷[(c) any recognized consumers association irrespective of the fact that the consumer to whom the goods are sold or delivered or service is provided is or is not a member of such association; or]
- ⁸[(d) by the Director or any officer of the Directorate authorized by him in this behalf.]

¹Added vide Khyber Pakhtunkhwa Act No. XVII of 2015

²Substituted vide Khyber Pakhtunkhwa Act No. II of 2005

³Substituted vide Khyber Pakhtunkhwa Act No. II of 2005

⁴Substituted vide Khyber Pakhtunkhwa Act No. II of 2005

⁵Substituted vide Khyber Pakhtunkhwa Act No. II of 2005

⁶Deleted vide Khyber Pakhtunkhwa Act No. XVII of 2015

⁷Substituted vide Khyber Pakhtunkhwa Act No. II of 2005

⁸Substituted vide Khyber Pakhtunkhwa Act No. XVII of 2015

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Explanation.---For the purpose of this section "recognized consumer association" means any voluntary consumer association registered under the Companies Ordinance 1984 (XLVII of 1984) or the Societies Registration Act, 1860 (XXI of 1860) or the Voluntary Welfare Agencies (Registration and Control) Act, 1961 or any other law for the time being in force and Consumer Cooperative Societies registered under the Cooperative Societies Act, 1925 or such other association as may be prescribed.

(2) A complaint under this section shall be submitted within ten days of the sale, delivery or rendering of the service:

Provided that the ¹[Court] having jurisdiction to hear the complaint may allow a complaint to be filed after ten days and within such time as it may allow if it is satisfied that there was sufficient cause for not filing the same within the specified period:

Provided further that such extension shall not be allowed beyond a period or sixty days from the expiry of the warranty or guarantee period specified by the manufacturer of the goods or seller of the services and if no such period is specified, one year of the date of purchase of the goods or providing of services.

14. Procedure on receipt of complaints.---²[(1) The Court, on receipt of a complaint, if it relates to any goods-]

- (a) refer a copy of the complaint to the opposite party mentioned in the complaint directing him to give his version of the case within a period of thirty days or such extended period not exceeding fifteen days;
- (b) where the opposite party on receipt of complaint referred to him under clause (a) denies or disputes the allegations contained in the complaint, or omits or fails to present his case within the time specified as the case may be, the ³[Court] as the case may be, shall proceed to settle the consumer dispute in the manner specified hereinafter provided;
- (c) where the ⁴[complainant] alleges a defect in the goods which cannot be determined without proper analysis or test of the goods, the ⁵[Court] shall obtain sample of the goods from complainant, seal it and authenticate it in the manner prescribed and refer the sample so scaled to a laboratory

¹Substituted vide Khyber Pakhtunkhwa Act No. II of 2005

²Substituted vide Khyber Pakhtunkhwa Act No. II of 2005

³Substituted vide Khyber Pakhtunkhwa Act No. II of 2005

⁴Substituted vide Khyber Pakhtunkhwa Act No. II of 2005

⁵Substituted vide Khyber Pakhtunkhwa Act No. II of 2005

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alongwith a direction to make an analysis or test, whichever may be necessary with a view to finding out whether such goods suffer from any defect and to report its findings thereon to the ¹[Court] within a period of thirty days of the receipt of the reference or within such period as may be extended by the ²[Court];

- (d) before sample of the goods is referred to any laboratory under clause (c), the ³[Court] may require the complainant to deposit to the credit of ⁴[Court] such fees as may be specified, for payment to the laboratory for carrying out the necessary analysis or test in relation to the goods in question. The fee so deposited by the complainant shall be recovered from the opposite party if the test / analysis support the complainant's version and paid to the complainant;
- (e) on receipt of the report from the laboratory, the ⁵[Court] shall forward a copy of the report, alongwith such remarks as may be deemed appropriate, to the opposite party and the whole process shall be completed within two months.;
- (f) if any of the parties disputes the correctness of the findings of the laboratory, or methods of analysis or test adopted by the laboratory, the ⁶[Court] shall require the opposite party or the complainant to submit in writing his objections in regard to the report of the laboratory;
- (g) the ⁷[Court] shall give a reasonable opportunity to both the parties of being heard with regard to the correctness or otherwise of the report before making an order under section-15.

(2) The ⁸[Court] shall, if the complaint received relates to goods in respect of which the procedure specified in sub-section (1) cannot be followed, or if the complaint relates to any service,-

- (a) refer a copy of such complaint to the opposite party directing him to give his version of the case within a period of thirty days or such extended period not exceeding fifteen days as

¹Substituted vide Khyber Pakhtunkhwa Act No. II of 2005
²Substituted vide Khyber Pakhtunkhwa Act No. II of 2005
³Substituted vide Khyber Pakhtunkhwa Act No. II of 2005
⁴Substituted vide Khyber Pakhtunkhwa Act No. II of 2005
⁵Substituted vide Khyber Pakhtunkhwa Act No. II of 2005
⁶Substituted vide Khyber Pakhtunkhwa Act No. II of 2005
⁷Substituted vide Khyber Pakhtunkhwa Act No. II of 2005
⁸Substituted vide Khyber Pakhtunkhwa Act No. II of 2005

Attorney
Sup. Court

may be granted by the ¹[Court]; and

- (b) on receipt of the defence of the opposite party, if any, under clause (b), proceed to settle the dispute on the basis of evidence produced by both the parties:

Provided that if the opposite party does not deny or dispute the allegations made in the complaint or fails to present his case within the specified period, the dispute shall be settled on the basis of the evidence brought by the ²[complainant].

(3) For the purpose of this section, the ³[Court] shall have the same powers as are vested in civil court under the code of Civil Procedure, 1908 (V of 1908), while trying a suit, in respect of the following matters, namely-

- (a) the summoning and enforcing attendance of any defendant or witness and examining him on oath;
- (b) the discovery and production of any document or other material object producible as evidence;
- (c) the receiving of evidence on affidavits;
- (d) requisitioning of the report of the concerned analysis or test from the laboratory or from any other relevant source;
- (e) issuing of any commission for the examination of any witness; and
- (f) any other matter which may be prescribed.

(2) ⁴[Deleted]

15. Findings of the ⁵[Court].---(1) If after the proceedings conducted under section 14, the ⁶[Court] is satisfied that the goods complained against suffer from any any of the defects specified in the complaint or that any or all of the allegations contained in the complaint about the services are proved, it shall issue an order to the opposite party directing him to take one or more of the following actions, namely-

¹Substituted vide Khyber Pakhtunkhwa Act No. II of 2005
²Substituted vide Khyber Pakhtunkhwa Act No. II of 2005
³Substituted vide Khyber Pakhtunkhwa Act No. II of 2005
⁴Deleted vide Khyber Pakhtunkhwa Act No. II of 2005
⁵Substituted vide Khyber Pakhtunkhwa Act No. II of 2005
⁶Substituted vide Khyber Pakhtunkhwa Act No. II of 2005

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- (a) to remove defect from the goods in question;
- (b) to replace the goods with new goods of similar description which shall be free from any defect;
- (c) to return to the complainant the price or, as the case may be, the charges paid by the complainant;
- (d) to do such other things as may be directed for adequate and proper compliance with the requirements of section 4, section 5 or section 6;
- (e) to pay such amount as may be awarded by it as compensation to the consumer for any loss or negligence of the opposite party.

(2) Every order made by the ¹[Court] under sub-section (1) shall be signed.

16. Penalties.— ²[(1) Where any right of consumer required to be protected under this Act, is in any way infringed, or is likely to be infringed, the person responsible for such infringement shall be punished with rigorous imprisonment which shall not be less than seven days or with fine which shall be extended to fifty hundred thousand rupees but not less than ten thousand rupees or with both and shall also be liable to provide such compensation or relief to the consumer as may be determined by the Court.

(2) Whoever makes advertisement through print or electronic or social media or by wall chalking or in any other manner in contravention of the provisions of this Act, the person responsible shall be punished with rigorous imprisonment which shall not be less than seven days or with fine which shall extend to twenty hundred thousand rupees but not less than ten thousand rupees or with both.]

(3) The ³[Court] may, where it is deemed appropriate, order for payment of compensation to the consumer to the extent the consumer has suffered any damage or loss through any unfair trade practice.

(4) The ⁴[Court] may, where it is deemed necessary for protection of the rights of other consumers, order for confiscation of any goods or material or direct for their destruction.

¹Substituted vide Khyber Pakhtunkhwa Act No. II of 2005

²Substituted vide Khyber Pakhtunkhwa Act No. XVII of 2015

³Substituted vide Khyber Pakhtunkhwa Act No. II of 2005

⁴Substituted vide Khyber Pakhtunkhwa Act No. II of 2005

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(5) The ¹[Court] may, where it is deemed appropriate, order for removal of the defect (s) of the product involved or replacement thereof.

17. Appeal.--- ²[(1) Any person aggrieved from the order passed by the Director, under sub-section (1) of section 11A of this Act, may file an appeal in the Court within a period of thirty days of such order by depositing full amount of the fine so imposed, which shall be reimbursed in case, the Court set-aside the decision of the Director.]

³[(2)] Any person aggrieved by an order made by the ⁴[Court] may prefer an appeal against such order to the ⁵[High Court] within period of thirty days from the date of the order, and the provisions of the Code of Criminal Procedure, 1898 (Act V of 1898), in respect of appeal to the High Court shall, *mutatis mutandis*, apply.

18. Finality of Order.---Every order of the ⁶[Court] if no appeal has been preferred against such order under the provision of this Act, shall become final.

19. Dismissal of frivolous, or vexatious complaints.---Where a complaint is found to be frivolous or vexatious, the ⁷[Court] as the case may be, shall dismiss the complaint and exceeding ⁸[ten] thousand rupees. Appropriate compensation may also be awarded to the respondent from the amount of fine so realized.

20. Principal, liable for offence of agent and servants.---Where any offence under this Act is committed by an agent or servant of any manufacturer or trader, such offence shall be deemed to have been committed by such manufacturer or trader unless he proves that such offence was committed without his knowledge.

PART-IV MISCELLANEOUS

21. Immunity.---No suit, prosecution or other legal proceedings shall lie against the Council or any member thereof or any functionary under this Act or acting under the direction of the Council or Government for anything which is in good faith done or intended to be done under this Act.

22. Power to make rules.---Government may, by notification in the official Gazette, make rules for carrying out the purposes of this Act.

¹Substituted vide Khyber Pakhtunkhwa Act No. II of 2005

²Inserted vide Khyber Pakhtunkhwa Act No. XVII of 2015

³Re-numbered vide Khyber Pakhtunkhwa Act No. XVII of 2015

⁴Substituted vide Khyber Pakhtunkhwa Act No. II of 2005

⁵Substituted vide Khyber Pakhtunkhwa Act No. II of 2005

⁶Substituted vide Khyber Pakhtunkhwa Act No. II of 2005

⁷Substituted vide Khyber Pakhtunkhwa Act No. II of 2005

⁸Substituted vide Khyber Pakhtunkhwa Act No. II of 2005

Attended
Approved
Signed

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23. Power to remove difficulties.---If any difficulty arises in giving effect to any of the provisions of this Act, Government may, make such orders not inconsistent with the provisions of this Act, as may appear to it to be necessary or expedient for removing the difficulty.

Attested
Attested
Subscribed



GOVERNMENT OF KHYBER PAKHTUNKHWA
FINANCE DEPARTMENT

Dated Peshawar the 02/04/2019

NOTIFICATION

No. SO(SR-II)/FD/8-43/2019 Whereas the Provincial Govt of Khyber Pakhtunkhwa enhanced the rates of Judicial Allowance of the Establishment of Peshawar High Court Peshawar w.e. 18.09.2012 vide notification No.FD(PRC)1-1/2012 dated 24.02.2012. Later on, the Provincial Govt enhanced the rates of the Judicial Allowance and Utility Allowance at the prescribed rates for the staff of Subordinate Judiciary in Khyber Pakhtunkhwa vide notification No.FD(SOSR-II)8-43/2012 dated 10.12.2012.

2- Now, in pursuance of the order of Peshawar High Court Peshawar under COC No. 146-P/2019 in Writ.Pet/Jon No.19-P/2010 Dated 28.03.2019, and in continuation of this department notification dated 10.12.2012 referred above, the competent authority has been pleased to approve the enhancement of the rates and ceiling of Judicial Allowance to the staff of Subordinate Judiciary in Khyber Pakhtunkhwa with immediate effect as per the rates noted against each.

S#	Judicial Allowance	Existing Rates	Revised Rates
1	from BPS-1 to BPS-6	Rs.2800/-	Rs.6000/-
2	from BPS-7 to BPS-16	Rs.4200/-	Rs.9000/-

3- The total additional financial implications of the proposed enhancement of Judicial Allowance of 5548 number of Para legal staff of Subordinate Judiciary in Khyber Pakhtunkhwa would come to Rs.268.953 million per-annum.

4- It is worth to mention that Provincial Govt has only enhanced the rates of Judicial Allowance and not Utility Allowance for the Establishment of Peshawar High Court Peshawar in light of this department notification referred above. Thus the contention of the petitioners regarding the enhancement of Utility Allowance on the analogy of Peshawar High Court Peshawar is baseless and misleading.

5- The other conditions mentioned in this department notification dated 10.12.2012 will remain the same.

Secretary to Govt. of Khyber Pakhtunkhwa
Finance Department

Endst: No. & Date Even:

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

1. Secretary to Govt of Khyber Pakhtunkhwa Law & Parliamentary Affairs Department.
2. Registrar Peshawar High Court Peshawar.
3. Accountant General of Khyber Pakhtunkhwa, Peshawar.
4. All District and Session Judges in Khyber Pakhtunkhwa.
5. Director Treasuries & Accounts of Khyber Pakhtunkhwa.
6. All District Comptroller of Accounts in Khyber Pakhtunkhwa.
7. Director, FMIU Finance Department.
8. All District Accounts Officer in Khyber Pakhtunkhwa.
9. Budget Officer-II, Finance Department.
10. PS to Secretary Finance Department.
11. PA to Additional Secretary (Regulation) Finance Department.

(MOAZZAM KHAN)
SECTION OFFICER (SR-II)

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GOVERNMENT OF
KHYBER PAKHTUNKHWA
FINANCE DEPARTMENT

GOVERNMENT WEBSITE
DMD
CURRENT BUDGET
DEVELOPMENT BUDGET
ALTERNATE CURRENT BUDGET

Updated on: 08-04-2019

CURRENT BUDGET UTILIZATION 2018-19

Search Criteria

DDO Wise

SHOWING SELECTED DDO WISE DETAILS

Grant:	NC21030-INDUSTRIES
DDO Code:	MR4727
DDO Description:	MR4727 - Consumer Protection Court Mardan
Financial Year:	2018-19
Grand Total Budget Estimate:	Rs: 14,669,000
Grand Total Budget Release:	Rs: 12,543,000
Grand Total Actual Expenditure:	Rs: 7,975,951

Attested
[Signature]

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OBJECT	OBJECT DESCRIPTION	BUDGET ESTIMATES (IN RUPEES)	BUDGET RELEASE (IN RUPEES)	ACTUAL EXPENDITURE (IN RUPEES)
A0121T	A0121T-ADHOC RELIEF ALLOWANCE 2013	130,000	90,000	62,787
A01224	A01224-ENTERTAINMENT ALLOWANCE	9,000	7,800	5,668
A01226	A01226-COMPUTER ALLOWANCE	18,000	0	0
A0122C	A0122C-ADHOC RELIEF ALLOWANCE - 2015	90,000	65,000	42,559
A0122M	A0122M-ADHOC RELIEF ALLOWANCE 2016	427,000	310,000	227,461
A0122Y	A0122Y-AD-HOC RELIEF ALLOWANCE 2017	640,000	405,000	293,653
A0123G	A0123G-AD-HOC RELIEF ALLOWANCE-2018	640,000	405,000	293,653
A01241	A01241-UTILITY ALLOWANCE FOR ELECTRICITY	533,000	207,000	182,277
A01248	A01248-JUDICIAL ALLOWANCE	700,000	330,000	280,904
A01274	A01274-MEDICAL CHARGES	11,000	11,000	0

Handwritten signature and stamp in the bottom right corner of the table area.

Amr (D)

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Judgment Sheet
IN THE LAHORE HIGH COURT LAHORE
JUDICIAL DEPARTMENT

W.P.No.20968/2009

JUDGMENT
Muhammad Akram PS, etc.
VERSUS
Government of Pakistan, etc.

Date of hearing : 12.10.2012:

Petitioners by: M/s. Arab Ahmad Bajwa and Syed Ijaz Qutab,
Advocates.
Respondents by: Mr. M. Nasim Kashmiri, Deputy Attorney General for
Pakistan,
Ch. Muhammad Iqbal, Addl. Advocate General, Punjab.

Muhammad Khalid Mehmood Khan, J.

All the

petitioners are the part of establishment of Federal Government Courts established by the act of Parliament commonly known as Banking Courts, Environmental Protection Tribunal, Special (Offences-in-Banks), Special Court Customs Taxation and Anti-Smuggling, Special Court C.N.S. Lahore, Drug Court, Special Judge (Central), these courts/tribunals are directly performing their duties in connection with the administration of justice. The petitioners claim is that they are being discriminated qua the employees of District Judiciary and establishment of the High Courts, thus they claim declaration to the effect that recommendations of National Judicial (Policy Making) Committee (hereinafter referred to as NJPMC) dated 10.11.2007 issued by the respondent No:1 vide letter dated

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30.4.2008 is binding on respondents No. 2 and 3 and the respondents are thus bound to implement the recommendations dated 10.11.2007 for bringing the petitioners at par with the employees of Districts Judiciary and Establishment of the High Court, District judiciary of Islamabad and Islamabad High Court.

2. The petitioners assert that NJPMC was constituted through National Judicial (Policy Making) Committee Ordinance 2002 (hereinafter referred to as "NJPMC Ordinance 2002"). The NJPMC submitted recommendations for the uniformity of the terms and conditions of Judicial Officers and staff attached to the judiciary i.e. District Judiciary, High Courts and the Apex Court.

3. The petitioners assert that on the recommendations of NJPMC, the Hon'ble Chief Justice of all the Provinces of Federation have directed to pay the allowances to the establishment of High Courts as is evident from the Notifications issued from time to time.

4. Learned counsel for the petitioners submits that the petitioners are no doubt the Federal Government employees but their job description and the working hours are equal to the job description and working hours of the District Judiciary, establishment of the High Court of the Provinces as well as Islamabad High Court.

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5. Learned Counsel argued with vehemence that due to high inflationary cost even the increase allowed by the High Courts in terms of NJPMC is not sufficient to meet with the day to day expenses of a normal size of family, but the petitioners have been denied even the increase in the salary and allowance which the District Judiciary is receiving for the same job, Labour with same qualifications and as such the petitioners being the employees of Federal Government and attached with the Special courts are being meted out a discriminatory treatment.

6. Learned Deputy Attorney General for Pakistan contends that if the requested allowance and salary is allowed to the petitioners it will create disparity among the Civil Servants and the Federal Government will not be in position to pay the allowance and salary as claimed by the petitioners to all the civil servants. The terms and conditions of the employees of the District Judiciary and establishment of High Courts are different with the terms and conditions of the petitioners.

7. Learned Deputy Attorney General for Pakistan object the very maintainability of the petition on the ground that dispute pertains to the terms and conditions of the service and as such the petitioners if are aggrieved they may approach to an appropriate fora.

8. Learned Counsel for the petitioners exercising the right of rebuttal submits that the Federal Government is already

maintaining different categories among the Civil Servants, for example special allowances are payable to the employees of Civil Aviation, railways, armed forces as to aviation allowance, railway allowance, disturbance and hazardous allowance, shift allowance, Governor House staff allowance, the petitioners if will be allowed the requested benefit it will not create any special category as the petitioners are performing same duties like the employees of District Judiciary and the establishment of High courts. Learned Counsel adds that all special courts are under the superintendence and control of the High Court, the appellate court of all the special courts is the High Court and the appointment of Judges of the Special Court require the consent of the Honourable Chief Justice of the High Court and Senior Judge of the High Court is the Inspection Judge of the Special Courts.

9. Learned counsel has relied on Government of Balochistan v. Azizullah Memon and others (PLD 1993 SC 341 (370)), Salman Adil Siddiqui v. Province of Sindh (2008 PLC (C.S.) 220), Abdur Rashid v. Secretary Establishment Division (1991 SCMR 1288), Atthya Bibi v. Federation of Pakistan (2001 SCMR 1161), Muhammad Akram v. selection Committee (2003 CLC 18), Government of Punjab v. Mubarak Ali (PLD 1993 SC 375), Mian Mehmood Ahmad v. Hong Kong and Shahghal Banking Corporation Ltd. through Manager and 6 others (2010 CLD 293) and Federation of All India Customs

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and Central Excise Stenographers (Recognized) and others v. Union of India and others (AIR 1988 SC 1291).

10. Learned counsel relying on Articles 25, 27, 33 and 37 of the Constitution of the Islamic Republic of Pakistan, 1973 submits that it is the duty of State to promote social justice and eradicate the social evils, which is only possible if uniform terms are applied among the employees attached with the Courts and that all persons placed in same category classification have to be treated alike. Learned Counsel submits that the petitioners are being discriminated in terms and conditions of service including emoluments, the Federal Government has promulgated various laws, which confers jurisdiction on a provincial judicial officer to adjudicate and decide the matters relating to the federal law within the provincial domain, for instance Banking Court, Custom Court, Excise and Taxation Tribunal, Special Anti-Terrorist Court and numerous other Tribunals and Courts established under the Federal statute are presided over by the judicial officers of the Province.

11. Learned Counsel has relied on Northern Area of Supreme Court (PLC 2010 (C.S.) 141) and Government of Punjab v. Mubarak Ali (PLD 1993 SC 375).

12. Heard, record perused.

13. The main controversy between the parties is of an equal treatment among the equally placed persons, the right of equal

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treatment is a fundamental right of every citizen of Pakistan and is guaranteed one. It is an admitted fact that All High Courts of Provinces have implemented the recommendations of the NJPMC but the Federal Government is denying the grant of all those allowances and benefits which the equally placed persons of the establishment of the High Courts and the District Courts are receiving as per their job description and nature of duties. It is not denied by the respondents that Federal Government has implemented the NJPMC recommendations for District Judiciary of Islamabad as well the establishment of Islamabad High Court.

14. It is an admitted position between the parties that Banking Courts, Labour courts and other Federal Courts are meant to administer justice between the parties and falls within the definition of Court, either established under Federal or provincial Statute or under the mandate of constitution of Islamic republic of Pakistan, likewise the establishment of Special court/Tribunal is equally necessary and important like the Judicial Officer who preside over the court, in the absence of establishment of the court the presiding officer could not perform his judicial duties, for example if the reader of the court refuse to perform his duties after the court time, the presiding officer cannot function and perform his judicial duties and if the reader is refusing to perform duty after the court hours that will not be in violation of his terms of service. It is also an admitted fact that the object of NJMPC is to provide

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speedy justice to public at large and to decide the voluminous litigation as early as possible.

15. The argument of Learned Counsels for the petitioners is that petitioners are performing duties with the courts and their case falls under Article 25 and 27 of the Constitution of Islamic Republic of Pakistan, 1973 which guarantees equal treatment to similarly placed persons and that no citizen in the service of Pakistan or the other persons could be discriminated in any manner whatsoever.

16. The perusal of article 25 and 27 will show that all equally placed persons are to be treated equally, no citizen in the service of Pakistan or the other person will be discriminated even at the time of admitting in to service or after joining the service. Under article 37 and 38 of the Constitution the State is bound to promote social justice and eradicate the social evils among the citizens of Pakistan and It could only be possible if all the employees of judicial establishment are treated equally whether they are the creation of Federal Government or provincial governments. For performing same functions two different terms could not be made or implemented for the establishment of courts/tribunals.

17. To remove disparity and ensure wellbeing of the people is responsibility of the State, which in turn would eliminate inequality in the income and earning of individual including persons of various classes similarly placed.

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18. Under the Constitution of the Islamic Republic of Pakistan, Article 25 forbids class legislation but permits reasonable classification for the purpose of legislation which classification must satisfy the twin-tests of classification being founded on an intelligible differentia which distinguishes persons or things that are grouped together from those that are left out of the group and that differentia must have a rational nexus to the object sought to be achieved by the statute in question.

19. The issue of creation of Federal Government courts came up for adjudication before Honourable Supreme Court of Pakistan in Mehram Ali and others v. Federation of Pakistan and others (PLD 1998 SC 1445), the Honourable Supreme Court of Pakistan ruled as under:

- (a) That Articles 175, 202 and 203 of the Constitution provide a framework of Judiciary i.e. the Supreme Court, a High Court for each Province and such other Courts as may be established by law.
- (b) That the words "such other Courts as may be established by law" employed in clause (1) of Article 175 of the Constitution are referable to the subordinate Courts referred to in Article 203 thereof.
- (c) That our Constitution recognizes only such specific Tribunal to share judicial powers with the above Courts, which have been specifically provided by the Constitution itself Federal Shariat Court (Chapter 3-A of the Constitution), Tribunals under Article 212, Election Tribunals (Article 225). It must follow as a corollary that any Court or Tribunal which is not founded on any of the Articles of the Constitution cannot lawfully share judicial power with the Court referred to in Articles 175 and 203 of the Constitution.
- (d) That in view of Article 203 of the Constitution read with Article 175 thereof the supervision, and control over the subordinate judiciary vests in High Courts, which is exclusive in nature, comprehensive in extent and effective in operation.

(1) That right of "access to justice to all" is a fundamental right, which right cannot be exercised in the absence of an independent judiciary providing impartial, fair and just adjudicatory framework i.e. judicial hierarchy. The Courts/Tribunals which are manned and run by executive authorities without being under the control and supervision of the High Court in terms of Article 203 of the Constitution can hardly meet the mandatory requirement of the Constitution."

20. The above said rule laid down by the Honourable Supreme court of Pakistan and the facts stated above will show that the Special Court / Tribunals are under the supervision and control of High Court, its presiding officers appointment under the statute require the recommendations of the Honourable Chief Justice; the eligible person is either Retired Judge of High Court or retired or sitting District and Session Judge and as such the establishment of Special Courts and District Judiciary and establishment of High courts could not be separated or distinguished with each other.

21. The Learned Division Bench of the Sind High Court in Amanullah Khan Yousufzal and others v. Federation of Pakistan through Law Secretary and others (PLD 2011 Karachi 451) held as under:

"NJPAC is a highest statutory judicial policy making body, which consists of the honourable Chief Justices of all High Courts and Chief Justice of Pakistan as its Chairman. NJPMC attend all matters concerning with the judiciary and in recent time has taken bold initiative to bring reform in justice delivery mechanism and for framing coherent policy to combat delays, promote automation, and bring out administrative reforms indeed an arduous responsibility that ensure free, fair, independent and conscious judiciary and in shortest time achieved enviable results."

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22. All the Provinces have implemented the decision of the NJPMC and the salary structure of the judicial officers, and attached staff has been revised. The Federal Government has already implemented the Recommendations of NJPMC in District Judiciary of Islamabad and Islamabad High Court.

23. The Letter dated 30.4.2008 from the Federal Secretary Law and Justice Division Government of Pakistan specifically find mention that NJPMC in a meeting held on 10.11.2007 recommended the compensation package of judicial officers and recommended the enhancement in the allowance as follows:

3. The National Judicial Policy Making Committee (NJPMC), headed by the Chief Justice of Pakistan, in its meeting held on 10.11.2007, reviewed the compensation package of judicial officers and recommended the enhancement in the allowance as follows:

1. Judicial Allowance

- (i) District & Sessions Judge/ Ad. District Judge/Senior Civil Judge/Magills-e-Shoora Rs. 14000/-
- (ii) Civil Judge/Deputy Civil Judge/Members Magills-e-Shoora Rs. 13000/-
- (iii) Subordinate courts staff running pay Rs. 20% of Rs. 8000/-

2. Utility Allowance

- (i) Officers in B-19 and above Rs. 8000/-
- (ii) Officers in B-17 and 18 Rs. 5000/-
- (iii) Staff in B-1 to B-16 running pay Rs. 10% of Rs. 1000/-

3. Car Allowance

- (i) Ad. District and Sessions Judge Rs. 7000/-
- (ii) Senior Civil Judge/Members Magills-e-Shoora Rs. 6000/-
- (iii) Civil Judge/Deputy Civil Judge Rs. 5000/-

4. Conveyance Allowance

All court staff
 stations

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4. The Provinces of Sindh, NWFP and Balochistan have implemented the recommendations of NJPMC, whereas the same are required to be implemented by the Punjab. As Punjab Judiciary would be the beneficiary of the above recommendations, therefore, intervention of and follow up by the Lahore High Court may be required in the matter.

5. It would be highly appreciated if the Lahore High Court takes necessary steps for ensuring implementation of the recommendations of the NJPMC.

With best regards.

Yours sincerely,
s/d
JUSTICE
(BIN YAMIN)

Mr Justice
Sayed Zahid Hussain,
Chief Justice,
Lahore High Court,
Lahore.

and employees of District Judiciary and establishment of High Court are drawing the revised emoluments.

24. The other argument of learned Deputy Attorney General for Pakistan is that petition is not maintainable is concerned, the petitioners have approached the Court on the touchstone of constitutional guarantee under Articles 25 and 27 of the Constitution of the Islamic Republic of Pakistan, 1973. The Hon'ble Supreme Court of Pakistan in Secretary Revenue v. Muhammad Saleem (2008 SCMR 948), Mrs. Manawa Sunni v. Director Army Education (1991 SCMR 135), Administrator District Council Larkana and others v. Gulab Khan and 5 others (2001 SCMR 1320) has dilated upon the above said issue.

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25. In the case of Mrs. Manawa Sunni (supra) it is held that despite her status of civil servant she approached the High Court for the redressal of grievance and the objection of jurisdiction was raised even up to the level of Hon'ble Supreme Court of Pakistan and the same was resolved in the following terms:

"Question whether she should approach the Civil Court or the Service Tribunal for this purpose was not very pertinent in the face of bound down obligation of the authorities to satisfy her claim themselves without the necessity of driving needy litigants a pillar to post."

26. In view of the above the objection of maintainability of the petition raised is repelled:

27. The respondent is not denying that the establishment of High Court of Lahore, Sindh and Quetta are getting the allowances detailed in letter dated 30.4.2008. The petitioners are admittedly placed in the similar category in which the employees of District Judiciary and establishment of the High Courts of the Provinces are working and as such the petitioners are entitled for the same treatment. Reliance is placed on Hussain Badsha and another v. Akhtar Zaman and others (2007 PLC (C.S.) 285); the Hon'ble Supreme Court held as "Article 25 of the Constitution of Islamic Republic of Pakistan, 1973 guarantees equal treatment before law and equal protection of law to all citizens similarly placed".

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28. In Dr. Muneer Ahmad and 37 others v. Government of Pakistan, Finance Division, Islamabad and 4 others (2007 PLC (CS) 285) the Honourable Chief Justice opined as under:-

"Concept of equal protection and equality before law is hallmark of the constitutional scheme recognized by not only the Preamble, Objectives Resolution, Articles 4, 23 and 27 of the Constitution but also by the Principles of Policy contained in Article 37 of the Constitution. Equal protection and equal treatment of citizens similarly placed is universally accepted and recognized principle, which has been explained by many authors in textbooks and Judges in precedents. Statutory functionaries in a democratic set up cannot make any individual distinction for any extraneous reasons and exercise of discretion must be free of arbitrariness and caprice."

29. In case of Ibrahim Flour and General Mills, District Sheikhupura through Chief Executive v. Government of Punjab through Secretary to the Government of the Punjab, Food Department, Lahore and another (PLD 2008 Lahore 184), the question of discrimination has been dilated upon and is opined as under:-

"The points of discrimination calls for interference and exercise of powers of judicial review."

30. In case of Mehar Muhammad Navaz v. M.D. Small Business Corporation (C.A.No.427 of 2005) decided on 09.10.2008, the honourable Supreme Court of Pakistan held as under:-

"Needless to emphasize that while dealing with the case whereas an aggrieved party alleges discrimination, the Court cannot overlook the implication thereof. Equal treatment of all similarly

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situated is the basic principle on which rests justice under the law. If even-handed justice is not administered, it can have many adverse and negative effects on the society. It can cause discontentment and frustration. In the social set-up. There can be no denial that social justice is an objective and enshrined in our Constitution."

31. In view of the above it is established fact that the similarly placed employees of District Judiciary, establishment of High Courts are getting the benefits under the recommendations of NJMPC but the petitioners are being deprived of the same, the respondents denial thus is in violation of Article 25 of the Constitution of the Islamic Republic of Pakistan, 1973; consequently it is declared without lawful authority. The petitioners are entitled to get the benefits under the NJMPC recommendations dated 10.11.2007 as confirmed by the respondent No. 1 vide letter dated 30.4.2008.

32. The petition is allowed in the above said terms.

(Muhammad Khalid Mehmood Khan)
Judge

KAC Subhan

Announced in open Court today (31.10.2012).

(Muhammad Khalid Mehmood Khan)
Judge

KAC Subhan

Approved for reporting.

Judgment Sheet

IN THE PESHAWAR HIGH COURT, PESHAWAR
JUDICIAL DEPARTMENT

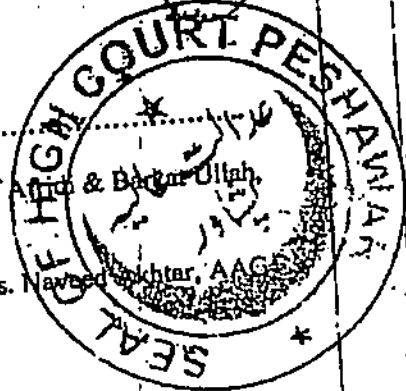
Writ Petition No. 19/2010.

JUDGMENT

Date of hearing.....18.09.2012.....

Petitioner. (Khan Akbar & 421 others) By M/s. Abdul Latif Afridi & Barkat Ullah,
Advocates.

Respondents. (Government of NWFP & 02 others) By M/s. Navab Akhtar, AAG
& Shumail Ahmad Butt, Advocate.



DOST MUHAMMAD KHAN, C.J.- This single judgment

shall also decide connected W.P.No. 2756/2010 entitled

"Abdul Manan Khan & 139 others Vs. Government of

Khyber Pakhtunkhwa through its Chief Secretary & 02

others" because the nature of prayer made and the law

points involved are not only identical but also these are

disposed of through negotiated settlement between the

parties.

Arguments heard and record perused.

2. All the petitioners in both the petitions belong to the

paralegal staff, attached to the District Judiciary of Khyber

Pakhtunkhwa, in different ranks, grades & categories.

3. Petitioners herein are representative of all the

paralegal staff of the Province, therefore, this petition was

ATTESTED

EXAMINER
Peshawar High Court

27/11/13

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taken up for hearing in that capacity with the consent of the parties.

4. After the preliminary hearing when the matter entered into a contest, it was suggested to the Government and the learned counsel, representing it, that it would be more appropriate, a dignified manner, if the matter is settled amicably by awarding Judicial & Utility Allowances at certain percentage because of the raising of such Allowances for paralegal staff by the Punjab & Sindh Governments much earlier.

5. The learned counsel representing the Provincial Government sought time at different occasions to discuss the matter with the Provincial Government and all those, who are not only relevant to the subject matter but also respondents in the case.

6. On the last date of hearing, the matter was referred to the agreed team of negotiators of the High Court and that of the Provincial Government, however, due to marginal difference, the settlement could not be reached upon.

ATTESTED

EXAMINER
Peshwar High Court

(57)

7. Today, when the petition was taken up for hearing along with the connected one and when it was suggested to the learned counsel for the Provincial Government that instead of 60% awarding of Judicial Allowance as well as Utility Allowance, the same may be awarded at the rate of 70% with no arrears to be paid and it shall take effect from today i.e. the date of judgment, the learned counsel sought time to discuss the matter with the Provincial Government and after some time, the learned counsel appeared and stated at the bar that the Provincial Government right from the top to the lower level, relevant to the subject matter, including the Competent Authorities have agreed to the suggestion made by the Court, however, arrears of the Allowances may not be granted.

8. After giving such statement at the bar by the learned counsel, the petitioners were asked whether they accept the same and are agreeing to the suggested settlement to which they stated that they have no reservation nor any objection if the suggested allowances are allowed without payment of arrears.

ATTESTED
EXAMINER
Peshawar High Court

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9. In view of what has been agreed upon by the parties, all the petitioners (the entire paralegal staff attached to the District Judiciary of Khyber Pakhtunkhwa) including Ex-cadre paralegal staff are granted 70% Judicial as well as Utility Allowance according to their pay scales. The same shall take effect from today i.e. the date of judgment, hence, the petitioners and all others alike would not be entitled to payment of arrears in this regard.

Accordingly, with the consent & amicable settlement between the parties, this petition is admitted & allowed in the above terms while the connected writ petition, mentioned above, is partially allowed to the extent of Judicial & Utility Allowances on the formula as discussed above whereas for rest of the prayer the same is dismissed.

sd/ Dost Muhammad Khan
sd/ J. Shae Dares

Announced
 18.09.2012.

CHIEF JUSTICE

[Signature]
 1-pkge

CERTIFIED TO BE TRUE COPY

Examiner
 Peshawar High Court Peshawar
 Authorised Under Article 87 of
 the Constitution of Pakistan Order 1984



Office
 19/9

R Zahir

PESHAWAR HIGH COURT, PESHAWAR

FORM OF ORDER SHEET

Aux (F)

(P)
(S)
(S9)

Date of Order or Proceedings	Order of other Proceedings with Signature of Judge.
01.10.2013	<p><u>WP No. 1100/2009.</u></p> <p>Present: <i>Mr. Amjad Ali, Advocate for the petitioners.</i></p> <p><i>Mr. Waqar Ahmad Khan, AAG & Mr. Shumail Ahmad Butt, Advocate for the Provincial Government alongwith Amanatullah Section Officer (Legal) Finance Department.</i></p> <p>*****</p> <p><u>DOST MUHAMMAD KHAN, CJ.</u> Same order as in connected WP No. 1725/2008 of the even date:</p> <p><i>Sd/- Dost Muhammad Khan CJ</i> <i>Sd/- Malik Mangoo Hussain</i></p> <p>CERTIFIED TO BE TRUE COPY</p> <p>Examiner Peshawar High Court Peshawar Authorised Under Article 87 of the Qanun-e-Shahadat Order 1984</p> <p>27/11/13</p>

Qaseem

PESHAWAR HIGH COURT, PESHAWAR

FORM OF ORDER SHEET

Date of Order or Proceedings	Order of other Proceedings with Signature of Judge.
01.10.2013	<p data-bbox="829 611 861 649">2</p> <p data-bbox="446 687 702 738"><u>WP No. 1725/2008.</u></p> <p data-bbox="446 726 1149 828">Present: <i>Mr. Bilal Ahmad Khan, Advocate for the petitioners.</i></p> <p data-bbox="622 815 1228 993"><i>Mr. Waqar Ahmad Khan, AAG & Mr. Shumail Ahmad Butt, Advocate for the Provincial Government alongwith Amanatullah Section Officer (Legal) Finance Department.</i> *****</p> <p data-bbox="462 1019 1356 2369"><u>DOST MUHAMMAD KHAN, CJ.</u> Vide detailed judgment of this court dated 18.9.2012, after hectic efforts, persuasion, deliberations and consultations the Provincial Government through its Finance Secretary and his counsel agreed that the entire paralegal staff attached to the District Courts/ District Judiciary including Ex-Cadre paralegal staff, meaning thereby that the paralegal staff of the same class attached to any Special Court or Tribunal working within the Province, are equally entitled to the same relief/ package, however, for no reason much less plausible, the bureaucrats are creating hurdles and that too absolutely unessential in the way of grant of relief to the paralegal staff attached to the Judges working in the Ex-Cadre whether as a Special Court/ Tribunal. In the case of <u>Hamid Akhtar Niazi</u> 1996 SCMR 1185, the Hon'ble Apex Court has held that once a law point is determined and enunciated by the Supreme Court or High Court then, those who are not before the court would be also entitled to the same relief and the authorities</p>

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ATTESTED

EXAMINED

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shall not take refuge behind technicalities.

2. Learned counsel for the replying respondents/ Provincial Government contended that neither the relief claimed is the same in this petition nor the employees attached to Ex-Cadre Judges working as Special Court or Tribunal falls within the definition of the same class to which the same relief can be granted / extended.

3. We have carefully gone through our judgment dated 18.9.2012 and it is not open to any debate or two opinion and the learned counsel for the Provincial Government is under entire misconception both on facts and on the point of law.

4. Accordingly, this and the connected WP No. 1100/2009 is admitted & allowed and the respondents-Government is directed to extend the said relief of judicial allowance/ utility allowance at the same rate which has been mentioned in our judgment, referred to above. The needful be done positively within one month otherwise, the court would be left with no option but to attach the property of the Provincial Government particularly of the Finance Department.

sd/- Dost Muhammad Ali
sd/- Malik Mangoor Hussain
CHIEF JUSTICE
JUDGE

7647

Date of Presentation of Application 26-11-13
No of Pages 12P
Copying fee 22-00
Urgent fee 22-00
Total 44-00
Date of Preparation of Copy 27-11-13
Date Given For Delivery 27-11-13
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Received By *[Signature]*

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Examiner
Peshawar High Court Peshawar
Authorised Under Article 87 of
the Constitution of Pakistan 1973
27-11-13

Judgment Sheet

IN THE PESHAWAR HIGH COURT, PESHAWAR
JUDICIAL DEPARTMENT.

JUDGMENT

W.P. No. 1382/2010

Date of hearing 12.12.2013.

Arshad Zaman and 33 others versus Federation of Pakistan through

Ministry of Law, Justice & Parliamentary Affairs, Islamabad.

Petitioner(s)/Appellant(s) by Barister Syed Mudasser Ameer Advocate.

Respondent(s) by Muhammad Taimi Warsak Standing Counsel for Federation.

IKRAMULLAH KHAN J. Through the instant

constitutional petition, petitioners have prayed for issuance of an appropriate writ directing the respondents to consider and grant them Special Judicial and Utility Allowances at the same rate and from the date as it was granted to others officers and staff members of Subordinate Judiciary with all others consequential benefits.

2. The learned counsel for petitioners submitted that petitioners being employees of the Accountability Courts, Peshawar appointed by Ministry of Law, Justice & Parliamentary Affairs, Islamabad (parent Department), are performing their duties on various posts directly connected with the affairs of the Courts which are purely of judicial nature. Further submitted that there is no difference.

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Peshawar High Court
11 JAN 2018

in the work and duties of the employees and officials of the subordinate judiciary and Federal or Provincial Services Tribunals.

3. It was also argued that the Federal Government has sanctioned the required allowances to all the employees working in administrative tribunals and Special Courts established in the country, who are similarly placed persons as petitioners but the required relief has been denied to petitioners which amounts to discrimination and the said discrimination is against the fundamental rights enshrined therein the constitution of Islamic Republic of Pakistan, 1973. Petitioners, being the employees and working therein the Accountability Court/Tribunals therefore, deserved to be treated alike in the matter of the allowances for which they have been prayed for.

4. The learned counsel for the petitioners cited the judgments of Hon'ble Lahore High Court, rendered therein cases of "Shah Jehan Khan versus Secretary etc" (W.P. No. 14784/2008) decided on 23.12.2008 and "Sadaqat Ali versus Government of

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EX. 101
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Punjab through Chief Secretary etc" (2008 PLC (CS) 1047), in support of his referred stance.

5. The learned counsel for petitioners also placed his reliance in support of his contentions on the judgments of the Apex Court reported as "Khwaja Abdul Hameed Nasir and others versus National Bank of Pakistan and others" (2003 SCMR 1090) and "Tara Chand and others versus Karachi Water and Sewerage Board Karachi and others" (2005 SCMR 499).

6. On the other hand, learned Deputy Attorney General strongly opposed petitioner's submissions and contended that petitioners are civil servants and has been treated at par with other civil servants, while took strong exception thereto the jurisdiction of this Court.

7. We have heard both the learned counsel and scrupulously gone through the available record.

8. As for as the question of jurisdiction of this Court is concerned, no doubt that petitioners are civil servants and performing their duties thereunder immediate subordination of the Federal Government, being employed by Ministry of Law, Justice and

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Parliamentary Affairs, Islamabad but petitioners have not questioned herein any final or appellate order passed by any departmental authorities rather a direction has been sought for, redressal of their grievance solely based on ground of discrimination. As per the mandate of the provisions contained thereunder Article 199 of the Constitution of Islamic Republic of Pakistan, 1973, any aggrieved person may invoke the jurisdiction of this Court, in case of any complaint who has been treated with discrimination by any government or authority. The Apex Court in case of "Secretary Revenue versus Muhammad Saleem" (2008 SCMR 948) has held as:-

"Jurisdiction vested with Apex and superior Courts are general, wider in scope and extent, while constraints prohibitions are narrow in their application and dimensions. Such jurisdiction is to be stretched to take into its folds all disputes to be resolved while limitation of jurisdictions and powers are to be squeezed and kept to minimum extent and length".

In essence the "Principle object behind all such formalities is to safeguard the paramount interest of justice. Legal precepts were devised with a view to impart certainty, consistency and uniformity to the administration of justice and to secure same against

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Peshawar High Court.

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arbitrariness errors of individual judgment and malafides".

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9. As, petitioners have not challenged any order or any matter which included in the terms and condition of their services, but have invoked the jurisdiction of this Court, being aggrieved by discriminatory treatment of the respondents, in matter of the allowances mentioned hereinabove, therefore in view of the judgments of the Hon'ble Supreme Court of Pakistan cited hereinabove, objections of maintainability of this petition raised by the learned DAG is accordingly repelled.

10. So for as the merits of the case is concerned, it is admitted by the respondents that employees of subordinate judiciary and Federal Service Tribunal, as well the employees serving in the office of worthy Attorney General for Pakistan they are getting the said allowances for which petitioners are claiming, however it was contended that petitioners services were not of the nature, and their terms and condition of services were not at par with duties of officers and staff of subordinate Courts and petitioners were purely civil servants, to be treated like others civil

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servants, being employee of a Accountability Court, constituted by special enactment having its own terms and conditions and service structure.

11. It would be not out of context at this stage to give reference to the recommendations made by the National Judicial (Police Making Committee) Supreme Court of Pakistan which is read as:-

"The Committee observed that due to devalue of currency and increasing inflation, the present rates of allowances are required to be enhanced and paid with a uniform rate to the employees by the High Courts as well as by the Provincial Courts. The Committee therefore, approved the following rates of allowances for officers and staff of the subordinate Courts to be paid with effect from 1st January, 2008;

1. Judicial Allowance.

- a. N/A.
- b. N/A.
- c. Subordinate Courts staff. Rs. 20% of running pay.

2. Utility Allowance.

- a. N/A.
- b. N/A.
- c. Staff in B-1 to B-16, 10% of running pay but not less than Rs. 1000/-.

3. Car Allowance.

N/A.

4. Conveyance Allowance.

N/A.



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12. The recommendation ibid made by the NJPMC has been implemented by the Federal and Provincial Governments whereas; the benefit under consideration has been extended not only to subordinate Courts but also to officers and staff of administrative tribunals and others authorities.

13. The policy mentioned hereinabove clearly and in unequivocal terms speaks about officers and staff of subordinate Courts.

14. The word subordinate Courts, though not defined any where but laterally it means, all Courts except the High Court and Supreme Court of Pakistan.

15. All Courts including the administrative Courts are subordinate to the Apex Court, therefore, the Accountability Courts could not be excluded therefrom the definition of the subordinate Courts.

16. The function and the job nature of the employees of Accountability Courts are at par with any other Courts or Tribunal performing judicial functions within contemplation of Article 175 of the Constitution, as Accountability Courts are the

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Supreme Court

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11 JAN 2013

creation of law, enacted by the parliament and duly promulgated by the President of Pakistan.

17. Keeping in view the job description and nature, petitioners are performing the same duties as conferred upon similar officers and staff of the subordinate judiciary and also officers and staff of Administrative Tribunals mentioned hereinabove, who are receiving the same allowances, for which the petitioners are claiming therefore it is held that petitioners are made subject of discrimination because similarly placed employees are enjoying the said benefit which petitioners are claiming but they are being deprived without any cogent reasons and legal justification. Even administrative Courts or Tribunals established thereunder the provisions of Article 212 of the Constitution, also squarely falls within the definition of Courts, when exercising judicial or quasi judicial functions.

18. The Hon'ble Supreme Court of Pakistan in case of "Hussain Badshah and another versus Akhtar Zaman and others" (2007 PLC (C.S) 157) has held as:-

"Article 25 of the Constitution of Islamic Republic of Pakistan, 1973, guarantees equal treatment before

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11 JAN 2015

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law and equal protection of law to all citizen similarly placed".

19. In another judgment rendered by the Apex Court in case of "Dr. Munir Ahmad and 37 others versus Government of Pakistan, Finance Division, Islamabad and 4 others" (2007 PLC (C.S) 285) has held as:-

"Concept of equal protection and equality before law is hall mark of the Constitution scheme recognized not only by the preamble, objectives resolution, Article 4, 25 & 27 of the Constitution but also by the principle of policy enshrined in Article 37 of the Constitution equal protection and equal treatment of citizens similarly placed is universally accepted and recognized principle, which has been explained by many jurist in text books and judges in precedents. Statutory functionaries in a democratic setup cannot make any individual distinction for any extraneous reasons and exercise of discretion must be free of arbitrariness and caprice."

Reliance can be placed in this regard on consistent views of Hon'ble Supreme Court of Pakistan rendered there in case of "Meher Muhammad Nawaz versus M.D; Small Business Corporation" (C.A. No. 427-05) decided on 09.10.2008.

20. When it is admitted on record that similarly placed employees of High Court, Office of the Punjab

Attested
By All Members
of the Court

For

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Bar Council, Office of attorney General for Pakistan, Federal Tax Ombudsman, Federal Services Tribunals, Government of Khyber Pakhtunkhwa Services Tribunals and Wafaqi Mohtasib are getting the required benefits but petitioners were being deprived of the same, the respondents action being violative of Article 25 of the Constitution of Islamic Republic of Pakistan, 1973, cannot remain in filed.

21. No second opinion could be held in this regard; that job and duties petitioners are performing could not be distinguished therefrom the job and duties performed by officers and staff of the above mentioned Courts, administrative tribunals and others establishments, established by Federal or Provincial Governments pertaining to either Judicial or Quasi Judicial Functions.

22. As such, petitioners worked in connection of affairs of National Accountability Court are entitled for the relief as prayed for through the instant constitutional petition.

23. Keeping in view, the provisions contained in Article 25 and other enabling provisions of the Constitution of Islamic Republic of Pakistan, 1973,

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and the consistent views of the Hon'ble Supreme Court of Pakistan in this regard, and the reasons given hereinabove, this writ petition is admitted and consequently allowed.

24. The respondents are directed to extend the benefit of judicial allowance as well as utility allowance as recommended by the National Judicial (Policy Making Committee) Supreme Court of Pakistan, which was implemented by the respondents and same benefits were provided to others officers, staff of subordinate judiciary, within a period of three months positively with immediate effect.

(Handwritten notes)
18/11/14

Nisar Hussain Khan
Karamullah Khan

(Signature)
JUDGE

(Signature)
JUDGE

ANNOUNCED.
12.12.2013.

CERTIFIED TO BE TRUE COPY

Registrar
Peshawar High Court, Peshawar
Authorized Under Article 117 of
the Qanun-e-shahadat Order 1984

26 DEC 2017

AAmif

No. 6415
Date: 11/01/2018
No. 28-P
C. RS 1127
U. 11/01/18
T. 11/07/2018
F. reparation
D. Delivery of
Received By: Gulzar Ahmad

BEFORE THE PESHAWAR HIGH COURT PESHAWAR

WRIT PETITION NO. 4415 2016.

1. Sabir Shah Assistant,
 2. Muhammad Arif Assistant,
 3. Zulfiqar Ali Stenographer,
 4. Miss Salma S/Clerk,
 5. Arshad Iqbal S/Clerk,
 6. Mushtaq Ali N/Qasid,
 7. Afsar Khan N/Qasid,
 8. Ishtuaq Ali N/Qasid ,
- The Consumer Protection Court, Mardan.



Annex G
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Petitioners.

Versus

1. The Secretary, Finance Department, Khyber Pakhtunkhwa, Peshawar.
2. The Secretary Law and Parliamentary Affairs, KPK, Peshawar.
3. The Secretary Industries Department, KPK, Peshawar.
4. The Accountant General KPK, Peshawar.
5. The Accounts Officer Mardan.

Respondents.

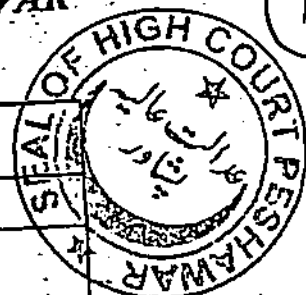
ATTESTED
EXAMINER
Peshawar High Court
13 APR 2019

Constitutional petition under Article 199 read with article 8 and 25 of the Constitution of Islamic Republic of Pakistan, 1973, for the direction to respondents No. 1 to 5 to grant the benefits of Judicial allowances, as well as, the Utility allowance to the petitioners alike the staff of other judicial courts including the Consumer Protection Courts in the Province of Khyber Pakhtunkhwa from the date, when the same was allowed to the staff of the aforesaid in other Districts of the Province of Khyber Pakhtunkhwa.

FILED TODAY
Deputy Registrar
24 OCT 2016

1. That the petitioners are employees of the Consumer Protection Court at Mardan as per the attached documents. Copies at nexure - "A to F".

PESHAWAR HIGH COURT, PESHAWAR
FORM OF ORDER SHEET



Date of Order or Proceedings	Order/Proceedings with Signature of Judge.
1	2
10.04.2018	<p><u>W.P No.4141-P/2016.</u></p> <p>Present: Petitioner No.1 in person. Syed Sikandar Hayat Shah, AAG, for the respondents.</p> <p align="center">*****</p> <p><u>QAISER RASHID KHAN, J.-</u> The former requests for withdrawal of the instant petition, as according to him, the very purpose for filing of this petition has already been achieved. Dismissed as such.</p> <p><u>Announced.</u> Dated: 10.04.2018.</p>

No. CS 507

Date of Presentation of Application 13/4/19

No of Pages 02

Copying Fee _____

Urgent Fee _____

Total Rs 0/-

Date of Preparation of Copy 13/4/19

Date of Delivery of Copy 13/4/19

Received By _____

CERTIFIED TO BE TRUE

Examiner
 Peshawar High Court, Peshawar
 Authorized Under Article 17 of
 the Constitution of Pakistan 1973

13 APR 2019

MCA

Handwritten signature and date: 14/4/19

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Accounts Office Head
PAYROLL REGISTER
for the month of September, 2020

Page : 1
Date : 29.9.2020

DOB : Hx47 Consumer Protection Court Headquarter Payroll Section : 002 Payroll 2

00127312 MUHAMMAD ALI PAYMENTS	CHIC: 1610107451377 AMOUNT	Design: MAIN SAID DEDUCTIONS	(88211091) AMOUNT	Grade: 04 NTH: LOAN/FUND	Booklet No.: PRINCIPAL	Exempted/Non-Exempted: N REPAID	BALANCE
0001 Basic Pay	21,340.00	3084 EPF Subscription	830.00-	EPF:	AGR 010613		210,195.00
1800 House Rent Allowance	1,450.00	4505 EPF Loan Principal In	8,000.00-	EPF Temp. Advance	150,000.00	96,000.00	54,000.00
1210 Convey Allowance 20	1,785.00	3501 Benevolent Fund	300.00-				
1300 Medical Allowance	1,500.00	3927 Industries (IEP)	2,000.00-				
1633 Integrated Allowance	450.00	4004 R. Benefits & Death C	300.00-				
2140 15% Adhoc Relief All	474.00						
2199 Adhoc Relief Allow &	333.00						
2211 Adhoc Relief All 201	1,479.00						
2224 Adhoc Relief All 201	2,134.00						
2247 Adhoc Relief All 201	2,134.00						
2264 Adhoc Relief All 201	2,134.00						
PAYMENTS	35,421.00	DEDUCTIONS	11,430.00-	NET PAY	23,991.00	01.09.2020	30.09.2020
Branch Code: 230365	KARDAN MAIN BRCH	NATIONAL BANK OF PAKISTAN	KARDAN MAIN BRCH	KARDAN		Acct. No: PL15000005172000	

9/10/20

00129316 MUHAMMAD ARIF PAYMENTS	CHIC: 1410111354347 AMOUNT	Design: ASSISTANT DEDUCTIONS	(88211092) AMOUNT	Grade: 18 NTH: LOAN/FUND	Booklet No.: PRINCIPAL	Exempted/Non-Exempted: E REPAID	BALANCE
0001 Basic Pay	37,150.00	3016 EPF Subscription	3,340.00-	EPF:	CA NR000493		139,501.00
1800 House Rent Allowance	2,727.00	4505 EPF Loan Principal In	6,000.00-	INCOME TAX	4,200.00	1,701.00	3,103.00
1210 Convey Allowance 20	5,000.00	3501 Benevolent Fund	200.00-	EPF Temp. Advance	200,000.00	150,000.00	50,000.00
1947 Medical Allow 15% (1)	1,260.00	3927 Industries (IEP)	3,000.00-				
2140 15% Adhoc Relief All	700.00	4004 R. Benefits & Death C	450.00-				
2199 Adhoc Relief Allow &	530.00	3609 Income Tax	567.00-				
2211 Adhoc Relief All 201	2,740.00						
2224 Adhoc Relief All 201	3,715.00						
2247 Adhoc Relief All 201	3,715.00						
2264 Adhoc Relief All 201	3,715.00						
PAYMENTS	41,340.00	DEDUCTIONS	14,357.00-	NET PAY	26,983.00	01.09.2020	30.09.2020
Branch Code: 230365	KARDAN MAIN BRCH	NATIONAL BANK OF PAKISTAN	KARDAN MAIN BRCH	KARDAN		Acct. No: 011 17320-3	

00131405 SABIN SHAN PAYMENTS	CHIC: 1710140570200 AMOUNT	Design: REGISTRAR DEDUCTIONS	(80438434) AMOUNT	Grade: 17 NTH: D LOAN/FUND	Booklet No.: PRINCIPAL	Exempted/Non-Exempted: D REPAID	BALANCE
0001 Basic Pay	31,070.00	3017 EPF Subscription	4,270.00-	EPF:	CA NR000331		184,937.00
1800 House Rent Allowance	4,433.00	3501 Benevolent Fund	300.00-	INCOME TAX	18,000.00	6,644.00	17,726.47
1210 Convey Allowance 20	5,000.00	3927 Industries (IEP)	5,000.00-				
1947 Medical Allow 15% (1)	1,244.00	4004 R. Benefits & Death C	300.00-				
2140 15% Adhoc Relief All	1,000.00	3609 Income Tax	1,540.00-				
2199 Adhoc Relief Allow &	711.00						
2211 Adhoc Relief All 201	3,636.00						
2224 Adhoc Relief All 201	5,107.00						
2247 Adhoc Relief All 201	5,107.00						
2265 Adhoc Relief All 201	2,553.00						
PAYMENTS	50,643.00	DEDUCTIONS	12,010.00-	NET PAY	38,633.00	01.09.2020	30.09.2020
Branch Code: 220505	KARDAN	KARDAN BANK LIMITED	KARDAN	KARDAN		Acct. No: 05350043619-01	

00140319 ARSHAD IQBAL PAYMENTS	CHIC: 99994089107 AMOUNT	Design: SENIOR SCALE ENGINEER(0021000) DEDUCTIONS	(80211090) AMOUNT	Grade: 16 NTH: LOAN/FUND	Booklet No.: PRINCIPAL	Exempted/Non-Exempted: A REPAID	BALANCE
0001 Basic Pay	35,630.00	3016 EPF Subscription	3,340.00-	EPF:	EPNR0000001		470,241.00

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Accounts Office Garden
PAYROLL REGISTER
For the month of September 2020

Date : 2
Eate : 29.09.2020

DDO : MR4777 Consumer Protection Court Garden	Payroll Section : 002 Payroll 2
1800 House Rent Allowance 2,727.00	3501 Benevolent Fund 800.00-
1210 Convey Allowance 20 5,000.00	3227 Industries (RDP) 2,000.00-
1300 Medical Allowance 1,500.00	4004 R. Benefits & Death C 650.00-
2148 15% Adhoc Relief All 705.00	3803 Income Tax 467.00-
2199 Adhoc Relief Allow 476.00	
2211 Adhoc Relief All 201 2,612.00	
2224 Adhoc Relief All 201 3,563.00	
2247 Adhoc Relief All 201 3,563.00	
2264 Adhoc Relief All 201 3,563.00	

INCOME TAX 5,603.00 1,401.00 4,202.00

9/10/20

PAYMENTS 59,339.00
Branch Code: 230566 SADOOR BAZAR HONS

DEDUCTIONS 7,257.00-
NATIONAL BANK OF PAKISTAN SADOOR BAZAR HONS

NET PAY 52,082.00 01.09.2020 30.09.2020
Accont. No: 2048-2

00436702 ROHIDA DARD
P A Y M E N T S

CHIC: 1730156459594 Design: SESSIONS JUDGE (80211097) Grade: 21 HTS:
A M O U N T D E D U C T I O N S A M O U N T L O A N / F U N D

Hackle No.: GARHED/Non-GarhED: 6
PRINCIPAL REPAY BALANCE

0001 Basic Pay 141,720.00	3501 Benevolent Fund 800.00-	INCOME TAX 646,819.80	155,645.00	491,174.82
1800 House Rent Allowance 11,648.00	4004 R. Benefits & Death C 2,000.00-			
1518 Entertainment Allowa 700.00	3803 Income Tax 54,575.00-			
1549 Senior Post Allowanc 1,350.00				
1874 Utility Allowance 20 30,000.00				
1947 Medical Allow 15% 4,944.00				
1951 Spl Judicial Allow 2 74,730.00				
1952 Spl Judicial Allow 5 70,060.00				
2100 Judicial Allow (Excl 14,000.00				
2148 15% Adhoc Relief All 2,422.00				
2199 Adhoc Relief Allow 6 1,778.00				
2211 Adhoc Relief All 201 9,491.00				
2224 Adhoc Relief All 201 14,132.00				
2247 Adhoc Relief All 201 14,132.00				
5855 44j Utility Allowanc 22,000.00				

INCOME TAX 646,819.80 155,645.00 491,174.82

PAYMENTS 416,175.00
Branch Code: 230304 PESHAWAR COURT

DEDUCTIONS 66,315.00-
NATIONAL BANK OF PAKISTAN PESHAWAR COURT

NET PAY 349,860.00 01.09.2020 30.09.2020
Accont. No: PL3 44780-1

00590829 ISHTIAQ ALI
P A Y M E N T S

CHIC: 1810127501267 Design: NAIB MAGIST (80439434) Grade: 02 HTS:
A M O U N T D E D U C T I O N S A M O U N T L O A N / F U N D

Hackle No.: GARHED/Non-GarhED: 6
PRINCIPAL REPAY BALANCE

0001 Basic Pay 12,720.00	3803 EPF Subscription 770.00-	EPF: 590829	72,464.00	
1800 House Rent Allowance 1,813.00	3501 Benevolent Fund 300.00-			
1210 Convey Allowance 20 1,785.00	3227 Industries (RDP) 2,000.00-			
1300 Medical Allowance 1,500.00	4004 R. Benefits & Death C 300.00-			
1833 Integrated Allowanc 650.00				
2148 15% Adhoc Relief All 270.00				
2199 Adhoc Relief Allow 6 169.00				
2211 Adhoc Relief All 201 967.00				
2224 Adhoc Relief All 201 1,273.00				
2247 Adhoc Relief All 201 1,273.00				
2264 Adhoc Relief All 201 1,273.00				

EPF: 590829 72,464.00

PAYMENTS 23,123.00
Branch Code: 220217 BANK ROAD, HARSAN

DEDUCTIONS 4,370.00-
HABIB BANK LIMITED BANK ROAD, HARSAN

NET PAY 18,753.00 01.09.2020 30.09.2020
Accont. No: 02197901034000

00852178 SAKHA
P A Y M E N T S

CHIC: 1810157301156 Design: ASSISTANT (80547710) Grade: 14 HTS:
A M O U N T D E D U C T I O N S A M O U N T L O A N / F U N D

Hackle No.: GARHED/Non-GarhED: 6
PRINCIPAL REPAY BALANCE

0001 Basic Pay 24,970.00	3816 EPF Subscription 3,340.00-	EPF: 652178	106,121.00	
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EPF: 652178 106,121.00

7

Accounts Office Nardam
PAYROLL REGISTER
For the month of September, 2020

Page : 3
Date : 29.09.2020

9/10/20

000 : BR4727 Consumer Protection Court Nardam	Payroll Section : 002 Payroll 2						
1800 House Rent Allowance	2,727.00	6505 EPF Loan Principal In	3,000.00-	EPF Temp. Advance	0158	100,000.00	0,000.00
1710 Convey Allowance 20	5,090.00	3501 Benevolent Fund	000.00-				
1300 Medical Allowance	1,500.00	3727 Industries (RPF)	5,000.00-				
2148 15% Adhoc Relief All	431.00	4004 A. Benefits & Death C	650.00-				
2199 Adhoc Relief Allow t	298.00						
2211 Adhoc Relief All 201	1,716.00						
2224 Adhoc Relief All 201	2,499.00						
2247 Adhoc Relief All 201	2,499.00						
2264 Adhoc Relief All 201	2,499.00						

PAYMENTS 44,158.00 DEDUCTIONS 12,790.00 NET PAY 31,368.00
 Branch Code: 220219 BANK ROAD, NARDAM. HABIB BANK LIMITED BANK ROAD, NARDAM. NARDAM
 Acct. No: 02197701538303

00766714 YOUSAF KHAN	CHIC: 1420219415645	Desig: CHOWKIDAR	(80211099)	Grade: 03 NTK:	Buckle No.:	Gazetted/Non-Gazetted: N
PAYMENTS	AMOUNT	DEDUCTIONS	AMOUNT	LOAN/FUND	PRINCIPAL	REPAID BALANCE
0001 Basic Pay	11,170.00	3003 EPF Subscription	770.00-			31,518.00
1800 House Rent Allowance	1,413.00	3501 Benevolent Fund	000.00-			
1710 Convey Allowance 20	1,785.00	3727 Industries (RPF)	2,000.00-			
1300 Medical Allowance	1,500.00	4004 A. Benefits & Death C	000.00-			
1516 Dress/ Uniform Allon	150.00					
1567 Washing Allowance	150.00					
2148 15% Adhoc Relief All	240.00					
2199 Adhoc Relief Allow t	155.00					
2211 Adhoc Relief All 201	836.00					
2224 Adhoc Relief All 201	1,117.00					
2247 Adhoc Relief All 201	1,117.00					
2264 Adhoc Relief All 201	1,117.00					

PAYMENTS 20,750.00 DEDUCTIONS 3,370.00 NET PAY 17,380.00
 Branch Code: 241401 Shah Mansoor Str. Suiabi NUSLIH COMMERCIAL BANK Shah Mansoor Str. Suiabi Suiabi
 Acct. No: 0041740221000959

00856304 SAR ANJAN	CHIC: 1410120710521	Desig: CHOWKIDAR	(80567721)	Grade: 03 NTK:	Buckle No.:	Gazetted/Non-Gazetted: N
PAYMENTS	AMOUNT	DEDUCTIONS	AMOUNT	LOAN/FUND	PRINCIPAL	REPAID BALANCE
0001 Basic Pay	10,350.00	3003 EPF Subscription	770.00-			29,354.00
1800 House Rent Allowance	1,413.00	3501 Benevolent Fund	000.00-			
1710 Convey Allowance 20	1,785.00	3727 Industries (RPF)	1,000.00-			
1300 Medical Allowance	1,500.00	4004 A. Benefits & Death C	000.00-			
1516 Dress/ Uniform Allon	150.00					
1567 Washing Allowance	150.00					
2148 15% Adhoc Relief All	253.00					
2199 Adhoc Relief Allow t	131.00					
2211 Adhoc Relief All 201	804.00					
2224 Adhoc Relief All 201	1,039.00					
2247 Adhoc Relief All 201	1,039.00					
2264 Adhoc Relief All 201	1,039.00					

PAYMENTS 19,725.00 DEDUCTIONS 2,370.00 NET PAY 17,355.00
 Branch Code: 220219 BANK ROAD, NARDAM. HABIB BANK LIMITED BANK ROAD, NARDAM. NARDAM
 Acct. No: 021977020384-02

00882105 MUHAMMAD ASIM	CHIC: 1410157877847	Desig: DRIVER	(80497722)	Grade: 05 NTK:	Buckle No.:	Gazetted/Non-Gazetted: N
PAYMENTS	AMOUNT	DEDUCTIONS	AMOUNT	LOAN/FUND	PRINCIPAL	REPAID BALANCE
0001 Basic Pay	11,100.00	3003 EPF Subscription	950.00-			20,187.00
1800 House Rent Allowance	1,544.00	3501 Benevolent Fund	000.00-			
1210 Convey Allowance 20	1,932.00	3727 Industries (RPF)	1,000.00-			

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Accounts Office Garden
PAYROLL REGISTER
For the month of September, 2020

Page: 4
Date: 29.09.2020

g/ok

980 : BR4727 Consumer Protection Court Garden Payroll Section : 002 Payroll 2
1300 Medical Allowance 1,500.00 4004 A. Benefits & Death C 450.00-
1567 Washing Allowance 150.00
2211 Adhoc Relief All 200 350.00
2224 Adhoc Relief All 200 1,110.00
2247 Adhoc Relief All 200 1,110.00
2264 Adhoc Relief All 200 1,110.00

PAYMENTS 20,550.00 DEDUCTIONS 3,000.00 NET PAY 17,550.00 01.09.2020 30.09.2020
Branch Code: 220219 BANK ROAD, GARDAN. BANK BANK LIMITED BANK ROAD, GARDAN. HARBAN

00910792 UMAR FAROOQ CNIC: 1412150456876 Basic: HAJR QALID (00211095) Grade: 03 NTH. LHRG/FUND
P A Y M E N T S A M O U N T D E D U C T I O N S A M O U N T P R I N C I P A L S A R T I C L E / N O N - S A R T I C L E : 6 B A L A N C E

0001 Basic Pay 10,000.00 3003 EPF Subscription 770.00-
1000 House Rent Allowance 1,413.00 3001 Conveyance Fund 300.00-
1210 Convey Allowance 20 1,785.00 3534 A. Ben & Death Camp F 300.00-
1300 Medical Allowance 1,500.00 3417 Industries (RPF) 1,000.00-
1833 Integrated Allowance 450.00
2211 Adhoc Relief All 200 300.00
2224 Adhoc Relief All 200 1,000.00
2247 Adhoc Relief All 200 1,500.00
2264 Adhoc Relief All 200 1,500.00

PAYMENTS 18,952.00 DEDUCTIONS 2,370.00 NET PAY 16,582.00 01.09.2020 30.09.2020
Branch Code: 220219 BANK ROAD, GARDAN. HARBAN BANK LIMITED BANK ROAD, GARDAN. HARBAN

00920123 AHMED KAZA SHAH CNIC: 6110145030785 Basic: ACCOUNTANT (00211093) Grade: 10 NTH. LHRG/FUND
P A Y M E N T S A M O U N T D E D U C T I O N S A M O U N T P R I N C I P A L S A R T I C L E / N O N - S A R T I C L E : 6 B A L A N C E

0001 Basic Pay 10,510.00 3003 EPF Subscription 2,340.00-
1000 House Rent Allowance 2,727.00 3001 Conveyance Fund 600.00-
1210 Convey Allowance 20 5,000.00 4004 A. Benefits & Death C 650.00-
1974 Medical Allowance 20 1,500.00
2211 Adhoc Relief All 200 1,590.00
2224 Adhoc Relief All 200 1,291.00
2247 Adhoc Relief All 200 1,871.00
2264 Adhoc Relief All 200 1,951.00

PAYMENTS 31,590.00 DEDUCTIONS 4,770.00 NET PAY 26,820.00 01.09.2020 30.09.2020
Branch Code: 422502 PAK HOTEL GARDAN, GARDAN. HARBAN BANK LIMITED PAK HOTEL GARDAN, GARDAN. HARBAN

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Urgent IMMEDIATE



GOVERNMENT OF KHYBER PAKHTUNKHWA
FINANCE DEPARTMENT

NO. BOVIII/FD/1-8(B)/2017-2018
Dated Peshawar the, 08.04.2019

To, ✓
The Section Officer (B&A)
Industries Department.

Subject:- EXCESS EXPENDITURE THAN REVISED ESTIMATES 2018-19.

I am directed to refer to the subject noted above and to state that as per attached statement, the offices of consumer courts have made excess expenditure than revised estimate 2018-19 under the object utility allowance and judicial allowances, which needs clarification.

It is, therefore, requested to send a copy of notification of Provincial Government where under the Judicial Allowance and utility allowance is permissible to the staff of consumer protection courts. If notification in this regard has not been issued, then the allowances may be discontinued and the amount drawn by the staff of consumer courts may be recovered and the same may be deposited in govt. treasury under intimation to this department on top priority basis, please.

Encl: as above. ✓

✓
(KHAN BAHADUR)
BUDGET OFFICER-VIII

ACCOUNTS OFFICER
Office of Accountant General
Khyber Pakhtunkhwa Peshawar

ASIA

Stamp: RECEIVED
Office of Accountant General
Khyber Pakhtunkhwa Peshawar



IN THE COURT OF
JUDGE CONSUMER COURT MARDAN.

Phone no.09379230729 09379230330

NO. 41/1/1 Gen: C.Court (M). *By hand*

Dated 17.04.2019.

TO,

The Budget Officer, VIII
Finance Department Khyber Pakhtunkhwa
Peshawar.

Subject: RELEASE OF REVISED ESTIMATES 2018-19.

I am directed to refer to your letter No. BOVIII/FD/1-8/2018-2019/RE, dated 26.03.2019, on the subject cited above.

In this connection it is pointed out that there is no budget for staff of the Court in the revised estimate for the year 2018-19 under head A01241-Utility Allowance and A01248-Judicial Allowance have not been allocated. It is therefore requested that a sum of Rs.338101 U/Head A01241-Utility Allowance and Rs.509874/- U/Head A01248-Judicial Allowance, may kindly be allocated to meet the requirements of this Court.

*DDO Code
MR 4727.*


Registrar
Consumer Court Mardan.

Hala o/c

2. April
2019
Consumer Court

To,

Secretary Law and Parliamentary Affairs/ Secretary Industries
Khyber Pakhtunkhwa, Civil Secretariat,
Peshawar.

Aux J
81

Subject: Departmental Appeal for declaring the impugned order of withdraw/deduction at the rate of Rs.6000/- per month mentioned in pay slips for the month of August 2020 are illegal, without lawful authority and of no legal effect may please be set aside. And further the appellant may please be treated at par with other employees of Courts, subordinate legal staff and para-legal staff of all Courts in matter of judicial allowances and utility allowances.

Sir:

Appellants humbly submits as under:-

- 1) That appellants are employees in Consumer Courts, Mardan.
- 2) That the Consumer Court has been established as per Consumer Protection Act.
- 3) That the National Judicial Policy Making Committee (NJPMC) in its meeting held on 10.02.2007 under the Chairmanship of the Hon'ble Chief Justice of Pakistan NJPHC approved the judicial allowance to subordinate Courts Staff to the extent of 20% of running basis pay and utility allowances to the extent of 10% of running basic pay, but not less than Rs.1000/- to the staff in BPS-1 to BPS-16.
- 4) That aforementioned decision of NJPMC was adopted by Govt. of NWFP, now KP and the above allowances were granted to Judicial Officer as well as Staff of Subordinate Courts vide 2 notifications.

- 82
- 83
- 5) That the above facility is provided to staff of Attorney General.
 - 6) That the allowances were granted to the Advocate General KP Office as well.
 - 7) That Lahore High Court in WP No.1484/2008 granted the same relief to employees of Federal Service Tribunal on the strength of decision of Attorney General.
 - 8) That hon'ble Peshawar High Court granted allowance vide judgment dated April to employees of District Judiciary in District Peshawar, Mardan and all Districts of KP.
 - 9) That Hon'ble Peshawar High Court, Peshawar granted the allowances to para-legal staff of Provincial Anti-Corruption Court, KP Service Tribunal, Labour Court.
 - 10) That petitioner filed WP No.4141-P/2016 and as a result of the writ petition, respondents granted the allowances to appellants and in presence of AAG vide order dated 10.04.2018 of Hon'ble Peshawar High Court, Peshawar as the purpose was achieved.
 - 11) That respondents vide order dated June in pay slips for the month of August 2016 stopped the payment of utility/ judicial allowance and started recovery from appellants, which is illegal, against law and facts.
 - 12) That Judge Consumer Court addressed letter dated 17-4-2019 to Budget Officer, but in vain.
 - 13) That finding, no other efficacious remedy, appellants approaches before your honor on following grounds:-

GROUNDS:

Q3

- A) Because admittedly judicial allowance, utility allowance is granted on the basis of judicial work as per notifications, judgments referred above.
- B) Because appellants are also performing judicial duties like the staff of District & Sessions Court, Service Tribunal, Labour Court, Anti-Corruption Court.
- C) Because appellants are also entitled for continuance of the same allowance as granted to other subordinate staff of other Courts in province and even in Pakistan.
- D) Because appellants are not dealt as per law, violating Article 4 of Constitution of Pakistan, 1973.
- E) Because appellants are discriminated, unfirming Article 25/27 of the Constitution of Islamic Republic of Pakistan, 1973.
- F) Because Article 3 of the Constitution embedded to eliminate all sort of exploitations.
- G) Because s per PLD 1992 SC Nil, allowance once granted, can't be withdrawn.
- H) Because impugned orders are without lawful authority.
- I) Because appellants requests for raising other grounds at the time of arguments.

PRAYER

It is, therefore, humbly prayed that, on acceptance of this appeal:-

- i. *The impugned order of withdraw/ deduction at the rate of Rs. 6000 /- per month mentioned in pay slips for the month of Aug 2020 is illegal, without lawful authority and of no legal effect may please be set-aside.*
- ii. *Appellants may please be treated at par with other employees of Courts, subordinate legal*

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staff and para-legal staff of all Courts in matter of judicial allowances and utility allowances.

(6)

Appellants
Employees of Consumer Protection Court, Mardan.

1. Ahmad Raza Shah, Assistant

Ahmad

2. Sabir Shah, Assistant

Sabir

3. Muhammad Arif, Assistant

Arif

4. Mst. Salma, Assistant

Salma

5. Arshad Iqbal, Assistant

Arshad

6. Mr. Zulfiqar Ali, Senior Scale Stenographer

Zulfiqar

7. Mushtaq Ali, Naib Qasid

مشتاق علی

8. Ishtiaq Ali, Naib Qasid

اشتیاق علی

9. Umar Farooq, Naib Qasid

Umar

10. Yousaf Khan, Naib Qasid

Yousaf

11. Sarnjam, Chowkidar

Sarnjam

12. Muhammad Asim, Driver

Asim

✓ (13)

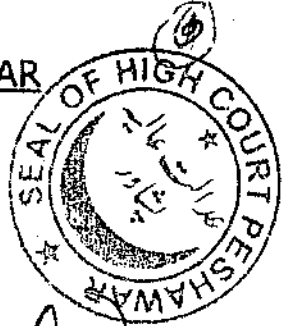
Shah Mahmood

Shah Mahmood

Date 23/9/2020

Consumer Protection Court

BEFORE THE PESHAWAR HIGH COURT, PESHAWAR



Writ Petition No 4635-P/2020

Aux (K) (85)

1. Ahmad Raza Shah, Assistant
 2. Sabir Shah, Assistant
 3. Muhammad Arif, Assistant
 4. Mst. Salma, Assistant
 5. Arshad Iqbal, Assistant
 6. Mr. Zulfiqar Ali, Senior Scale Stenographer
 7. Mushtaq Ali, Naib Qasid
 8. Ishtiaq Ali, Naib Qasid
 9. Umar Farooq, Naib Qasid
 10. Yousaf Khan, Naib Qasid
 11. Sarnjam, Chowkidar
 12. Muhammad Asim, Driver
 13. Shah Mehmood, Driver
- All employees of Consumer Protection Court,
Mardan.

.....Petitioner

VERSUS

- 1) Government of Khyber Pakhtunkhwa through Secretary Law and Parliamentary Affairs, Khyber Pakhtunkhwa Civil Secretariat, Peshawar
- 2) Secretary Industries, Khyber Pakhtunkhwa Civil Secretariat, Peshawar
- 3) Secretary Finance, Govt. of Khyber Pakhtunkhwa, Civil Secretariat, Peshawar
- 4) Budget Officer-VIII, Finance Department, Khyber Pakhtunkhwa Peshawar.
- 5) Accountant General, Khyber Pakhtunkhwa, Peshawar
- 6) Accountant Officer, Mardan.

M. G.
ATTESTED
EXAMINER
Peshawar High Court

- 7) District Account Officer, Nowshera.
8) Auditor Account Office, Mardan.

.....Respondents

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

Sir:

Petitioners humbly submit as under:-

- 1) That petitioners are employees in Consumer Court, Mardan. **(Copies of appointment letters are Annex "A")**
- 2) That the Consumer Court has been established as per Consumer Protection Act. **(Copy of Consumer Protection Act is Annex "B")**
- 3) That the national Judicial Policy Making Committee (NJPMC) in its meeting held on 10.02.2007 under the Chairmanship of the Hon'ble Chief Justice of Pakistan NJPHC approved judicial allowance to subordinate Courts Staff to the extent of 20% of running basic pay and utility allowances to the extent of 10% of running basic pay, but not less than Rs.1000/- to the staff in BPS-1 to BPS-16. **(Copy of decision of Committee is Annex "C")**
- 4) That aforementioned decision of NJPMC was adopted by Govt. of NWFP, now KP and the above allowances were granted to Judicial Officer as well as Staff of Subordinate Courts

M. A.
ATTESTED
EXAMINER
Peshawar High Court

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vide 2 notifications. **(Copy of notifications is Annex "D")**

- 5) That the above facility is provided to staff of Attorney General.
- 6) That the allowances were granted to the Advocate General KP Office as well.
- 7) That Lahore High Court in WP No.1484/2008 granted the same relief to employees of Federal Service Tribunal on the strength of decision of Attorney General. **(Copy of judgment dated 12.10.2012 of Hon'ble Lahore High Court is Annex "E")**
- 8) That hon'ble Peshawar High Court granted allowance vide judgment dated 18.09.2012 to employees of District Judiciary in District Peshawar, Mardan and all Districts of KP. **(Copy of judgment dated 18.09.2012 is Annex "F")**
- 9) That Hon'ble Peshawar High Court, Peshawar granted the allowances to para-legal staff of Provincial Anti-Corruption Court, KP Service Tribunal, Labour Court. **(Copy of judgment dated 01.10.2013 of Peshawar High Court is Annex "G")**
- 10) That petitioner filed WP No.4141-P/2016 and as a result of the writ petition, respondents granted the allowances to petitioners and in presence of AAG vide order dated 10.04.2018 of Hon'ble Peshawar High Court, Peshawar as the purpose was achieved. **(Copy of order dated 10.04.2018 is Annex "H", Copies of grant**

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ATTESTED
EXAMINER
Peshawar High Court

of allowances alones in pay slips are Annex "I")

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- 11) That respondents vide order dated 6000 in pay slips for the month of August 2020 stopped the payment of utility/ judicial allowance and started recovery from petitioners, which is illegal, against law and facts. (Copy of pay slips containing order of recovery is Annex "J")
- 12) That Judge Consumer Court addressed letter dated 17.04.2019 to Budget Officer, but in vain. (Copy of letter dated 17.04.2019 is Annex "K")
- 13) That the petitioners filed departmental appeal dated 23.09.2020 to the Secretary Law/Industries, but in vain. (Copy of appeal to Secretary Law/ Industry dated 23.09.2020 is Annex "L")
- 14) That finding no other efficacious remedy, petitioner approaches this hon'ble Court on following grounds:-

GROUNDS:

- A) Because admittedly judicial allowance, utility allowance is granted on the basis of judicial work as per notifications, judgments referred above.
- B) Because petitioners are also performing judicial duties like the staff of District & Sessions Court, Service Tribunal, Labour Court, Anti-Corruption Court.

MAJ
ATTESTED
EXAMINER
Peshawar High Court

- (89) (8)
- C) Because petitioners are also entitled for continuance of the same allowance as granted to other subordinate staff of other Courts in province and even in Pakistan.
- D) Because petitioners are not dealt as per law, violating Article 4 of Constitution of Pakistan, 1973.
- E) Because petitioners are discriminated, unfirming Article 25/27 of the Constitution of Islamic Republic of Pakistan, 1973.
- F) Because Article 3 of the Constitution embedded to eliminate all sort of exploitations.
- G) Because s per PLD 1992 SC, allowance once granted, can't be withdrawn.
- H) Because impugned orders are without lawful authority.
- I) Because petitioners requests for raising other grounds at the time of arguments.

PRAYER

It is, therefore, humbly prayed that, on acceptance of this writ petition:-

- i. The impugned order of withdraw/ deduction at the rate of Rs.6000/- per month mentioned in pay slips for the month of August 2020 is illegal, without lawful authority and of no legal effect may please be set-aside.***
- ii. Petitioners may please be treated at par with other employees of Courts, subordinate legal staff and***

May
ATTESTED
EXAMINER
Peshawar High Court

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para-legal staff of all Courts in matter of judicial allowances and utility allowances.

iii. Any other relief deemed fit in the circumstances of the case may also be granted.

INTERIM RELIEF

Impugned order of stoppage/ withdrawal of judicial allowance/ utility allowance may please be suspended till decision of the case.

Petitioners
Through

Amjad Ali (Mardan)
Advocate
Supreme Court of Pakistan

CERTIFICATE:

It is certify that, no such like writ petition has earlier been filed by the petitioner(s) in this Hon'ble Court.

Advocate

LIST OF BOOKS:

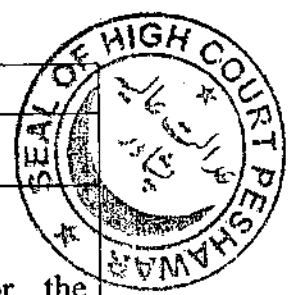
- 1) Constitution of Islamic Republic of Pakistan, 1973.
- 2) Law books as per need.

Amjad Ali
Advocate
Supreme Court of Pakistan

14 JUN 2021

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PESHAWAR HIGH COURT, PESHAWAR
FORM OF ORDER SHEET



Date of Order of Proceedings	Order of other Proceedings with Signature of Judge.
1	2
08.06.2021	<p>WP No. 4635-P of 2020</p> <p>Present: Mr. Anjad Ali, advocate, for the petitioners.</p> <p>Syed Sikandar Hayat Shah, AAG, for the respondents.</p> <p>*****</p> <p>The learned AAG is directed to ensure that the comments of the concerned respondents are filed within a fortnight. Adjourned to a date in office. In the meanwhile, the respondents are restrained from the recovery of the amount already received by the petitioners.</p> <p style="text-align: center;">CHIEF JUSTICE</p> <p style="text-align: center;">JUDGE</p>

EXHIBIT

[Signature]

14 JUN 2021

No. 38327

Date of Presentation 14/6/21

No. of Pages 38

Copying for 5

Total 28

Date of Preparation of 14/6/21

Date of Delivery of Copy 14/6/21

Received By [Signature]

"Younas"

[Signature] (DB) Hon'ble Mr. Justice Qaiser Rashid Khan, CJ
Hon'ble Mr. Justice Ijaz Anwar, J.

PESHAWAR HIGH COURT, PESHAWARORDER SHEET

Aux (L)
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Date of order or proceedings	Order or other proceedings with signature of Judge or Magistrate and that of parties or counsel where necessary.
1.	2.
23.11.2022	<p><u>WP No.4635-P/2020 with IR.</u></p> <p><u>Present:</u> Mr. Amjad Ali, Advocate for the petitioners.</p> <p>Syed Qaiser Ali Shah, AAG along with M/S Muhammad Mansoor, Assistant Director and Jan Gul, Section Officer (Litigation), Industries Department, Government of KPK.</p> <p>*****</p> <p><u>QAISER RASHID KHAN, CJ.-</u> Through the petition in hand, the petitioners have prayed as under:-</p> <ul style="list-style-type: none"> ➤ The impugned order of withdrawal / deduction at the rate of Rs.6000/- per month mentioned in pay slips for the month of August, 2020 is illegal, without lawful authority and of no legal effect may please be set-aside; and ➤ Petitioners may please be treated at par with other employees of courts, subordinate legal staff and para-legal staff of all courts in matter of judicial allowance and utility allowances. <p>2. During the course of arguments, the learned counsel for the petitioners states that the appeal / representation of the petitioners is pending adjudication before the respondent No.1, which has not as yet been decided. Such fact is also affirmed by the</p>

learned AAG.

3. Such being the case, we dispose of the instant petition in terms of directing the respondent No.1 to decide the departmental appeal / representation of the petitioners in accordance with law through a speaking order positively within a month, after the receipt of the judgment of this court. Thereafter, the petitioners may have recourse for the redressal of their grievance before the proper forum, if so advised.

Announced.
Dated: 23.11.2022.


CHIEF JUSTICE


JUDGE

Altaf Hussain, SCS

(DB) Chief Justice Qaiser Fazlaid Khan
Justice S.M. Atiqul Haq

Attested
Sealed by
High Court

عمران

Aux (M)
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**BEFORE THE HONOURABLE PESHAWAR HIGH COURT,
PESHAWAR**



Review Petition No. _____ /2022

The Government of Khyber Pakhtunkhwa through Secretary Law and
Parliamentary Affairs Department & others Petitioners (In Review)

Versus

Ahmad Raza Shah & others Respondents (In Review)

IN

WP No.4635-P/2020

1. Ahmad Raza Shah, Assistant.
 2. Sabir Shah, Assistant.
 3. Muhammad Arif, Assistant.
 4. Mst. Salma, Assistant.
 5. Arshad Iqbal, Assistant.
 6. Mr. Zulfiqar Ali, Senior Scale Stenographer.
 7. Mushtaq Ali, Naib Qasid.
 8. Ishtiaq Ali, Naib Qasid.
 9. Umar Farooq, Naib Qasid.
 10. Yusef Khan, Naib Qasid.
 11. Samjam, Chowkidar.
 12. Muhammad Asim, Driver.
 13. Shah Mehmood, Driver.
- All employees of Consumer Protection Court, Mardan. Petitioners

Versus

1. The Government of Khyber Pakhtunkhwa, through Secretary Law and Parliamentary Affairs Department, Civil Secretariat, Peshawar.
2. The Secretary to Government of Khyber Pakhtunkhwa Industries Department, Civil Secretariat, Peshawar.
3. The Secretary to Government of Khyber Pakhtunkhwa Finance Department, Civil Secretariat, Peshawar.

ATTESTED
EXAMINER
Peshawar High Court

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4. The Budget Officer-VIII, Finance Department, Khyber Pakhtunkhwa, Peshawar.
 5. The Accountant General, Khyber Pakhtunkhwa, Peshawar.
 6. The Account Officer, Mardan.
 7. The District Account Officer, Nowshera.
 8. The Auditor Account Office, Mardan.

.....Respondents

REVIEW PETITION U/S 114 OF C.P.C READ WITH ORDER 47 OF C.P.C TO REVIEW THE JUDGMENT/ORDER DATED 23/11/2022 PASSED BY THIS HON'BLE COURT IN WRIT PETITION NO.4635-P/2020 TITLED AS 'AHMAD RAZA SHAH & OTHERS VS GOVERNMENT OF KHYBER PAKHTUNKHWA THROUGH SECRETARY LAW AND PARLIAMENTARY AFFAIRS DEPARTMENT & OTHERS WHEREBY THIS HON'BLE COURT DISPOSED OFF THE TITLED WRIT PETITION WITH THE DIRECTION TO PRESENT PETITIONER NO.1 (IN REVIEW) TO DECIDE THE DEPARTMENTAL APPEAL/REPRESENTATION OF RESPONDENTS (IN REVIEW) WITHIN STIPULATED TIME PERIOD OF ONE MONTH.

PRAYER:-

ON ACCEPTANCE OF THIS REVIEW PETITION THE IMPUGNED JUDGMENT/ORDER DATED 23/11/2022 PASSED BY THIS HON'BLE COURT IN WRIT PETITION NO.4635-P/2020 MAY KINDLY BE REVIEWED AND THE WRIT PETITION FILED BY THE RESPONDENTS (IN REVIEW) BEING INCORRECT, TIME BARRED, BASELESS, FRIVOLOUS, ILLEGAL, WITHOUT ANY SUBSTANCE AND AGAINST THE RECORD, MAY GRACIOUSLY BE DISMISSED WITH HEAVY COST.

RESPECTFULLY SHEWETH:-

FACTS:-

1. That the Respondents (In Review) filed Writ Petition No.4635-P/2020 against the Petitioners (In Review) the detail of which has been given in the Writ Petition. (Copy of Writ Petition No.4635-P/2020 is annexed as "A")

2/6
D

2. That the present Petitioners (In Review) being Respondents in the main Writ Petition were summoned appeared before this Hon'ble Court and vehemently denied the claim of Respondents (in Review) by filing separate parawise comments/replies wherein several legal and factual objections were raised. (Copies of Parawise Comments/replies are annexed as "B")
3. That after hearing arguments, this Hon'ble Court disposed off the titled Writ Petition with the direction to present Petitioner No.1 (In Review) to decide the Departmental Appeal/Representation of Respondents (In Review) within stipulated time period of one month vide Judgment/Order dated 23/11/2022 impugned herein. (Copy of Impugned Judgment/Order dated 23/11/2022 annexed as "C").
4. That the present Petitioners (in Review) being aggrieved & dissatisfied from the impugned Judgment/Order dated 23/11/2022 passed by this Hon'ble Court in Writ Petition No.4635-P/2020 seek the Review of Judgment/Order dated 23/11/2022 on the following grounds amongst others:-

GROUND:-

- A. That the impugned Judgment/Order dated 23/11/2022 passed by this Hon'ble Court in WP No.4635-P/2020 is against facts and record available on case file, therefore, is liable to be reviewed.
- B. That although the present Petitioner No.1 has been arrayed as party in the titled case but his point of view was not taken into account during the proceedings while passing the impugned Judgment/Order.
- C. That the impugned Judgment/Order dated 23/11/2022 is the result of misreading/non-reading of the available record, hence, liable to be reviewed.
- D. That the Respondents (In Review) concealed material facts from this Hon'ble Court, in fact they did not submit any departmental appeal/representation before the Petitioner No.1 (In Review), furthermore, they are the employees of Industries Department and

ATTESTED
EXAMINER
Peshawar High Court

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Law Parliamentary Affairs & Human Rights Department has not been concerned, thus, they obtained the impugned Judgment/Order dated 23/11/2022 by setting up a false claim, therefore the impugned Judgment/Order is liable to be reviewed.

E. That the Respondents (In Review) were required under the law *ibid* to have agitated their grievance if any at the relevant time at proper forum but they came to this Hon'ble Court without availing the first available remedy and brought a baseless and frivolous case against the present Petitioners (in Review) but this aspect of the case was ignored while passing the impugned Judgment/Order dated 23/11/2022.

F. That the Writ Petition filed by the Respondents (in Review) is not maintainable as necessary parties required under section 79 of C.P.C and under Article 174 of the Constitution of Islamic Republic of Pakistan 1973 have not been impleaded but this Hon'ble Court did not look into consideration this legal aspect of the case while passing the impugned Judgment/Order dated 23/11/2022.

G. That a large number of employees are serving in Consumer Protection Courts and if the Respondents (In Review) are held entitled for grant of the Judicial and Utility allowances it will be a great financial burden on the Government exchequer and it will open a flood gate, on this score the impugned Judgment/Order dated 23/11/2022 is liable to be reviewed.

H. That this Hon'ble Court has not appreciated the authentic record in its true spirit and unnecessarily relied upon the unauthentic and uncorroborated record of the Respondents (In Review), thus, the impugned Judgment/Order is not sustainable in the eyes of law and liable to be reviewed.

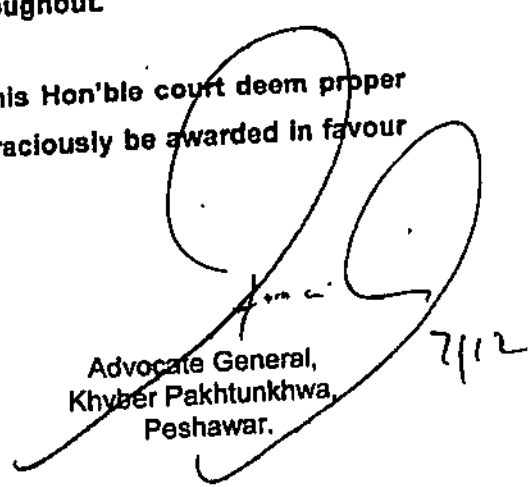
I. That the Respondents (In Review) did not annex even a single document in support of their stance and have miserably failed to prove their case through cogent and reliable record, therefore, the impugned Judgment/Order is untenable.

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(5)

- J. That it is in the interest of justice that the impugned Judgment/ Order dated 23/11/2022 passed in WP No.4635-P/2020 may kindly be reviewed.
- K. That the Respondents (In Review) are not entitled for any relief under the law.
- L. That apart from the above mentioned submissions the counsel for the Petitioners (in Review) may kindly be allowed to raise additional grounds at the time of arguments with the permission of this Hon'ble Court.

It is, therefore, humbly prayed that on acceptance of this Review Petition the impugned Judgment/Order dated 23/11/2022 passed by this Hon'ble Court in WP No.4635-P/2020 may kindly be reviewed and the Writ Petition filed by the Respondents (in Review) being incorrect, time barred, baseless, frivolous, illegal, without any substance and against the record, may graciously be dismissed with heavy cost throughout.

Any other remedy which this Hon'ble court deem proper in the circumstances may also graciously be awarded in favour of the Petitioners (in Review).


Advocate General,
Khyber Pakhtunkhwa,
Peshawar.

ATTESTED
EXAMINED
Peshawar High Court

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BEFORE THE HONOURABLE PESHAWAR HIGH COURT,
PESHAWAR

Review Petition No. _____ /2022

The Government of Khyber Pakhtunkhwa through Secretary Law and
Parliamentary Affairs Department & othersPetitioners (in Review)

Versus

Ahmad Raza Shah & othersRespondents (in Review)

IN

WP No.4635-P/2020

FITNESS CERTIFICATE

It is certified that the above titled Review Petition is fit case for
review of the Judgment/Order dated 23/11/2022 passed by this Hon'ble
Court in WP No.4635-P/2020 and no such like Review Petition has earlier
been filed against the said Judgment/Order.

Advocate General,
Khyber Pakhtunkhwa,
Peshawar

ATTESTED
EXAMINER
Peshawar High Court

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(7)

**BEFORE THE HONOURABLE PESHAWAR HIGH COURT,
PESHAWAR**

Review Petition No. _____/2022

The Government of Khyber Pakhtunkhwa through Secretary Law and
Parliamentary Affairs Department & others

Versus

Ahmad Raza Shah & others

IN

WP No.4635-P/2020

ADDRESSES OF PARTIES

PETITIONERS IN REVIEW:-

1. The Government of Khyber Pakhtunkhwa, through Secretary Law and Parliamentary Affairs Department, Civil Secretariat, Peshawar.
2. The Secretary to Government of Khyber Pakhtunkhwa Industries Department, Civil Secretariat, Peshawar.
3. The Secretary to Government of Khyber Pakhtunkhwa Finance Department, Civil Secretariat, Peshawar.
4. The Budget Officer-VIII, Finance Department, Khyber Pakhtunkhwa, Peshawar.
5. The Accountant General, Khyber Pakhtunkhwa, Peshawar.
6. The Account Officer, Mardan.
7. The District Account Officer, Nowshera.
8. The Auditor Account Office, Mardan.

RESPONDENTS IN REVIEW:-

1. Ahmad Raza Shah, Assistant.
2. Sabir Shah, Assistant.
3. Muhammad Arif, Assistant.
4. Mst: Salma, Assistant.
5. Arshad Iqbal, Assistant.
6. Mr. Zulfiqar Ali, Senior Scale Stenographer.
7. Mushtaq Ali, Naib Qasid.
8. Ishtiaq Ali, Naib Qasid.
9. Umar Farooq, Naib Qasid.
10. Yousaf Khan, Naib Qasid.
11. Samjam, Chowkidar.
12. Muhammad Asim, Driver.
13. Shah Mehmood, Driver,
All employees of Consumer Protection Court, Mardan.

Advocate General,
Khyber Pakhtunkhwa,
Peshawar.

7/12

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BEFORE THE PESHAWAR HIGH COURT, PESHAWAR

Review Petition No. _____/2022 in Writ Petition No. 4635-P/2020

Government of Khyber Pakhtunkhwa through Secretary Law, Parliamentary Affairs and Human Rights Department and others Respondents.

VERSUS

Ahmad Raza Shah Petitioner.

AFFIDAVIT

80117

I, Muhammad Ismail Khalil, Superintendent (Lit), Law Department do hereby solemnly affirm and declare on oath that contents of Review Petition on behalf of Secretary to Government of Khyber Pakhtunkhwa, Law, Parliamentary Affairs and Human Rights Department (Respondent No. 1), are true to the best of my knowledge and belief that nothing has been concealed from this Hon'ble Court.

Deponent

NIC No. 17301-0876331-9
Cell# 03459782603

Identified by

for
Advocate General,
Khyber Pakhtunkhwa,
Peshawar.

No. 25326
Certified
affirmation bet. ...
day of Dec
at Supd
who was id.
who is present

solemly
M. Ismail Khalil
Peshawar
D.R.

06/12/2022

TO BE TRUE COPY

22 MAR 2023

PESHAWAR HIGH COURT, PESHAWAR

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ORDER SHEET

Date of order or proceedings	Order or other proceedings with signature of Judge or Magistrate and that of parties or counsel where necessary.
1.	2.
09.03.2023	<p><u>Review Petition No.180-P/2022 with CM No.85-P/2022 in WP No.4635-P/2020 (D).</u></p> <p><u>Present:</u> Syed Sikandar Hayat Shah, AAG for the petitioners along with Mr. Muhammad Mansoor, AD (Litigation), Director General, Industries Department and Mr. Azimullah Khan, Assistant Law Officer (Litigation), Law and Parliamentary Affairs Department, KPK.</p> <p>Nemo for the respondents.</p> <p>*****</p> <p><u>QAISER RASHID KHAN, CJ.-</u> Through the petition in hand, the petitioner seeks the review of the judgment of this court dated 23.11.2022 in WP No.4635-P/2020 only to the extent that this court while disposing of the writ petition had issued directions to respondent No.1 to decide the pending department appeal / representation of the petitioners in accordance with law. However, the concerned competent authority is respondent No.2, i.e. Secretary Industries, Khyber Pakhtunkhwa, Civil Secretariat, Peshawar.</p> <p>2. The learned AAG, at the very outset,</p>



Ataf Hussain, SCS

(DB) Chief Justice Qaiser Rashid Khan,
Justice Ijaz Anwar


ATTESTED
EXAMINER
Peshawar High Court


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states that the same has been done administratively and presently, the appeal / representation of the petitioners is placed before the Secretary Industries, KPK for its decision in accordance with law. We understand that there is no occasion for the Advocate General's Office to file review petition in such like matters.

3: Accordingly, this petition stands disposed of.

Announced.
Dated: 09.03.2023.


CHIEF JUSTICE


JUDGE

CERTIFIED TO BE TRUE COPY
Examined by
Peshawar High Court
Authorised Under Article 57 of the
Constitution of Pakistan Order 1981
22 MAR 2023

Atiq Huzaini, SCS

(D8) Chief Justice Qasim Raza Khan
Justice Ijaz Awan

76487
Date of Presentation of Application 22-03-2023
No of Pages 10-0
Copying fee 10-00
Total 22-03-2023
Date of Preparation of Copy 22-03-2023
Date of Delivery of Copy 22-03-2023
Received By / moqam

Office of the
Accountant General
Khyber Pakhtunkhwa Peshawar
Phone: 091 9211250-53

Aux ^(N)
⁽¹⁰⁴⁾

NO.H-24(78)DAO KOHAT/343-344

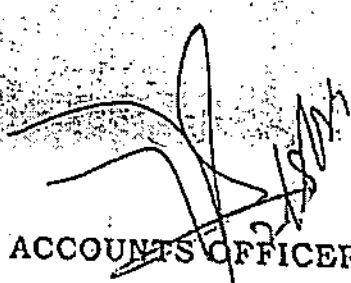
Dated:31.07.2024

To

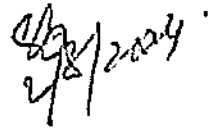
The District Comptroller of Accounts,
Kohat.


Subject:- GRANT OF JUDICIAL ALLOWANCE AND UTILITY ALLOWANCE.

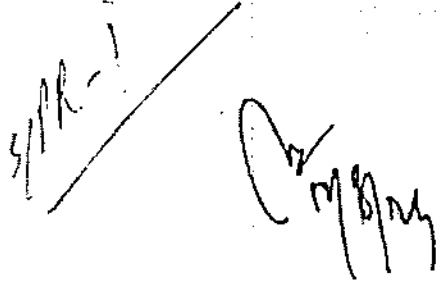
The undersigned is directed to refer to your letter No.01/DCA/KT/PR-1/2023-24 dated 01.07.2024 on the above noted subject and to state that the said allowance is admissible to Peshawar High Court and its sub-ordinate judiciary only (copy enclosed), and since Consumers Courts are working under the jurisdiction of Industries Department, therefore, the staff of the Consumers Courts are not entitled to the subject allowances, with the exception of judges staff.


ACCOUNTS OFFICER (HAD)

Copy for information and necessary action to all DAO's.


2/8/2024


2/8/24


2/8/24

Aux (0)

105

Overpayment due to payment of judicial allowance amounting to Rs. 1.152 million

According to the clarification of the Accountant General Khyber Pakhtunkhwa vide letter No. H-24(78)DAO Kohat/343-344 dated 31.07.2024, the Judicial allowance is not admissible to the staff of Consumer Protection Court except the judges of the said courts.

During the certification audit of the District Comptroller of Accounts Mardan for the financial year 2023-24, it was noticed that a sum of Rs. 1.152 million was irregularly paid on account of judicial allowance to the staffs of the Consumers Protection Court Mardan in violation of the above mentioned notification which resulted into overpayment of Rs. 1.152 million.

Pers.no.	Name	BPS	Cost Center Description	Amount	Total
766714	YOUSAF KHAN	Grade 03	Consumer Protection Court Mardan	6,000.00	72,000.00
590829	ISHTIAQ ALI	Grade 03	Do	6,000.00	72,000.00
652176	SALMA	Grade 16	Do	9,000.00	108,000.00
127312	MUSHTAQ ALI	Grade 04	Do	6,000.00	72,000.00
129316	MOHAMMAD ARIF	Grade 16	Do	9,000.00	108,000.00
967497	SAJID ALI	Grade 03	Do	6,000.00	72,000.00
967499	FAZAL DAYAN	Grade 04	Do	6,000.00	72,000.00
967502	BAKHT ZADA	Grade 03	Do	6,000.00	72,000.00
967505	MUHAMMAD IRFAN	Grade 04	Do	6,000.00	72,000.00
50511798	SHADMAN KHAN	Grade 16	Do	9,000.00	108,000.00
856304	SAR ANJAM	Grade 03	Do	6,000.00	72,000.00
882105	MUHAMMAD ASIM	Grade 06	Do	6,000.00	72,000.00
910792	UMAR FAROOQ	Grade 03	Do	6,000.00	72,000.00
915466	SHAH MAHMOOD	Grade 14	Do	9,000.00	108,000.00

The matter is brought to the notice for recovery under intimation to audit.

The lapse occurred due to weak internal control.

[Signature]
Audit Officer Inspection

[Signature]
23/8

106

Overpayment due to payment of Utility allowance amounting to Rs. 1.132 million

According to the clarification of the Accountant General Khyber Pakhtunkhwa vide letter No 24(7S)DAO Kohat/343-344 dated 31.07.2024, the Utility Allowance is not admissible to the of Consumer Protection Court except the judges of the said courts.

During the certification audit of the District Comptroller of Accounts Mardan for the finance year 2023-24, it was noticed that a sum of Rs. 1.320 million was irregularly paid on account utility allowance to the staffs of the Consumers Protection Court Mardan in violation of the above mentioned notification which resulted into overpayment of Rs. 1.320 million.

The matter is brought to the notice for recovery under intimation to audit.

The lapse occurred due to weak internal control.

Audit Officer Inspection

See/don't
Mr 4/8

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Consumer Protection Court Mardan <consumercourt.mrd@gmail.com>

CHANGES ALERT - MR4727 Dated 24.08.2024

1 message

Employee Services <SERVICES@pifra.gov.pk>
To: CONSUMERCOURTMRD@gmail.com

Sat Aug 24, 2024 at 6:19 PM

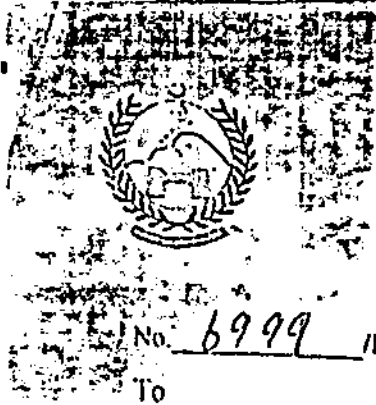
00127312 MUSHTAQ ALI
00127312 3905 (Justice(ROP)) Monthly deduction amount changed to PKR 12000.00- w.e.f 01.08.2024 to 31.07.2025
00129316 MOHAMMAD ARIF
00129316 3905 (Justice(ROP)) Monthly deduction amount changed to PKR 23000.00- w.e.f 01.08.2024 to 31.07.2025
00590829 ISHTIAQ ALI
00590829 3905 (Justice(ROP)) Monthly deduction amount changed to PKR 12000.00- w.e.f 01.08.2024 to 31.07.2025
00652176 SALMA
00652176 3905 (Justice(ROP)) Monthly deduction amount changed to PKR 21000.00- w.e.f 01.08.2024 to 31.07.2025
00766714 YOUSAF KHAN
00766714 3905 (Justice(ROP)) Monthly deduction amount changed to PKR 12000.00- w.e.f 01.08.2024 to 31.07.2025
00856304 SAR ANJAM
00856304 3905 (Justice(ROP)) Monthly deduction amount changed to PKR 12000.00- w.e.f 01.08.2024 to 31.07.2025
00882105 MUHAMMAD ASIM
00882105 3905 (Justice(ROP)) Monthly deduction amount changed to PKR 12000.00- w.e.f 01.08.2024 to 31.07.2025
00910792 UMAR FAROOQ
00910792 3905 (Justice(ROP)) Monthly deduction amount changed to PKR 12000.00- w.e.f 01.08.2024 to 31.07.2025
00915466 SHAH MAHMOOD
00915466 3905 (Justice(ROP)) Monthly deduction amount changed to PKR 19000.00- w.e.f 01.08.2024 to 31.07.2025
00967497 SAJID ALI
00967497 3905 (Justice(ROP)) Monthly deduction amount changed to PKR 12000.00- w.e.f 01.08.2024 to 31.07.2025
00967499 FAZAL DAYAN
00967499 3905 (Justice(ROP)) Monthly deduction amount changed to PKR 12000.00- w.e.f 01.08.2024 to 31.07.2025
00967502 BAKHT ZADA
00967502 3905 (Justice(ROP)) Monthly deduction amount changed to PKR 12000.00- w.e.f 01.08.2024 to 31.07.2025
00967506 MUHAMMAD IRFAN
00967506 3905 (Justice(ROP)) Monthly deduction amount changed to PKR 12000.00- w.e.f 01.08.2024 to 31.07.2025
50511798 SHADMAN KHAN
50511798 3905 (Justice(ROP)) Monthly deduction amount changed to PKR 23000.00- w.e.f 01.08.2024 to 31.07.2025

یہ ای میل خودکار نظام سے تحت بھیجی جا رہی ہے جس کا مقصد ڈی ڈی او کو ملازمین کی چینجز سے متعلق ہر وقت مطلع کرنا ہے۔ اگر اس ای میل میں شامل ملازمین کی چینجز میں کوئی غلطی پائی جا رہی ہو، تو جلد از جلد اپنے متعلقہ اکانٹ آفس سے رابطہ کر کے درستگی کروالیں

Kind Regards,
FABS Directorate
<http://www.fabs.gov.pk>

* This is an auto generated mail from PSH system, Do not reply ***

**Errors & omissions excepted



DIRECTORATE OF
INDUSTRIES AND COMMERCE
KHYBER PAKHTUNKHWA, PESHAWAR

Aux (P)

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No. 6999 /DIC/R&A/HQ/General/Misc/2019-20

Dated. 21/6/2021.

To

The Section Officer (Litigation;
Government of Khyber Pakhtunkhwa,
Industries, Commerce and Technical Education
Department, Peshawar.

Subject: REQUEST TO EXTEND JUDICIAL & UTILITY ALLOWANCE TO
CONSUMER PROTECTION COURTS STAFF IN KHYBER
PAKHTUNKHWA.

I am directed to refer to your letter No. SO(Lit)(ND)/5-2/2021/7026 dated 25.05.2021 on the subject cited above and to say that the Consumer Courts are established under section 11 of Consumer Protection Act, 1997 (Amended 2017) in 17-Districts in Khyber Pakhtunkhwa. The Presiding Officers/Judges of Consumer Protection Courts are posted by Peshawar High Court, Peshawar and their further posting orders are issued by Establishment Department Government of Khyber Pakhtunkhwa in Consumer Protection Courts. The staff of the Consumer Protection Courts is recruited/posted as per the Service Rules of Directorate of Industries & Commerce. The staff of the Consumer Protection Courts is at the strength of Directorate of Industries & Commerce and the staff of the Directorate is posted in Consumer Protection Courts and there is no specific/separate staff for Consumer Protection Courts.

Furthermore it is submitted that there is no specific terms and conditions for posting of Consumer Protection Court Judges and staff.

However the nature of job of the staff of Consumer Protection Courts is judicial and they also follow the office timing and working days calendar issued by Peshawar High Court.

Accounts Officer,
Directorate of Industries & Commerce,
Khyber Pakhtunkhwa, Peshawar

Aux Q 109

No. SO (I/IND)/S-2/2020 / 9018
GOVERNMENT OF KHYBER PAKHTUNKHWA
INDUSTRIES, COMMERCE AND TECHNICAL
EDUCATION DEPARTMENT

Dated Peshawar, the 27th June, 2021



To

The Section Officer (SI-II)
Finance Department

Subject: REQUEST TO EXTEND JUDICIAL AND UTILITY ALLOWANCES TO CONSUMER PROTECTION COURTS STAFF IN KHYBER PAKHTUNKHWA.

I am directed to refer to your letter No.FD/SOSI-II/B-43/2020/03 dated 19-05-2021 the subject noted and to forward herewith a copy of Directorate of Industries & Commerce, Khyber Pakhtunkhwa self explanatory letter No.6999/DIC/B&N/General/Misc/2019-20 dated 21-06-2021 which contains the requisite information as desired please.

Eccls: As above.

Section Officer (SI)

Director
Industries, Commerce & Technical Education



OFFICE OF THE DISTRICT & SESSIONS JUDGE/
JUDGE CONSUMER / COMMERCIAL COURT
MARDAN

Email: consumercourtmd@gmail.com Contact No: 0937-9230729

No. 87 /1/1-CCM

Dated: 07-05-2024

OFFICER ORDER:-

In order to streamline working of this court, following internal posting/ assignment of work order is made in the interest of public service with immediate effect:-

S.#	Name of Official	Job assigned	Remarks
01.	Mr. Arif (Assistant)	Reader of Court	All officials shall perform the duties as are described for their assigned jobs in chapter-II Section-5 (pages 285-305) of Judicial Estacode.
02.	Mr. Arshad Iqbal (Assistant)	Institution Branch Incharge	
03.	Ms. Salma (Assistant)	Muharrar to the Court / Incharge R/R	
04.	Mr. Shadman Khan (Stenographer)	Stenographer	
05.	Mr. Shah Mehmood (Senior Clerk)	Accountant	
06.	Mr. Fazal Deyan (Bailiff)	Bailiff	
07.	Mr. Irfan (Bailiff)	Attached to S#03	
08.	Mr. Sajid Ali (Processor Server)	Attached to S#03	
09.	Mr. Bakht Zada (Processor Server)	Attached to S#02)	
10.	Mr. Mushtaq Ali (Niab Qasid)	Attached to court	
11.	Mr. Ishtiaq (Niab Qasid)	Chowkidar	
12.	Mr. Umar Farooq (Niab Qasid)	Attached to S#02	
13.	Mr. Yousaf (chowkidar)	Attached to court	
14.	Mr. Sar Anjam (Chowkidar)	Attached to court	
15.	Mr. Asim (Driver)	Driver	

(Tanveer Iqbal)
District & Sessions Judge/
Judge Consumer / Commercial Court
Mardan

Endst: No. 88-91 /D&S/JCC/MDN

Dated: 07/05/2024

Copy forwarded for information to:

1. Addl: Registrar (Admn), Peshawar High Court, Peshawar/ Focal Person Consumer Court Khyber Pakhtunkhwa.
2. The Director of Industries & Commerce, Khyber Pakhtunkhwa Peshawar.
3. Officials concerned.
4. Office file.

(Tanveer Iqbal)
District & Sessions Judge/
Judge Consumer / Commercial Court
Mardan

THE KHYBER PAKHTUNKHWA RESOLUTION OF COMMERCIAL DISPUTES
ACT, 2022.

(KHYBER PAKHTUNKHWA ACT NO. XXXVIII OF 2022)

PREAMBLE

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Aux (S)

(111)

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AND THEIR DISPOSAL

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9. Appeals.
10. Overriding effect.

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17. Power to make rules.
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THE KHYBER PAKHTUNKHWA RESOLUTION OF COMMERCIAL DISPUTES
ACT, 2022.

(KHYBER PAKHTUNKHWA ACT NO. XXXVIII OF 2022)

(First published after having received the assent of the Governor of the
Khyber Pakhtunkhwa in the Gazette of the Khyber Pakhtunkhwa,
(Extraordinary), dated the 31st August, 2022).

AN
ACT

to provide for establishment of commercial courts for resolution of
commercial disputes in the Khyber Pakhtunkhwa Province.

WHEREAS commerce and trade are intrinsically linked with the economic growth and development of the Province and as such during the course of commercial activities, commercial disputes may arise which hampers the efficient provision of goods to the people and need to be disposed of expeditiously for which establishment of Commercial Courts and Appellate Tribunal are necessary and also to provide for out of Court settlement mechanism in the shape of Alternative Dispute Resolution and for matters connected therewith and ancillary thereto;

It is hereby enacted by the Provincial Assembly of Khyber Pakhtunkhwa as follows:

CHAPTER-I
PRELIMINARY

1. **Short title, extent, application and commencement.**—(1) This Act may be called the Khyber Pakhtunkhwa Resolution of Commercial Disputes Act, 2022.

(2) It shall extend to whole of the Province of the Khyber Pakhtunkhwa.

(3) It shall apply to commercial disputes as defined in clause (d) of sub-section (1) of section 2 of this Act.

(4) It shall come into force at once.

2. **Definitions.**—(1) In this Act, unless there is anything repugnant in the subject or context,-

(a) “Appellate Tribunal” means the Appellate Tribunal, established under section 8 of this Act;

(b) “Code” means the Code of Civil Procedure, 1908 (Act No. V of 1908);

(c) “Commercial Court” means the Consumer Court, empowered under section 3 of this Act to act as Commercial Court;

(d) “commercial dispute” means any dispute, claim or counter claim, arising out of a contractual dispute, where the value of the claim or counter claim is three hundred thousand rupees or more, or such other value as Government may notify, relating to or connected with any transaction of trade, business or commerce, excluding sale or purchase of immovable property, between-

(i) the domestic companies; or

(ii) a domestic company and a foreign company or a firm; or

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- (iii) the firms; or
 - (iv) a firm and a domestic or foreign company; or
 - (v) the foreign companies having trade in the Province; or
 - (vi) a domestic company, foreign company or a firm and a private person; or
 - (vii) Government entities or a Government entity and a firm or domestic company or foreign company or private person;

Explanation: For the purpose of this clause,-

- (i) **“domestic company”** means a company, incorporated and registered under the Companies Act, 2017 (XIX of 2017), or any other law, for the time being in force, for registration of companies;
 - (ii) **“foreign company”** means any company or body corporate, incorporated outside Pakistan, which has a place of business, liaison office or branch office in Pakistan whether by itself or through an agent, physically or through electronic mode;
 - (iii) **“firm”** means a firm registered under the Partnership Act, 1932 (IX of 1932), or the Limited Liability Partnership Act, 2017 (XV of 2017);
 - (iv) **“private person”** means a merchant, trader, professional, banker, financier or any individual, involved in ordinary transaction, relating to mercantile documents, including enforcement and interpretation of such documents; and
 - (v) **“Government entity”** means any entity, a statutory body or any agency of Government or a private body, carrying out public functions;
- (e) **“Consumer Court”** means the Consumer Court, established under section 11A of the Khyber Pakhtunkhwa Consumer Protection Act, 1997 (Khyber Pakhtunkhwa Act No. VI of 1997);
 - (f) **“Department”** means the Industries, Commerce and Technical Education Department of Government;
 - (g) **“Directorate General”** means the Directorate General of Industries and Commerce, Khyber Pakhtunkhwa;
 - (h) **“Director General”** means the Director General of the Directorate General;
 - (i) **“Government”** means the Government of the Khyber Pakhtunkhwa;
 - (j) **“High Court”** means the Peshawar High Court, Peshawar;

- (k) "Oversight Committee" means the Oversight Committee constituted under section 12 of this Act;
- (l) "prescribed" means prescribed by rules;
- (m) "Province" means the Province of the Khyber Pakhtunkhwa; and
- (n) "rules" mean rules made under this Act.

(2) Words and expressions, used but not defined under this Act, shall have the same meanings as are respectively assigned to them in the Code.

CHAPTER-II
ESTABLISHMENT OF COMMERCIAL COURTS, INSTITUTION OF SUITS AND THEIR DISPOSAL

3. **Commercial Court.**—(1) Subject to the provisions of this Act, the Consumer Courts, established under section 11A of the Khyber Pakhtunkhwa Consumer Protection Act, 1997 (Khyber Pakhtunkhwa Act No. VI of 1997), shall act as Commercial Courts under this Act.

(2) Soon after the commencement of this Act, all suits and proceedings, arising from or connected with commercial disputes, shall be entertained, heard and decided by the Commercial Courts under the provisions of this Act.

(3) The area of the jurisdiction of the Commercial Courts shall be same as provided for the Consumer Courts.

4. **Application of the Code.**—For all matters and procedures, not specifically provided for in this Act, the provisions of the Code shall, *mutatis mutandis*, apply.

5. **Institution of suit and its disposal.**—(1) Every suit, under this Act, shall be instituted and disposed of in accordance with the provisions of the Code.

(2) Without prejudice to the generality of sub-section (1), the Directorate General may, for the expeditious disposal of commercial dispute under this Act, put in place e-filing system, which shall be operationalized from such date as the Department may appoint by notification in the official Gazette.

(3) For expeditious disposal of suits or appeals under this Act, the Commercial Courts or, as the case may be, the Appellate Tribunal, if it deems necessary,—

- (a) for reasons to be recorded in writing, shall, on its own motion, have the power to summon official record, maintained by the public authorities in respect of any matter connected with or arising from the subject matter of the suit or appeal; and
- (b) shall not grant unnecessary adjournments and in no case more than two adjournments shall be granted for a specific purpose:

Provided that the Commercial Courts or the Appellate Tribunal, under exceptional circumstances, may adjourn hearing of a case, for not more than seven days, subject to payment of such costs, as may be determined by the Commercial Court or the Appellate Tribunal, as the case may be.

(4) Subject to section 9 of this Act, the judgment, decree or an order passed by the Commercial Court shall be final.

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6. **Determination of costs.**—(1) Notwithstanding anything contained in the Code or any other law, for the time being in force, the Commercial Court shall have power to determine the costs of the suit and by whom it is payable and to give all necessary directions in this regard.

Explanation: For the purposes of this section the expression “costs” shall mean reasonable costs relating to-

- (a) the fees and expenses of the witnesses incurred;
- (b) legal fees and expenses incurred; and
- (c) any other expenses incurred in connection with the proceedings before the Commercial Court.

(2) Where the Commercial Court directs that costs shall not be granted, it shall state its reasons in writing.

7. **Transfer of pending cases.**—On commencement of this Act,-

- (a) all suits and execution petitions, connected with or arising from commercial disputes pending in any court of its original civil jurisdiction, shall stand transferred to the concerned Commercial Court;
- (b) on transfer of suits and execution petitions under this section, the Commercial Court may proceed with the case from the stage at which it was pending immediately before such transfer and it shall not be bound to re-hear any witness who has recorded his evidence;
- (c) all appeals and revisions, arising from the orders, judgment and decrees in respect of commercial dispute, pending before any court before the commencement of this Act, shall stand transferred to the Appellate Tribunal for adjudication; and
- (d) any suit, appeal or revision, in respect of commercial dispute, which has been culminated and are pending announcement of final order or decision, shall not be transferred and the relevant court shall announce the order or decision therein, as the case may be.

CHAPTER-III **ESTABLISHMENT OF APPELLATE TRIBUNAL**

8. **Appellate Tribunal.**—(1) For the purpose of hearing appeals against the decisions of the Commercial Courts, Government may, by notification in the official Gazette, establish an Appellate Tribunal.

(2) The Appellate Tribunal shall comprise of a Chairman and two members, one legal member and one technical member, to be appointed in consultation with the Chief Justice of the High Court, in the manner as may be prescribed.

(3) The Chairman and the members shall have such qualifications and experience of service as may be prescribed.

(4) The Chairman and the others two members of the Appellate Tribunal shall be appointed for a term of three years, in such a manner and with such other terms and conditions of service, as may be prescribed.

(5) The Appellate Tribunal shall conduct its proceedings in the manner, as may be prescribed.

(6) The Appellate Tribunal shall have such staff with such terms and conditions of service, as the Government may determine, and until such staff is appointed, the Directorate General shall provide secretariat support to the Appellate Tribunal.

9. **Appeals.**—(1) Any person, aggrieved from the judgment or decree or an order of the Commercial Court, may prefer an appeal in the Appellate Tribunal, within a period of thirty days

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from the date of announcement of such judgment, decree or order.

(2) The Appellate Tribunal shall dispose of appeals in such a manner, as may be prescribed.

10. **Overriding effect.**—The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or any instrument having effect by virtue at any law other than this Act.

CHAPTER-IV MISCELLANEOUS

11. **Support to the Commercial Court.**—(1) The existing staff of the Consumer Court shall provide support to the Commercial Court for the performance of its functions under this Act:

Provided that the Directorate General, if required, may provide necessary additional human resource support to the Commercial Court for the purposes of this Act.

(2) The staff of the Commercial Court shall also perform the following functions, namely:

(a) to maintain an updated record and statistical data in physical and electronic form, regarding the number and nature of cases filed, pendency of such cases, status of each case and disposal of the cases by the Commercial Court and the Appellate Tribunal and all matters connected therewith, as may be prescribed;

(b) to maintain case laws repository; and

(c) any other functions as may be prescribed.

(3) For the efficient and expeditious disposal of commercial disputes under this Act, the Directorate General may arrange necessary trainings for judges of the Commercial Court.

12. **Oversight Committee.**—Government may, by publication in the official Gazette, notify an Oversight Committee which shall consist of such number of members and shall perform such functions, as may be specified in the notification.

13. **Report.**—The Director General shall prepare and present an annual report on the implementation of this Act to the Oversight Committee in a manner, as may be prescribed.

14. **Alternative Disputes Resolution.**—Any suit or appeal relating to a commercial dispute, filed or pending in a Commercial Court or Appellate Tribunal, as the case may be, may be referred to Alternative Dispute Resolution, with the consent of the parties, by the Commercial Court or Appellate Tribunal, in accordance with the provisions of section 89-A of the Code.

15. **Power of High Court to issue directions.**—The High Court may issue directions to supplement the provisions of this Act or the Code, in so far as such provision apply to the hearing of commercial disputes of a specified value under this Act.

16. **Bar of jurisdiction of Commercial Courts.**—Notwithstanding anything contained in this Act, the Commercial Court shall not entertain or decide any suit, application or proceedings relating to any commercial dispute of Government entity in respect of which the jurisdiction of the civil court or special court is either expressly or impliedly barred under any other law for the time being in force.

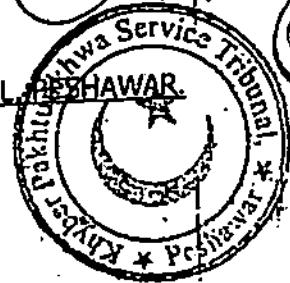
17. **Power to make rules.**—Government may by, notification in official Gazette, make rules for carrying out the provision of this Act.

18. **Removal of difficulties.**—If any difficulty arises in giving effect to any of the provisions of this Act, Government may, by notification in the official Gazette, make such provisions, not inconsistent with the provisions of this Act, as it deems fit for removal of such difficulty.

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR.

Appeal No. 631/2012

Date of Institution. 15.6.2012
Date of Decision 07.3.2013



Wasim Akhtar, Superintendent Khyber Pakhtunkhwa
Service Tribunal, Peshawar.

(Appellant)

VERSUS.

1. The Chief Secretary, Khyber Pakhtunkhwa, Peshawar.
2. The Secretary, Finance Khyber Pakhtunkhwa, Peshawar.
3. The Secretary Establishment, Khyber Pakhtunkhwa, Peshawar.
The Chairman, Khyber Pakhtunkhwa Service Tribunal,
Peshawar.

(Respondents)

EX ADAMTER
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

ATTESTED

APPEAL UNDER SECTION 4 OF THE KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL ACT 1974 AGAINST THE ORDER DATED
17.2.2012 WHEREBY THE SPECIAL SERVICE TRIBUNAL ALLOWANCE
HAS BEEN REFUSED TO APPELLANT AND AGAINST NOT TAKING
ANY ACTION ON THE DEPARTMENTAL APPEAL OF THE APPELLANT
WITHIN THE STATUTORY PERIOD OF NINETY DAYS.

MR. MUHAMMAD ASIF YOUSAFZAI,
Advocate

For appellant.

MR. ARSHAD ALAM,
Addl. Government Pleader

For respondents.

SYED MANZOOR ALI SHAH,
MR. NOOR ALI KHAN,

MEMBER
MEMBER

JUDGMENT

SYED MANZOOR ALI SHAH, MEMBER. - This appeal has been filed by Wasim Akhtar, the appellant under Section 4 of the Khyber Pakhtunkhwa Service Tribunal Act 1974, against the order dated 17.2.2012 whereby the Special Service Tribunal Allowance has been refused to him. It has been prayed that on acceptance of the appeal, the impugned order dated 17.2.2012 may be declared as illegal, discriminatory and against the spirit of the approved minutes dated 11.11.2009 and may be set aside and the respondents be directed to grant Special Service Tribunal Allowance to the appellant by treating him at par with the Presiding Officers of the Tribunal w.e.f. 15.3.2011 at the rate allowed to Presiding Officers of the Tribunal.

2. Brief facts of the case are that the appellant is serving as Superintendent in the Khyber Pakhtunkhwa Service Tribunal. A meeting was scheduled on

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11.11.2009 for restructuring of the Tribunal. In para-4 of the minutes of the meeting, various decisions were taken. In para-4(ix) it was decided that the Finance Department shall sanction judicial allowance for all members at par with the District & Sessions Judges. Other incentives for members and staff of the Service Tribunal shall be explored by Finance Department in a realistic manner to make the Institutions more attractive and coveted place for quality officers/officials. In pursuance to the above mentioned minutes, the Finance Department was requested vide letter No. 241/ST, dated 18.2.2010 for providing Special Service Tribunal Allowance and Utility Bill Allowances at special rates as incentive to the Hon'ble Chairman, members and other staff of the Tribunal followed by reminders on 10.5.2010 and 12.5.2011. On 18.5.2011, Special Special Service Tribunal Allowance was sanctioned w.e.f. 15.3.2011 for the Chairman at the rate of Rs. 35000/- P.M and Members at the rate of Rs. 25,000/- P.M and excluded the other staff, vide notification dated 28.5.2011. On 16.7.2011, the Secretary Establishment was requested to extend the benefit of Special Service Tribunal Allowance to the Registrar and other staff of the Tribunal from the date, allowed to the Presiding Officer. But the same was regretted on 17.1.2012 by the Finance Department and the refusal was conveyed to the Tribunal through Administration Department on 19.1.2012. Feeling aggrieved, the appellant filed departmental appeal on 18.2.2012, which has not been decided within the statutory period of ninety days, hence the present appeal.

3. The appeal was admitted to regular hearing on 5.7.2012 and notices were issued to the respondents. They filed their written reply. Rejoinder was also filed in rebuttal.

Arguments heard and record perused.

Attested
15/07/2012

EXCISE
Khyber Pakhtunkhwa
Tribunal
ATTESTED

5. The learned counsel for the appellant argued that a meeting on Restructuring of Khyber Pakhtunkhwa Service Tribunal was held on 11.11.2009 to make the Tribunal more attractive and coveted place for quality officers/officials. In its meeting besides other measure, it was decided that the Finance Department shall sanction judicial allowance for all Members at par with District and Sessions Judges. Other incentives for Members and staff of the Service Tribunal shall be explored by Chairman/Finance Department in a realistic manner. So all the Presiding Officers and staff members were entitled to Special Service Tribunal Allowance and Utility Bill Allowance at special rates as incentive to them. Vide notification dated 18.5.2011, the Finance Department sanctioned Special Service Tribunal Allowance for the Chairman and Members of the Service Tribunal

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w.e.f. 15.3.2011 at the rate of Rs. 35,000/- per month and Rs. 25,000/- per month respectively while other other staff Members of the Tribunal have been discriminated. Staff members are backbone of the Tribunal and depriving them of the said incentive (allowed to the Presiding Officers) will defeat the object of restructuring of Khyber Pakhtunkhwa Service Tribunal. The action of Provincial Government, especially the Finance Department amounts formation of classes/groups on irrational basis which is against the verdict of august Supreme Court of Pakistan. He further argued that vide notification dated 13.3.2010, in the similar circumstances Public Service Commission Allowance has been sanctioned to the Chairman as well as other staff members upto Chowkidar serving in the Public Service Commission. Similarly, Special Allowance has been granted to the Judges and Staff of the Hon'ble Peshawar High Court by the government. Staff of the Service Tribunal is also entitled to the same treatment as per judgment of the august Supreme Court of Pakistan as reported in 2009-SCMR-1. Furthermore, vide letter dated 17.1.2012, Special Service Tribunal Allowance regretted by the Finance Department without any plausible reason, which is against Section 24-A of General Clauses Act 1897. He requested that the appeal may be accepted as prayed for.

6. The learned AGP, on the other hand argued that allocation of allowances is the discretion of the provincial government. Presiding Officers and Staff are two different categories/cadres and facility granted to one category do not entitle other for the same. The job descriptions of the Presiding Officers and Staff are totally different with each others. Due to their hard work and early coming and late sitting, the provincial government sanctioned Service Tribunal Allowance to the Presiding Officers to make the Tribunal more attractive and coveted place for quality officers. No discrimination has been done to the staff of the Tribunal as the facilities/benefits of allowances are extended to them equally with other government servants as and when ordered and no discrimination has been done to them. He requested that the appeal may be dismissed

7. The Tribunal observes that a meeting was scheduled on 11.11.2009 for restructuring of the Tribunal. In para-4(ix) it was decided that the Finance Department shall sanction judicial allowance for all the Presiding Officers and Staff of the Tribunal in a realistic manner to make it more attractive and coveted place for quality officers/officials. In pursuance of the above decision, the Finance Department was required to sanction Service Tribunal Allowance to the Presiding Officer and Staff members but on 18.5.2011, Special Service Tribunal Allowance was sanctioned w.e.f. 15.3.2011 only to the Presiding Officers (for the Chairman at

ATTESTED

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the rate of Rs. 35000/- P.M and Members at the rate of Rs. 25,000/- P.M) and excluded the other staff. The exclusion of staff is not based on any reasonable classification. Staff is the back bone of the Tribunal and serving equally with hard work side by side with the Presiding Officers. They could not be ignored and deprived of their legitimate rights of the said allowance. Similarly in such circumstances staff of Peshawar High Court, Labour Court and Public Service Commission are receiving their Special Allowances. The appellant alongwith other staff members (for which they have filed separate service appeals) are also entitled to Special Service Tribunal Allowance under the principles of consistency and as per judgment of the august Supreme Court of Pakistan as reported in 2009-SCMR-1. The appellant made a good case for indulgence of the Tribunal.

8. In view of the above, the appeal is accepted, the impugned order dated 17.2.2012 is set aside and Special Service Tribunal Allowance is allowed to the appellants from the date sanctioned/received by the Presiding Officers, i.e. w.e. 15.3.2011. So far as the quantum/rate is concerned, it is the discretion of the Competent Authority/Finance Department but the appellant cannot be discriminated. (The rates of allowance for staff of Khyber Pakhtunkhwa Public Service Commission can be taken as a guideline). Parties are left to bear their own costs. File be consigned to the record.

9. This judgment will also dispose of the following service appeals in the same manner. Service Appeals No. 630/2012, Abdul Hanan, No. 632/2012 Nimatullah, No. 633/2012 Muhammad Israeel, No. 634/2012 Fazle Subhan, No. 635/2012 Syed Muqaddar Shah, No. 636/2012 Syed Maqbool Ahmad, No. 637/2012 Gul Khan, No. 638.2012 Pir Muhammad, No. 639/2012 Izzatullah, No. 640/2012 Matullah, No. 641/2012 Afsar Khan, No. 642/2012 Muhammad Nabil, No. 643/2012 Syed Shezad Ahmad, No. 644/2012 Syed Haris Shah, No. 645/2012 Awali Gul, No. 646/2012 Mehar Muhammad, No. 647/2012 Shamshad Khan, No. 648/2012 Muhammad Haroon, No. 649/2012 Safeer Khan, No. 650/2012 Arshadullah, No. 651/2012 Allah Dad, No. 652/2012 Faqir Muhammad, No. 653/2012 Ayaz Khan, No. 654/2012 Syed Shamsheer Khan, No. 655/2012 Sher Daraz, No. 656/2012 Muhammad Pervez, No. 657/2012 Wahid Gul, No. 658/2012 Ghulam Masih, No. 659/2012 Azizur Rahman, No. 660/2012 Samjullah, No. 661/2012 Mahar Shaid, No. 666/2012 Mahmoodur Rahman Qazi, and No. 6807/2012 Aftab Ahmad.

ANNOUNCED
7.5.2013

Sd/- Syed Manzoor Ali Shah
Member
Sd/- Nadeem Ali Khan
Member

Copy 3
Amir
Sd/-

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IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

Present:

Mr. Justice Sarmad Jalal Osmany
Mr. Justice Dost Muhammad Khan

CIVIL PETITIONS NOS. 270-P TO 301-P OF 2013

(On appeal from the judgment/order dated 07.03.2013 passed by KPK Service Tribunal, Peshawar in Service Appeal No. 631, 630, 632-634, 636-644, 646-652, 653-656, 658-661, 666 & 807 of 2012)

Chief Secretary, KPK, Peshawar and others	...	...	Petitioner. (in all cases)
	Versus		
Wasim Akhtar and another	...	...	Respondents. (in CP.270-P/2013)
Abdul Hanan and another	...	...	Respondents. (in CP.271-P/2013)
Naimatullah and another	...	...	Respondents. (in CP.272-P/2013)
Muhammad Irshad and another	...	...	Respondents. (in CP.273-P/2013)
Fazal Subhan and another	...	...	Respondents. (in CP.274-P/2013)
Syed Maqbool Ahmed and another	...	...	Respondents. (in CP.275-P/2013)
Gul Khan and another	...	...	Respondents. (in CP.276-P/2013)
Pir Muhammad and another	...	...	Respondents. (in CP.277-P/2013)
Tahirullah and another	...	...	Respondents. (in CP.278-P/2013)
Matiullah Khan and another	...	...	Respondents. (in CP.279-P/2013)
Afsar Khan and another	...	...	Respondents. (in CP.280-P/2013)
Muhammad Nabi and another	...	...	Respondents. (in CP.281-P/2013)
Syed Shehzad Ahmad and another	...	...	Respondents. (in CP.282-P/2013)
Syed Haris Shah and another	...	...	Respondents. (in CP.283-P/2013)
Wahid Gul and another	Respondents. (in CP.284-P/2013)

ATTESTED

Secretary
Supreme Court of Pakistan
Islamabad

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(108)

Mehar Muhammad and another	Respondents. (In CP.285-P/2013)
Shamshad Khan and another	Respondents. (In CP.286-P/2013)
Muhammad Haroon and another	...	...	Respondents. (In CP.287-P/2013)
Safeer Khan and another	...	...	Respondents. (In CP.288-P/2013)
Arshadullah and another	...	...	Respondents. (In CP.289-P/2013)
Allah Dad and another	...	...	Respondents. (In CP.290-P/2013)
Faqir Muhammad and another	...	...	Respondents. (In CP.291-P/2013)
Ayaz Khan and another	...	...	Respondents. (In CP.292-P/2013)
Syed Shamsheer Khan and another	...	...	Respondents. (In CP.293-P/2013)
Sher Daraz and another	...	...	Respondents. (In CP.294-P/2013)
Muhammad Parvez and another	...	...	Respondents. (In CP.295-P/2013)
Ghulam Masih and another	...	...	Respondents. (In CP.296-P/2013)
Aziz-ur-Rehman and another	...	...	Respondents. (In CP.297-P/2013)
Samiullah and another	...	...	Respondents. (In CP.298-P/2013)
Mehar Shaid Khan and another	...	...	Respondents. (In CP.299-P/2013)
Mehmood-ur-Rehman Qazi and another	...	...	Respondents. (In CP.300-P/2013)
Aftab Ahmed and another	...	...	Respondents. (In CP.301-P/2013)

For the petitioners : Mr. Zahid Yousaf, Addl. AG.
(In all cases)

Respondents : Not represented.
(In all cases)

Date of hearing : 16.05.2014

ATTESTED

Supervisor
Supreme Court of Pakistan
Islamabad

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JUDGMENT:

DOST MUHAMMAD KHAN, J. - Civil Petition No.270-P/2013. -This

single judgment shall also decide the connected Civil Petitions Nos.271-P to 301-P of 2013, because questions of law and facts in all are identical and parties in contest are almost the same.

2. Respondent No.1 along with other colleague-respondents in the connected Civil Petitions, referred to above, are serving on different posts and all are attached to the Provincial Service Tribunal, KPK, Peshawar.

3. Brief but relevant facts are that the Government of KPK intended to restructure the Provincial Service Tribunal, therefore, the first meeting was held on 11.11.2009. The minutes of the meetings were reproduced in para-4(ix), where it was decided that the Finance Department, Government of KPK shall accord sanction, allowing Judicial Allowance for the Chairman and Members of the Tribunal at par with the District & Sessions Judges, serving in the District Judiciary under the Peshawar High Court. It was, however, added that the incentives for the staff of the Tribunal shall also be explored by the Finance Department in a realistic-manner so that to make the institution more attractive, giving incentives for competent, efficient and devoted officers/officials.

4. In light of the above minutes, the Finance Department was requested to grant Special Service Tribunal Allowance and Utility Bills Allowance at special rates, by way of incentive to the Chairman, Members and para-legal staff of the Tribunal. This was followed by reminders to the same department vide letters dated 10.05.2010 and 12.05.2011. It was on 18.05.2011 that the Special Service Tribunal Allowance was sanctioned w.e.f. 15.03.2011 for the Chairman of the Tribunal @ Rs.35000/- per month, while Members of the Tribunal were allowed the same @ Rs.25000/- per month, vide notification dated 28.05.2011. However, for no reason, much less plausible, the para-legal staff of the Tribunal was excluded therefrom, and they were denied sine incentives/relief, earlier decided.

Attested

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ATTESTED

Deputy Assistant
Attorney General of Pakistan
Islamabad

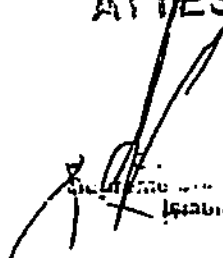
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5. On 16.07.2011, the Secretary Establishment, Government of KPK was requested to extend the benefit of Special Service Tribunal Allowance to the Registrar and other para-legal staff of the Tribunal from the date, it was allowed to the Chairman and Members of the Tribunal. However, without showing any just cause and sound reasons, the same was regretted on 17.01.2012 by the Finance Department, which was conveyed to the Administration Department on 19.01.2012. This refusal caused grievance to the para-legal staff/respondents and they filed departmental appeal on 28.02.2012. However, as usual, it was thrown under the carpet by the executive limb of the State and was not decided within 90 days, the statutory period allowed to the competent authority to decide the same. Therefore, para-legal staff of the Tribunal, referred to above, filed appeals before the Tribunal, which were admitted to full hearing on 05.07.2012 and notices were issued to the respondents, who filed written reply to which rejoinder was also filed.

6. The learned Bench of the Service Tribunal, vide impugned judgment dated 07.03.2013, allowed the appeals, set aside the order of the Finance Department dated 17.01.2012 and held that the entire para-legal staff of the Service Tribunal is entitled to draw Special Service Tribunal Allowance from the date it was allowed to the Chairman and Members of the Tribunal i.e. 15.03.2011. However, for determining the slab/rate on which it is to be allowed, the matter was left to the discretion of the Finance Department, with direction that it should be realistic and the rate of the allowance be determined, keeping in view the guidelines on which the Chairman and Members of the Service Tribunal were granted the same.

7. Aggrieved from the impugned judgment, (1)Chief Secretary, (2)Secretary Finance and (3)Secretary Establishment, Government of KPK, have filed this and all connected Civil Petitions, seeking setting aside the impugned judgment of the Service Tribunal.

ATTESTED


Secretary
Government of Pakistan
Islamabad

Attest
Secretary
Government of Pakistan
Islamabad

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8. We have heard the learned Additional Prosecutor General, representing the petitioner at length. He came up with the following contentions:-

- (a) that the Tribunal while deciding the appeals of its staff was judge of its own cause, hence it was disqualified to decide the same and on that account, the impugned judgment is nullity in the eye of law.
- (b) that the staff of the Tribunal could not be taken at par with the para-legal staff attached to the District and Sessions Judge/District Judiciary as they are Government servants; hence they do not fall within the category of para-legal staff.

9. So far as the first objection is concerned, we have no amount of hesitation to hold that the same is based on misconception. In service matter relating to terms and conditions of Government/Civil servants, the authority and jurisdiction exclusively vests in the Service Tribunal and no other Court or forum/Tribunal was competent to entertain the appeal of the staff of the Tribunal. The plea that the Tribunal was acting as Judge in its own cause, is also based on misconception. A Bench of the Tribunal was to decide the matter on merits and according to law and in no eventuality was supposed to show undue favour to the staff. If such a contention is permitted to prevail, it will deprive a competent forum/Tribunal, having exclusive jurisdiction in a matter, to do justice in a particular case albeit, the appellant before it might be working under its control. In other words, a Tribunal placed at high pedestal, could not be labeled with bias or being partisan in the case. In the past, Lahore High Court, Lahore; Peshawar High Court, Peshawar; Federal Shariat Court, Islamabad and even this Court allowed 20% Secretariat Allowance to its employees and if any precedent is required to be cited, reference can be made to the case of Collector of Customs vs. Abrar Hussain (1999 SCMR 2473).

10. If it is established that the Judge or Chairman or Member of a particular Court or Tribunal has legal interest, at least pecuniary interest in the subject matter before it, it is in that case alone, that the Judge, Chairman or Member of the Tribunal stands disqualified to hear *it* because he became a Judge

ATTESTED

Registrar
Supreme Court of Pakistan
Islamabad

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of his own cause, which is not at all the case in hand. Reliance is placed in this case on the principle laid down in the case of Government of NWFP vs. Hussain Ahmad Haroon (2003 SCMR 104).

11. Not because it was the petitioner government itself, who initiated the process to restructure the Provincial Service Tribunal, enhancing its emoluments/allowances, to make it more attractive so that persons of high caliber, qualification and high standard, are attracted therein, so to make it an effective tool to enhance the delivery of its service, which the Chairman and Members of the Tribunal alone could not accomplish, unless they are supported by a competent staff of the nature, referred to above, because each institution/tribunal of this nature could better deliver services if everyone from the top to the bottom is given attractive salary/emoluments, which is ordinarily called restructuring of the institution. Anything short of that would be of no benefit on one hand while on the other hand, it would amount to discrimination between two sets of employees, within the same institution/tribunal. In addition thereto, the para-legal staff, attached to the Service Tribunal, do perform almost the same duties as the para-legal staff of the District Judiciary performs and with a slight difference, the nature of their duty is almost one and the same. The para-legal staff of the Tribunal do arrive at office much earlier the Chairman and the Members and leave the office much later than them, after the work, entrusted to them on day to day basis, is completed/concluded. The Service Tribunal is undoubtedly a quasi judicial forum, therefore, its staff cannot be distinguished on any sound rationales from the para-legal staff of the District Judiciary.

12. Keeping aside the above findings and observations, through the impugned judgment, the matter has been left to the discretion of the Finance Department to determine but realistically, while enhancing the emoluments i.e. Judicial Allowance to the para-legal staff of the Tribunal, therefore, in our view, the Service Tribunal has taken the right step by doing substantial justice in the matter, leaving this important aspect to the Provincial Government to determine.

ATTESTED

Superintendent
Supreme Court of Pakistan
Islamabad

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the raising of the slab of the Special Service Tribunal Allowance of para-legal staff, also keeping in view the guidelines on the basis of which the Special Service Tribunal Allowance was allowed to the Chairman and Members of the Tribunal.

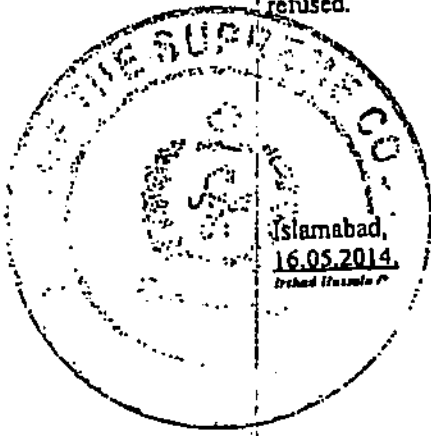
13. We would also like to add to the above observations that recently, the emoluments by way of Judicial Allowance of the para-legal staff of the District Judiciary was enhanced up to 75% of the pay; that too with the consent of the Finance Department, therefore, the Finance Department may also seek guidelines from that judgment of the High Court, which was passed with the consent of the Finance Department/Provincial Government.

14. In view of what has been held above, all these petitions are found devoid of all legal merits and are dismissed. Accordingly, leave to appeal is refused.

Sd/- Sarmad Jalal Osmany, J
Sd/- Dost Muhammad Khan, J

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Supdtentendont
Supreme Court of Pakistan
Islamabad



NOT APPROVED FOR REPORTING.

31/09/11

5458/14

GR No: _____

Date of Presentation: 27.5.14 Civil/Criminal

No. of Petitions: _____

No. of Officers: 20 100

Reason for Refusal: _____

Cop: _____

Court: _____

Date of C. _____

Date of _____

27/05/14

2024 S C M R 538

[Supreme Court of Pakistan]

Present: Munib Akhtar, Shahid Waheed and Musarrat Hilali, JJ
SECRETARY FINANCE, GOVERNMENT OF KHYBER PAKHTUNKHWA,
PESHAWAR and another---Appellants

Versus

Syed JEHANGIR SHAH and others---Respondents

Civil Appeal No. 894 of 2015, decided on 29th November, 2023.

(On appeal against the judgment dated 24.04.2015 passed by
the Peshawar High Court, Peshawar, in Writ Petition No.2095-P of 2008)

Constitution of Pakistan---

---Art. 25---Civil service---Employees of Solicitor Office, Law Department,
Peshawar ('the respondents')---Special allowance and utility allowance, denial of---
Discrimination---Two allowances in question were also drawn by the respondents but
later payment of such allowances was discontinued by the Government on the ground
that the employees of the Solicitor Office were not part of the Civil Secretariat,
therefore, not entitled for such allowances---Legality---High Court rightly allowed
said allowances to the respondent by holding that that the classification so made by
the Government qua granting of said two allowances to specified employees while
denying the same to other employees who were also posted inside the walled premises
of the Civil Secretariat, could not be termed as reasonable and amounted to offend the
principle of equity before the law---High Court correctly noted that the office of the
Solicitor having a separate entity in the Law Department was situated within the
premises of the Civil Secretariat, therefore, the employees of the Solicitor Office were
similarly placed and were entitled to the grant of special allowance and utility
allowance---Counsel for the Provincial Government could not point out any illegality
or perversity in the impugned judgment of the High Court, which was maintained---
Resultantly, appeal was dismissed.

Zahid Yousaf Qureshi, Advocate Supreme Court for Appellants.

Muhammad Asif Yousafzai, Advocate Supreme Court for Respondents.

Date of hearing: 29th November, 2023.

JUDGMENT

MUSARRAT HILALI, J.---Through this appeal, the Appellant-Department
has assailed the judgment dated 23.04.2015 passed by the Peshawar High Court,
Peshawar, in Writ Petition No.2095-P of 2008, by which the Respondents were
granted special allowance and utility allowance.

2. Brief facts of the case are that the Respondents while serving in the Solicitor
Office, Law Department, Peshawar had been receiving special allowance @ 20% and
utility allowance 10% of their basic pay from February, 2008 but such allowances
were discontinued from July, 2008 on the ground that the employees of the Solicitor
Office are not part of the Civil Secretariat, therefore, they are not entitled for such
allowances and recovery of the paid allowances was started. Feeling aggrieved, the
Respondents filed a Writ Petition before the High Court, which was allowed vide the
impugned judgment.

3. Heard. Record perused.

4. Let us have a look at the record which shows that in the year 1995 the Solicitor
office was made part of the Law Department of NWFP Civil Secretariat ('the Civil
Secretariat') through a Notification dated 26.07.1995 which was issued in pursuance
of a Summary approved by the then Chief Minister, NWFP. In February 2008, Finance
Department, Government of NWFP ('the Government') issued two letters, one
granting special allowance @ 20% and the other granting 10% utility allowance to the
officers and officials of the Civil Secretariat, Chief Minister's Secretariat and
Governor's House/Secretariat, with effect from 1st February, 2008. By way of an
amendment, the Government through Finance Department's letter dated 03.03.2008,
also extended applicability of special allowance to all those employees who were (i)
on deputation to Civil Secretariat (ii) the employees of Civil Secretariat who were
posted outside Civil Secretariat and (iii) the government servants deputed from other
departments who do not belong to Secretariat Service but were working in the
Secretariat. The above allowances were also drawn by the Respondents but later
payment of such allowances was discontinued on the ground that the employees of

Aux (V)
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the Solicitor office were not part of the Civil Secretariat, therefore, not entitled for such allowances. The Government kept on denying said monetary benefit to the Respondents on one pretext or the other, which was ultimately granted by the High Court in Writ Petition No.2095-P of 2008. The High Court, while allowing the writ petition held that as per Article 25 of the Constitution all citizens are equal before the law and are entitled to equal protection of law but the State is not prohibited to treat its citizens on the basis of a reasonable classification and by referring the case of I.A. Sherwani observed that the classification so made by the Government qua granting of said two allowances to specified employees while denying the same to other employees who are also posted inside the walled premises of the Civil Secretariat, cannot be termed as reasonable and amounts to offend the principle of equity before the law. The High Court noted that the office of the Solicitor having a separate entity in the Law Department is situated within the premises of the Civil Secretariat, therefore, the employees of the Solicitor office are similarly placed and are entitled to the grant of special allowance and utility allowance. The learned counsel for the Appellant could not point out any illegality or perversity in the impugned judgment, which is maintained. Resultantly, this appeal is dismissed.

MWA/S-4/SC

Appeal dismissed.

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attested
by
[Signature]

2011 P L C (C.S.) 1373
[Sindh High Court]
Before Gulzar Ahmed and Shahid Anwar Bajwa, JJ
MUHAMMAD NUSRAT ALI and 3 others

Aux (W)
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Versus
PROVINCE OF SINDH through Chief Secretary, Government of Sindh and 3
others

Constitutional Petitions Nos.D-1756 and D-1912 of 2009, decided on 23rd May, 2011.

Sindh High Court Establishment Rules, 2006---

---Part-I, Clause-15---Finance Department Notification No. B1/2 (18) 1996, dated 25-11-2006---Constitution of Pakistan, Art.199---Constitutional petition---Utility and judicial allowance---National Judicial (Policy Making) Committee---Implementation of recommendations---Petitioners were members of establishment of Sindh High Court and had sought recovery of judicial and car allowances with effect from 1-1-2008, as per recommendations of National Judicial (Policy Making) Committee---Validity---Employees of Lahore High Court and Peshawar High Court had been extended the benefit of increase of allowances in question---Notification which provided for payment of arrears had nexus to the recommendations of National Judicial (Policy Making) Committee which had specifically provided for increase of allowances in question from 1-1-2008---Word "arrears" as appearing in the notification could not be considered to be surplus, superfluous and it had to be given effect from 1-1-2008---High Court directed the authorities to disburse arrears of judicial and car allowances to employees of Sindh High Court within a period of two months---Petition was allowed accordingly.

Khan Chand Tiloka Ram v. State of Punjab and others AIR 1966 Punjab 423 rel.

Muhammad Ali Hakro for Petitioners.

Rasheed A. Rizvi for Petitioners (in C.P. No.D-1912 of 2009).

Sheraz Iqbal Chaudhry, Standing Counsel for Respondent No.3.

Adnan Karim, A.A.-G. along with Habib-ur-Rehman, Section Officer, Budget, Revenue Department, Government of Sindh for Respondents.

Date of hearing: 27th April, 2011.

ORDER

GULZAR AHMED, J.--- By this application (Miscellaneous No.2465 of 2011), petitioners have prayed for implementation of the order dated 8-4-2010 by which this petition along with C.P. No.D-1912 of 2009 were disposed of by noting the fact that the Hon'ble Chief Justice of this Court by exercising powers conferred by clause-15 Part-I of the Sindh High Court Establishment Rules, 2006 read with powers conferred by the Finance Department Notification No.B1/2(18) 1996 dated 25-11-2006 has issued two notifications, both dated 2-4-2010, by which utility and judicial allowances of staff/officials of this Court and Bench at Sukkur, Circuit Courts at Hyderabad and Larkana were enhanced w.e.f. 1-3-2010 and judicial and car allowances of the Officers working in B-17 of this Court and Bench at Sukkur, Circuit Courts at Hyderabad and Larkana were also enhanced. With regard to arrears the Court observed as follows:---

"It is however, stated by the learned counsel that as per the above Notification arrears have not been paid due to unavailability of funds and it is mentioned in the subject Notifications that the said allowances will be paid to the concerned Employees from the month of March, 2010 onward out of the sanctioned Budget grant of this Court for the Fiscal year 2009-2010 and the arrears would be paid as and when funds will be made available by the Finance Department Government of Sindh. The learned counsel for the petitioners submits that though the issue of payment of allowances has already been delayed, the respondents may be directed to pay the arrears without any further delay as expeditiously as possible. Mr. Miran Muhammad Shah learned Addl. A.-G. present in Court contends that since a considerable amount is involved

therefore reasonable time may be granted. It may be noted that once a competent authority in exercise of powers has already enhanced the allowances, it is incumbent upon the Finance Department Government of Sindh to make the funds available. Looking at the amount involved and being at the end of the current financial year, we would direct that such arrears would be paid within two months from the date of this order. Let copy of this order be forwarded to the A.-G. Sindh for information and compliance."

The arrears, as noted above, were not paid to the employees/ officers who have filed this application for their payment. On 22-3-2011 statement was filed by the Secretary, Finance Department, Government of Sindh in which with regard to payment of arrears the following stand was taken:---

"As regards payment of arrears of enhanced Judicial Allowance, no request for releasing additional funds for enhanced Judicial Allowance has been received from Law Department/Sindh High Court by Finance Department."

The Additional Advocate-General has filed a statement dated 12-4-2011 with which is attached the original letter dated 9-4-2011 of the Section Officer (Legal) of Finance Department, Government of Sindh addressed to the Advocate General Sindh. In the last para which is with regard to arrears it is noted as follows:---

"This department is unable to know the period for which arrears are being claimed by the employees when the honourable Court has enhanced the rates of Utility and Judicial Allowances with effect from 1st March, 2010. Besides, Finance Department has already made necessary budgetary provisions in the Budget Estimates, 2010-11 as per demand of the Registrar, SHC."

Mr. Rasheed A. Razvi, the learned Counsel for the petitioners has contended that the Government is not releasing arrears of the allowances granted by the two notifications and unnecessarily confusing it with the date of 1-3-2010. He has further contended that there is specific mention of payment of arrears other than payment w.e.f. from 1-3-2010 in the two notifications and such is also apparent from the order dated 8-4-2010 where the only reason assigned for not disbursing the arrears by the A.A.-G., Sindh was that as it involves considerable amount therefore, reasonable time may be granted. Learned Counsel thus contended that the Government has not disputed or denied the liability for payment of the arrears and such be allowed to the employees and officers as per the notification and the order passed by the Court.

On the other hand, Mr. Adnan Karim, the learned A.A.-G. Sindh although made effort to dispute payment of arrears by reading the two notifications but when confronted with the order dated 8-4-2010, he too was unable to defend the position that the arrears are not payable. He has further contended that the Government has challenged the order dated 8-4-2010 in the Hon'ble Supreme Court but candidly admitted that there is no stay order passed by the Hon'ble Supreme Court. He, however, asserted that there is no date provided in the notifications for payment of arrears and for this reason also the payment of arrears could not be given effect to by the Government. To the last submission of the learned A.A.-G., Sindh, Mr. Rasheed A. Razvi has pointed out that these petitions were filed for the implementation of the recommendations of the National Judicial (Policy Making) Committee dated 18-12-2007 filed as annexure P-1 with the petition who has approved the rates of allowances of officers and staff which are to be paid from 1-1-2008. He has stated that such allowances were paid to the officers/staff by the Lahore High Court as well as by the Peshawar High Court from 1-1-2008 and in the petitions also the petitioners have prayed for granting of the allowances w.e.f. 1-1-2008. He has contended that there is no ambiguity regarding the date from which the arrears are to be paid.

We have considered the submissions of learned counsel for the parties and have gone through the record.

Though it is specifically mentioned in the two notifications dated 2-4-2010 that the utility and judicial allowance of staff/officers in B-1 to B-16 of this Court, its Bench at Sukkur, Circuit Courts at Hyderabad and Larkana is enhanced w.e.f. 1-3-2010 and judicial and car allowances of officers in B-17 of this Court, its Bench at Sukkur, Circuits Courts at Hyderabad and Larkana is enhanced from 1-3-2010 but the last para of both the notifications reads as follows:---

"However, due to non-availability/shortage of funds, it has been resolved that the said allowances will be paid to the concerned Employees from the month of March-2010 onward out of the sanctioned Budget Grant of this Hon'ble Court for the Fiscal year 2009-10. The arrears will be paid as and when funds will be made available by the Finance Department Government of Sindh."

This para of the notifications has already been observed in the order dated 8-4-2010, where it was noted that allowances in terms of two notifications will be paid to the concerned employees from the month of March, 2010 onwards out of sanctioned budget grant of this Court for the fiscal year 2009-10 and the arrears would be paid as and when funds will be made available by the Finance Department, Government of Sindh. To the extent that arrears are payable, there is no ambiguity in the notifications as the same has already been lucidly and expressly mentioned in the order dated 8-4-2010. There was also no opposition from the side of Government for payment of arrears as the learned A.A.-G., Sindh who has appeared before the Court on 8-4-2010 has only contended that since the considerable amount is involved therefore reasonable time may be granted. Therefore the Government has agreed to pay the arrears. The question is from which date such arrears are to be paid. Although it seems that demand for increasing the allowances seems to be pending with the Government of Sindh but cause for filing the petitions was provided by the recommendations dated 18-12-2007 of the National Judicial (Policy Making) Committee, wherein it has recommended for increasing the allowances from 1-1-2008. The petitioners have also claimed in their petitions the increase in allowances from 1-1-2008. In the order dated 16-10-2009 the Court has observed as follows:---

"We have taken serious view of the matter and direct the respondent No.4, Finance Department, Government of Sindh to allocate the requisite fund as requisitioned by respondent No.2 to comply with the National Judicial Policy in consonance and at par with privileges and benefits as are extended to the employees of other High Courts."

In the same order it was noted that employees of Lahore High Court and Peshawar High Court have been extended the benefit of increase of these allowances. Thus, it is clear from all attending circumstances that two notifications which provide for payment of arrears have nexus to the recommendations of the National Judicial (Policy Making) Committee dated 18-12-2007 which has specifically provided for increase of these allowances from 1-1-2008.

In the case of Khan Chand Tiloka Ram v. State of Punjab and others (AIR 1966 Punjab 423) a full bench of Punjab High Court in the dealing with the question of interpretation has observed as follows:---

"It is a recognized principle of interpretation of statutes that in order to give meaning to the clear and definite intention of the Legislature some words may in suitable cases be read in the provisions to avoid reducing the provisions to an absurdity."

In the same judgment, the full bench has further observed as follows:---

"It must be presumed that every word used in a section of a legislative enactment has been inserted with a purpose and some meaning must be assigned to it. The intention of having uselessly added surplus words or phrases should never be attributed to the legislature. The Courts always presume, while interpreting statutes, that the legislature inserted every part thereof for a purpose and the legislative intention is that every part of the statute should have effect."

Keeping in view the above principle of law, the word arrears as appearing in two notifications cannot be considered to be surplus, superfluous and it has to be given effect from 1-1-2008.

After hearing the learned counsel for the parties, through a short order dated 27-4-2011 we have allowed the application of the petitioners and directed that arrears of the allowances be disbursed to the employees within a period of two months. Above are the reasons for the same.

M.H./M-88/K

Application allowed.

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2023 P L C (C.S.) 457

[Balochistan High Court]

Before Naeem Akhtar Afghan, CJ and Abdul Hameed Baloch, J
MUHAMMAD WASSAY TAREEN

Verus

GOVERNMENT OF BALOCHISTAN through Chief Secretary and 2 others
C.P. No.523 of 2021, decided on 21st September, 2021.

Constitution of Pakistan---

---Arts.25 & 199---Constitutional petition---Discrimination---Superior Judicial Allowance, grant of---Petitioner was Provincial Mohtasib (Ombudsman) and was aggrieved of non-payment of Superior Judicial Allowance to him which was approved by Governor in his favour and previous Ombudsmen had also been receiving the allowance---Validity---Discrimination met with petitioner was not based on any rational ground or reasonable classification and was devoid of intelligible differentiation--In order to avoid discrimination, order passed by Governor for paying Superior Judicial Allowance to petitioner was not suffering from any illegality or irregularity--Chief Minister erred in facts as well as law while rejecting summary for approval of payment of Superior Judicial Allowance---High Court directed Provincial Government to make payment of Superior Judicial Allowance to petitioner in pursuance to the order passed by Governor of the Province---Constitutional petition was allowed in circumstances.

Pakcom Limited v. Federation of Pakistan PLD 2011 SC 44 and N.W.F.P
Public Service Commission v. Muhammad Arif 2011 SCMR 848 rel.

Naseebullah Tareen, Tahir Ali Baloch, Nadir Ali Chalgari and Behram Khan
Tareen for Petitioners.

Zahoor Ahmed Baloch, Assistant Advocate General for Respondents.

Date of hearing: 24th August, 2021.

JUDGMENT

NAEEM AKHTAR AFGHAN, CJ.---In the instant constitution petition, the petitioner (Ex-Provincial Ombudsman/Mohtasib Balochistan) has claimed the following relief:

"It is therefore, respectfully prayed that keeping in to consideration the above facts and circumstances, petition may kindly be allowed by declaring that:

- A. Since the Honorable Governor has granted Superior Judicial Allowance in favour of petitioner which is under his mandate, as such, the respondents have no authority to interfere in the same hence liable to release the amount in favour of the petitioner;
 - B. To direct the respondents to release the amount demanded by Ombudsman Secretariat through letter dated 28.09.2020 forthwith and its rejection dated 16.03.2021 made by respondents may kindly be set aside.
 - C. Cost of the proceedings may also be awarded;
 - D. Any other relief may kindly be granted in favour of the petitioner which this Honourable Court deems fit and proper in the circumstances of the case".
2. The petition has been contested by respondent No.3 by filing parawise comments with the contention that the petitioner accepted all the terms and conditions of his appointment and he was entitled only for those benefits which were accepted by him; the "Superior Judicial Allowance" was not allowed to him at that time, therefore he is not entitled for the subject benefit after expiry of contractual period.
 3. On 10.08.2021, learned AAG stated that respondents Nos.1 and 2 are not filing separate para-wise comments and they are relying upon para-wise comments filed by respondent No.3.
 4. After hearing learned counsel for petitioner and learned Assistant Advocate General, we have perused the available record which reveals that the petitioner was appointed as Provincial Ombudsmen for the Province of Balochistan by the then Governor Balochistan vide order dated 03.06.2013 without specifying therein the terms and conditions of service of the petitioner with stipulation that same will be issued on joining the office by the petitioner.
 5. The petitioner was administered oath as Provincial Ombudsmen Balochistan on 09.06.2013. The petitioner assumed the charge of Provincial Ombudsmen

Balochistan on 11.6.2013 and same was also confirmed by Principal Secretary to Governor Balochistan vide letter dated 12.06.2013.

6. The petitioner was not paid monthly salary and terms and conditions of his service were also not settled/issued due to which the petitioner invoked constitutional jurisdiction of this Court by filing C.P. No.570 of 2014.

7. During pendency of C.P. No.570/2014, the then Governor Balochistan issued Notification dated 07.01.2015 with regard to terms and conditions of service of the petitioner as Provincial Ombudsmen Balochistan w.e.f. 11.06.2013 which was not including "Superior Judicial Allowance".

8. Being partly satisfied with the terms and conditions of his service and being aggrieved of non-granting "Superior Judicial Allowance" by the then Governor Balochistan, the petitioner solicited permission of this Court in C.P. No.570/2014 to take up the matter with the Government.

9. Constitutional Petition No.570 of 2013 was disposed of by this Court vide order 07.01.2015 in the following terms:

"In view of above, the petition to the extent of the pay and allowances excluding Superior Judicial Allowance has borne fruit, consequently the same is disposed of. The petitioner would be at liberty to agitate his grievance if any before the proper forum, subject to all just exceptions".

10. Subsequent to the above, the petitioner submitted application dated 21.01.2015 to the Governor Balochistan for grant of "Superior Judicial Allowance" as terms and conditions of his service.

11. The above application remained pending without any decision due to which the petitioner submitted reminder dated 01.09.2015 to the Governor Balochistan, but the grievance of the petitioner was not redressed due to which the petitioner again invoked constitutional jurisdiction of this Court by filing C.P. No.973 of 2015.

12. Constitutional Petition No.973 of 2015 was dismissed by this Court vide judgment dated 31.8.2018, operating portion whereof reads as follows:

"4. We have heard the learned counsel for the parties and have gone through the record. It is true that the qualification for the appointment of an Ombudsman is equivalent to the qualification for the elevation of a Judge of a High Court, however the terms and conditions of the service is governed by Section 6(1) of the Ordinance, according to which, the Governor concerned has power to determine the same. Section 6(1) of the Ordinance is reproduced as under for ready reference.

6. Terms and conditions of service and remuneration of Ombudsman.---

(1) The Ombudsman shall be entitled to such salary, allowances and privileges and other terms and conditions of service as the Governor may determine and these terms shall not be varied during the term of office of an Ombudsman.

5. According to the above provision of law, fixation of the terms and conditions of the Ombudsman is the discretion of the Appointing Authority, therefore, because of having a qualification of a judge of a High Court does not entitles the petitioner to receive the Superior Judicial Allowance. No doubt that previously, the Ombudsman were granted Superior Judicial Allowance, but after the above referred judgment of the Hon'ble Supreme Court, it was held that the office of the Ombudsman does not fall within the category of Court or the Tribunal, whereas, the Superior Judicial Allowance has been allowed only to the Hon 'ble Judges of High Court, the Hon 'ble Supreme Court and Chairman of same Tribunals. Because the Ombudsman is not a Judicial Officer, therefore, it was not granted the said allowance by the Governor. It is a fact that the sitting Ombudsman has also not been granted the Superior Judicial Allowance, for the same reason, therefore the plea of a discrimination raised by the petitioner has no force in it. Besides, as per the Ordinance, settlement of the terms and conditions is since the discretion of the appointing authority, therefore, whatever term and condition is settled, by the authority, it is for the person, designated as an Ombudsman, either to accept or refuse it. Admittedly, the notification containing the terms and conditions of the service was issued on 7th January 2015, but the petitioner continued his office and completed his tenure on the same term and conditions, which amounts to acceptance of the same.

Attested
[Signature]
[Name]

6. Without prejudice to the above, it prima facie appears that the petitioner wants us to interfere in the discretion of the appointing authority, but he has failed to point out violation of any provision of the Ordinance or any other law by the Governor Balochistan, by not allowing the Superior Judicial Allowance to the petitioner. The discretion of the appointing authority is not unfettered; therefore, the Governor did not grant the Superior Judicial Allowance to a Non-Judicial Officer. Learned counsel for the petitioner has failed to point out any illegality, irregularity, jurisdictional defect or any reason warranting us to interfere in the notification impugned.

Thus, in view of above, the petition is dismissed".

13. The petitioner challenged the above judgment before the Hon'ble Supreme Court of Pakistan by filing CPLA No.284-Q of 2018 which has been disposed of by the Hon'ble Supreme Court of Pakistan vide order dated 24.05.2021 in the following terms:

"The learned ASC for the petitioner submits that grievance of the petitioner has been redressed to the extent that the Governor of Balochistan, vide order dated 16.09.2020 has allowed the allowance, which is the subject matter of this petition to the petitioner. However, he has filed another petition seeking implementation of the order and other reliefs.

2. In this view of the matter, this petition is disposed of. However, the petition filed by the petitioner shall be decided on its own merits, in accordance with law and without being prejudiced by the order of the High Court".

14. The order dated 16.09.2020 passed in favour of petitioner by the incumbent Governor Balochistan, implementation whereof has been sought by the petitioner by filing the instant constitution petition reads as follows:

"Mr. Muhammad Wassay Tareen, Ex-Provincial Ombudsman on the subject has submitted an appeal/application (F/A). The decision of the High Court was also presented in the matter vide (F/B) while the terms and conditions issued in favour of the applicant is at (F/C).

2. Mr. Muhammad Wasay Tareen pleaded that all the three Ex-Provincial Ombudsmen before him had been allowed Superior Judicial Allowance by the Honorable Governor Balochistan, including the current Provincial Ombudsman Mr. Abdul Ghani Khilji who is also recently granted SJ Allowance from date of his appointment.

3. Keeping in view the precedence and practice Mr. Muhammad Wasay Tareen Advocate, may also be sanctioned/allowed to get Superior Judicial Allowance w. e.f. June 2013.

4. This order be shared with the current Provincial Ombudsman to process his case under the law".

15. In pursuance of above, the office of Provincial Ombudsman (Mohatsib Secretariat Balochistan) calculated Superior Judicial Allowance for the tenure of the petitioner w.e.f. 11.06.2013 to 10.06.2017 amounting to Rs.1,13,42,093/-.

16. Request was made by Provincial Ombudsman (Mohatsib Secretariat Balochistan) to Secretary Finance Department Government of Balochistan vide letter dated 28.09.2020 to release the above amount for the petitioner under the Head of Superior Judicial Allowance. Summary was forwarded to Chief Minister Balochistan by Chief Secretary Balochistan and following decision was made by Chief Minister Balochistan:

"Case already stands disposed off, and as such be consigned to record".

17. Perusal of record reveals that in the year 2001 Malik Sikandar Advocate appointed as Provincial Ombudsman (Mohtasib) Balochistan was paid "Superior Judicial Allowance" @ Rs. 6000/- per month in pursuance of Notification dated 13.06.2001 issued by the then Governor Balochistan.

Justice (R.) Fazal-ur-Rehman appointed as Provincial Ombudsman (Mohtasib) Balochistan in the year 2005 was also granted "Superior Judicial Allowance" as admissible to a Judge of High Court vide Notification dated 21.12.2005.

Mr. Akbar Ali Baloch Advocate appointed as Provincial Ombudsman (Mohtasib) Balochistan was also granted "Superior Judicial Allowance" as admissible to a Judge of High Court vide Notification dated 26.05.2009.

File No. _____
Date: _____
Signature: _____
Judge of the Court

18. Mr. Abdul Ghani Khilji Advocate was appointed as Provincial Ombudsman (Mohtasib) Balochistan in July 2017 but he was not paid "Superior Judicial Allowance" till June 2020. However by the order of Governor Secretariat he was paid "Superior Judicial Allowance" as admissible to a Judge of High Court w.e.f. 01.07.2020.

19. In view of all the above, we have no hesitation to conclude that the petitioner has met with discrimination which is unwarranted under Article 25 of the Islamic Republic of Pakistan, 1973 which reads as follows:

"25. (1) All citizens are equal before law and are entitled to equal protection of law.

(2) There shall be no discrimination on the basis of sex.

(3) Nothing in this Article shall prevent the State from making any special provision for the protection of women and children."

20. According to settled principles of law, all persons similarly situated or circumstanced shall be treated alike. Reliance in this regard is placed on the case of Pakcom Limited v. Federation of Pakistan, PLD 2011 Supreme Court 44.

21. In view of dictum laid down by the Hon'ble Supreme Court in the case of N.W.F.P Public Service Commission v. Muhammad Arif, PLD 2011 SCMR 848, all persons subjected to a law should be treated alike under all circumstances and conditions both in privileges conferred and in the liabilities imposed. The equality should not be in terms of mathematical calculation and exactness. It must be amongst the equals. The equality has to be between persons who are placed in the same set of circumstances.

22. The discrimination met with by the petitioner is not based on any rational ground or reasonable classification and is devoid of intelligible differentia.

23. Keeping in view of principle of equality and in order to avoid discrimination, the order dated 16.09.2020 passed by the incumbent Governor Balochistan for paying "Superior Judicial Allowance" to the petitioner w.e.f. 11.06.2013 to 10.06.2017 amounting to Rs.1,13,42,093/- is held not suffering from any illegality or irregularity.

24. While rejecting the Summary for approval of payment of "Superior Judicial Allowance" to the petitioner w.e.f. 11.06.2013 to 10.06.2017 amounting to Rs.1,13,42,093/-, the Chief Minister Balochistan has badly erred in facts as well as law.

25. In view of the order dated 24.05.2021 passed by the Hon'ble Supreme Court in Civil Petition No.284-Q of 2018 (reproduced in para-13 supra), rejection of Summary by Chief Minister Balochistan for payment of "Superior Judicial Allowance" to the petitioner w.e.f. 11.06.2013 to 10.06.2017 amounting to Rs.1,13,42,093/- is not sustainable.

For the above reasons, the constitution petition is accepted. The respondents are directed to make payment of "Superior Judicial Allowance" to the petitioner w.e.f. 11.06.2013 to 10.06.2017 amounting to Rs.1,13,42,093/- in pursuance of order dated 16.09.2020 passed by the incumbent Governor Balochistan.

MH/167/Bal.

Petition allowed.

2019 P L C (C.S.) 238

[Sindh High Court]

Before Syed Hassan Azhar Rizvi and Khadim Hussain Tunio, JJ

ABDUL HALEEM SIDDIQUI and others

Versus

FEDERATION OF PAKISTAN through the Law Secretary, Ministry of Law and Justice, Pakistan Secretariat, Islamabad and others

C.Ps. Nos. D-3460, D-3366 of 2011, D-1053, D-1524, D-1657, D-3644 of 2013 and D-1268 of 2016, decided on 4th September, 2018.

(a) Constitution of Pakistan---

---Arts. 212 & 199---Constitutional jurisdiction of High Court---Civil Service---Constitutional petition seeking relief for framing of service rules and seniority list---Relief seeking framing of rules and seniority list, prima facie, cannot be legally entertained by High Court being a matter relating to service structure and applicable rules.

(b) Constitution of Pakistan---

---Arts. 25 & 4---Fundamental rights of equality of citizens and right to be dealt in accordance with law---Scope---Expression "equality before law" or "equal protection of law" did not secure to all persons the benefit of Art. 25 of the Constitution, which required that persons, similarly situated or circumstanced shall be treated alike and if one intended to seek exception to the application of Art. 25 of the Constitution, then such person would be required to establish that things were different and only then discrimination could be made which too much be based on some intelligible differential, bearing a reasonable and just relation to the object, sought to be achieved.

Pakcom Limited v. Federation of Pakistan PLD 2011 SC 44 rel.

(c) Constitution of Pakistan---

---Arts. 25, 4, 38(e) & 37(d)---Interpretation of the Constitution---Fundamental Rights---Principles of Policy---Equality of citizens---Right to be dealt in accordance with law---Obligation of state to ensure inexpensive and expeditious justice---Application of such rights to public servants/civil servants---Terms and conditions of Public Service---Scope---Constitution was a living and organic document, and while interpreting the same, expensive and dynamic approach was to be adopted---Fundamental Rights included equality in terms and conditions of service and Arts. 25, 37(d) & 38(e) of the Constitution were to be read with Arts. 4 & 25 of the Constitution.

(d) Constitution of Pakistan---

---Arts. 25, 4, 37(d), 38(e) & 199---Sindh Criminal Prosecution Service (Constitution, Functions and Powers) Act (IX of 2009), S.9(1)---Judicial Officers---Remuneration and benefits of judicial officers---Special Judicial Allowance---Entitlement of Offices of State Representation to Special Judicial Allowance---Roles and Functions of the Sindh Criminal Prosecution Service---Employees of Provincial Criminal Prosecution Service entitled to same benefit(s) as employees of the Offices of the Advocate-General and Attorney-General---Scope---Question before the High Court was whether petitioners, who were working for the Provincial Criminal Prosecution Service, were entitled to grant of Special Judicial Allowance, as was being provided to offices of the Advocate-General and Attorney-General---Contention of petitioners, inter alia, was that functions and duties of the office of the petitioners was similar to that of the offices of the Advocate-General and Attorney-General, and thus they were being discriminated against---Validity---Barriers of names and classification of office(s)/court(s) were of no significance when question of Special Judicial Allowance was involved---Judiciary, anywhere in the country, was to be as a class in itself and barriers of names, classification and Provinces could not therefore stand---Special Judicial Allowance was not limited to the Judiciary alone, but also to its counterpart, which was "State Representation"---Prima facie, purpose and object of both Advocate-General Office and the Provincial Criminal Prosecution Service was one and the same, which was representation of the Government and mere difference of "civil matters", which was dealt with by Advocate General Office and "criminal prosecution", dealt with by Provincial Criminal Prosecution Service, could not be a factor in the present case---High Court observed that Office of Advocate-General performed the same functions in the Province as the Provincial Criminal

Aux (Y)

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Prosecution Service, and therefore petitioners were entitled for equal treatment under Art. 25 of the Constitution, and thus were entitled to avail the same benefits as employees of the Advocate-General Office---High Court declared refusal of grant of Special Judicial Allowance to petitioners being violative of Art. 25 of the Constitution and directed payment of the same to the petitioners---High Court further directed the State respondents to take steps and initiate legislative measures as may be necessary to frame service structure of employees/non-gazetted staff of the Provincial Criminal Prosecution Service---Constitutional petitions were allowed, accordingly.

Government of Punjab v. Mubarak Ali Khan PLD 1993 SC 375; Pakcom Limited v. Federation of Pakistan PLD 2011 SC 44; Secretary, Ministry of Finance v. Masdar Hossain (1999) DLR (AD) 82; Pir Imran Sajid and others v. Managing Director/General Manager and others 2015 SCMR 1257; WP Sadaqat Ali v. Government of Punjab and Muhammad Akram v. Selection Committee 2003 CLC 18 rel.

Date of hearing: 11th August, 2018.

JUDGMENT

KHADIM HUSSAIN TUNIO, J.---By this common judgment, we intend to dispose of captioned petitions as the same have been filed by different persons, from which all are associated directly or indirectly with the administration of justice, which includes judicial officers of the District Judiciary, employees and servants attached to the District Judiciary and employees/staff attached to Special Courts under the Federal Governments. The sole purpose behind all the petitions is enhancement of pay and judicial allowance at par with the judicial officer and officers and employees of District Judiciary Establishment.

2. The petitioners, in the respective petitions have sought for the following relief:-
C.P No. D-3460 of 2011
 - i. Direct the Respondents Nos. 1 and 2 to frame appropriate rules/legislation to ensure the financial and budgetary independence of the Sindh Criminal Prosecution Service.
 - ii. Direct the Respondent No. 2 to frame appropriate rules to ensure that the prosecutor's supervisory role over the police investigation as contemplated under sections 9 and 10 of the Sindh Criminal Prosecution Service (Constitution Functions and Powers) Act 2009 is truly effective and meaningful.
 - iii. Direct the Respondents Nos. 1 and 2 to ensure that all prosecutors within the Sindh Criminal Prosecution Service are provided equal salaries, allowances, privileges and facilities as their similarly placed counterparts in the Attorney General Office and - at any rate - to ensure that the former are conferred the same remunerative enhancements as have been conferred on the latter;
 - iv. Grant such further or additional relief as this Hon'ble Court may deem appropriate in the circumstances.
C.P. No. D-3366 of 2011
 - i. To hold/declare that the Judicial allowance as well as utility allowance of Petitioners/Prosecutors and their sub-ordinate staff of Sindh Criminal Prosecution Service Department working under the supervision of Prosecutor General Sindh (Respondent No. 5) i.e. Prosecutor General Sindh, Additional Prosecutor Generals, Deputy Prosecutor Generals, Assistant Prosecutor Generals, District Public Prosecutors, Deputy District Public Prosecutors and Assistant Deputy Public Prosecutors and their sub-ordinate staff is discriminatory especially in view of the Attorney General Office, Advocate General Office, sub-ordinate Judiciary and their lower staff.
 - ii. To allow the petition of the Petitioners by directing the Respondents that the Petitioners/Prosecutors of Sindh Criminal Prosecution Service Department may also be treated as provided to the Attorney General Office, Advocate General Office, their sub-ordinate employees, Sub-Ordinate Judiciary and their lower staff as directed by the Hon'ble High Court in its order dated 24th May 2011 and further direct the Respondents that at worst the Petitioners/Prosecutors of Sindh Criminal Prosecution Service Department may be given Medical facility equal to the employees of Sindh Secretariat.

- iii. That the remuneration and other allowances may be awarded to the Petitioners/Prosecutors of Sindh Criminal Prosecution Service Department and their employees/sub-ordinate staff since 2008.
- iv. Or may pass any order(s) in favour of the Petitioners/Prosecutors of Sindh Criminal Prosecution Service Department against the Respondents which this Hon'ble Court may deem fit and proper under the circumstances of the case.
C.P. No. D-3644 of 2013
 - i. Declare that the petitioners along with other subordinate staff of office of the District Attorney, District Prosecutor, Deputy District Attorneys and Deputy District Prosecutors, are entitled to the grant of special Judicial Allowance (3 basic) and Utility Allowance at the enhance rate as being availed by the Office of the Attorney General and the Office of the Advocate General and the Office of the Advocate General Sindh and their subordinate staff.
 - ii. Direct the respondents to grant and provide/ allowance and utility allowance at the rate already availed by the office of the Attorney General and office of Advocate General Sindh, to be paid to the petitioners.
 - iii. Grant the costs of this petition.
 - iv. Grant any other relief as may be deemed fit and proper under the circumstance of the petition.
C.P. No. D-1657 of 2013
 - i. Declare that the petitioners along with other sub-ordinate staff of office of the District Attorneys, District Prosecutors, Deputy District Attorneys and Deputy District Prosecutors are entitled to the grant of Special Judicial Allowance 3 basic and Utility Allowance at the enhance rate as being availed by the office of the Attorney General and the Office of the Advocate General Sindh, and their sub-ordinate staff.
 - ii. Direct the respondents to grant and provide/allocate the require funds for judicial allowance and utility allowance at the rate already availed by the office of Attorney General and office of Advocate General Sindh, to be paid to the petitioners.
 - iii. Grant the costs of this petition.
 - iv. Grant any other relief as may be deemed fit and proper under the circumstances of the petition.
C.P. No. D-1053 of 2013
 - i. Declare that the petitioners along with other sub-ordinate staff of office of the District Attorneys, District Prosecutors, Deputy District Attorneys and Deputy District Prosecutors are entitled to the grant of special Judicial Allowance (3 basic) and Utility Allowance at the enhance rate as being availed by the office of the Attorney General and the Office of the Advocate General Sindh, and their sub-ordinate staff.
 - ii. Direct the respondents to grant and provide/allocate the require funds for judicial allowance and utility allowance at the rate already availed by the office of Attorney General and office of Advocate General Sindh, to be paid to the petitioners.
 - iii. Grant the costs of this petition.
 - iv. Grant any other relief as may be deemed fit and proper under the circumstances of the petition.
C.P. No. D-1524 of 2013
 - i. Direct the respondents Nos. 1 and 2 frame service structure of the employees/non gazetted staff of the Criminal Prosecution Services Department.
 - ii. Direct the respondents to ensure that all employees/non gazetted staff of the Criminal Prosecution Services Departments are provided equal salaries, allowances, privilege and facilities as their similarly, placed, counterparts in the-Attorney General's Office, Advocate General of Sindh office, special court's and District Courts of Sindh, which have recently been enhanced.
 - iii. Direct the respondents to continue paying salary along with benefits/ allowances according to the law regularly without fail.
 - iv. Any other relief(s) deem fit and proper by this Hon'ble Court may be awarded to the petitioner under Article 199 of the Constitution of Pakistan.

- i. To direct the respondents to grant the allowances, perks and emoluments to the petitioner as well as to the other prosecutors working as D.P.Ps, D.D.P.Ps, Deputy Director Monitoring, A.D.P.Ps and Assistant Director Monitoring as equal to the prosecutors working as Addl. P.Gs, D.P.Gs and A.P.Gs to their categories respectively, as envisaged in concerned rules and Act, with effect from the period since granted in favour of Addl. P.Gs, D.P.Gs and A.P.Gs.
 - ii. To direct the respondents to prepare joint seniority list of D.P.Gs with D.D.P.Ps directly recruited through Sindh Public Service Commission (BPS-18) for promotion to the post of Addl.P.Gs and D.P.Gs (BPS-19), also direct the respondents to prepare joint seniority list of the prosecutors serving in BPS-17 directly recruited through SPSC in different categories qualified together for their promotion to the post of D.P.Gs, D.D.P.Ps and Deputy Director Monitoring in order to equal treatment and to avoid discrimination.
 - iii. To award any other relief to the Petitioner and other prosecutors found to be entitled thereto, in the best interest of justice.
3. Learned counsel for the petitioners argued that the advocates working for the Sindh Criminal Prosecution Service perform, by and large, similar functions to those performed by the advocates working for the Attorney General Office; that their duties of prosecution and supervision over the investigative process are not confined solely to offences under provincial law but also offences under federal law; that Respondents Nos. 1 and 2 are under legal obligation to ensure the elimination of disparity in remuneration of prosecutors; that the judicial officers/employees in all categories and so also the staff and the employees attached to the District Judiciary or Federal/ Provincial Courts/Tribunals are a separate class burden with onerous responsibility; that they perform their duties diligently and whole-heartedly; that special allowances are allowed to various categories of service which are not admissible to other categories. Learned counsel has further urged that it is not the case that the Province of Sindh has scarce resources because it is otherwise responsibility of the state to ensure elimination of all forms of exploitation and the State as a guardian of all must act fairly, justly, equitably and the judiciary and staff or servant attached thereto are to be extended similar treatment throughout different departments in Pakistan; that it is the duty of the state to promote social justice and eradicate social evils, which is only possibly if uniform terms are applied and that all persons placed in same classification are treated alike; that low pay-grade can also encourage corruption and malpractice; that by withholding the right of petitioners to the said allowances, they will undermine the judicial independence, promised to every citizen of Pakistan; that when other staff of the same ranking and performing similar duties though working under different heads then it would not be justified to with-hold same treatment merely for difference of name; that judiciary is not a provincial subject and the Federation of Pakistan is equally responsible to shoulder the duty to provide all the resources to the provinces; that in terms of Articles 3, 37(d) and 38(e) read with Article 25 of the Constitution 1973, the staffed attached to the judiciary perform one in the same function in all four provinces and it is not that the judicial officers in a certain office, province or place perform any different functions; therefore, the judiciary as a whole is a class in itself and must be treated alike, without any bias; that the function being performed by the Attorney General and the officers attached thereto is similar. Learned counsel for the petitioner has further urged that the power to revise the benefits and emoluments of the judicial officers and the other staff attached to the judiciary whether it be district judiciary or superior judiciary should vest with the judiciary not with the executive functionaries; that this court may strike down the terms and conditions prescribed by the Government of Sindh and frame appropriate legislation to provide for Independent Judicial Service Board vesting power in the judicial hierarchy to determine the terms and conditions including emoluments.
4. Learned counsel for the state urged that there is no disparity in the service emoluments of different category of civil servants, including the petitioners whether judicial officers or servants and employees of District Judiciary or other courts and tribunals working in the province of Sindh, including employees of the Advocate General, Sindh are civil servant and pay scale of all the civil servants in the province of Sindh are being treated equally and there is no discrimination; that as for the three

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fold salary increases, the financial position of the Province of Sindh is far from weak and the same are not going to be in an improved position any sooner, once that is done so, the salaries would be revised; that Judicial Officers of the District Judiciary or staff of a body governed by the Provincial or Federal Government are all civil servants, their terms and conditions are governed under the Sindh Civil Servants Act, therefore, the petitioners cannot form a separate class and claim different or for that matter better treatment compared to other civil servants; that the petitioners are the employees of offices of Prosecutors and they cannot be categorized with the judicial employees nor the secretariat employees.

5. At the very outset, it may be said that through instant petition (s) number of relief(s) have been sought which includes direction for framing rules as well joint seniority list however main relief seems to be that of discrimination with reference to office (s) of Attorney General and Advocate General. As regard the relief (s) for framing of rules and seniority list, it would suffice to say that same prima facie legally cannot be entertained by this court being a matter relating to service structure and applicable rules. However, the question of discrimination (violation of Article 25 of Constitution) can well be examined particularly when the same has been pressed while referring to particular office (s) with a claim that functions and duties of office (s) of petitioners is one and same.

6. The issue, involved in the instant petitions, was never with regard to status of the petitioners to be civil servant or otherwise but whether functions and duties of the office of petitioners is similar to that of offices of Advocate General and Attorney General?. If so, whether they are justified in seeking grant of Special Judicial Allowance equal to three times of the initial of the substantive pay scale as is being provided to offices of Advocate General and Attorney General or otherwise?.

7. Before examining merits, it would be appropriate to say that Special Judicial Allowance is not an ordinary allowance but the use of the word 'special judicial' is self-sufficient to make it quite obvious that it has no general/ordinary application which every civil servant could claim under status of his being a civil servant. It was always aimed for specific class of persons though falling within meaning of civil servants. Thus, legally the plea of the learned counsel for State with reference to status of petitioners and that of office of Advocate General and Additional Attorney General as 'civil servant' is entirely misconceived unless and until the learned State Counsel prima facie establishes that functions and duty, being performed by such offices, is not similar to that of office of petitioners. The barriers of names and classification of office (s)/court (s) are of no significance when a question of special judicial allowance is involved. In the case of Government of Punjab v. Mubarak Ali Khan (PLD 1993 SC 375), the Honourable Supreme Court has held that since employees of High Courts perform almost identical functions as do the employees of Hon'ble Supreme Court and Federal Shariat Court, as such; they cannot be discriminated against in respect of an allowance which has been allowed to the employees of these two Courts. Relevant observations there from are reproduced here-in-below:-

"The employees of the Federal Shariat Court and the Supreme Court of Pakistan have been allowed such an Allowance. The High Court employees perform almost identical functions as do the employees of these two other Courts perform. The employees of all the three Courts have been dealt with constitutionally by the same provision reproduced above. In the circumstances, the High Courts employees cannot be discriminated against. The necessary provision of Secretariat/Personal Allowance had to be made in respect of such employees as was made in the case of the Federal Shariat Court and the Supreme Court employees."

(underlining is for emphasis)

8. We may further add that Article 25 of the Constitution of Islamic Republic of Pakistan, 1973 guarantees equal treatment to all persons similarly placed. We may safely add here that expression (s) i.e. 'equality before law' or 'equal protection of law' do not secure to all persons the benefit of a law but requires that persons, similar situated or circumstanced, shall be treated alike. If one intends to seek any exception to application of such article, he shall always be required to establish that things are different and only then discrimination could be made which too must be based upon some intelligible differential, bearing a reasonable and just relation to the object,

sought to be achieved. Reference may well be made to the case of Pakcom Limited v. Federation of Pakistan PLD 2011 SC 44 wherein it is observed as:

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"It would not be enough to say that a piece of legislation or a policy formulated thereunder is discriminatory but it is to be substantiated by applying certain well entrenched principles on the subject of discriminatory legislation which are as follows:-

- (i) The expression 'equality before law' or the 'equal protection of law' does not mean that it secures to all persons the benefit of the same laws and the same remedies. It only requires that if persons similarly situated or circumstances shall be treated alike'
- (ii) The guarantee of equal protection of law does not mean that all laws must be general in character and universal in application and the State has no power to distinguish and classify persons or things for the purpose of legislation;
- (iii) The guarantee of equal protection of laws forbids class legislation but does not forbid reasonable classification for the purpose of legislation. The guarantee does not prohibit discrimination with respect to things that are different. The State has the power to classify persons or things and to make laws applicable only to the persons or things within the class;
- (iv) The classification, if it is not to offend against the Constitutional guarantee must be based upon some intelligible differential bearing a reasonable and just relation to the object sought to be achieved by the legislation.

9. We would also add that constitution is living and organic document, while interpreting the Constitution expensive and dynamic approach and interpretation is to be adopted. Fundamental rights include equality in terms and conditions of the service Articles 27, 37(d) and 38(e) are to be read with Articles 4 and 25 of the Constitution 1973. Judicial Officers in District Judiciary and Courts and Tribunal and the staff attached thereto perform one in the same function in all four provinces and it is not that the Judiciary in Punjab performs any different functions; therefore, the judiciary anywhere in Pakistan as a whole is a class in itself, this was also ruled by the apex court in Bangladesh in a land mark judgment reported as Secretary, Ministry of Finance v. Masdar Hossain (1999) DLR (AD) 82. The 'special judicial allowance' though earlier was granted to the judiciary alone and barriers of provinces and name (s) classification of court (s) even could not stand in such benefit. That, being an undeniable position, needs not be discussed any more.

10. It is also a matter of record that the office of 'Advocate General Sindh' also claimed same relief by resorting to constitutional jurisdiction of this Court. Such claim, prima facie, was based on nothing but that judicial system always require a proper assistance from State (representative) and an effective and speedy trial is not possible if a complete assistance is not provided by such end. At this juncture, a direct referral to letter of Advocate General Sindh bearing No.AG-738/ 2012 Karachi dated 27.03.2012 and office memorandum, issued by Finance Department vide No.FD(SR-III)5/ 4 2009(A) Karachi dated the 1st February, 2013 shall make situation more easier to conclude the discussion. The letter of Advocate General Sindh reads as:-

"To
The Secretary,
Finance Department, Government of Sindh, Karachi
Subject:- C.P.NO.D-2318/ 2009 FILED BY MUHAMMAD ALI ANSARI AND
OTHERS VERSUS PROVINCE OF SINDH AND
OTHERS

Please find herewith copy of judgment dated 24.05.2011 and order dated 13.3.2012 for immediate compliance, however, without prejudice the stand of the Government in the Hon'ble Supreme Court of Pakistan, the Employees of the Advocate General Sindh is on the same footing and are entitled for equal treatment. As such the treatment meted out by your Department vide Letter dated 16.3.2012 for grant of Special Judicial Allowance equal to three times the intial of respective basic pay scale of 2008 to the office / employees of establishment of subordinate / district judiciary may be given accordingly.

Encl. As above.

Sd/-

ABDUL FATTAH AMLIK (T.I)
Advocate General Sindh

The letter of finance department, referred above, reads as:--

OFFICE MEMORANDUM

Subject:- GRANT OF SPECIAL JUDICIAL ALLOWANCE EQUAL TO THREE TIMES THE INITIAL OF RESPECTIVE BASIC PAYSACLE OF 2008 TO THE OFFICERS/EMPLOYEES OF THE OFFICE OF ADVOCATE GENERAL SINDH

In compliance with the order dated 10.01.2013, passed by the Honourable Sindh High Court, Karachi in Constitution Petition No.D-2318/ 2008 read in conjunction with the common judgment dated 24.05.2011 passed by the Honourable High Court of Sindh in Constitutional Petitions Nos.D-1930/2009, D-1465/2009, D-2318/2009 and D-2433/2009, Finance Department allows Special Judicial Allowance at the rate of three times the initial of the respect Basic Pay Scale, 2008 to the officers/officials in BPS-1 and above of the office of Advocate General of Sindh, Karachi, with effect from 1st February, 2013. TENTATIVELY

In case of the said order of the Honourable High Court is set aside by the Honourable Supreme Court of Pakistan, then all payments made will be recovered in installments.

SECRETARY TO GOVERNMENT OF SINDH
FINANCE DEPARTMENT

Karachi dated the 1st February, 2013

The above are sufficient to make it clear that 'special judicial allowance' is not limited/confined to judiciary alone but to its counter-part i.e. 'state-representation'. Thus, the learned State counsel would not be legally justified in opposing the instant relief, sought through said petition (s) merely by uttering word of 'civil servant' while not denying the fact that such benefit is also being taken by office (s), representing the State though in civil matter (s). In the case of Pir Imran Sajid and others v. Managing Director/General Manager and others 2015 SCMR 1257 it is held as:-

"1. It hardly needs to be emphasized that the whole edifice of government of the society has its genesis in the Constitution and laws aimed at to establish an order, inter alia, ensuring the provisions of socio-economic justice, so that the people may have guarantee and sense of being treated in accordance with law that they are not being deprived of their due rights.

In the said case, it was further observed as:-

"Provision of Article 4 embodies the concept of equality before law and equal protection of law and save citizens from arbitrary/discriminatory law and actions by the governmental authorities. Article 5(2) commands that every body is bound to obey the command of the constitution'. Every public functionary is supposed to function in good faith, honestly and within the precincts of its power so that person concerned should be treated in accordance with law as guaranteed by Article 4 of the Constitution. It would include principles of natural justice, procedural fairness and procedural propriety. The action which is mala fide or colourable is not regarded as action in accordance with law. While discharging official functions, efforts should be made to ensure that no one is prevented from earning his livelihood because of unfair and discriminatory act on their part.

"12. It is now well laid down that the object of good governance cannot be achieved by exercising discretionary powers unreasonably or arbitrarily and without application of mind but objective can be achieved by following the rules of justness, fairness, and openness in consonance with the command of the Constitution enshrined in different Articles including Articles 4 and 25. The obligation to act fairly on the part of the administrative authority has been evolved to ensure the rule of law and to prevent failure of the justice.

We would insist that obligation to act fairly would always require the State Counsel to make a fair statement or least give reasonable justification to the effect that functions and duties of the office of petitioners is different from that of their (s).

11. Though, no such classification/justification has been attempted, however, as an abandon caution the functions and duties of the office (s) of these two be examined. Office of the Advocate General Sindh', prima facie, is assigned the work to defend the interest of provincial and local functionaries of Government in Constitutional

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Petitions and Civil matters before the High Court and Supreme Court. On the other hand, the function of the office of the Criminal Prosecution Services, per section 9 of the Sindh Criminal Prosecution Service (Constitution, Functions and Powers) Act, 2009 is:

"9(1) The Prosecution shall be responsible for the conduct of prosecution on behalf of Government."

Prima facie, the purpose and object of both offices is one and same i.e. representation of the Government and mere difference of 'civil matters' and 'criminal prosecution' cannot be said to be a deciding different (factor). In short, both office (s) are meant to protect the government interest in specified fields i.e. civil and criminal. We would also add that the Government was / is not only required to protect its civil rights (matters) but is also required to ensure peace and tranquility in the society which cannot be achieved unless and until the prosecution services is not provided effectively. We would say that a civil right / interest of government may cause prejudice to such right alone but a failure in prosecution would surely affect the governance which may even result in 'failure of government' therefore, the duty and obligation of the prosecution, in our view, is more serious. Office of Advocate General perform same function in the Province as is performed by the office of the Sindh Criminal Prosecution Service, therefore are entitled for equal treatment else there shall be a failure of Article 25 of the Constitution. In an unreported judgment in WP Sadaqat Ali v. Government of Punjab, where the Advocate General Office was directed to be placed equally with the Attorney General Office on the ground that the officers attached to the Principal Law Officer performs similar function as is being performed by the Attorney General and the officers attached thereto. Therefore plea of discrimination by employees of Sindh Criminal Prosecution Service carries substance. The petitioners are entitled to avail the benefit, being availed by the office of the Advocate General Sindh.

12. In the last, we would say that to provide inexpensive and expeditious justice in terms of Article 37(d) of the Constitution, 1973 it is the responsibility of the State; the Federation cannot shed its responsibility on the premise that it is responsibility of the Province of Sindh. Inexpensive and expedient justice could only be achieved by efficient, competent and independent judicial apparatus, which all attributes have direct nexus with better reward in terms and condition of service and financial independence of the Judiciary. To remove disparity and ensure wellbeing of the people is responsibility of the State, which in turn would eliminate inequality in the income and earning of individual including persons of various classes similarly placed. (See Attiyya Bibi v. Federation of Pakistan 2001 SCMR 1161 and Muhammad Akram v. Selection Committee (2003 CLC 18). Be that as it may, it is a matter of record the Government of Sindh (Finance Department) did allow special judicial allowance to office of the Advocate General Sindh therefore, the same cannot seek an exception to provide similar relief/treatment on account of any financial issue.

13. In view of what has been discussed hereinabove we are of the view that the petitioners have made out a case for grant of Special Judicial Allowance equal to three times of the initial of the substantive pay scale with effect from 01.07.2017, as such, the instant petitions are allowed declaring that the deferment/refusal of the arrears of the Special Judicial Allowance to the members of Sindh Criminal Prosecutors Service, their subordinate staff as well as petitioners in C.P. No. 3644 of 2013 and C.P. No. 1657 of 2013 and C.P. No. 1053 of 2013 and other subordinate staff of office of District Attorneys and Deputy District Attorneys with effect from 01.07.2017 on the ground of financial constraints being discriminatory is violative of Articles 25 of the Constitution of Islamic Republic of Pakistan, 1973. The members of Sindh Criminal Prosecutors Service, their subordinate staff as well as petitioners in C.P. No. 3644 of 2013 and C.P. No.1657 of 2013 and C.P. No. 1053 of 2013 and other subordinate staff of office of District Attorneys and Deputy District Attorneys are entitled to the Special Judicial Allowance equal to three times of the initial substantive pay scale with effect from 01.07.2017. Consequently the respondents are directed to pay Special Judicial Allowance equal to three times of the initial of the substantive pay scale to the members of Sindh Criminal Prosecutors Service, their subordinate staff as well as petitioners in C.P.No. 3644 of 2013 and C.P. No.1657 of 2013 and C.P. No.1053 of 2013 and other subordinate staff of office of District Attorneys and Deputy District

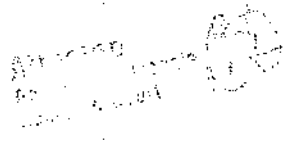
Attorneys with effect from 01.07.2017 and notification be issued accordingly, such increase to be paid with effect from 1st January 2019 and arrears with effect from 1st of July 2017 be paid in monthly instalments along with monthly salary till entire arrears are paid with monthly salary for the month same is due. However, they are not entitled for utility allowance as same had not been allowed by the provincial and federal governments to the Advocate General Sindh, Attorney General of Pakistan and their subordinate staff.

14. In C.P. No. D-3460 of 2011, the respondents are directed to take steps and initiate such legislative measures as may be necessary to empower the Sindh Criminal Prosecutors Service's supervisory role over the performance of investigation officers of the criminal cases. The respondents are further directed to take steps and initiate such legislative measures as may be necessary to frame appropriate rules relating to the financial and budgetary independence of the Sindh Criminal Prosecutors Service.

15. In C.P. No. D-1524 of 2013 and C.P. No. 1268 of 2016, the respondents are directed to take measures and initiate such legislative measures as may be necessary to frame the service structure of the employees/non gazetted staff of the Criminal Prosecution Services Department and prepare seniority list as per rules.

KMZ/A-103/Sindh

Order accordingly.



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[Supreme Appellate Court]

Before Dr. Rana Muhammad Shamim, C.J., Javed Iqbal and Shahbaz Khan, JJ
 SECRETARY LAW AND PROSECUTION GILGIT-BALTISTAN and 3 others---

Petitioners

Versus

ASLAM KHAN, SUPERINTENDENT, CUSTOMS AND BANKING COURT,
 GILGIT and 15 others---Respondents

C. Misc. No. 86 of 2014 in C.P.L.A. No. 90 of 2014, heard on 5th September, 2016.

Civil service---

---Judicial allowance and special judicial allowance---Entitlement to---Writ petition by the employees in various categories in BPS-1 to 16 of the Customs and Banking Court, with contentions that they were entitled to all the benefits i.e. Judicial Allowance and Special Judicial Allowance; equal to three time of their substantive pay scale was allowed by the Chief Court---Validity---Advocate-General, could not point out any infirmity and illegality in the impugned judgment---Claimed Judicial/Special Judicial Allowance was paid to all the court staff and officials in all the Provinces of Pakistan, Islamabad Capital; as well as to the staff of officers of Supreme Appellate Court and Supreme Court of Pakistan but the government of Gilgit-Baltistan, in the present case failed to treat equally among equals---Leave to appeal was dismissed by the Supreme Appellate Court and judgment passed by the Chief Court was maintained---Authorities were directed to pay/release all back benefits in shape of arrears.

Advocate-General along with Ali Nazar Khan, Advocate-on-Record for Petitioners.

Date of hearing: 5th September, 2016.

ORDER

DR. RANA MUHAMMAD SHAMIM, C.J.---The learned Advocate General contends that the respondents are the employees in various categories in BPS-01 to 16 of the Customs and Banking Court, Gilgit-Baltistan who filed a Writ Petition No. 103/2013 with the contentions that they are entitled to all the benefits i.e. Judicial Allowance and Special Judicial Allowance equal to three time of their substantive pay scale while setting aside the letter No. SO-14 (1) CBC/2013 dated 05.11.2013 issued by the petitioner No. 01. The said Writ Petition of the respondents was allowed vide impugned judgment dated 28.05.2014. The petitioners being aggrieved by and dissatisfied with the said impugned judgment filed this petition for leave to appeal and the petition was heard today.

2. The learned Advocate General contends that the respondents have not obtained the Ex-post facto sanction from the competent authority i.e. the Government of Gilgit-Baltistan. He also contends that the Judge of the Customs and Banking Court has no authority to sanction the Judicial/Special Allowance in favour of the employees of Customs and Banking Court Gilgit-Baltistan and the sanction order No. Law-SO-14(1)/CBC/2013 dated 05.11.2013 being devoid of legal sanction was not tenable and liable to be set aside. He further contends that the learned Gilgit-Baltistan Chief Court vide impugned judgment dated 28.05.2014 in Writ Petition No. 103/2013 has wrongly allowed the said Writ Petition which is required to be set aside being not well reasoned and well founded.

3. We have heard the learned Advocate General at length, perused the record of the case file and gone through the impugned judgment dated 28.05.2014 in Writ Petition No.103/2013 passed by the learned Gilgit-Baltistan Chief Court. The learned Advocate General could not point out any infirmity and illegality in the impugned judgment dated 28.05.2014. The Judicial/Special Judicial Allowance is paid to all the court staff and officials in all the Provinces of Pakistan, Islamabad Capital, as well as to the staff and officers of this court and the Supreme Court of Pakistan. Why the Gilgit-Baltistan Government is not treating equally among the equals?

In view of the above, we are not inclined to grant leave. The leave to appeal is accordingly refused. The impugned judgment dated 28.05.2014 in Writ Petition No. 10/2013 passed by the learned Gilgit-Baltistan Chief Court is maintained. The petitioners are directed to pay/release all the back benefits in shape of arrears, if any, and keep paying on account of Judicial/Special Judicial Allowances to the respondents from the date as extended to other employees/staff/officers of District Judiciary, Gilgit-Baltistan Chief Court and Supreme Appellate Court Gilgit-Baltistan.

The leave is refused.

HBT/97/GB

Leave refused.

2016 P L C (C.S.) 1

[Sindh High Court]

Before Muhammad Ali Mazhar and Shahnawaz Tariq, JJ

DAWOOD SIGHAR and 5 others

Versus

PROVINCE OF SINDH through Chief Secretary, Sindh and others

C.P. No.D-1637 of 2013, decided on 28th April, 2015.

(a) Civil Service Regulations, 1960---

---Art. 486---Constitution of Pakistan, Arts.199 & 208---Constitutional petition---Civil service---Retired employees of High Court (Sindh)---Plea for accumulation of judicial allowance in pension calculation---Independence of judiciary---Chief Justice, powers of---Scope---Chief Justice of High Court had power to sanction pension provided same was covered by the rules and certified by the Audit Officer to be admissible---Supreme Court and Federal Shariat Court with the approval of the President and High Court with the approval of the Governor concerned might make rules providing for appointment by the Court of officers and servants of the Court and for their terms and conditions of employment---Object in making special dispensation for officers and servants of the Court was to ensure the independence of Superior Courts---High Court to remain independent and free from interference in its affairs by the executive authorities---Payment of judicial allowance could not be treated as an ad hoc relief or any benefit of contingent or reliant nature but same was one of the components of the emoluments which was being paid during active service---Special pay of all types and nature was part of emoluments including other emoluments which might be specially classed as pay---Overseas pay, technical pay, special pay and personal pay were also integral part of pay except the pay other than special pay or pay granted in view of personal qualification which had been sanctioned for a post held by an employee substantively or in an officiating capacity or to which he was entitled by reason of his position in a cadre---Judicial allowance was allowed to the employees across the board---Judicial allowance was neither extended to a person specific nor sanctioned for a post held by an employee substantively or in an officiating capacity or to which he was entitled by reason of his position in a cadre---Judicial allowance was part of emoluments/pay/salary and reckonable being one of the components for pension calculation---Chief Justice of High Court had all the powers of government in the administrative department with regard to officers and servants of the High Court---Judicial allowance had been treated as emolument for the purpose of pension with regard to judicial officers and such benefit had also been extended to the staff and officers of the High Court (Sindh)---Judicial allowance was reckonable for the calculation of pension as part of emoluments---Petitioners and other retired employees placed in similar position were entitled for accumulation of judicial allowance in pension calculation---Government was directed to re-calculate pension within specified period after giving effect of judicial allowance and start the future payment accordingly and arrears be also paid---Constitutional petition was accepted in circumstances.

PLD 1994 SC 105; 1997 SCMR 141; PLD 1993 SC 375 and 1991 MLD 2546 rel.

(b) Civil Service Regulations, 1960---

---Art. 486---"Emoluments"---Meaning---"Emoluments" meant the emoluments which the officer was receiving immediately before his retirement.

(c) Civil Service Regulations, 1960---

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---Art. 487--- "Average Emoluments"--- Meaning--- "Average Emoluments" meant the average calculated upon the last three years of service.

(d) Judgment---

---Judgment "in rem"---Meaning.

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Wharton's Law Lexicon (Fifteenth Edition); Satrucharla v. Vijayarama Raju v. Nirmaka Jaya Raju (2006) 1 SCC 212; Black's Law Dictionary, 7th Edn., p. 847; Black's Law Dictionary (Sixth Edition); Eureka Building and Loan Ass'n v. Shulz, 139 Kan. 435, 32 P.2d 477, 480; Federal Land Bank of Omaha v. Jefferson 229 Iowa 1054, 295 N.W. 855, 857; Hameed Akhtar Niazi v. Secretary Establishment Division Pakistan 1996 SCMR 1185 and Federation of Pakistan v. Qamar Hussain Bhatti PLD 2004 SC 77 rel.

Rasheed A. Razvi, Farhatullah, Haider Imam Rizvi and Abbas Rizvi for Petitioners.

Sarwar Khan, Addl. A.-G. Sindh for Respondents.

Muhammad Arshad, Section Officer, Finance Department, Government of Sindh, Karachi.

Date of hearing: 27th October, 2014.

JUDGMENT

MUHAMMAD ALI MAZHAR, J.--- This petition has been brought to seek following relief(s):--

- "(a) Declaration that the petitioners and all other retired employees of Sindh High Court placed in similar class are entitled for calculation of pensionary benefits by inclusion of Judicial Allowance.
- (b) Direct the respondents to implement and act upon the orders of the Hon'ble Chief Justice of this court in letter and spirit.
- (c) Direct the respondents to allow judicial allowance to be counted for calculation of pension towards the petitioners as well as other officers/members of the establishment who have retired and are entitled.
- (d) Any other relief as this court may be deemed fit and proper under the circumstances of the case."

2. The brief facts of the case are that the petitioners are retired employees of this Court. The Supreme Court of Pakistan keeping in view the various factors allowed judicial allowance to its employees in the year 2000. Subsequently, the High Courts of Provinces also granted such facility to their employees. The former Chief Justice of this Court late Mr. Justice Sabihuddin Ahmed had passed an administrative order that the judicial allowance should be counted for calculation of pension in respect of judicial officers working under this Court. The officers/staff members of this Court made representation to another former Chief Justice of this court who was pleased to grant this facility to officers of this court after going through the decision of the honourable Chief Justice of Pakistan with effect from 3-1-2000. The Registrar of this court had written a letter on 17-12-2012 to the respondent No.3 (Accountant General Sindh) to comply with the orders of the Chief Justice and also quoted the order which is reproduced as under:--

"Raising the issue of judicial allowance to be counted for calculating pension by the Finance Department at this stage is irrelevant and afterthought as A.G. Sindh office is already paying pension incorporating judicial allowance for calculation of pension to the judicial officers as well as Establishment of the High Court of Sindh."

3. Despite communicating the orders, the respondent No.3 failed and neglected to entertain the applications of the petitioners regarding accumulation of judicial allowance in pension. The respondent No.3 in his comments took the position that the Finance Department, Government of Sindh has refused to treat the judicial allowance as reckonable component for pension under Article 486 of CSR while the respondent No.2 submitted the comments in line that in view of the Article 486 of Civil Service Regulation (C.S.R.) the Judicial Allowance is not reckonable for pension calculation. It was further submitted in the comment that if judicial allowance is allowed to be treated as a reckonable emolument, its financial implication would be huge and those who are not employees of the High Court of Sindh and drawing judicial allowance will also demand judicial allowance as reckonable emolument for calculation of their pension which will result substantial burden on already frail financial resources of the province.

4. The Registrar of this court submitted a brief note along with some documents that the power to sanction the pension and treat the judicial allowance as part of pension to the members of High Court Establishment lies with Hon'ble Chief Justice. Such power is exercised under High Court of West Pakistan (Civil Service) Delegation of Powers Rules, 1960 as mentioned at Serial Nos.35 and 36, Appendix A. While deciding the request of Justice (retired) Mr. Muhammad Sadiq Leghari for including judicial allowance as part of pension, the then Hon'ble Chief Justice Mr. Justice Sabihuddin Ahmed (late) was pleased to order as under:---

"Judicial allowance is payable to sheerly by virtue of a person's being a judicial officer and even taken such officer is not performing strictly judicial functions, there appears no reasons for excluding it from "emoluments" for the purpose of pension "A" is approved--- Sd/-".

5. It was further stated by the Registrar that the Administration Committee on 17-2-2007 resolved that the judicial allowance to be made part of pension which shall take effect from the date when the same was paid to the judicial officers and as such it was retrospectively applied w.e.f. 3-1-2000. Thereafter, some staff members had submitted joint application for extending such benefit to them as they too were getting judicial allowance in their pay. The note was placed before the then Hon'ble Chief Justice and his lordship vide order dated 3-2-2011 was pleased to extend the benefit of calculating judicial allowance in the pension of members of High Court Establishment with immediate effect and the notification was issued on 4-2-2011. Some retired employees of High Court who stood retired before issuance of such notification and were getting judicial allowance in their pay, applied to this court requesting that such benefit may also be extended to them. The matter was placed before the then Hon'ble Chief Justice and the benefit was extended w.e.f. 3-1-2000 (the date when the same was extended to the judicial officers). However, as the judicial allowance was being paid to the members of High Court Establishment w.e.f. 1-7-2003 and not from 3-1-2000, as such in order to rectify this date, the note was placed again before the then Hon'ble Chief Justice and his lordship was pleased to approve the same therefore, notification and corrigendum were issued accordingly. The Finance Department drew the attention towards Article 486 of Civil Service Regulation and took the view that there is no mention of word "judicial allowance" in the said provision therefore vide letter dated 17th May, 2013, the Registrar of this Court again communicated the administrative order dated 6-7-2012, passed by the then honorable Chief Justice to the Secretary Finance, Government of Sindh which is reads as under:---

"Examined. Since judicial allowance per policy decision dated 13-4-2006 of the then Hon'ble Chief Justice (late Sabihuddin Ahmed) is treated as emolument for the purpose of pension, in respect of judicial officers. Similar consideration was not extended to other staff/members of High Court Establishment. Erstwhile A.C. in its meeting dated 17-2-2007 made applicability of judicial allowance w.e.f. 3-1-2000 (i.e. retrospectively) benefit of judicial allowance was however extended to the staff and officers of High Court of Sindh by the competent authority the

then Hon'ble Chief Justice (Justice Sarmad Jalal Osmani) on 4-2-2011 with immediate effect.

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Since in principle it is decided that staff/officers of this court are allowed/entitled to judicial allowance which is treated as emolument for the purpose of pensionary benefit per terms of clause 486 section IV Allowances. Reckoned for pension of "Compendium of pension Rules and Orders. Therefore, in order to be fair, just and equitable judicial allowance would be applicable and extendable to staff/members of H.C. Establishment from the date applicable to judicial officers i.e. w.e.f. 3-1-2000."

6. The learned counsel for the petitioner argued that the Registrar submitted a reference on 14-1-2010 to the competent authority regarding the application of employees and the Hon'ble Chief Justice directed to put up the matter with relevant rules. In compliance of the directions the Registrar submitted Clause 486 of the Compendium of Pension Rules and Order and stated that judicial allowance is a Special Allowance which falls under the category (c) and (h) thereof and as such the said allowance is an integral part of Salary of the Employees of the High Court of Sindh. It was further contended that the Chief Justice is the Competent Authority to treat the Judicial Allowance as part of Pensionable Pay. The High Court (Civil Services) Delegation of Powers Rules, 1960 does not permit Accountant General Sindh or Finance Department to undo or revise the order passed by the Competent Authority. It was further averred that in the pension of some of the retired employees of Sindh High Court, judicial allowance has already been included but other retired employees have been denied therefore, the Accountant General Sindh vide letter dated 30-8-2012 requested the Finance Department to allow judicial allowance to be counted in calculation of pension of the retired staff/officers of Sindh High Court as directed by the Chief Justice but Finance Department vide its letter dated 1st October, 2012 declined to act on the said direction of the Chief Justice and misinterpreted Article 486 of the Sindh Civil Service Regulations. He referred to Article 208 of the Constitution of Pakistan which empowers High Court to make rules for the appointment and frame the terms and conditions of employment. Article 260 of the Constitution defines remuneration as remuneration includes salary and pension therefore the High Court has powers to decide and issue directions in this regard. He also referred to Rule 2 of the High Court of West Pakistan (Civil Service) Designation of Powers Rules, 1960 in which the Chief Justice has the powers of Government in the Administration Department under the Civil Service Rules in force in the different integrating units of West Pakistan, in respect of the officers and servants of the High Court, its Benches and Circuits. Serial 35 of the Appendix 'A' of the High Court of West Pakistan (Civil Services) Delegation of Powers Rules, 1960, gives full power to the Chief Justice to sanction pension. He also focused on the independence of the Judiciary as mandated under Article 175 of the Constitution of Pakistan. Lastly he referred to the list to show that in the monthly pension of at least 15 retired employees of this court, the judicial allowance was added and has been given effect in the pension amount/calculation. In order to strengthen his arguments, the learned counsel referred to PLD 1994 SC 105, 1997 SCMR 141, PLD 1993 SC 375 and 1991 MLD 2546.

7. The learned Additional Advocate-General Sindh argued that in fact the special judicial allowance allowed by this court in the case of Amanullah Khan Yousufzai v. Federation of Pakistan and others reported in PLD 2011 Karachi 451 is already under challenge before the apex Court. The petition was disposed of with the directions to the Government of Sindh to pay special judicial allowance equal to three times of the initial of their substantive pay w.e.f. 1-3-2010 when such allowances were extended to servants and employees of this court through Notification dated 2-4-2010 issued by the honorable Chief Justice. Though he did not controvert the High Court of West Pakistan (Civil Services) Delegation of Powers Rules, 1960 through which the powers have been delegated to the Chief Justice as specified in column-2 of Appendix 'A' and the powers in respect of the officers and servants of the High Court, its Benches and Circuit other than C.S.P. and P.C.S. Officers but he made much emphasis on Sindh High Court Establishment (Appointment and Conditions of Service) Rules, 2006 and referred to Rule 15 which relates to the terms and conditions and argued that under the first proviso the

powers of the Provincial Government shall be exercised by the Administration Committee or such other Judges upon whom the power may be delegated by the Administration Committee however, in the second proviso the Chief Justice whenever thinks fit may grant Special Allowance to any officer or an employee keeping in view the nature of services that he is required to perform. Rule 17 deals residuary powers which provides that all matters not specifically provided for in these rules, or in the provisions referred to in Rule 15 and all questions relating to the detail working of these Rules shall be regulated in accordance with such orders as the Chief Justice may make. While under Rule 19, Full Court by a Majority Vote may make amendment in the Rules. He also referred to Article 38 of the Civil Service Regulations (C.S.R) according to which pay means monthly substantive pay which includes also overseas allowance and technical allowance while the salary means sum of pay and acting allowance or charge allowance under Article 94 of Chapter-VIII. He also made reliance on Article 486 of the Civil Service Regulations (C.S.R) and argued that the term emoluments include pay as defined in F.R. 9 (21) (a) (i), Senior Post Allowance, Special Pay of all types and nature, personal pay, Technical Pay, Index Pay, increments accrued during leave preparatory to retirement and any other emoluments which may specially classed as pay. It was averred that the judicial allowance cannot be treated part of emoluments as no such allowance is added in the definition of emoluments therefore the Judicial Allowance is not reckonable for the purposes of calculation of pension of the retired employees of the High Court. He also referred to a letter dated 29th August, 2012 written by the Additional Secretary Finance Department, Government of Punjab to the Registrar Lahore High Court and argued that Lahore High Court also issued Administrative Notification declaring Judicial Allowance and Special Judicial Allowance as part of pay for the purposes of pension of Judicial Officers and Members of Establishment of Lahore High Court but in response to Notification, the Finance Department took the view that the pensioners of the Government or of the High Court constitute a class and draw their pension benefits under the Pension Rules, 1955 and have to be treated alike. The effect of the disputed notification is to allow higher pension benefits to retired judicial officers and employees of High Court as compared to other retired employees and the request was made by the Finance Department Government of Punjab to the Registrar Lahore High Court to withdraw the Notification. However the learned A.A.-G. could not controvert the plea that in the case of some individual employees of this court, the judicial allowance has already been made reckonable for their pension calculation and they are drawing the effect of this allowance in their pensions but a large number of employees have been deprived and discriminated. He further referred to Rule 5 of the Sindh Judicial Staff Service Rules, 1992 which provides that the pay scales and allowances of the members of staff shall be as prescribed by Government from time to time.

8. The learned counsel for the petitioner and the learned A.A.-G. both had agreed that this petition may be disposed of at Katcha peshi stage and they argued their case extensively.

9. Heard the arguments. According to Rule 2 of the High Court of West Pakistan (Civil Services) Delegation of Powers Rules, 1960, the Chief Justice of the High Court of West Pakistan have the powers in respect of Judicial Officers up to the level of District and Sessions Judges and all the powers of Government in the Administrative Department under the Civil Services Rules in force in the different integrating units of West Pakistan in respect of the officers and servants of the High Court, its Benches and Circuits other than C.S.P, and P.C.S. officers, and the establishment of the Civil and Sessions Courts. For ready reference and convenience, Rule 2 of High Court of West Pakistan (Civil Services) Delegation of Powers Rules, 1960 is reproduced. as under:---

2. Notwithstanding any provision to the contrary in any Civil Services Rules for the time being in force in the Province or any part thereof, the Chief Justice of the High Court of West Pakistan shall have ---

(i) the powers specified in column 2 of Appendix 'A' to these rules to the extent mentioned in column 3 thereof in respect of Judicial Officers up to the level of District and Sessions Judges; and

(ii) all the powers of Government in the Administrative Department under the Civil Services Rules in force in the different integrating units of West Pakistan, in respect of -

(a) The officers and servants of the High Court, its Benches and Circuits other than C.S.P. and P.C.S. officers, and

(b) The establishment of the Civil and Sessions Courts.

10. Appendix "A" of the aforesaid Rules elucidates and explicates the delegation of powers to the Chief Justice in respect of judicial officers. Entry No.35 delegates the chief justice full power to sanction pension provided the pension is covered by the rules and the certified by the Audit Officer to be admissible and no deduction is to be made therefrom while Entry No.36 delegates the powers to sanction commutation of pension provided the conditions laid down in the rules are fulfilled.

11. In the case of Government of Sindh v. Sharaf Faridi reported in PLD 1994 SC 105, the honorable Supreme Court held that "financial independence of the judiciary can be secured if the funds allocated to the Supreme Court and High Courts (by the Parliament and the Provincial Assemblies in their respective annual budgets) are allowed to be disbursed within the limits of the sanctioned budget by the respective Chief Justices of these Courts without any interference by the Executive (in practical terms without reference and seeking the approval of the Ministry of Finance/the Provincial Finance Department). Thus, the Chief Justice would be competent to make reappropriation of the amounts from one head to another, create new posts, abolish old posts or change their nomenclature and to upgrade or downgrade etc. as per requirements of their respective Courts and this should be possible, as has been observed earlier, without being obliged to seek the approval of the Ministry of Finance or the Provincial Finance Departments as the case may be, provided of course the expenditure that is incurred by them falls within the limits of the budget allocation for their Courts. To ensure financial discipline, as Accounts Officer of the Accountant-General may sit in all Courts for pre-audit and issue of cheques. In this way, the control of the executive over the judiciary in this important sphere will be eliminated and the judiciary enabled to function independently."

12. In the case of Registrar, Supreme Court of Pakistan, Islamabad v. Qazi Wali Muhammad reported in 1997 SCMR 141, the apex Court held that "the status of persons employed in the Provincial High Courts, Federal Shariat Court and the Supreme Court of Pakistan and whose terms and conditions were governed under the rules framed by virtue of Article 208 of the Constitution directly arose in the case of Government of Punjab v. Mubarak Ali Khan, supra, and the view taken by the High Court in that case that the employees of the Provincial High Court, Lahore, do not find within the category of civil servants as defined in the Civil Servants Act". In the case Mubarak Ali Khan supra, PLD 1993 SC 375 the apex court held that "the Legislature was not given any role to determine the terms and conditions of the employees including their remunerations and this exclusionary rule was found in conformity with the concept of independence of judiciary as enshrined in the Constitution". It was further held by the apex court that "the definition of service of Pakistan itself divides those included into two broad categories i.e. one of those employed in connection with the affairs of Federation and the other of those employed in connection with the affairs of a Province. Applying this definition, the employees of the High Court Establishment would fall within the definition of service of Pakistan and have been taken to be employed in connection with the affairs of the Province".

13. Article 208 of the Constitution of Pakistan provides in clear terms that the Supreme Court and the Federal Shariat Court, with the approval of President and a High Court, with the approval of Governor concerned, may make rules providing for appointment by the Courts of officer and servants of the Court and for their terms and conditions of employment. Why the officers and servants of the Superior Court are to be treated differently than the civil servants employed by the Government is not far to see. The object in making special dispensation for the officers and servants of the Court as

provided by Article 208 of the Constitution is to secure the independence of the Superior Courts which is essential for the working of any democratic form of Government. The Constitution ensures that as far as possible the High Court should remain independent and free from interference in its affairs by the executive authorities. Reference can be made to 1991 MLD 2546.

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14. The Sindh High Court Establishment (Appointment and Conditions of Service) Rules, 2006 were framed on 21-10-2006 (Notified on 18-11-2006) in exercise of powers conferred by Article 208 of the Constitution of Pakistan 1973 which repealed the High Court Establishment (Appointment and Conditions of Service) Rules, made under the authority of the Constitution 1956. It would be most expedient to keep an eye on Rule 15 pertaining to the terms and conditions of employment which is reproduced as under:---

"15. Terms and Conditions:

Subject to these Rules other terms and conditions of service including pay, allowances, retirement, deputation, pension, gratuity, provident fund, benevolent fund, group insurance or other privileges of an employee shall be governed by the provisions for the time being in force and applicable to the employees in posts in the same scale in the Provincial Government.

Provided that the powers of the Provincial Government shall be exercised by the Administration Committee or such other Judges upon whom power may be delegated by the Administration Committee.

Provided further that the Chief Justice whenever he thinks fit may grant a special allowance to any officer or an employee keeping in view the nature of the services that he is required to perform."

15. Let us first clarify that the Sindh Judicial Staff Service Rules, 1992 have no relevance or application in the present controversy and reliance on these rules by the learned A.A.-G. is beside the point for the reason that these rules are meant for regulating recruitment of the staff to the posts specified in Rule 3 such as the staff in the various districts and sessions courts, small causes court Karachi and the subordinate civil courts in the province of Sindh. So far as the Sindh High Court Establishment (Appointment and Conditions of Service) Rules, 2006 are concerned, these rules were framed on 21-10-2006 to regulate the appointment and conditions of employment of the officers and servants of the High Court of Sindh and its Rule 15 is based on a broad spectrum and canvas which includes the benefit of pension also so this is not the case of the petitioners or they have not knocked the doors of this court for awarding the pension which is already being paid to them as per terms and conditions of service but what they are claiming is the inclusion or effect of judicial allowance for the purposes of calculation of their pension which was part of their emolument/pay or salary. The payment of judicial allowance cannot be treated as an ad hoc relief or any benefit of contingent or reliant nature but it was one of the components of the emoluments which was being paid during active service without any interruption or interval but after retirement the benefit of allowance was recalled for the purposes of pension which is without any sagacity or rational. Despite encompassing field of Sindh High Court Establishment (Appointment and Conditions of Service) Rules, 2006, we cannot ignore Rule 2 of the High Court of West Pakistan (Civil Services) Delegation of Powers Rules, 1960 which is also encircling field under which the Chief justice of the High Court has the powers in respect of Judicial Officers and all the powers of Government in the Administrative Department under the Civil Services Rules in force in the different integrating units of West Pakistan in respect of the officers and servants of the High Court, its Benches and Circuits other than C.S.P. and P.C.S. officers, and the establishment of the Civil and Sessions Courts. Despite issuing repeated administrative orders/ notifications from time to time, the Government of Sindh failed to implement the notifications and in the end the petitioners had left with no other option but to pray to the constitutional jurisdiction of this court for recompense and straighten out their grievance.

16. Now we would like to embark upon the entreaty of the respondents as regards the minutiae of Article 486 of Civil Service Regulations (C.S.R.):

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SECTION IV - ALLOWANCES RECKONED FOR PENSION Emoluments and Average Emoluments

[486. The term "emoluments" means the emoluments which the officer was receiving immediately before his retirement and shall include:---

- (a) Pay as defined in FR 9(21)(a)(i);
- (b) Senior Post Allowance;
- (c) Special Pay of all types and nature;
- (d) Personal Pay;
- (e) Technical Pay;
- (f) Indexed Pay;
- (g) Increments accrued during, leave preparatory to retirement;
- (h) Any other emoluments which may be specially classed as Pay.

Since the sub-article (a) of Article 486 C.S.R. also refers to FR 9 (21) (a) (i) therefore in order to make more clarity, we also refer to FR 9 (21) (a) (i) as under:-

Combined Set of F.R. & S.R. VOL. I and II (Revised Edition).

(21)(a) Pay means the amount drawn monthly by a Government servant as--

- (i) the pay, other than special pay or pay granted in view of his personal qualifications, which has been sanctioned for a post held by him substantively or in an Officiating capacity, or to which he is entitled by reason of his position in a cadre, and
- (ii) overseas pay, technical pay, special pay and personal pay, and
- (iii) any other emoluments which may be specially classed as pay by the Governor-General.

17. If the reliance placed by the respondents on the aforesaid F.R. and S.R. and C.S.R. is considered to be literal and ingenuous even then they have no conceivable justification to deprive or divest the effect of judicial allowance from the calculation of pension. In addition thereto, the Special Pay of all types and nature is part of emoluments including other emoluments which may be specially classed as Pay. So far FR 9 (21) (a) (i) of F.R. and S.R. is concerned it also does not debar or make any embargo under which the Government may obliterate or wipe out the effect of judicial allowance from the pension's calculation rather overseas pay, technical pay, special pay and personal pay are also integral part of it except the pay, other than special pay or pay granted in view of personal qualifications, which has been sanctioned for a post held by an employee substantively or in an officiating capacity or to which he is entitled by reason of his position in a cadre. The judicial allowance was allowed to the employees across the board, neither it was extended to a person specific nor it was allowed on contingent or transient basis nor sanctioned for a post held by an employee substantively or in an officiating capacity or to which he is entitled by reason of his position in a cadre. The terms "emoluments" used under Article 486 of C.S.R. means the emoluments which the officer was receiving immediately before his retirement and judicial allowance was also part of emolument in this case. Besides much extended meaning of emolument, clause (h) of it makes it more

clear that any other emolument which may be specially classed as pay. The nomenclatures of emoluments alluded to Article 486 and FR 9 (21) (a) (4) of F.R. and S.R. are not restrictive but exhaustive in nature and if we get hold of it there would be no improbability to perceive that judicial allowance is a part of emoluments/pay/salary and reckonable being one of the components for pension calculation. It is worthwhile to draw attention to Article 487 of Civil Service Regulations (C.S.R.), in which the term "Average Emoluments" means the average calculated upon the last three years of service while Article 488 defines the allowances which do not count such as local allowances and deputation (local) allowances; messing allowances, working allowances and provision allowances to office department which is not the case at this juncture.

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18. After considering the pros and cons it is quite visible that under the delegated powers conferred through 1960 Rules, the Chief Justice of High Court has all the powers of government in the administrative department under the Civil Services Rules in respect of the officers and servants of the High Court and these powers are in addition to and not in derogation of the powers already vested in or delegated to him under any law, rule or order in force. Even the rules made under Sindh High Court Establishment (Appointment and Conditions of Service) Rules, 2006 have no overriding effect on the delegated powers of the Chief Justice of the High Court. Albeit the administrative order passed by the then Chief Justice on 6-7-2012 do show that judicial allowance per policy decision dated 13-4-2006 of the then Hon'ble Chief Justice was treated as emolument for the purpose of pension, in respect of judicial officers. Erstwhile A.C. in its meeting dated 17-2-2007 made applicability of judicial allowance with effect from 3-1-2000 and the benefit of judicial allowance was however extended to the staff and officers of High Court of Sindh by the then Hon'ble Chief Justice. The above order further refers to that in principle it was decided that staff/officers of this court were allowed/entitled to judicial allowance which was treated as emolument for the purpose of pensionary benefit per terms of Article 486 section IV of C.S.R. So taking into account forgoing *raison d'etre* we have reached to an unequivocal concluding stage that judicial allowance is reckonable for the calculation of pension as part of emoluments.

19. The next question that now arises for consideration or crop up in our mind whether this benefit will extend to the petitioners alone and or other retired employees also who are placed in a similar position. Precisely we mean to deduce and figure out the terminology and phraseology of judgment in rem.

Wharton's Law Lexicon (Fifteenth Edition)

Judgment in rem, a judgment in rem is one which declares, defines or otherwise determine the jural relation of a person or thing to the world generally, *Satrucharla v. Vijayarama Raju v. Nirmaka Jaya Raju* (2006) 1 SCC 212. Means a judgment that determines the status or condition of property and that operates directly on the property itself. Also termed in rem judgment, *Black's Law Dictionary*, 7th Edn., p. 847. "Judgment in rem" is one which declares, defines or otherwise determines the jural relationship of a person or thing to the world generally, *Satrucharla v. Vijaya Rama Raju v. Nirmaka Jaya Raju*, (2006) 1 SCC 212.

Black's Law Dictionary (Sixth Edition).

Judgment in rem. An adjudication pronounced upon the status of some particular thing or subject matter, by a tribunal having competent authority. *Booth v. Copley*, 283 Ky. 23, 140 S.W. 2d 662, 666. It is founded on a proceeding instituted against or on something or subject-matter whose status or condition is to be determined; *Eureka Building and Loan Ass'n v. Shulz*, 139 Kan. 435, 32 P.2d 477, 480; or one brought to enforce a right in the thing itself. *Federal Land Bank of Omaha v. Jefferson* 229 Iowa 1054, 295 N.W. 855, 857. It operates directly upon the property. *Guild v. Wallis*, 150 Or. 69, 40 P.2d 737, 742. It is a solemn declaration of the status of some person or thing. *Jones v. Teat*, Tex.Civ.App., 57 S.W. 2d 617, 620. It is binding upon all persons in so far as their interests in the property are concerned. See also judgment quasi in rem.

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20. In the case of "Hameed Akhtar Niazi v. Secretary Establishment Division Pakistan" reported in 1996 SCMR 1185, the apex court in the majority view held as under:---

"16. In our view, it will be just and proper to remand the case to the Tribunal with the direction to re-examine the above case after notice to the affected persons and to decide the same afresh in the light of above observations. We may observe that if the Tribunal or this Court decides a point of law relating to the terms of service of a civil servant which covers not only the case of the civil servant who litigated, but also of other civil servants, who may have not taken any legal proceedings; in such a case, the dictates of justice and rule of good governance demand that the benefit of the above judgment be extended to other civil servants, who may not be parties to the above litigation instead of compelling them to approach the Tribunal or any other legal forum."

21. While in the case of "Federation of Pakistan v. Qamar Hussain Bhatti" reported in PLD 2004 Supreme Court 77, the apex Court held as under:--

"Judgments in rem are an exception to the rule of law that no man should be bound by the decision of a Court of justice unless he or those under whom he claims were parties to the proceedings in which it was given. This rule of law is referable to the maxims of Roman Law namely, 'Res inter alios judicata nullem inter alios prejudicium facit' or 'Res inter alios acta alteri nocere non debet'. Such exception of the judgment in rem in the Roman Law was the foundation of the exception in English Law. Section 41 of the Evidence Act is the foundation for the exception of judgment in rem in our corpus juris. The reasons why a judgment should not be used to the prejudice of a stranger is that he is denied the fundamental right to make a defence, or to examine or cross-examine witnesses or to appeal from a judgment which aggrieves him. This is the requirement of most manifest justice and good sense".

22. In the wake of above discussion, this petition is admitted to regular hearing and disposed of as under:--

a. The judicial allowance is part of emolument therefore it is reckonable for the calculation of pension. Consequently; the employees those were receiving judicial allowance as component of their monthly emoluments are entitled to the inclusion and effect of judicial allowance in their pension

b. The petitioners and all other retired employees placed in the similar position are entitled to the above relief and the respondents are directed to re-calculate their pension within two months after giving the effect of judicial allowance and start the future payment accordingly.

c. Subject to the conditions mentioned in clauses (a) & (b) above, the respondents shall also pay the arrears within three months with effect from the date when the payment of pension was started or set in motion.

ZC/D-4/Sindh

Petition disposed of.

As ordered
in the case of
Hameed Akhtar Niazi v. Secretary
Establishment Division Pakistan

PLD 2019 Islamabad 591

Before Miangul Hassan Aurangzeb, J

DEPUTY REGISTRAR/REPRESENTATIVE OF EMPLOYEES OF FEDERAL SHARIAT COURT---Petitioner

Versus

FEDERATION OF PAKISTAN and others---Respondents

Writ Petition No.3094 of 2016, decided on 31st July, 2019.

(a) Interpretation of statutes---

---Addition or omission in law---Scope---Court, in the garb of interpretation has no power to add or omit even a single word from provisions of law---Nothing can be added to a statute or a rule to rewrite same as such would be against accepted principles of interpretation.

Khan Gul Khan v. Daraz Khan 2010 SCMR 539 and Crescent Jute Products Ltd. v. Government of the Punjab PLD 2004 Lah. 686 rel.

(b) Federal Shariat Court (Terms and Conditions of Service of Staff) Rules, 1982---

---Rr. 5 & 6---Employees of Federal Shariat Court---Enhancement of allowances---Federal Shariat Court, powers of---Chief Justice of Federal Shariat Court enhanced/revised rates of utility allowances for its officers and staff---Plea raised by Federal Government was that such an enhancement/revision could not be entertained as it required approval from Prime Minister and could not be acted upon directly---Validity---President had power to grant or sanction allowances to civil servants in service of Federal Government, such powers by virtue of Proviso to R. 5 of Federal Shariat Court (Terms and Conditions of Service of Staff) Rules, 1982 could be exercised by the Chief Justice of Federal Shariat Court---Provisions of R. 5 of Federal Shariat Court (Terms and Condition of Service of Staff) Rules, 1982 did not make exercise of powers by the Chief Justice of Federal Shariat Court to regulate terms and conditions of service of persons on staff attached to Federal Shariat Court conditional or subject to approval or sanction of Finance Division or Prime Minister---Notification in question was issued pursuant to decision taken by the Chief Justice of Federal Shariat Court in exercise of powers conferred by R. 5 of the Federal Shariat Court (Terms and Conditions of Service of Staff) Rules, 1982 to revise rates of utility allowances (gas and electricity) for officers and staff of Federal Shariat Court---High Court declared that plea raised by Federal Government that revision of allowances could not be made by the Chief Justice of Federal Shariat Court without approval of Finance Division or Prime Minister was without lawful authority and of no legal effect---Petition was allowed accordingly.

Riaz Ali Zaidi v. Government of the Punjab 2015 PLC (C.S.) 831 and Government of the Punjab v. Riaz Ali Zaidi 2016 PLC (C.S.) 1074 distinguished.

Government of Pakistan through Ministry of Finance v. M.I. Cheema, Deputy Registrar, Federal Shariat Court 1992 SCMR 1852; PLD 2014 SC 131 and Mehran Security Service (Pvt) Ltd. v. Pakistan 2000 YLR 2655 ref.

Aftab Ahmad Khan for Petitioner.

Nadeem Haider, Additional Registrar FSC for Respondents.

Shumayl Aziz, Assistant Attorney-General for Respondents.

Date of hearing: 30th July, 2019.

JUDGMENT

MIANGUL HASSAN AURANGZEB, J.---Through the instant writ petition, the employees of the Hon'ble Federal Shariat Court seek the implementation of the notification dated 25.10.2014 whereby the Hon'ble Chief Justice of the Federal Shariat Court ("F.S.C.") revised the rate of utility allowance (gas and electricity) in respect of all the officers and staff (BPS-1 to BPS-22) of the said Court with effect from 16.10.2014.

2. Learned counsel for the petitioners drew the attention of the Court to the judgment dated 07.02.2013, passed by this Court in Writ Petition No.719/2012, titled "Ajmad Ali v. Government of Pakistan" and contended that this Court had directed the respondents to implement similar notifications dated 12.03.2010 and 14.02.2011 issued by F.S.C. He further submitted that the respondents are coming up with lame excuses for not implementing the said notifications.

Aux (BB)

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30 JUL 2019

3. On the other hand, learned Assistant Attorney-General submitted that the Hon'ble Chief Justice of F.S.C. could not enhance/revise the rates of utility allowance without obtaining the approval of the Prime Minister; that earlier vide notification dated 12.03.2010, the Hon'ble Chief Justice of F.S.C. had sanctioned the enhancement of allowances and perks for the members of the establishment of F.S.C. with effect from 01.07.2009; that after the Finance Division asked F.S.C. to first obtain approval of the Prime Minister, F.S.C., vide letter dated 01.04.2010, requested the Law and Justice Division to have the approval of the competent authority obtained for payment pursuant to the said notification dated 12.03.2010; that after the Prime Minister accorded the necessary approval, the Law and Justice Division, vide letter dated 28.07.2010, informed F.S.C. about the same; that this prescribed method for obtaining approval for the grant or enhancement of allowances to the members of the establishment of F.S.C. has not been followed by F.S.C. before issuing the notification dated 25.10.2014; that without the approval of the Prime Minister, the said notification dated 25.10.2014 cannot be implemented; that the allowances sought to be granted in terms of notification dated 25.10.2014 have never been granted to civil servants by the Federal Government; that the grant of the allowances under the said notification would result in a change in the terms and conditions of service of employees in the establishment of F.S.C., which change cannot be brought about without the concurrence of the Finance Division in terms of Rule 12(1)(h) of the Rules of Business, 1973; and that F.S.C. could only approach the Finance Division through the Law and Justice Division and not directly. Learned Assistant Attorney-General prayed for the writ petition to be dismissed.

4. I have heard the contentions of the learned counsel for the petitioner as well as the learned Assistant Attorney-General and have perused the record with their able assistance.

5. Federal Shariat Court is the creature of Article 203C of the Constitution. Article 208 of the Constitution provides inter alia that F.S.C., with the approval of the President, may make rules providing for the appointment by F.S.C. of officers and servants and for their terms and conditions of employment. In exercise of the powers conferred by Article 208 of the Constitution, F.S.C., with the approval of the President, made the Federal Shariat Court (Terms and Conditions of Service of Staff) Rules, 1982 ("the 1982 Rules"). These rules provide for the terms and conditions of employment of the officers and servants of F.S.C. and were published in the official Gazette on 18.08.1982. These rules made with a Constitutional sanction have to be given due weight.

6. Vide notification dated 25.10.2014, the Hon'ble Chief Justice of F.S.C., in exercise of the powers conferred under Rule 5 of the 1982 Rules, revised the rates of utility allowance (gas and electricity) for the officers and staff of F.S.C. Apparently, the bills regarding the difference in the utility allowance were submitted to respondent No.2 (Accountant General Pakistan Revenue) which required the enhanced rates to be endorsed by the Finance Division. The matter was placed before the Finance Division, which has till date remained unresolved.

7. The matter regarding the revision of rates of utility allowance to the officers and staff of F.S.C. was referred to the Attorney-General for Pakistan for advice in terms of Rules 14(2) of the Rules of Business, 1971. The office of the Attorney-General for Pakistan has rendered an opinion that the "Honourable Chief Justice of F.S.C. has the exclusive power to regulate the terms and conditions of service of its officers and servants while remaining within the limits of the budgetary allocation". It has also been opined that "any increase in remuneration and allowances beyond the approved budget will require the approval of the Federal Government."

8. The vital question that needs to be decided is whether the decision taken by the Hon'ble Chief Justice of F.S.C. to revise the rates of the utility allowance to the officers/staff of F.S.C. is to be implemented by the Federal Government without further ado or whether the implementation of said decision is subject to or contingent upon the approval of the Prime Minister.

9. The matter regarding the enhancement of the judicial and ad hoc allowance for the staff of the superior judiciary became the subject matter of Writ Petition No.5406/2011 before the Hon'ble Lahore High Court. The matter was taken to the High Court due to the inaction on the part of Government of the Punjab to honour the

budgetary approval for the said allowances. Rule 17 of the High Court Rules and Orders provides that the members of the High Court Establishment shall be entitled to pay (including special pay) and allowances as fixed by the Hon'ble Chief Justice from time to time with the approval of the Governor to the rules. The said petition was decided vide judgment reported as Riaz Ali Zaidi v. Government of the Punjab (2015 PLC (C.S.) 831). In the said judgment, Rule 17 of the High Court Rules and Orders was interpreted. It was held that the said rule does not mean that the decision of the Hon'ble Chief Justice fixing the pay and allowances of the members of the High Court Establishment will be subjected to the approval of the Governor. Furthermore, it was explained that what was required was the approval of the Governor to the making of the rules and not to the decisions of the Hon'ble Chief Justice issued from time to time under the rules. After referring to a catena of case law, it was inter alia held by the Hon'ble Lahore High Court that if the financial and budgetary management of the High Court in terms of its administrative expenses is left to the Executive or the Legislature, it would generate a public perception of dependence of the judiciary on the other two branches of the State and would weaken the public confidence reposed in the judicial system.

10. The intra Court appeal against the said judgment was dismissed and the appellate judgment of the Hon'ble Lahore High Court is reported as Government of the Punjab v. Riaz Ali Zaidi (2016 PLC (C.S.) 1074). Vide order dated 09.11.2015 passed in Civil Petition No.1930-L/2015, leave to appeal against the said judgment was granted by the Hon'ble Supreme Court. Furthermore, the operation of the said judgment of the Hon'ble Lahore High Court was suspended. I am told that the said suspension order is still in the field.

11. Coming back to the case at hand, the Law and Justice Division, in its office memorandum dated 11.02.2016, made reference to the litigation before the Hon'ble Lahore High Court and the Hon'ble Supreme Court in Riaz Ali Zaidi's case, and took the position that since the matter is pending before the Hon'ble Supreme Court, it would be appropriate to pend the case regarding the revision in the rates of the utility allowance to the officers and staff of F.S.C. until a decision is given by the Hon'ble Supreme Court.

12. With utmost respect, I cannot bring myself to agree with the stance taken by the Law and Justice Division in its office memorandum dated 11.02.2016. This is because the 1982 Rules (pertaining to the F.S.C.) have no provision similar to or in pari materia to Rule 17 of the Lahore High Court Rules and Orders, which had been interpreted by the judgments of the Hon'ble Lahore High Court, and the operation of the said judgments has been suspended by the Hon'ble Supreme Court as revealed through the order dated 09.11.2015

13. In the case at hand, what we are concerned with is the interpretation of Rule 5 of the 1982 Rules. By virtue of this rule, the rules and orders applicable to civil servants of the corresponding grade in the service of the Federal Government are to regulate the terms and conditions of service of the persons on the staff attached to F.S.C. The proviso to the said rule provides that the powers exercisable under the said rules and orders applicable to civil servants by the President or any authority subordinate to the President shall be exercisable by the Hon'ble Chief Justice of F.S.C. For the purposes of clarity, Rule 5 of the 1982 Rules and its proviso is reproduced herein below:-

"Subject to any special provisions contained in these rules, the rules and orders for the time being in force and applicable to civil servants of corresponding grades in the service of the Federal Government shall regulate the terms and conditions of service of persons on the staff attached to the Federal Shariat Court:

Provided that the powers exercisable under the said rules and orders by the President, or by any authority subordinate to the President, shall be exercisable by the Chief Justice of the Federal Shariat Court or by such person as he may, by general or special order, direct."

14. It may also be mentioned that Rule 6 of the 1982 Rules provides that any question arising as to which rules and/or orders are applicable to the case of any person serving in the staff attached to F.S.C. shall be decided by the Chief Justice of F.S.C.

15. The thrust of the stance of the Ministry of Law, Justice and Parliamentary Affairs, in its written comments, is that the allowances and perks of the members of the establishment of F.S.C. cannot be enhanced without the approval of the Prime Minister.

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16. Vide notification dated 12.03.2010 issued by F.S.C., the Hon'ble Chief Justice of F.S.C. sanctioned the enhancement in the allowances and perks of the members of the establishment of F.S.C. with effect from 01.07.2009. On 01.04.2010, the Registrar of F.S.C. wrote to the Law and Justice Division, requesting the latter to obtain the necessary approval of the competent authority for the payment of the increased allowances and perks. Vide letter dated 28.07.2010, the Law Reforms Section of the Ministry of Law, Justice and Parliamentary Division informed the Registrar of F.S.C. that the Prime Minister had sanctioned the enhancement in the allowances and perks of the members of the establishment of F.S.C. with effect from 01.07.2010.

17. Additionally, the Law and Justice Division, along with its written comments, has filed letter dated 03.03.2010 which shows that the Ministry of Law, Justice and Parliamentary Affairs, had conveyed the approval/sanction of the Prime Minister of Pakistan as regards the allowances and perks for the members of the establishment of the Hon'ble Supreme Court.

18. The above referred letters dated 28.07.2010 (regarding the Prime Minister's sanction for the enhancement in the allowances and perks of the F.S.C's employees) and 03.03.2010 (regarding the Prime Minister's sanction allowances and perks of the Supreme Court's employees) were relied upon by the learned Assistant Attorney-General to show that as a matter of standard practice the approval/sanction of the Prime Minister was required for an enhancement of the allowances and perks of the employees of the Hon'ble Supreme Court and of the F.S.C. This argument has not impressed me. The Supreme Court Establishment Service Rules were made in the year 2015. Rule 4 of the Supreme Court Establishment Service Rules, 2015 ("the 2015 Rules"), is in pari materia to Rule 5 of the 1982 Rules. It may be emphasized that the wordings of these two rules are exactly the same. The 2015 Rules and the 1982 Rules have both been made in exercise of the powers conferred by Article 208 of the Constitution, and with the approval of the President. The said approval of the Prime Minister in the year 2010, i.e. prior to the making of the 2015 Rules, has no bearing whatsoever on the exclusive power of the Hon'ble Chief Justice of Pakistan to regulate the terms and conditions of service of the persons on the staff attached to the Supreme Court, especially when Rule 4 of the 2015 Rules requires no such approval or sanction of the Prime Minister. This principle would perforce also apply to the powers exercised by the Hon'ble Chief Justice of F.S.C. under Rule 5 of the 1982 Rules to regulate the terms and conditions of service of the persons on the staff attached to F.S.C.

19. The proviso to Rule 5 of the 1982 Rules clearly provides that the powers exercisable by the President under the rules and orders applicable to civil servants in the service of the Federal Government, shall be exercisable by the Hon'ble Chief Justice of F.S.C. There is no express requirement for the exercise of such powers by the Hon'ble Chief Justice of F.S.C. to be subject to the approval of the Finance Division or the Prime Minister. Therefore, the contention of the learned Assistant Attorney-General to the effect that the payment of the enhanced allowances and perks sanctioned by the Hon'ble Chief Justice of F.S.C. under Rule 5 of the 1982 Rules cannot be made unless approved by the Finance Division or by the Prime Minister is without substance.

20. Vide order dated 13.07.1988, the Hon'ble Chief Justice of F.S.C. made the secretariat allowance at the rate of 20% of the basic pay applicable to the staff attached to the F.S.C. In spite of the said order, the staff attached to the F.S.C. were not paid the said allowance. This caused them to file a writ petition before the Hon'ble Lahore High Court. Along with the said writ petition, the staff attached to the F.S.C. also filed an application for interlocutory relief which was allowed. A petition for leave to appeal against the interlocutory order was dismissed by the Hon'ble Supreme Court in the judgment reported as Government of Pakistan, through Ministry of Finance v. M.I. Cheema, Deputy Registrar, Federal Shariat Court (1992 SCMR 1852). In the said judgment, after reference was made to Rule 5 of the 1982 Rules, it was held as follows:-

"A perusal of the above-quoted rule 5 shows that the employees of the Federal Shariat Court subject to any special provision contained in the rules are subject to the rules and orders for the time being in force applicable to the civil servants in corresponding grades in the service of Federal Government, in respect of their terms and conditions. It is also evident that under the proviso to the above rule 5 the powers which are exercisable by the President under the relevant rules and orders in respect of civil servants are exercisable by the Chief Justice of the Federal Shariat Court in relation to the staff of the Federal Shariat Court.

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It may also be noticed that under rule 6 of the rules, it has been provided that if any question arises as to which rules or orders are applicable to the case of any person serving on the staff attached to the Federal Shariat Court, the same shall be decided by the Chief Justice.

6. We may observe that the approval granted by the learned Chief Justice, Federal Shariat Court to the proposal contained in the above-quoted summary, was accorded pursuant to the powers conferred under above rules 5 and 6 and, therefore, prima facie the competent authority had decided that the respondents were entitled to the above Secretariat Allowance."

21. Vide judgment dated 07.02.2013, this Court allowed two writ petitions filed by the employees of the F.S.C. seeking the implementation of notifications issued by the Hon'ble Chief Justice of F.S.C. for enhancing their perks and allowances. The argument advanced on behalf of the Federation of Pakistan through the Secretary, Ministry of Finance, that an enhancement in the perks and allowances of the employees of the F.S.C. could not be made without the approval of the Prime Minister, was spurned by this Court in the said judgment. Paragraph 12 of the said judgment is reproduced herein below:-

"12. It would also not be out of context to mention here that through the writ petitions in hand, issue regarding implementation of sanctions accorded by the Hon'ble Chief Justice of Federal Shariat Court is agitated, however, this Court while dealing with W.P. No. 1613/2003 has already held that Ministry of Finance is under obligation to obey the sanction accorded by the Hon'ble Chief Justice of Federal Shariat Court in the light of Rules-5 and 6 of the Federal Shariat Court (Terms and Conditions of Staff) Rules, 1982."

22. Since under the proviso to Rule 5 of 1982 Rules, the powers exercisable by the President under the rules and orders applicable to civil servants, are exercisable by the Chief Justice of F.S.C., it now needs to be determined whether the rules and orders applicable to civil servants in the service of the Federal Government empower the President or any authority subordinate to the President to grant or enhance allowances payable to such civil servants. Rule 4 of the Fundamental Rules provides that the powers specifically granted by the Fundamental Rules to local Governments may be exercised by them in relation to those Government servants only who are under their administrative control. Furthermore, it is provided inter alia that these powers may be exercised by the Governor General in respect of all other Government servants. Now Rule 44 of the Fundamental Rules titled "Compensatory allowances" provides that subject to the general rule that the amount of the compensatory allowance should be so regulated that the allowance is not on the whole a source of profit to the recipient, a local Government may grant such allowances to any Government servant under its control and may make rules prescribing their amounts and the conditions under which they may be drawn. For the purpose of clarity, Rules 4 and 44 of the Fundamental Rules, are reproduced herein below:-

"F.R.4. The powers specifically granted by these rules to local Government may be exercised by them in relation to those Government servants only who are under their administrative control. These powers may be exercised by the Governor-General in respect of all other Government servants, and may be delegated by him, without regard to the limitations of rule 6 and subject to any conditions which he may think fit to impose, to a Chief Commissioner.

F.R.44. Compensatory allowances.---Subject to the general rule that the amount of a compensatory allowance should be so regulated that the allowance is not on the whole a source of profit to the recipient, a local Government may grant such allowances to any Government servant under its control and may make

rules prescribing their amounts and the conditions under which they may be drawn."

23. A cumulative reading of Rules 4 and 44 of the Fundamental Rules provide that the Governor General can exercise the power to grant allowances to Government servants in the same manner as can be granted by the local Government to the Government servants under its control. The Fundamental Rules continue to remain in force by virtue of Article 268 of the Constitution and Rule 25(2) of the Civil Servants Act, 1973. Under Article 2(2) of the Central Laws (Adaptation) Order, 1961 (President's Order No. 1 of 1961), the expression "Government" was ordered to be substituted for the expressions "Crown", "His Majesty" or "Her Majesty" occurring in the Central Acts and Ordinances, and the word "President" for the expression "Governor-General".

24. In the case reported as PLD 2014 SC 131 "In the matter of: Action against distribution of development funds by Ex-Prime Minister Raja Pervez Ashraf", it was held by the Hon'ble Supreme Court that since the Rules of Procedure and Conduct of Business in the National Assembly, 2007, were made under Article 67 of the Constitution, they had the status of law. In the case of Mehran Security Service (Pvt.) Ltd. v. Pakistan (2000 YLR 2655), the Division Bench of the Hon'ble High Court of Sindh held that since the Rules of Business, 1973, were framed under Article 99 of the Constitution, the said rules had a higher status than ordinary delegated legislation on account of having being made on the authority of the Constitution itself. In the case at hand, the 1982 Rules derive their mandate from Article 208 of the Constitution and therefore have the status of law.

25. If this Court were to accept the contention of the learned Assistant Attorney-General and hold that the decision of the Hon'ble Chief Justice of F.S.C., made in exercise of the powers under Rule 5 of the 1982 Rules, is subject to the approval of the Prime Minister or that such a decision cannot be implemented unless approved by the Prime Minister, it would be reading into the said Rule words that are not mentioned therein. It is well settled that in the garb of interpretation, Courts have no power to add or omit even a single word from the provisions of law. Nothing could be added to a statute or a rule to rewrite the same as that would be against accepted principles of interpretation. Reference in this regard may be made to the law laid in the cases of Khan Gul Khan v. Daraz Khan (2010 SCMR 539) and Crescent Jute Products Ltd. v. Government of the Punjab (PLD 2004 Lahore 686).

26. In view of the above, the position that emerges is that since the President has the power to grant or sanction allowances to civil servants in the service of the Federal Government, such powers by virtue of the proviso to rule 5 of the 1982 Rules can be exercised by the Hon'ble Chief Justice of F.S.C.; and since Rule 5 of the 1982 Rules does not make the exercise of the powers by the Hon'ble Chief Justice of F.S.C. to regulate the terms and conditions of service of the persons on the staff attached to F.S.C. conditional on or subject to the approval or sanction of the Finance Division or the Prime Minister; and since the notification dated 25.10.2014 was issued pursuant to a decision taken by the Hon'ble Chief Justice of F.S.C. in exercise of the powers conferred under Rule 5 of the 1982 Rules to revise the rates of utility allowance (gas and electricity) for the officers and staff of F.S.C., the objection raised by the respondents that such revision could not be made without the approval of the Finance Division or the Prime Minister is declared to be without lawful authority and of no legal effect. The instant writ petition is allowed in the above terms. In allowing this petition, I have not taken into account the ratio in the judgments of the Hon'ble Lahore High Court in the cases of Riaz Ali Zaidi v. Government of the Punjab (Supra) and Government of the Punjab v. Riaz Ali Zaidi (Supra).

27. Before parting with this judgment, I deem it appropriate to express my appreciation regarding the invaluable assistance rendered by Mr. Umar Farooq, posted as Research Officer with this Court.

MH/121/IsI.

Petition allowe

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Aug 22/163
(Handwritten initials and date)

PESHAWAR HIGH COURT, PESHAWAR

NOTIFICATION

Dated Peshawar the 08th April, 2019

No. 85-J Hon'ble the Chief Justice has been pleased to order that the Peshawar High Court, Peshawar, its Benches and all the District Courts in the Khyber Pakhtunkhwa, shall observe the following working hours during the summer season: -

SUMMER: (w.e.f 16th April, 2019 to 15th October, 2019 both days inclusive).

Monday to Thursday & Saturday:

08:00 am to 02:30 pm (with 30 minutes break from 01.00 pm to 01.30 pm for Zohar Prayers).

Friday: 08:00 am to 12:00 noon.

Sunday: Closed.

By order of Hon'ble the Chief Justice

**ADDITIONAL REGISTRAR (ADMIN)
FOR REGISTRAR**

Endst No 7875-7975 Admn:

Dated Pesh the 10/14/2019

Copy forwarded to: -

1. The Chief Secretary, Government of Khyber Pakhtunkhwa, Peshawar.
2. The Advocate General, Khyber Pakhtunkhwa, Peshawar.
3. The Secretary, Government of KPK, E&A Department, Peshawar.
4. The Secretary, Government of KPK, Law Department, Peshawar.
5. The Secretary, Government of KPK, Home Department, Peshawar.
6. The Secretary to Governor, Khyber Pakhtunkhwa, Peshawar.
7. All the Principal Officers in the Peshawar High Court, Peshawar.
8. All the Directors in SD, Peshawar High Court, Peshawar.
9. All the Additional Registrars of the Peshawar High Court Benches.
10. All the District & Sessions Judges/Zilla Qazis in the Khyber Pakhtunkhwa for circulation amongst all the Courts within the respective district.
11. All the Ex-Cadre Judges in the Khyber Pakhtunkhwa.
12. The Deputy Attorney General for Pakistan at Peshawar.
13. The Secretary High Court Bar Association, Peshawar.
14. All the Presidents of Bar Associations in the Khyber Pakhtunkhwa.
15. All the ARs/Readers/Head of Branches in Peshawar High Court, Peshawar.
16. All the Court/Private Secretaries of this Court for placing the same before the Hon'ble Judges for their kind information.
17. The Manager Government Printing Press, Peshawar for publication in the next official Gazette.
18. The Director (IT), Peshawar High Court, Peshawar.
19. Website/Notice Board.

**ADDITIONAL REGISTRAR (ADMIN)
FOR REGISTRAR**

(Handwritten signature and date)
10/14/19

Scanned by CamScanner

Attested
Sd/-
Additional Registrar
Peshawar High Court

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[Handwritten scribble]



The
PESHAWAR HIGH COURT
Peshawar

All communications should be addressed to the Registrar Peshawar High Court, Peshawar and not to any official by name.

Exch: 9210149-58
Off: 9210135
Fax: 9210170
www.peshawarhighcourt.gov.pk
Info@peshawarhighcourt.gov.pk
phcpsh@gmail.com

No. HRC

Dated Peshawar, the _____

To
The District Comptroller of Accounts,
Mardan.

Subject: COMPLAINT/APPLICATION (#21151)

Reference to this office letter No. 2927/HRC dated: 12-08-2020, on the subject complaint and to say that reply of the above mentioned letter is still awaited, which may be sent to this office within Two Weeks, please.

Director,
Human Rights Cell
Ph: No. 091-9213023
Fax No: 091-9210728

Enclt. No. 3182 HRC

Dated Peshawar, the 9-9-2020

Copy forwarded for information to:

Mr. Zulfiqar Ali, Senior Stenographer, Consumer Court, Nowshera.

[Signature]
Director,
Human Rights Cell



Secy. IC&TE
16/2/17

Registered
Advocate
Court

GOVERNMENT OF KHYBER PAKHTUNKHWA
INDUSTRIES, COMMERCE AND TECHNICAL
EDUCATION DEPARTMENT

Dated Peshawar, the 10th February, 2017

NOTIFICATION

No. SO-II(IND)3-94/2016 Vol-VII. - In pursuance of the Chief Justice, Peshawar High Court, Peshawar approval/recommendation conveyed vide Registrar, Peshawar High Court letter No. 2456/Admin dated: 06-02-2017, the following transfer/posting order of the Judges Consumer Courts (BPS-21) is hereby issued with immediate effect in the public interest:-

S#	Name of Judicial Officer	From	To
01.	Mr Muhammad Naseem	Judge Consumer Court, Karak.	Repatriated to Peshawar High Court, Peshawar.
02.	Mr Abdul Ghafoor Qureshi	Judge Consumer Court, Malakand.	Judge Consumer Court, Charsadda vice No. 7.
03.	Mr Muhammad Aamir Nazir	District & Sessions Judge.	Judge Consumer Court, D.I.Khan against the vacant post.
04.	Mr Abdur Rauf Khan	Judge Consumer Court, Abbottabad.	Judge Consumer Court, Tank vice No. 6.
05.	Mr Muhammad Iqbal Khan.	Judge Consumer Court, Peshawar.	Judge Consumer Court, Malakand vice No. 2.
06.	Syed Aqeel Shah.	Judge Consumer Court, Tank.	Judge Consumer Court, Peshawar vice No. 5.
07.	Mrs Rozina Rahman.	Judge Consumer Court, Charsadda (presently on 16 weeks training w.e.f. 10 th Jan, 2017 in Shariah Academy Islamabad.	Judge Consumer Court, Chitral against the vacant post.
08.	Mrs Farah Jamshed	District & Sessions Judge.	Judge Consumer Court, Haripur against the vacant post.

Secretary
Industries, Commerce and
Technical Education Department

Endst. of Even No. and Date: /1566-20

Copy forwarded for information and necessary action to:-

1. Accountant General, Khyber Pakhtunkhwa, Peshawar.
2. Registrar Peshawar High Court, Peshawar w/r to his letter referred to above
3. All Judges of District Consumer Courts in Khyber Pakhtunkhwa.
4. Officers concerned.
5. Director Industries & Commerce, Khyber Pakhtunkhwa, Peshawar.
6. District Accounts Officer, Haripur, Chitral, Malakand, Tank, D.I.Khan, Peshawar and Charsadda.
7. P.S to Secretary IC&TE Department.

SECTION OFFICER-II

PESHAWAR HIGH COURT, PESHAWAR

ORDER

Dated Peshawar the 04th September, 2019

In continuation of this Court's Notification No.66-J dated 14.03.2019, Hon'ble the Chief Justice has been pleased to declare that this Court, its Benches and all the subordinate courts in the Khyber Pakhtunkhwa shall remain closed on 09th & 10th September, 2019 (Monday & Tuesday), on occasion of Ashura (09th & 10th Moharrum 1441 A.H).

By order of Hon'ble the Chief Justice

(KHAWAJA WAJIB-UD-DIN)
REGISTRAR

Endst No 18561-661 / Admn:

Dated Pesh the 06/09/2019

Copy forwarded to:

1. The Chief Secretary, Government of Khyber Pakhtunkhwa, Peshawar.
2. The Advocate General, Khyber Pakhtunkhwa, Peshawar.
3. The Registrar, Supreme Court of Pakistan, Islamabad.
4. The Registrar, Federal Shariat Court, Islamabad.
5. The Registrars of Lahore, Sindh, Baluchistan & Islamabad High Courts.
6. The Secretary, Government of KPK, Establishment Department, Peshawar.
7. The Secretary, Government of KPK, Law Department, Peshawar.
8. The Secretary, Government of KPK, Home Department, Peshawar.
9. The Secretary to Governor, Khyber Pakhtunkhwa, Peshawar.
10. All the Principal Officers in the Peshawar High Court, Peshawar.
11. All the Directors in SDJ, Peshawar High Court, Peshawar.
12. All the District & Sessions Judges/Zilla Qazis in the Khyber Pakhtunkhwa.
13. All the Special Courts/Tribunals in the Khyber Pakhtunkhwa.
14. All the Ex-Cadre Judges in the Khyber Pakhtunkhwa.
15. All the Additional Registrars of Peshawar High Court Benches.
16. The SCS to Hon'ble Chief Justice, Peshawar High Court, Peshawar.
17. All the Court/Private Secretaries of this Court for placing the same before the Hon'ble Judges for their kind information.
18. The Deputy Attorney General, Khyber Pakhtunkhwa, Peshawar.
19. The Secretary, Khyber Pakhtunkhwa Bar Council, Peshawar.
20. The Secretary High Court Bar Association, Peshawar.
21. All the ARs/Readers/Head of Branches in Peshawar High Court, Peshawar.
22. The Director (IT), Peshawar High Court, Peshawar.
23. The Protocol Officer, Peshawar High Court, Peshawar.
24. Website/Notice Board.

(KHAWAJA WAJIB-UD-DIN)
REGISTRAR



GOVERNMENT OF
KHYBER PAKHTUNKHWA
ESTABLISHMENT DEPARTMENT

DATED PESHAWAR, AUGUST 16, 2017

NOTIFICATION.

NO. SO(E-I)/E&AD/9-228/2017. Government of Khyber Pakhtunkhwa is pleased to order posting/transfer of the following Judicial Officers, in the public interest, with immediate effect:-

S.No.	Name of Judicial Officer	From	To
1.	Mr. Muhammad Aamir Nazir,	Judge, Consumer Court, D.I.Khan	Repatriated to Peshawar High Court, Peshawar
2.	Mr. Rafiullah,	Judge, consumer Court, Bannu	Repatriated to Peshawar High Court
3.	Mr. Aftab Afridi,	Judge, Consumer Court, Kohat.	Repatriated to Peshawar High Court
4.	Mr. Rajab Ali Khan,	Judge, Consumer Court, Nowshera.	Repatriated to Peshawar High Court
5.	Mrs. Farah Jamshed,	Judge, Consumer Court, Haripur	Repatriated to Peshawar High Court
6.	Mr. Muhammad Iqbal Khan,	Judge, Consumer Court, Malakand.	Repatriated to Peshawar High Court
7.	Mr. Badruddin,	Judge, Consumer Court, Charsadda	Posted as judge, Consumer Court, Kohat.
8.	Mr. Muhammad FarhatUllah Khan,	Judge, Consumer Court, Lakki Marwal.	Posted as judge, Consumer Court, D.I.Khan.
9.	Mr. Aurangzeb	Judge, Anti-Terrorism Court, D.I.Khan.	Repatriated to Peshawar High Court, Peshawar
10.	Mr. Zafar Iqbal Khan,	Judge, Anti-Terrorism Court, Swat.	Repatriated to Peshawar High Court, Peshawar
11.	Mr. Azhar Khan.	Presiding Officer, Labour Court, Haripur	Repatriated to Peshawar High Court, Peshawar
12.	Mr. Muhammad Hussain,	District & Session Judge	Posted as Presiding Officer, Labour Court, Haripur.

2. Moreover, the competent authority has further pleased to order the following adjustments:-

- I. Consumer Courts, Bannu and Karak will be presided over by Mr. Badruddin.
- II. Consumer Courts, Tank and Lakki Marwal will be presided over by Mr. Muhammad FarhatUllah Khan.
- III. Consumer Court, Malakand will be presided over by Syed Zamarrud Shah, Judge, Consumer Court, Swat.
- IV. Consumer Courts, Charsadda, Nowshera and Mardan will be presided over by Mr. Muhammad Asim Imam, Judge, Consumer Court, Swabi.
- V. Consumer Courts, Haripur and Mansehra will be presided over by Mr. Abdur Rauf Khan, Judge, Consumer Court, Abbottabad.
- VI. Anti-Terrorism Court, D.I.Khan will be presided over by Mr. Babar Ali Khan, Judge, ATC, Bannu.
- VII. Anti-Terrorism Court, Swat will be presided over by Mr. Muhammad Arif Khan, Judge, ATC, Swat.

CHIEF SECRETARY
GOVERNMENT OF KHYBER PAKHTUNKHWA

Continued at Page-2



GOVERNMENT OF
KHYBER PAKHTUNKHWA
ESTABLISHMENT DEPARTMENT

PAGE-2.

Endst: No. & date even

Copy forwarded to the:-

1. Principal Secretary to Governor, Khyber Pakhtunkhwa.
2. Principal Secretary to Chief Minister, Khyber Pakhtunkhwa.
3. Secretary to Government of Khyber Pakhtunkhwa, Law Department.
4. Secretary to Government of Khyber Pakhtunkhwa, Labour Department.
5. Secretary to Government of Khyber Pakhtunkhwa, Industries Department.
6. Registrar, Peshawar High Court, Peshawar.
7. All Divisional Commissioners in Khyber Pakhtunkhwa
8. Accountant General, Khyber Pakhtunkhwa.
9. Presiding Officer, Labour Court, D.I. Khan, Bannu, Kohat, Nowshera, Malakand, Charsadda Lakki Marwat.
10. Consumer Courts, Bannu, Karak Tank, Lakki Marwat, Malakand, Swat, Charsadda, Nowshera, Mardan, Swabi, Abbottabad.
11. Director Anti-Corruption Establishment Peshawar.
12. Director Labour, Khyber Pakhtunkhwa.
13. Deputy Commissioner, concerned.
14. District Accounts Officer, concerned.
15. Director Information, Khyber Pakhtunkhwa.
16. PS to Chief Secretary, Khyber Pakhtunkhwa.
17. PS to Secretary Establishment/PS to SS(E)/SS (Reg)/PA, AS(HRD)/AS(E)/DS(E.)/D/S(HRD Wing) SO(E.II), SO(HRD.I) SO(HRD.II) E&AD.
18. PS to Secretary (Admn.)/D.S(A)/SO(Secret)/Estate Officer/ACSO Cypher/Dy Director (IT) and Director Protocol Administration Department.
19. Officers concerned.
20. Manager, Govt. Printing Press Peshawar.

— sd —

(KASHIF IQBAL JILANI)
SECTION OFFICER (ESTT-I)
PH: & FAX # 091-9210529

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Peshawar High Court, Peshawar

Order

Dated Peshawar the 13th January, 2017

Hon'ble the Chief Justice and Judges of this Court are pleased to order the postings/transfers of the following Judicial Officers in the public interest, with immediate effect:-

S No	Name of Officer with designation	From	To	Remarks
1.	Mr. Muhammad Adil Khan, District & Sessions Judge	On repatriation from Provincial Government	Swabi	Transferred and posted as District & Sessions Judge against the vacant post.
2.	Syed Anees Badshah Bukhari, District & Sessions Judge	On repatriation from Provincial Government	Peshawar High Court	Transferred and posted as Legal Draftsman, Peshawar High Court, Peshawar against the vacant post.
3.	Mr. Aurangzeb Khattak, District & Sessions Judge	On repatriation from Provincial Government	Tank	Transferred and posted as District & Sessions Judge vice No. 14
4.	Mr. Ahmad Sultan Tareen, District & Sessions Judge	On repatriation from Provincial Government	Kohat	Transferred and posted as District & Sessions Judge vice No. 5
5.	Mr. Muhammad Younas Khan, District & Sessions Judge	Kohat	Peshawar High Court	Transferred and posted as OSD, Peshawar High Court, Peshawar.
6.	Mrs. Muneera Abbas, District & Sessions Judge	On repatriation from Provincial Government	Charsadda	Transferred and posted as District & Sessions Judge against the vacant post.
7.	Syed Zamrud Shah, District & Sessions Judge/OSD	Peshawar High Court	Consumer Court, Swat	Relieved to join his new assignment as Judge, Consumer Court, Swat.
8.	Mr. Aftab Afridi, District & Sessions Judge/OSD	Peshawar High Court	Consumer Court, Kohat	Relieved to join his new assignment as Judge, Consumer Court, Kohat.
9.	Mr. Babar Ali Khan, District & Sessions Judge/OSD	Peshawar High Court	Consumer Court, Mansehra	Relieved to join his new assignment as Judge, Consumer Court, Mansehra.
10.	Mr. Asad Hameed, District & Sessions Judge	On repatriation from Provincial Government	Peshawar High Court	Transferred and posted as OSD, Peshawar High Court, Peshawar.
11.	Mr. Rajab Ali Khan, District & Sessions Judge/OSD	Peshawar High Court	Consumer Court, Nowshera.	Relieved to join his new assignment as Judge, Consumer Court, Nowshera.
12.	Mr. Sahaj Sheraz Noor Sani, District & Sessions Judge/Zila Qazi	Dir Lower	Consumer Court, Mardan	Relieved to join his new assignment as Judge, Consumer Court, Mardan.
13.	Mr. Rafiqullah, District & Sessions Judge	Hangu	Consumer Court, Bannu	Relieved to join his new assignment as Judge, Consumer Court, Bannu.
14.	Mr. Tariq Parvez Baloch, District & Sessions Judge	Tank	Consumer Court, Maripur	Relieved to join his new assignment as Judge, Consumer Court, Maripur.

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Note:

1. Senior Most Additional District & Sessions Judge in Districts headquarter Dir Lower and Hangu is authorized to look after the administrative work as well as urgent judicial (Civil & Criminal) matters of the vacant Court of District & Sessions Judge, till posting of permanent District & Sessions Judges.

By Order of Hon'ble the Chief Justice & Judges

(Fazal Subhan)
Acting Registrar

Endst:No. 967-1066 Admn

Dated Peshawar the 13-01-2017

- Copy forwarded for information and further necessary action to:-
1. The Chief Secretary, Government of Khyber Pakhtunkhwa, Peshawar.
 2. The Director General, Khyber Pakhtunkhwa Judicial Academy, Peshawar.
 3. All the District & Sessions Judges/Zila Qadis in Khyber Pakhtunkhwa.
 4. The Secretary to Government of Khyber Pakhtunkhwa, Establishment Department, Peshawar.
 5. The Secretary to Government of Khyber Pakhtunkhwa, Law Department, Peshawar.
 6. The Secretary to Government of Khyber Pakhtunkhwa, Home and TAs Department, Peshawar.
 7. The Secretary to Government of Khyber Pakhtunkhwa, Industries, Commerce and Technical Education Department, Peshawar.
 8. The Secretary to Governor of Khyber Pakhtunkhwa.
 9. The Provincial Election Commissioner, Khyber Pakhtunkhwa, Peshawar.
 10. The Accountant General, Khyber Pakhtunkhwa, Peshawar.
 11. The PSO to Hon'ble Chief Justice, Peshawar High Court, Peshawar.
 12. The Private Secretary to Hon'ble Chief Justice, Peshawar High Court, Peshawar.
 13. All the Private Secretaries to the Hon'ble Judges of Principal Seat and its Benches for placing the same before the Hon'ble Judges for their kind information.
 14. The District Accounts Officers concerned.
 15. The Officers concerned by name.
 16. The Director Information, Peshawar.

(Fazal Subhan)
Acting Registrar



**GOVERNMENT OF KHYBER PAKHTUNKHWA
INDUSTRIES, COMMERCE & TECHNICAL EDUCATION
DEPARTMENT, PESHAWAR**

NOTIFICATION

Dated Peshawar the, 13th October, 2016

No. SO-II(IND)3-94/2016 Vol-VII. - In pursuance of the Registrar, Peshawar High Court, Peshawar letter No. 10743/Admn dated 05-10-2016 the following transfer/ posting order of the Judges Consumer Courts (BPS-21) is hereby issued with immediate effect in the public interest:-

S#	Name of Judicial Officer	From	To
1.	Syed Kamal Hussain Shah	District & Sessions Judge (BPS-21).	Judge, Consumer Court, Swabi against vacant post
2.	Syed Aqeel Shah	Judge Consumer Court Lakki Marwat (BPS-21).	Judge, Consumer Court, Tank against the vacant post
3.	Mr. Muhammad Farhatullah Khan	District & Sessions Judge (BPS-21).	Judge Consumer Court, Lakki Marwat vice No.2

**Secretary
Industries, Commerce and
Technical Education Department**

Endst: No. SO-II(IND)3-94/2016 Vol-VII 27 87-23 Dated 13th October, 2016

Copy forwarded for information and necessary action to:-

1. The Accountant General, Khyber Pakhtunkhwa, Peshawar.
2. The Registrar Peshawar High Court, Peshawar w/r to his letter referred to above
3. All Judges of Consumer Courts in Khyber Pakhtunkhwa.
4. The Officer concerned.
5. Director Industries & Commerce, Khyber Pakhtunkhwa, Peshawar.
6. District Accounts Officer, Swabi, Tank and Lakki Marwat.
7. P.S to Secretary, IC&TE Department.



GOVERNMENT OF KHYBER PAKHTUNKHWA
INDUSTRIES, COMMERCE & TECHNICAL EDUCATION
DEPARTMENT, PESHAWAR

Dated Peshawar the 9th November, 2016

NOTIFICATION

No. SO-II(IND)3-94/2016 Vol-VII

In supersession of this Department notification Nos. SO-II(IND)3-94/2013/Vol-IV/16997-34 dated 18-12-2014 and No. SO-II(IND)3-94/2013/Vol-V/13576-516 dated 20-10-2015, and in exercise of the powers conferred under Rule 3 of the General Financial Rules Vol-I, the Competent Authority has been pleased to declare District & Sessions Judges/Presiding Officers (BPS-21) of the following Consumer Protection Courts in Khyber Pakhtunkhwa, as Drawing and Disbursing Officers under functional classification 04-Economic Affairs-044-Mining & Manufacturing-0443-Administration-044301-Administration for all object classifications, with immediate effect:-

1.	District & Sessions Judge, Consumer Protection Court	Peshawar
2.	District & Sessions Judge, Consumer Protection Court	Nowshera
3.	District & Sessions Judge, Consumer Protection Court	Charsadda
4.	District & Sessions Judge, Consumer Protection Court	Mardan
5.	District & Sessions Judge, Consumer Protection Court	Swabi
6.	District & Sessions Judge, Consumer Protection Court	Malakand
7.	District & Sessions Judge, Consumer Protection Court	Swat
8.	District & Sessions Judge, Consumer Protection Court	Chitral
9.	District & Sessions Judge, Consumer Protection Court	Haripur
10.	District & Sessions Judge, Consumer Protection Court	Abbottabad
11.	District & Sessions Judge, Consumer Protection Court	Manshra
12.	District & Sessions Judge, Consumer Protection Court	Kohat
13.	District & Sessions Judge, Consumer Protection Court	Karak
14.	District & Sessions Judge, Consumer Protection Court	Bannu
15.	District & Sessions Judge, Consumer Protection Court	Lakki Marwat
16.	District & Sessions Judge, Consumer Protection Court	D.I.Khan
17.	District & Sessions Judge, Consumer Protection Court	Tank

Secretary
Industries, Commerce &
Technical Education Department

Endst: Even No. & Date: 13671-36

Copy forwarded to:-

1. The Accountant General, Khyber Pakhtunkhwa, Peshawar.
2. All Judges, Consumer Courts in Khyber Pakhtunkhwa.
3. The Registrar Peshawar High Court, Peshawar.
4. The Director, Industries & Commerce, Peshawar.
5. The District Account Officer, Nowshera, Charsadda, Mardan, Swabi, Malakand Swat, Chitral, Haripur, Abbottabad, Manshra, Kohat, Karak,



The
PESHAWAR HIGH COURT
Peshawar

All communications should be addressed to the Registrar Peshawar High Court, Peshawar and not to any official by name.

Exch: 921014958
Off: 9210136
Fax: 9210170

www.peshawarhighcourt.gov.pk
info@peshawarhighcourt.gov.pk
phcpsh@gmail.com

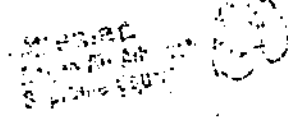
Dated Peshawar, the 25th July 2016

No. 4312-82/B&A

To,

1. All the District & Sessions Judge(s) / Zilla Qazi(s),
In the Khyber Pakhtunkhwa.
2. All the Judge(s), Anti-Terrorism Court(s),
In the Khyber Pakhtunkhwa.
3. The Additional Registrar(s),
Peshawar High Court, Abbotabad, D. Khan, Bannu
and Mingora Dar-ul-Qaza, Swat Benches.
4. The Director General,
Khyber Pakhtunkhwa Judicial Academy, Peshawar.
5. The Judge (s) Consumer Courts,
In the Khyber Pakhtunkhwa.
6. All the Senior Civil Judge(s),
In the Khyber Pakhtunkhwa.

*Sem. Office / A/c to
note. 25/7/2016*



Subject: ECONOMY / AUSTERITY MEASURES FOR FINANCIAL YEAR 2016-17

Dear Sir,

With reference to the subject noted above, I am to forward herewith letter No. BO. / FD / 5-3 / 2016-17 dated 04-07-2016, received from the Budget Officer-I, Govt of Khyber Pakhtunkhwa, Finance Department, Peshawar for information and compliance, please.

Encl. as above: -

[Signature]
**ADDL REGISTRAR (ADMN)
FOR REGISTRAR**



GOVERNMENT OF KHYBER PAKHTUNKHWA
FINANCE DEPARTMENT

NO.BO.I/FD/S-8/2016-17
Dated Peshawar the 04.07.2016

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[Handwritten marks]

To

RECEIVED
PESHAWAR HIGH COURT
PESHAWAR
Receipt No. 18890
Date 14/7/16
For action B. A. A
Signature

- 1) The Senior Member, Board of Revenue, Khyber Pakhtunkhwa.
- 2) All Administrative Secretaries to Govt. of Khyber Pakhtunkhwa.
- 3) The Principal Secretary to Governor, Khyber Pakhtunkhwa.
- 4) The Principal Secretary to Chief Minister, Khyber Pakhtunkhwa.
- 5) All Divisional Commissioners in Khyber Pakhtunkhwa.
- 6) All Heads of Attached Departments in Khyber Pakhtunkhwa.
- 7) All Heads of Autonomous/Semi-Autonomous Bodies in Khyber Pakhtunkhwa.
- 8) All Deputy Commissioners in Khyber Pakhtunkhwa.
- 9) The Registrar, Peshawar High Court, Khyber Pakhtunkhwa.
- 10) The Secretary, Provincial Assembly, Khyber Pakhtunkhwa, Peshawar.
- 11) The Registrar, Khyber Pakhtunkhwa Service Tribunal Peshawar.
- 12) The Secretary, Khyber Pakhtunkhwa Public Service Commission, Peshawar.

Subject: - ECONOMY/AUSTERITY MEASURES FOR FINANCIAL YEAR 2016-17

Dear Sir,

I am directed to refer to the subject noted above and to say that the Provincial Cabinet in its meeting held on 14.06.2016 while considering the Budget Estimates 2016-17, approved the following guiding principles to curtail the recurring expenditure, to be effective from 1st July, 2016:-

- 1) There shall be complete ban on creation of posts except posts required for completed Developmental Projects.
- 2) There shall be complete ban on treatment abroad on Provincial Government's expense.
- 3) There shall be complete ban on purchase of new vehicles.
- 4) Participation in workshops/seminars and training abroad involving provincial funds will be banned.
- 5) There shall be complete ban on holding Seminars and Workshops in Five Star Hotels involving Provincial funds.
- 6) All Administrative Secretaries and Heads of Autonomous/Semi-Autonomous Bodies, being Principal Accounting Officers, shall conduct meetings of Departmental Accounts Committee regularly under intimation to Finance Department so as to ensure INTERNAL AUDIT of their respective Departments /Organizations.
- 7) To achieve the budgeted Provincial Revenue targets, Finance Department shall convene monthly meetings to be attended by administrative Secretaries of the concerned Departments.
- ✓ 8) No appointment of contingent paid staff shall be made during the course of the financial year 2016-17.
- ✓ 9) No appointment shall be made against leave vacancies without prior approval of Finance Department.
- ✓ 10) No appointment will be made against vacant posts (except Class-IV) without obtaining NOC from the concerned Surplus Pool."

(Contd: Page-2)

FROM : DIRECTOR INDUST AND COMMERCE

FAX NO. : 0919243383

19 Jul. 2016 01:23PM P1



DIRECTORATE OF
INDUSTRIES AND COMMERCE
KHYBER PAKHTUNKHWA, PESHAWAR

Dated. 19/07/2016.

No. 6280-86/1/98-DI-Admn:

To

1. The Judge Consumer Court, Peshawar.
2. The Judge Consumer Court, Charsadda
3. The Judge Consumer Court, Mardan
4. The Judge Consumer Court, Malakand
5. The Judge Consumer Court, Swat
6. The Judge Consumer Court, Kohat
7. The Judge Consumer Court, Lakki Marwat

19/07/2016

Subject: - INTERVIEW FOR THE POST OF DRIVER.

I am directed to refer to the Section Officer (Admn) Govt. of Khyber Pakhtunkhwa, Industries, Commerce & Technical Education Department letter No.F&A(IND)2-14/2015/78 dated 18.07.2016 on the subject cited above and to say that the date of interview for the post of Driver for Consumer Courts scheduled on 20.07.2016 has been postponed / cancelled as and when next date is fixed then you will be informed accordingly.

Section Officer (Admn) Govt. of Khyber Pakhtunkhwa, Industries, Commerce & Technical Education Department, Peshawar

C.C. to :-

1. The Section Officer (Admn) Govt. of Khyber Pakhtunkhwa, Industries, Commerce & Technical Education Department, Peshawar with reference to his letter referred to above.
2. Mr. Zahir Shah, Section Officer-III Govt. of Khyber Pakhtunkhwa Industries, Commerce & Technical Education Department, Peshawar for similar action please.

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PRESIDING DISTRICT & SESSIONS JUDGE, CONSUMER COURT, KOHAT

House No.52, Sector-VI, Gate No.3 KDA, Kohat
Ph: 0922-513232, Fax: 0922-513359
Email: consumercourt@kohat.gov.pk

Dated 14th July, 2016

Ref# _____ /CC/KT

To, The Registrar,
Peshawar High Court,
Peshawar.

Subject: INDEPENDENCE OF CONSUMER COURT FROM EXECUTIVE.

Dear Sir,

It is obvious that for the time being, the executive and financial control of Consumer Court lies with the Government of Khyber Pakhtunkhwa through Industries, Commerce & Technical Education Department of said government. It is considered opinion of the undersigned that with given role of government vis-à-vis the Consumer Court, it is not independent from Executive in contemplation of the Constitution of Pakistan and the precedent law so far developed through rulings of the Apex Court of Pakistan. Therefore, it has become expedient to highlight the constitutional and legal position herein-below for removing the anomaly about supervisory role over the Consumer Court and ensuring its independence from Executive in due court of time:-

- (i) That the Consumer Court has been established by a provincial statute namely Khyber Pakhtunkhwa Consumer Protection Act, 1997 (hereinafter shall be referred as Act) within meaning of section 11A of the Act. The said section provides: "Government may, by notification in the official gazette, establish a Consumer Court in each District of the Province to be presided by a District & Sessions Judge."
- (ii) That there is no specific provision in the Act about control and supervision of the Consumer Court by government except the authority of its establishment as mentioned above. It is clear from plain reading of section 11A ibid that government has not been given statutory power for posting of District & Sessions Judge (D&SJ) to preside the said Court. This is because the expression "to be presided by a District & Sessions Judge" occurring in section 11A does not imply the vesting of power in the government for posting of D&SJ when it is compared with statutory provisions under other laws for establishment of courts and appointment of judges thereto. Section 9 of the Code of Criminal Procedure, 1898 deals with establishment of a Court of Session and appointment of a judge of such court which provides: "(1) The Provincial Government shall establish a Court of Session for every sessions

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division, and appoint a judge of such Court." Section 5 of the Civil Courts Ordinance, 1962 deals with District Judges and provides: "Government shall, in consultation with the High Court, appoint as many persons as it thinks necessary to be District Judges and post a District Judge to each district:" In both the provisions referred before for comparison, the power of appointment has been specifically mentioned, which is not the case as far as Consumer Court is concerned. Needless to say that control and supervision of the Court of District & Sessions Judge, notwithstanding the given statutory powers of government, lies with the High Court after separation of Judiciary from the Executive since long in light of Apex court's ruling in Sharaf Fridi case (PLD 1994 sc 105). It is highly anomalous that the government even having not been given statutory power for posting of D&SJ to preside the Consumer Court is exercising such power and control over the said Court.

- (iii) That in view of the anomaly pointed out in the preceding point, it necessitates to have recourse to the Constitutional and legal requirements for removal of such anomaly in due course of time. To meet with said purpose, it apt to cite Clause (1) of Article 175 of the Constitution of Pakistan as reproduced hereinafter: "(1) There shall be a Supreme Court of Pakistan, a High Court for each Province [and a High Court for the Islamabad Capital Territory] and such other courts as may be establish by law." When the control of Court of D&SJ established under by law already cited above lies with the High Court, then it is quite befitting that control and supervision of Consumer Court may be taken over by the High Court; which is otherwise reasonable in absence of power with the government about posting of D&SJ to preside over such Court. For the sake of further clarification, it significant to point out that Consumer Court is not an administrative court within meaning of Article 212 of the Constitution of Pakistan. So, the control and supervision of government of Khyber Pakhtunkhwa over Consumer Court is not justified from any corner.
- (iv) That besides absence of Constitutional and legal justification with government to exercise control over Consumer Court, It is also against the spirit of law i.e. Consumer Protection Act. Through Khyber Pakhtunkhwa Act No. XVII of 2015, the forum of Director of Industries and Commerce, Khyber Pakhtunkhwa has been provided with powers under sections 11B and 11C by the same amendment. Any person aggrieved from order passed by the Director, under sub-section (1) of section 11A of the Act, has been provided with right of appeal before the Consumer Court against such order, within meaning of section 17 of the Act. Who will bring it in the logical domain that the same Director judicially subordinate to the Consumer Court has been vested with all powers by the government to exercise administrative control in affairs of the Consumer Court which is superior judicial forum as regards the Director? Moreover, the Director besides his independent powers of

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inquiry is also under direction of Consumer Court within meaning of Section 11C of the Act for the purpose of conducting inquiry.

- (v) That the Director or any authorized officer of the Directorate has been given a statutory role as complainant before the Consumer Court under amended Section 13(1)(d) of the Act. With this role, the exercise of control by Directorate in administrative and financial affairs of Consumer Court is tantamount to placing a complainant at higher pedestal before the Court against the respondent of his complainant. If this role of the Directorate is allowed to perpetuate, it will certainly disseminate the impression of miscarriage of justice and will ultimately result in weakening the confidence of public at large in the Court.

With the foregoing points, the undersigned respectfully avers that it not possible for him to agree to the control of government over Consumer Court, Kohat without objection. Standing with the objection, it is requested that Competent Authority in the Peshawar High Court, Peshawar may graciously pass orders for bringing the Consumer Court in domain of supervision of High Court for the purposes of Articles 202 and 203 read with Article 175 (1) of the Constitution of Pakistan, for independence of said Court from the Executive, in the larger public interest, please.

(AHMAD SULTAN TAREEN)
PRISING DISTRICT & SESSIONS JUDGE
CONSUMER COURT
KOHAT

Endst. No. 569-99/CC/KT

Dated: 14.07.2016

Copy to:-

1. The Secretary, Industries, Commerce and Technical Education Department, Peshawar.
2. The Secretary Home & Tribal Affairs Department, Peshawar.
3. The Secretary, Law, Parliamentary Affairs & Human Rights Department, Peshawar.
4. The Secretary, Finance Department, Peshawar.
5. The Director General, Khyber Pakhtunkhwa, Judicial Academy, Peshawar.
6. All Judges Consumer Courts, Khyber Pakhtunkhwa. *Mardan*
7. The Private Secretary to Chief Secretary, Khyber Pakhtunkhwa, Peshawar.
8. The Director, Industries and Commerce Department, Khyber Pakhtunkhwa, Peshawar.
9. The Commissioner Kohat, Kohat.
10. The Regional Police Officer, Kohat Range, Kohat.
11. The Deputy Commissioner, Kohat.
12. The District Police Officer, Kohat
13. The Assistant Director, CPC, Kohat.
14. The Industrial Development Officer, Kohat.
15. Office File


(AHMAD SULTAN TAREEN)
PRISING DISTRICT & SESSIONS JUDGE
CONSUMER COURT
KOHAT



The
PESHAWAR HIGH COURT
Peshawar

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Dated Pesh the ___/___/2016

No. _____ / Admn:

To:

The Director General,
Khyber Pakhtunkhwa Judicial Academy,
Peshawar.

Subject: **NOMINATION OF NEWLY PROMOTED DISTRICT & SESSIONS JUDGES FOR TRAINING (26-30 APRIL, 2016).**

Dear Sir,

I am directed to refer to your letter No.313/KPJA dated 22.03.2016 and to say that Hon'ble the Chief Justice has been pleased to nominate 17 newly promoted District & Sessions Judges/Zilla Qazis, as per attached list, please.

Sincerely yours,

ADDITIONAL REGISTRAR (ADMN)
FOR REGISTRAR

Dated Pesh the 6/4/2016

Endst: No. 3613-3629 / Admn:

Copy alongwith enclosure forwarded to the officers concerned by name.

ADDITIONAL REGISTRAR (ADMN)
FOR REGISTRAR

*Already
received
05/05/2016*

180

List of Newly Promoted DSJs

S.No	NAME OF JUDICIAL OFFICER	DESIGNATION WITH POSTING	REMARKS
1	Mr. Aurangzeb Khattak	Judge, Consumer Court, Mardan	
2	Mr. Muhammad Aamir Nazir	Disst. & Sessions Judge / OSD, PHC, Peshawar.	
3	Mr. Aurangzeb	Presiding Officer, Labour Court, Malakand Division at Swat	
4	Mrs. Muneera Abbasi	Judge, Consumer Court, Haripur	
5	Mr. Aamer Nazir Bhatti	Judge, Anti-Terrorism Court, Matta (Swat) (At Central Prison Mardan)	
6	Mr. Asad Hameed Khan	Judge, Consumer Court, Nowshera	
7	Mr. Tahir Mehmood	Judge, Consumer Court, Swabi	
8	Mr. Muhammad Arshad	Judge, Special Court, Peshawar (Under Protection Pakistan Act, 2014)	
9	Syed Kamal Hussain Shah	District & Sessions Judge, Karak	
10	Syed Aqeei Shah	Judge, Consumer Court, Lakki	
11	Mr. Sohail Sheraz Noorsani	District & Sessions Judge, Dir (Lower)	
12	Syed Anees Badshah Bukhari	Judge, Consumer Court, Mansehra	
13	Mrs. Rozina Rehman	Judge, Consumer Court, Charsadda	
14	Mr. Muhammad Naseem	Judge, Consumer Court, Karak	
15	Mr. Aftab Afridi	Judge, Consumer Court, Chitral	
16	Mr. Ashfaque Taj	Director P&D, PHC, Peshawar.	
17	Mrs. Nusrat Yasmeen	Addl. Director, Federal Judicial Academy, Islamabad.	



The
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Peshawar

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181
181

No. 397-496/MIT

Seen
27/05/2016

Dated Peshawar the 27-4-2016

To

1. All the District & Sessions Judges,
Khyber Pakhtunkhwa.

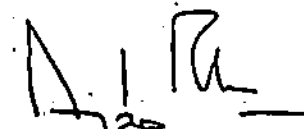
✓ 2. All the Ex-Cadre Judicial Officers,
Khyber Pakhtunkhwa.

SUBJECT: - MISBEHAVIOR AND UNPLEASANT ATTITUDE OF JUDICIAL OFFICERS

I am directed to refer to the subject cited above and to say institutions are made and shaped by individuals and individuals, in turn, by possessing the traits of highest character. The independence of judiciary demand of all the judicial officers to behave in a manner befitting of an umpire as it is the need of the day. A judicial officer should be God fearing, law abiding, abstemious, truthful of tongue, wise in opinion, cautious and forbearing, patient and clam, completely detached and balanced, faithful to his words and meticulous in his functions.

But unfortunately instances have come on the notice of Hon'ble the Chief Justice about misbehavior and unpleasant attitude of the judicial officers inside and outside the court, which lamish the image of the concerned judicial officer as well as institution.

I am directed to ask you to improve your conduct/behavior inside as well as outside the court and in future, if any complaint in respect of insulting and unpleasant behavior of judicial officer is reported then strict legal action will be taken against him.


(Muhammad Ayub Khan)
REGISTRAR

182

(S)

(S)

**IN THE COURT OF DISTRICT SESSION JUDGE
CONSUMER PROTECTION COURT MARDAN.**

OFFICE ORDER.

This Court will remain closed for its Judicial functions since 10 August, 2015 to 30 August, 2015, due to summer vacation, However the following Officer/Officials will remain on duty on the date mentioned against them, to receive cases and for other official business of the office.

S.No.	Name of Officer/Officials	Designation	Duty Roster.
1.	Sabir Shah	Assistant.	10.8.015 to 16.8.015
	Arshad Iqbal	S/Clerk	-do-
	Mushtaq Ali	N/Qasid	-do-
2.	Mohd: Arif	Assistant.	17.8.015 to 23.8.015
	Salma	S/Clerk	-do-
	Ishtiaq Ali	N/Qasid	-do-
3.	Zulfiqar Ali	Steno	24.8.015 to 30.8.015
	Afsar Khan	N/Qasid	-do-

Sd/-
Judge consumer Court Mardan.
Dated. 27/08/2015.

Endst:No. 453-57/1/1-CP Court.(M).

Copy of the above is forwarded to;

1. PA to Director Industries & Commerce Khyber Pakhtunkhwa Peshawar.
2. Administrative Officer Hqtrs: Office Peshawar
3. Assistant Director CPC Mardan.
4. The Officer/Officials Concerned.
5. File NO.1/1-CP Court(M).

(Anwar Hussain Khan)
District Session Judge Consumer Court
Mardan

27/8/15

(183)
(208)

**DIRECTORATE OF
INDUSTRIES AND COMMERCE
KHYBER PUKHTUNKHWA, PESHAWAR.**

No. 5062-68 /16/896-DI-Admn

Dated. 08/07/2015.

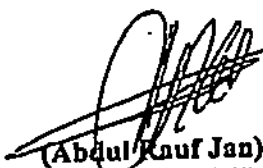
To

1. The Judge Consumer Court, Peshawar..)
2. The Judge Consumer Court, Kohat.
3. The Judge Consumer Court, Bannu.
4. The Judge Consumer Court, D.I.Khan.
- ✓ 5. The Judge Consumer Court, Mardan.
6. The Judge Consumer Court, Abbottabad.
7. The Judge Consumer Court, Swat.

*sum / office is desirable
to prepare the salary
15-7-2015*

Subject: SUMMER VACATION.

Kindly refer to the subject cited above and to request that the schedule of Summer Vacation of your courts may kindly be intimated to this Directorate for information please.


(Abdul Rauf Jan)
Administrative Officer,
Hqtrs Office, Peshawar

Endst: No. _____ /16/896-DI-Admn

Dated. _____ /2015.

Copy forwarded for information to PA to Director, Industries & Commerce, Khyber Pakhtunkhwa, Peshawar.

Administrative Officer,
Hqtrs Office, Peshawar

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(scribble)

(scribble)

IN THE COURT OF
DISTRICT SESSION JUDGE CONSUMER COURT MARDAN.

NO. 422 / 111 / General/C.Court(M).

Dated. 22/7 /2015.

OFFICE ORDER.

The Court routine work has distributed amongst the following official which is noted against each with immediate effect.

- 1: Sabir Shah Assistant. Accounts/Attestation of photo copies as allowed by the judge.
- 2. Mohammad Arif Asstt: Reader/New cases taken & enter in relevant register Computer work Mardan District.
- 3. Zulfiqar Ali Steno Reader/New cases taken & enter in relevant register Computer work ~~Mardan~~ District, Suwaybi
- 4. Arshad Iqbal S/Clerk To Maintain all record, summen, warrant, Dairy, Despatch Etc:
- 5: Salma S/Clerk. To Maintain all record, summen, warrant, Dairy, Despatch Etc:

All the Officials are noted for strict compliance.

(Signature)

(Signature)
23/7/15

(Anwar Hussain Khan)
District Session Judge Consumer Court
Mardan.



The
PESHAWAR HIGH COURT
Peshawar

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No. 340-90 /Admn:

Dated Pesh the 19/01/2015

To:

1. All the District & Sessions Judges/
Zilla Qazis in the Khyber Pakhtunkhwa.
2. All the Judges in Ex-Cadre Courts,
in the Khyber Pakhtunkhwa.

Subject: **LOW DISPOSAL RATE.**

Dear Sir,

I am directed to say that while perusing the preceding weekly, fortnightly and monthly Institution/disposal reports of the subordinate Courts, it has been noticed that the disposal rate has been considerably decreased. Hon'ble the Chief Justice has shown great concern and directed that the performance of Judicial Officers regarding disposal rate would be reflected in their PERS.

I am further directed to say that the guidelines provided for expeditious dispensation of justice under the National Judicial Policy are binding on all Courts, therefore, the Courts should improve their performance with regard to timely disposal of cases.

Sincerely yours,


(MUHAMMAD AYUB KHAN)
REGISTRAR

(186)

MINUTES OF THE MEETING OF JUDGES CONSUMER COURTS HELD ON 09-01-2015.

A meeting was held with the Director Industries & Commerce / Focal Person on 09.01.2015 at 10:30 AM, with the agenda to facilitate consumer courts in administration of justice and to remove the difficulties being faced by the Learned District & Session Judges, in the establishment and function of the newly established Consumer Courts.

The following attended the meeting :-

- Mr. Anwar Hussain Distt: & Sessions Judge Consumer Court, Mardan
- Khwaja Wajihuddin Distt: & Sessions Judge Consumer Court, Peshawar.
- Mr. Muhammad Adil Khan Distt: & Sessions Judge Consumer Court, Swat
- Syed Zamrud Shah Distt: & Sessions Judge Consumer Court, Bannu
- Mr. Shoaib Khan Distt: & Sessions Judge Consumer Court D.I.Khan
- Hafiz Naseem Akbar Distt: & Sessions Judge Consumer Court, Kohat
- Mr. Abdul Rauf Jan Administrative Officer, Directorate of Industries and Commerce Peshawar.

The following issues were discussed:-

1. ESTABLISHMENT ISSUES.

The Learned, District and Sessions Judges, Consumer Courts pointed out deficiency of staff in the courts, by stating that besides sanctioned posts, the following posts are also required for administration branch besides Registrar :-

- i). Senior Clerk
- ii). Junior Clerk
- iii). Dispatcher
- iv). Naib Qasid

It is also stated that for record room there shall be a record keeper / senior clerk, Junior Clerk / copier/examiner and a record lifter. Process serving agency has also to be established to be headed by a Naib Nazir, Process Servers and bailiff.

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The Learned Judges also informed the chair about lack of law-books and desired that sufficient amount may be placed in the budget for the purchase of law book, magazine and journals etc. A proper library may be set-up with a Librarian.

That there shall be an information centre in the Consumer Courts to facilitate the general public about their petition etc. with an in-charge/clerk. Further a well trained Accountant may be appointed in each court.

The Chair assured the Judges that SNE will be prepared and necessary staff will be sent to Finance Department for sanction. It was also informed that 02/3 staff /official have been posted in each court as stop-gap arrangement and remaining appointment is in process. The learned judges complained that staff posted in the courts unable to understand the procedure, language and legal terminologies, causing them difficulties to run the affairs of the court smoothly. They desired that recruitment shall be made on merit regional wise with the constant of concerned judges. However a common list/seniority list shall be maintained by the Directorate. The Chair assured that all recruitments will be merit based and the suggestion for inclusion of Judges/nominee in the appointment committee will place to the authority for consideration.

2. PURCHASE OF VEHICLES AND FURNITURE ETC.

The learned judges pointed out about non-availability of vehicle as well as other necessary article. The bills are not being processed at District Accounts Offices for want of advance sanction. The chair informed participants that consumer courts may purchase vehicles of 1300cc from the authorized dealers, for which an amount of Rs.1800000/- for each vehicle is available in the budget 2014-15. It was informed that case regarding advance sanction has already been granted.

Beside sufficient amount has been allocated in the budget 2014-15 for purchase of furniture etc. The DDO utilize the same after fulfillment of codel formalities. It was also told that office timing is 08:00 AM to 04:00 PM and that the provincial government have authorized holidays on Saturday and Sunday. The Courts may follow the same. The winter and summer vacation will be availed as per Judicial calendar, as observed by the other courts. The Learned Judges may avail other leave, i.e. casual leave etc, as per entitlement by intimating the same to the Director of Industries.



The PESHAWAR HIGH COURT Peshawar

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No. [redacted] /Admn:

To:

Date [redacted]

- 1. All the District & Sessions Judges/Zilla Qazis In Khyber Pakhtunkhwa.

Subject: [redacted]

Dear Sir,

I am directed to say that in order to facilitate Bench, Bar, Litigants and other stake holders and for generation of data to be employed in the software designed by the MIS Branch of this Court, Hon'ble the Chief Justice has been pleased to direct that henceforth;

- a. All trial/Appellate/Revisional Courts shall on institution and progressively ensure scanning of pleadings/memo of appeal, revision/Judicial Files (criminal cases), supportive documents (Exhibits) etc.
b. In respect of pending cases, this process of scanning be completed within reasonable time depending on the pendency figures of individual courts.
c. All courts of first instance on entertaining bail matters ought to scan the Police Investigation Record.
d. For each case a separate FOLDER be maintained in the dedicated computer of that court. The scanned documents so generated, order sheets, evidence/statements, statement of accused, orders, judgments etc. be maintained therein and ought not be deleted.
e. In bail matters or appeal/revision the court of first instance shall on passing of bail order/interlocutory order transmit as soon as possible the soft record so generated to the principal next higher court in hierarchy.
f. Towards DATA WARE HOUSING, at the District; this data be stored with the court concerned, with the Senior Civil Judge and the District & Sessions Judge concerned so that potential theft/destruction of record generated in soft be averted.
g. Towards, DATA AUTHENTICATION, all files so generated ought to be in read only protected format with a water mark, "COMPUTER RECORD REQUIRES AUTHENTICATION OF COPYING BRANCH".
h. In case evidence/order/order sheet is recorded hand written it ought to be scanned.
i. The District & Sessions Judges shall ensure adequate scanning facilities. In case of scarcity of funds demands be made at the earliest.

Please ensure compliance of the above directions in letter & spirit.

Attended [redacted]
[redacted]
[redacted]

[redacted signature]

PESHAWAR HIGH COURT, PESHAWAR

NOTIFICATION

Dated Peshawar th [REDACTED]

189

[REDACTED] Hon'ble the Chief Justice has been pleased to prescribe the following dress code for the employees (BPS-06 to 20) of Peshawar High Court, Peshawar, its Benches and all the courts staff of District Judiciary, [REDACTED] the Khyber Pakhtunkhwa, with immediate effect: -

SUMMER (15 TH APRIL TO 14 TH OCTOBER)	
Gents:	White Shalwar Qameez with Grey Waist Coat and black shoes
Ladies	White Shalwar Qameez with Grey Scarf (Dupatta) and black shoes
WINTER (15 TH OCTOBER TO 14 TH APRIL)	
Gents:	White Shalwar Qameez with Grey Coat/Sweater and black shoes
Ladies	White Shalwar Qameez with Grey Sweater, Grey Scarf (Dupatta) and black shoes

NOTE:

1. All concerned shall also put a badge containing his name and designation.
2. White Shalwar Qameez and Green Waist Coat shall be standard uniform for Class-IV employees.
3. The drivers shall wear the uniform, already prescribed.

By order of Hon'ble the Chief Justice

[REDACTED SIGNATURE]

Ends [REDACTED] Admn:

Dated Pesh the 19/9/2018

Copy forwarded to: -

1. All the Principal Officers In the Peshawar High Court, Peshawar.
2. All the District & Sessions Judges/Zilla Qazis In the Khyber Pakhtunkhwa.
3. All the Special Courts/Tribunals in the Khyber Pakhtunkhwa.
4. [REDACTED]
5. All the Additional Registrars of the benches of Peshawar High Court.
6. The PS to HCJ, Peshawar High Court, Peshawar.
7. All the Private Secretaries of this Court for placing the same before the Hon'ble Judges for their kind information.
8. All the ARs/Readers/Head of Branches in the Peshawar High Court, Peshawar.
9. The Director (IT), Peshawar High Court, Peshawar.
10. The Protocol Officer, Peshawar High Court, Peshawar.
11. The PS to Registrar, Peshawar High Court, Peshawar.
12. The PA to AR (Admn), Peshawar High Court, Peshawar.
13. Website/Notice Boards.

[REDACTED SIGNATURE]



The
PESHAWAR HIGH COURT
Peshawar

1470

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1430
[Redacted] /Admn:

Date [Redacted]

To:

All the Judicial Officers [Redacted]
in the Khyber Pakhtunkhwa.

Subject: [Redacted]

Memo:

I am directed to refer to the subject noted above and to say that Hon'ble the Chief Justice has been pleased to direct that all the Judicial Officers shall adopt strict austerity measures to avoid unnecessary expenditures and observe strict financial discipline to avoid wastage of public money.

Sincerely yours,

[Handwritten Signature]
(K) [Redacted] 17.9

[Redacted]

Copy forwarded to the PSO to HCJ, Peshawar High Court, Peshawar.

[Redacted]
REGISTRAR

Attestor
Arif Ali Advocate
Supreme Court



The
PESHAWAR HIGH COURT
Peshawar

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191

[Redacted]

[Redacted]

To,

All District & Session Judges/Illaq Qazis
Khyber Pakhtunkhwa.

[Redacted]

Khyber Pakhtunkhwa.

Sub:

[Redacted]

Dear Sir,

Your attention is drawn to the previous correspondence on the subject noted above and to observe that the DSRs are not received at this end regularly. It results in info blackout thus proper facilitation cannot be carried out.

In case there is no actionable matter worth reporting it may become worthless to send DSR, thus to avoid unnecessary documentation in partial modification of ibid directive the non receipt of DSRs would be presumed as if nothing worth exist to be reported to this office Needless to mention that this presumption would entail a liability as services discipline warrants that all matters worth conveying be promptly placed before the competent authority.

Lastly, the channel of transmission of DSR and its mode and manner is simplified. It ought to be carried on prescribed proforma enclosed via email to ps@peshawarhighcourt.gov.pk.

[Redacted Signature]



The
PESHAWAR HIGH COURT
Peshawar

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192

[REDACTED]

[REDACTED]

1. All the District & Sessions Judge(s) / Zilla Qazi(s) in the Khyber Pakhtunkhwa.
2. All the Special Courts / Tribunals in the Khyber Pakhtunkhwa.
3. All the Addl. Registrar(s) of the Benches of Peshawar High Court.

Subject: -

[REDACTED]

It has been observed with great concern that certain employees of the Peshawar High Court, Peshawar, its Benches, and that of District Judiciary, Ex-Cadre and Special Courts / Tribunals in the Khyber Pakhtunkhwa do not observe the official dress code notified vide this Court's Notification No. U-86-JII/233 & 236-J dated 10-09-2018 and 01-10-2018.

The Competent Authority has, therefore, been pleased to direct that final warning may be issued to those officers / officials who do not observe official dress code. Failure to comply with may lead to punitive action.

RECEIVED
REGISTRAR
PESHAWAR
10/10/2018

ADDITIONAL REGISTRAR (ADMN)
FOR REGISTRAR

Endst. No. & dated even: -

Copy of the above is forwarded for information to: -

1. All the Principal Officers in the Peshawar High Court, Peshawar.
 2. All the Private Secretary(s) to the Hon'ble Judge(s), Peshawar High Court, Peshawar.
 3. The P.S.O to Hon'ble the Chief Justice, Peshawar High Court, Peshawar.
 4. The Private Secretary to Hon'ble the Chief Justice, Peshawar High Court, Peshawar.
 5. The Private Secretary to Registrar, Peshawar High Court, Peshawar.
 6. The Asst. Registrar (Mgt.), Peshawar High Court, Peshawar.
 7. The Garage Supdt. Peshawar High Court, Peshawar.
- } to convey the above orders for compliance to all Class-IV Staff and Drivers.

[REDACTED]

Present: Muhammad Afzal Zullah, C.J., Abdul Qadeer Chaudhry and Wali Muhammad Khan, JJ

THE ENGINEER-IN-CHIEF BRANCH through Ministry of Defence, Rawalpindi and another--Appellants

Versus

JALALUDDIN--Respondent

Civil Appeal No.202 of 1988, decided on 19th January, 1992.

(On appeal from the judgment and order dated 5-7-1987 of the Federal Service Tribunal, Islamabad in Appeal No.453(R) of 1984).

(a) Locus Poenitentiae--

---Principal of---Application---Order in question which was incorrect had already been acted upon---Principle of locus poenitentiae would not be applicable.

(b) General Clauses Art (X of 1897)--

--S. 21---Authority which can pass an order, is entitled to vary, amend, add to or to rescind that order.

(c) Locus Poenitentiae--

--Principle of---Locus poenitentiae is the power of receding till a decisive step is taken but it is not a principle of law that order once passed becomes irrevocable and past and closed transaction.

Locus poenitentiae is the power of receding till a decisive step is taken. But it is not a principle of law that order once passed becomes irrevocable and it is past and closed transaction. If the order is illegal then perpetual rights cannot be gained on the basis of an illegal order. In the present case the appellants when came to know that on the basis of incorrect letter, the respondent was granted Grade-11, they withdrew the said letter. The principle of locus poenitentiase would not apply in this case. However, as the respondent had received the amount on the bona fide belief, the appellant is not entitled to recover the amount drawn by the respondent during this period when the letter remained in the field.

(d) Locus Poenitentiae--

---Principle of--- Recovery of amount paid on basis of incorrect order and the recipient had received same on a bona fide belief that he was entitled to it---Payer was not entitled to recover the amount from the payee during the period when incorrect order remained in field and principle of locus poenitentiae would be applicable to the case.

Ch. Ijaz Ahmed, Dy. A.-G. instructed by Manzoor Ilahi, Advocate-on-Record for Appellants.

Ch. M. Ikram, Advocate Supreme Court and K.E. Bhatti, Advocate-on-Record for Respondent.

Date Of hearing: 10th December, 1991.

JUDGMENT

194

ABDUL QADEER CHAUDHRY, J.— This appeal by leave of the Court is directed against the judgment of the Federal Service Tribunal dated 5-7-1987.

The facts of the case are that respondent Jalaluddin was appointed as Draughtsman Class 'C' in the M.E.S. Department on 1st of March, 1971. On the implementation of the National Pay Scale with effect from 1st March, 1972, the respondent was placed in National Pay Scale No.5. As per rules, the respondent qualified the departmental promotion examination from Draughtsmen Class 'C' to Draughtsmen Class 'B' in May, 1976. He was promoted to Draughtsmen Class 'B' on 15-5-1976. On 8th of May, 1974, the Ministry of Finance issued an Office Memorandum which reads as under:--

"It has been decided that in the case of Engineering Diploma holders and technical draughtsmen employed under the Federal Government the enhanced pay scale shall be as follows:--

Filed
Advocate
Supreme Court

(a) NPS-11 shall be allowed for posts for which the prescribed qualification for direct entry is Matriculation plus 3 years diploma course in any branch of engineering from a recognised institution.

(b) NPS-11 shall also be allowed for posts of draughtsmen requiring for direct recruits the educational qualification of Matric with 3 years diploma course.

(c) The promotees to posts (a) and (b) above shall get the same NPS as direct recruits irrespective of their educational qualification."

According to respondent, he was allowed National Pay Scale 11 with effect from 13-5-1976. He stated at the time of hearing that he was granted the National Pay Scale 7, on 13-5-1976. It means, on the same day, he was given escalated pay scale from 7 to 11. (If the contention of the appellant be accepted, then he was granted this Scale No.11 on 13-5-1976). The perusal of letter dated 8th May, 1976, clearly shows that National Pay Scale-11 was allowed to all promotees irrespective of their educational qualifications. Thus the qualification for promotion as contended by the department of the appellant, was done away by this Notification. Under the Recruitment Rules, the qualification for direct recruits of Draughtsmen is Matric. The Certificate of Draughtsmanship from the recognised institution and there is no dispute between the parties about the qualifications for appointment of Grades 'A' and 'B' of the Draughtsmen, as direct recruits.

The Draughtsmen Class 'A' were allowed National Pay Scale No. 9' with effect from 1-3-1972. They were placed in National. Pay Scale No. 11 with effect from 1-5-1974. If the contention of the respondent is accepted then irrespective of their qualifications and experience, both categories of Draughtsmen would get National Pay Scale 11. This is to our mind, against the principle of fairness and justice. By the letter dated 24th May, 1976, the Finance Division stated that NPS-11 shall be allowed to the post for which the prescribed qualification for direct entry is matriculation and three years' diploma course in any branch of engineering from the recognised University. However, relaxation was made for those who had been appointed/recruited directly without the requisite qualification, by the competent authorities, in consideration perhaps of their practical experience. They were also allowed NPS-11. There is no reference in this letter that Grade 'B' is also entitled to the same National Pay Scale. In the letter dated 12-10-1977 issued by MA.G., Rawalpindi, it has been stated that for the post of Draughtsmen 'B' grade of M.E.S., the minimum qualification is Matric plus Certificate from a recognised institution in Draughtsmanship. Accordingly, it is clear that Draughtsmen 'B' Grade of M.E.S. being not Diploma-holders, whether appointed direct or promoted from 'C' Grade are not entitled to NPS-11.

By letter dated 27th February, 1984, MAG directed to recover the overpayment for the last 12 months from the date it was challenged. The letter dated 12th October, 1977, was cancelled on 28th November, 1977, by the Engineer-in-Chief Branch, Rawalpindi. Similarly, on 18-5-1982, it was stated that incorrect fixation of pay of Draughtsmen Grade 'B' in Grade-11 has been carried out and this was not in order. It was directed that all the

cases be reviewed and necessary re-fixation may be made out. The facts narrated above, make it clear that the respondent was never promoted to NPS-11 and no decision of the competent authority has been placed on record to substantiate the contention of the respondent about his fixation in NPS-11. He was not properly and legally allowed the Grade-11. The respondent challenged the action of the appellants in an appeal before the Federal Services Tribunal. The appeal was allowed. The reasons which weighed with the learned Tribunal are as follows:--

"Be that as it may however, it is a well-settled legal position that a public authority which can pass an order, is empowered to vary, amend or rescind that order. But this power to recede can be exercised only till a decisive step to carry out that order is taken. If, however, the order has been given effect to, so that no locus poenitentiae is left, there will be no occasion for exercise of such power. Thus the power to amend or cancel an order cannot be carried into effect if the order has been acted upon. In the present case the pay of the appellant was duly fixed in NPS-11 in 1976 which was being paid to him for about seven years. Therefore, the departmental authorities had no valid power of receding the orders of fixation of the appellant's pay in NPS-11 which was fully carried into effect. Consequently we held that the impugned action is incompetent and unjust."

It is therefore, clear that the Tribunal has also not disputed the contention of the appellant that respondent was not entitled to be fixed in Grade-11 of National Pay Scale. The principle of locus poenitentiae was invoked by the learned Tribunal in aid of the respondent. Having gone through the facts of the case, we have come to the conclusion that this principle is not attracted in the present case. Additionally, under section 21 of the General Clauses Act, the authority which can pass an order, is entitled to vary, amend, add to or to rescind that order. The order under which the payment was made to the respondent had no sanction of law. Locus poenitentiae is the power of receding till a decisive step is taken. But it is not a principle of law that order once passed becomes irrevocable and it is past and closed transaction. If the order is illegal then perpetual rights cannot be gained on the basis of an illegal order. The appellants when came to know that on the basis of incorrect letter, the respondent was granted Grade-11, they withdrew the said letter. The principle of locus poenitentiae would not apply in this case. However, as the respondent had received the amount on the bona fide belief, the appellant is not entitled to recover the amount drawn by the respondent during the period when the latter remained in the field. Learned counsel for the appellants had submitted that the appellants had drawn Rs.12,890.86 (Rupees twelve thousand, eight Hundred, ninety and paisa eighty-six only) during this period but the Engineer-in-Chief had directed the recovery of Rs.1,860.00 only (Rupees one thousand, eight hundred, sixty and paisa nil only). We consider that as far as the recovery of the amount in question is concerned, the principle of locus poenitentiae would be applicable and the appellants are not entitled to recover the amount. The appellants have themselves taken a liberal view and the recovery of only 12 months is being made.

For the reasons stated above, WC accept this appeal and set aside the order of the Tribunal. However, the appellants would not recover even Rs.1,860 (Rupees one thousand, eight hundred, sixty and paisa nil only) from the respondent. There would be no order as to costs.

M.B.A./E-24/S

Appeal accepted.

Accepted
Anded All Appellate
Supreme Court

1981 SCMR 523

Present : Aslam Riaz Hussain, Karam Elahee Chauhan and Nasim Hasan Shah, JJ

Raja MUHAMMAD NAWAZ-Appellant

Versus

GOVERNMENT OF THE PUNJAB-Respondent

Civil Appeal No. 164 of 1979, decided on 11th March, 1981.

Attended
Called At 11:30 AM
Supreme Court

(On appeal from the judgment and order of the Punjab Service Tribunal, dated 25-2-1979, in Service Appeal No. 93/78).

(a) Punjab Civil Servants Act (VIII of 1974)-

--- S. 10--Animum reverendi or loco poenitentiae, principle of Reversion-- Recall of appointment order-Petitioner, Government servant, appointed by competent authority and such authority competently relaxing rule as to such appointment on condition of certain undertakings and surrender of certain rights by appointee and appointee duly fulfilling such conditions-Reversion of petitioner to a lower post-Held, not justified in circumstances--Impugned order even if a recall order, as alleged by respondent, after fulfilment of relevant conditions and undertaking by petitioner no animus revertendi left on part of authority concerned to recall earlier appointment order.-[Civil services].

Shahbasz. The crown P L. D 1955 F C 46 ; Lt. Col.-G. L. Battacharya v. The State P L D 1964 S C 503 ; Pakistan through the Secretary, Ministry of Finance v. Muhammad Himayatullah Farukhi P L D 1969 S C 407 and the State v. Muhammad Ismail 1980 S C M R 268 ref.

(b) Punjab Civil Servants Act (VIII of 1974)-

---- S. 10-Probation-Reversion-Animus revertendi or loco poenitentiae, principle of Petitioner appointed by competent authority after , relaxing relevant rule competently and appointment made subject to certain conditions and such conditions fulfilled by appointee-Sub- r, sequent reversion of petitioner to a lower post, held, not justifiable. on plea of petitioner having been appointed on probation and services of probationer could be terminated competently-Case, held further not a case of termination of service but one pertaining to domain of principle of animus revertendi, i.e. recall of basic order of appointment, and required to be decided with reference to such principle alone and not on basis of S. 10, Punjab Civil Servants Act, 1974--[Civil services].

Raja Muhammad Akram Advocate Supreme Court and Muhammad Adam, Advocate-on-Record for Appellant.

Shujauddin Quresi, Advocate Supreme Court for Advocate-General (Pb) and Sh. Ijaz

Advocate-on-Record for Respondent.

Date of hearing : 11th March. 1981.

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JUDGMENT

KARAM ELAHEE CHAUHAN, J.-Leaving aside the unnecessary details it will be sufficient for the purpose of the present judgment to state that the petitioner who was working as a Section Officer in the Punjab Civil Secretariat was offered a post of an E. A. C. in P. C. S. (Executive Branch) by a letter dated 27-1-1975 which reads as follows :-

"Reference your representation dated the 20th October. 1974, addressed to the Chief Minister, Punjab, on the subject noted above.

Filed
11th March 1981
Punjab High Court

(2) It has been decided to appoint you as an E. A. C. on the express condition that you would not claim any benefit for the service rendered by you as Section Officer in the Punjab Secretariat and your seniority in the cadre of E. A. Cs. would be counted from the date of your actual appointment. Accordingly this offer is hereby made to you subject to the availability of a vacancy. This offer would not in itself entail any commitment on the part of the Government for your appointment as E. A. C. In case these terms are acceptable to you, your acceptance should be sent so as to reach this Department within a fortnight of the receipt of this communication along with necessary undertaking that you will not claim seniority from a earlier than your date of joining, failing which it shall be presumed that you are not interested in your appointment as E. A. C."

2. The appellant conveyed acceptance of the above offer on 5-2-1975 (page 17 of the paper book) where after a regular appointment notification was issued on 7-3-1975, which is reproduced below :-

"Government of the Punjab Services
and
General Administration Department.
Lahore, the 7th March, 1975.

NOTIFICATION

No. 2-4/72 (SOPV).-The Governor of the Punjab is pleased to order in relaxation of Rules the appointment of Raja Muhammad Nawaz, Section Officer of the Punjab Civil Secretariat, as Extra Assistant Commissioner.

(2) He shall remain on probation as prescribed under rule 8 of the "PCS"(EB) Rules, 1964 and will be required to complete training and pass such Departmental examinations as may be prescribed from time to time. He shall be governed by "PCS"(EB) Rules, 1964 and other rules, regulations and instructions applicable to his service has in force heretofore and issued in future.

(3) The Governor of the Punjab is further pleased to order that Raja Muhammad Nawaz shall be treated as direct recruit of 1975 in the cadre of Extra Assistant Commissioners and will not be entitled to seniority prior to his actual date of taking over.

(4) Raja Muhammad Nawaz, on appointment as an Extra Assistant Commissioner, is hereby posted as Extra Assistant Commissioner (UT), Rawalpindi.

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(Sd.) By Order of the Governor of the

Punjab

Prof. M. Rashid,
Additional Chief Secretary to
Government, Punjab."

3. It appears that the Governor of the Punjab at a latter stage reverted the appellant to his previous post of a Section Officer by a notification dated 13-7-1976 which stated that:-

"The Governor of the Punjab is pleased to order that Raja Muhammad Nawaz, E. A. C., presently posted at Gujranwala, shall stand reverted as Section Officer in the Punjab Civil Secretariat with immediate effect.

(2) He should report to the Services, G General Administration and Information Department for further posting."

4. The appellant challenged the aforesaid order by an appeal before the Punjab Service Tribunal, but without any success as it dismissed on 25-2-1979 on the ground that the Government has rather done a favour to the appellant by providing him with a job of Section Officer because according to the Tribunal the appellant was still on probation and his service could have been terminated without issuing any notice.

5. The appellant has now come up in appeal to this Court by special leave which was granted on 2-12-1979. The leave granting order reads as follows:-

"It is argued that the petitioner was appointed in the P. C. S. (Executive Branch) as an E. A. C. in "relaxation of rules" and was treated as a "direct recruit" as per order of the Government of the Punjab Annexure 'C' at page 20 of the Paper Book). There being no defect in that appointment and as a matter of fact none having been found by any forum and there otherwise being no fault or misconduct on " the part of the petitioner, he could not have on the facts and in the circumstances of this case, been reduced in rank or reverted as a Section Officer, especially, when the petitioner had agreed to and fulfilled the conditions of the said appointment which left no animus revertendi on the part of the Department to pass the impugned order of reversion. The point raised is of considerable importance of a public interest and is likely to effect a large number of cases of this nature.

Leave to appeal is granted. Security Rs. 500. Early hearing."

6. The original record of the case was produced before us by the Departmental Representative and its perusal showed that the basic appointment of the appellant as an E. A. C. did not suffer from any lack of competence on the part of the concerned appointing authority. It further appeared that the aforesaid appointing authority had the power to make .A the appointment in relaxation of rules, and he competently relaxed the same on condition of certain undertakings and surrender of certain right which were contained in the appointment orders

and which were duly fulfilled by the appellant as above-stated. These facts stood proved from the record and were also admitted by the learned counsel for the respondent. In these circumstances we asked the learned counsel for the respondent as to how the reversion of the appellant was brought about. After referring to the file he submitted that it was just a recall of the earlier appointment order of a competent authority by the successor of that authority on the assumption that the earlier appointment should not or could not have been made. If this is so then the so-called "recall" order suffers from an inherent defect vize and mistake both of law and fact which will vitiate the same. In this context, the plea raised by the learned counsel for the appellant would also have force that after the fulfilment of the relevant conditions and undertaking by him there was left no animus revertendi on the part of the authority concerned to recall the earlier appointment order. For the principle and situations when an order can be recalled reference may be made to *Shahbaz v The Crown* (P L D 1955 F C 46), *Lt. Col. G. L. Battacharya v. The State* (P L D 1964 S C 503), *Pakistan, through the Secretary, Ministry of Finance v. Muhammad Himayatullah Farukhi* (P L D 1969 S C (Pak.) 407) and *The State v. Muhammad Ismail* (1980 S C M R 268). As the law on the principle of animus revertendi or loco poenitentiae stands authoritatively settled by the aforesaid judgments of this Court, we do not feel the necessity of dilating any further on the subject aforesaid and it will be sufficient for our purpose to state that on the peculiar facts and the circumstances of this case the order of recall was without lawful authority.

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7. When confronted with the above situation learned counsel for the respondent submitted that as the appointment of the appellant as an E. A. C. was on probation therefore under section 10 of the Punjab Civil Servants Act (VIII of 1974) his service could have been terminated by the Government. It may be pointed out that this is not a case of termination of service but it pertains to the domain of the principle of animus revertendi or loco poenitentiae as above-stated viz. of the recall of basic appointment order, and on the facts and the circumstances hereinbefore mentioned, it has to be decided with reference to that and that principle alone, because, the original file shows that the authority concerned too did not purport to act under section 10.

8. The result is that this appeal is accepted. The order of the Punjab Service Tribunal dated 26-2-1979 is set aside and the impugned order of reversion of the appellant dated 13-7-1976 is declared to be without lawful authority and of no legal effect against him. There shall be no order as to costs.

Appeal allowed.

Attended
Amjed Ali Khan
Supreme Court



Present : Hamoodur Rahman, C. Js, Muhammad Yaqub Ali, Sajjad Ahmad, Abdus Sattar and M. R. Khan, JJ

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PAKISTAN, THROUGH THE SECRETARY, MINISTRY OF
FINANCE-Appellant

versus

MUHAMMAD HIMAYATULLAH FARUKHI-Respondent

Civil Appeal No. K-22 of 1967, decided on 6th June 1969.

(On appeal from the judgment and order of the High Court of West Pakistan, Karachi Bench, Karachi, dated the 11th January 1966, in Writ Petition No. 373 of 1962).

Government servant-Principle of locus poenitentiae (power of receding till a decisive step taken) is available to Government or relevant authorities-Authority competent to make order has power to undo it-Order, however, cannot be withdrawn or rescinded once it has taken legal effect and certain rights created in favour of any individual-General Clauses Act (X of 1897), S. 21.

H, who was a permanent member of the Madras Civic Service, on migration to Pakistan was appointed in the General Administrative Reserve, shortly called G. A. R. on assurance held out to him that he would get a starting salary of Rs. 1,000 p.m. Subsequently a formal office order was issued on 6-11-48 fixing his initial pay at Rs. 620 with a specific mention that it was without prejudice to his representation for fixation of his initial pay at a higher level. His representation was turned down by the Prime Minister of Pakistan on 11-4-58. He, however, continued to press his representation and it was finally accepted by the President of Pakistan on 1-10-59. A communication was issued by Secretary to the President and it was endorsed to the Secretary, Railways and Communications: The President, however, on 26-8-62 withdrew his order of 1-10-59. H thereupon filed a writ petition in the High Court and the High Court held the subsequent order of the President dated 26-8-62 to be without lawful authority and of no effect. On appeal by the Government, the Supreme Court upheld the order of the High Court. The main judgment was delivered by Sajjad Ahmad, J. with whom all other Judges agreed but his Lordship M. R. Khan, J., while concurring in the order proposed by his Lordship Sajjad Ahmad, J., gave reasons in support of that order somewhat different. The respective reasons advanced by their Lordships are as follows:

Per Sajjad Ahmad, J. (majority concurring)-

There can hardly be any dispute with the rule that apart from the provisions of section 21 of the General Clauses Act, locus poenitentiae, i.e. the power of receding till a decisive step is taken, is available to the Government or the relevant authorities. In fact, the existence of such a power is necessary in the case of all authorities empowered to pass orders to retrace the wrong steps taken by them. The authority that has the power to make an order has also the power to undo it. But this is subject to the exception that where the order has taken legal effect, and in pursuance thereof certain rights have been created in favour of any individual, such an order cannot be withdrawn or rescinded to the detriment of those rights. In the present case, the order fixing the basic salary of Rs. 1,000 per mensem for the respondent Himayatullah Farukhi was made by the President on the 1st of October 1959, when the 1956-Constitution had been abrogated and the country was governed by the Laws (Continuance in Force) Order, 1958. Under clause (11) of Article 6 of that Order, which was introduced by the Laws (Continuance in Force) (Sixth Amendment) Order, 1960, it was provided that nothing in that Article or in any rule or enactment relating to conditions of service, shall be construed to limit or abridge the power of the President or a Governor to deal with the case of any person in the service of

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Pakistan in such manner as may appear to him to be just and equitable provided that where anything in this Article or in any such rule or enactment is applicable to the case of any person, the case shall not be dealt with in any manner less favourable to him than that provided by this Article or the rule or enactment. Acting under this provision the President in the exercise of his supra-constitutional powers fixed the salary of the respondent at Rs. 1,000 per mensem, notwithstanding the fact that his earlier representation for the same purpose had been rejected by the Prime Minister of Pakistan. The order of the President was duly communicated to the Ministry of Communications and the respondent, and its implementation thus ensured became a part of the terms and conditions of the service of the latter (Himayatullah Farukhi) relating to his remuneration. By the time that the President made the second order on the 26th of August 1962, revoking the earlier one, the Constitution of the Islamic Republic of Pakistan, 1962, had been enforced which contained a protective provision in Article 178 thereof, that the terms and conditions of service of a person in the service of Pakistan as regards his remuneration and age, shall not be varied to his disadvantage. The President's subsequent order was, therefore, void on that basis.

The second contention that the first order of the President suffered from the infirmity of not having been made in consultation with the Ministry of Finance as required by rule 10 of the Business Rules (1950), is without any practical effect.

Even if the Finance Ministry had not been consulted, it did not have any effect on the validity of the President's order.

Shahbaz v. The State P L D 1956 F C 46 and Lt.-Col. G. L. Bhattacharya v. The State and 2 others P L D 1964 S C 503 ref.

Per M. R. Khan, J.-

Attested
Article 41
Supreme Court

It would be useful to examine the state of law obtaining at the material time, namely, the 1st October 1959 on which date the President accepted the representation of Mr. Farukhi. Pursuant to the Martial Law Proclamation of the 27th October 1958, the President made the Laws (Continuance in Force) Order, 1958. By Article 4 of this Order, all laws and rules in force before the abrogation of the 1956-Constitution, other than the ones excepted in that Article, were kept alive. Thus, the Rules of Business as in operation before the abrogation of the 1956-Constitution continued to remain in force. Neither the Laws (Continuance in Force) Order, 1958, nor the Constitution of 1956 conferred upon the President any plenary power to deal with the case of any person in the service of Pakistan in the manner appearing to him to be just and equitable. Such plenary power was available to the Governor-General and Governors under section 241 (5) of the Government of India Act, 1935.

A provision, like the provision of the said section 241(5), was incorporated in the Laws (Continuance in Force) Order, 1958, for the first time on the 25th October 1960, by an amendment of the said Order. By that amendment, clause (11) was added to Article 6 of the Laws (Continuance in Force) Order.

As the said clause (11) was introduced by an amendment on the 25th October 1960, the power under that clause was not available to the President when he made an order on the 1st October 1959, fixing the salary of Mr. Farukhi at Rs. 1,000 p.m. The President, however, had power at that time to deal with the case of a Government servant in the exercise of his executive authority conferred by Article 41 of the 1956-Constitution, but that power was exercisable in accordance with the provisions of the Rules of Business.

Rule required consultation with the Ministry of Finance before settling the terms and conditions of service of a Government servant if such terms and conditions were to affect the finance of the Federation. This was the state of law at the relevant time.

Although consultation with the Ministry of Finance is obligatory under rule 10 of the Rules of Business in a case involving financial implication, the said rule, in the facts of

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the present case, does not appear to stand in the way of Mr. Farukhi's right to get an initial salary of Rs. 1,000 p.m. as allowed by the President. As already stated, Office Order No. 79/Adorn., dated the 6th November 1948, fixing the initial salary of Mr. Farukhi at Rs. 620 p.m. in the scale of Rs. 550-35-900-40-1100 was issued with the concurrence of the Ministry of Finance. In that Office Order, it was clearly stated that the fixation of pay as above was "with out prejudice to his representation to the Cabinet Secretariat for fixation of his initial pay at a higher level in the stage". Thus. the said Office Order issued with the concurrence of the Ministry of Finance, permitted Mr. Farukhi to get his initial salary fixed by representation to the Cabinet Secretariat. Mr. Farukhi made a representation to the President who, besides being the executive head, was the head of the Cabinet Secretariat. Thus the representation made by Mr. Farukhi to the President, the head of the Cabinet Secretariat was entirely in accordance with the clearance given to him in the Office Order No. 79/Adorn., dated the 6th November 1948, issued with the concurrence of the Ministry of Finance. That being so, the Ministry of Finance could not turn round and say that the President's order should be recalled as that Ministry had not been consulted.

Whenever a case involves expenditure from the Central Finances, consultation with the Ministry of Finance is obligatory under rule 10 of the Rules of Business. If that be not so, the Central finances might be adversely effected by an order of any officer of any rank who is empowered under the Rules of Business to issue orders in the name of the President. Rule 10 of the Rules of Business is a safeguard against such risk. In the present case, however, the question of non-compliance with rule 10 of the Rules of Business does not arise inasmuch as Mr. Farukhi moved the head of the Cabinet Secretariat exactly in accordance with the concurrence of the Ministry of Finance.

Shah Jamil Alam, Senior Advocate Supreme Court instructed by Shafiq Ahmad, Senior Attorney for Appellant.

Saiyed M. Sadiq, Advocate Supreme Court instructed by Ghulam Ali Memon, Attorney for Respondent.

Dates of hearing: 13th and 14th May 1969.

JUDGMENT

SAJJAD AHMAD, J.-The Government of Pakistan has preferred this appeal, by special leave, against the decision of a Division Bench of the High Court of West Pakistan, Karachi, made in writ jurisdiction, whereby the order of the President of Pakistan dated the 26th of August 1962, withdrawing his earlier order of the 1st of October 1959, made in favour of the respondent Muhammad Himayatullah Farukhi (now dead and represented by his legal heirs), fixing his basic salary at Rs. 1,000 per mensem with effect from the 8th of June 1948, was held to be without lawful authority. The brief facts are as follows:-

Mr. Himayatullah Farukhi who was a permanent member of the Madras Civil Service, on migration to Pakistan, was appointed in the General Administrative Reserve (abbreviatively called G. A. R.) He joined service in the Ministry of Economic Affairs on the 8th of June 1948, on the assurance allegedly given to him that he would get a starting salary of Rs. 1,000 per mensem in the time scale applicable to the G. A. R. Service. Subsequently, a formal office order was issued on the 6th of November 1948, fixing his initial pay at Rs. 620 per mensem in the scale of Rs. 550-35-900-40-1100 with a specific mention that it was without prejudice to his representation for the fixation of his initial pay at a higher level. His representation was turned down by the Prime Minister of Pakistan on the 11th of April 1958, except that he was given the benefit of doubt for the loosely-worded order of his reversion at one stage as Under-Secretary and it was directed that he was to be treated as Deputy Secretary during the period of his reversion as Under-Secretary. Himayatullah Farukhi, however, continued to press his representation which was finally accepted by the President of Pakistan on the 1st of October 1959. A communication was issued by Mr. Q. U. Shahab, Secretary, to the President, conveying the President's order as follows:-

✓ Subject -Representation of Mr. Md. H. Farukhi, for re-fixation of his pay.

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President's Secretariat
(President's House).

Agreeing with the views of the Communications Ministry, the President has accepted the appeal of Mr. M. H. Farukhi for re-fixation of his basic pay in G. A. R. at Rs. 1,000 p. m. effective from 8-6-1948 including payment of arrears and has directed that further necessary action may be taken by the Ministry of Railways and Communications (C & T Division) in direct consultation with the Ministry of Finance."

The communication was endorsed by the President's Secretariat to the Secretary, Railways and Communications, who, in turn, endorsed it to the Deputy Secretary, Establishment. The photostat copy of the communication at page 13 of the record, shows that it bears the signatures of Mr. Farukhi which he appended on it on the 7th of October 1959, in token of the receipt or information of that communication. The Ministries concerned failed to implement this order which led the respondent to file a writ petition in the High Court which was met with the plea that the President had on the 26th of August 1962, withdrawn his order of the 1st of October 1959. As already stated above, the High Court has found the subsequent order to be without lawful authority, on the main ground that it was passed without affording an opportunity to the respondent Himyatullah Farukhi, of being heard, although as alleged by the Government, the decision of the President was based on question of fact and circumstances, including certain questions relating to the grant of Provident Fund and fixation of his pension on account of his past services in Madras. A further direction was made in the judgment of the High Court that it was up to the Central Government to give a hearing to the petitioner if it still intended to rescind the order passed on the 1st of October 1959.

Special leave to appeal was granted by this Court on the 28th of March 1966, to consider the contention of the Government that the order of the 1st of October 1959, did not create any -vested right in the respondent as it had never been communicated to him.

Mr. Shah Jamil Alam, the learned counsel for the appellant, has urged before us that the order of the President dated the 1st of October 1959, had not become effective as it was not duly communicated to Mr. Himayatullah Farukhi. It was also argued that the President's order fixing the respondent's salary at its. 1,000 per mensem suffered from a flaw as it had not been passed in previous consultation with the Ministry of Finance, in terms of rule 10 of the Rules of Business of the Government of Pakistan (1950), although the action directly affected the--finances of the Federation. The first contention has to be rejected outright in view of the facts already mentioned. The order of the President as conveyed by his Secretary was forwarded by the Establishment Secretariat to the Ministry of Communications and Railways which, in due course, was received by the respondent as per his signatures on that order. We cannot accept the suggestion of the learned counsel for the appellant that the respondent somehow surreptitiously managed. to sign this communication which was received in the Ministry of Communications in token of its receipt by him. The argument of Mr. Shah Jamil Alam, that since the order of the President was not communicated to the respondent "locus poenitentiae", i.e., the power of receding was available to the President to revoke the order, was based on two decisions of this Court from which he sought to derive support. The first is the case of *Shahbaz v. The State* (P L D 1956 F C 46) in which the Government had ordered the remission of the prison sentence of Shahbaz with: effect from the 14th of August 1954, but before the order was acted upon, it was rescinded on the 13th of August 1954. It: was held that the order cancelling the remission was not open to any objection. In the case of *Lt.-Col. G. L. Bhattacharya v. The State and 2 others* (P L D 1964 S C 501), which was also a case of remission of sentence under section 401 of the Criminal Procedure Code, it was held that the remission of sentence becomes effective when duly communicated to the Superintendent of Jail, who is duty bound to give effect to it in accordance with the Prisoners' Act.

Amirul
Supreme Court

There can hardly be any dispute with the rule as laid down, in these cases that apart from the provisions of section 21 of the General Clauses Act, *locus poenitentiae*, i.e., the power of receding till a decisive step is taken, is available to the Government or the relevant authorities. In fact, the existence of such a power is necessary in the case of all authorities empowered to pass orders to retrace the wrong steps taken by them. The authority that has the power to make an order has also the power to undo it. But this is subject to the exception that where the order has taken legal effect, and in pursuance thereof certain rights have been created in favour of any individual, such a order cannot be withdrawn or rescinded to the detriment of those rights.

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In the present case, the order fixing the basic salary of Rs. 1,000 per mensem for the respondent Himayatullah Farukhi was made by the President on the 1st of October 1959; when the 1956-Constitution had been abrogated and the country was governed: by the Laws (Continuance in Force) Order, 1958. Under clause (11) of Article 6 of that Order, which was introduced by the Laws (Continuance in Force) (Six Amendment), Order, 1960, it was provided that nothing in that Article or in any rule or enactment relating to conditions of service, shall be construed to limit or abridge the power of the President or a Governor to deal with the case of any person in the service of Pakistan in such manner as may appear to him to be just and equitable, provided that where anything in this Article or in any such rule or enactment is applicable to the case of any person, the case, shall not be dealt with in any manner less favourable to his that provided by this Article or the rule or enactment. Acting under this provision the President in the exercise of his supra-constitutional powers fixed the salary of the respondent at Rs. 1,000 per mensem, notwithstanding the fact that his earlier representation for the same purpose had been rejected by the Prime Minister of Pakistan. The order of the President was duly communicated to the Ministry of Communications and the respondent and its implementation thus ensured became a part of the terms and conditions of the service of the latter (Himayatullah Farukhi) relating to his remuneration. By the time that the President made the second order on the 26th of August 1962, revoking the earlier one, the Constitution of the Islamic Republic of Pakistan, 1962, had been enforced which contained a protective provision in Article 178 thereof, that the terms and conditions of service of a person in the service of Pakistan as regards his remuneration and age, shall not be varied to his disadvantage. The President's subsequent order was, therefore, void on that basis. The second contention of Mr. Shah Jamil Alam that the first order of the President suffered from the infirmity of not having been made in consultation with the Ministry of Finance as B required by rule 10 of the Business Rules (1950), is without any practical effect. There is no reason to think that when the President made the first order, he was not fully posted with the facts of the case, including the circumstance that the Prime Minister had already rejected the respondent's representation. If in spite of that the President accepted the respondent's representation, obviously he did so, consciously. But even if the Finance Ministry had not been consulted, it did not have any effect on the validity of the President's order.

For the reasons stated above, we are in agreement with the High Court that the order of the President dated the 26th of August 1962, reversing his earlier order made in favour of Himayatullah was without lawful authority.

It has been pointed out at the Bar that Himayatullah who died on the 17th of November 1967, had retired from service on the 1st of September 1965. He had during the period of his service starting from 8-6-48 while officiating as Deputy Secretary from 3-9-52 to 4-11-53 and again when on deputation with the United Nations from the 25th of January 1954 to the 1st of January 1956, drawn his salary equivalent to or more than his time scale salary at the basic pay of Rs. 1,000 per mensem. It would be for the relevant authorities to work out the amount of arrears due to him or unpaid to him, which will now be realizable by his legal heirs, by giving effect to the President's order of the 1st of October 1959, and disregarding that made on the 26th of August 1962, the latter being without lawful authority.

The appeal is dismissed with no order as to costs.

Accepted
Sd/-
Standing Court

HAMOODUR RAHMAN, J.--I agree.

MUHAMMAD YAQUB ALI, J.-I agree

ABDUS SATTAR, J.-I agree.

M.R. KHAN, J.-I concur the order proposed by my learned brother Sajjad Ahmad, J. to be made in this appeal, but my reasons in support of that order are somewhat different.

For a proper appreciation of the reasons I want to give, it is necessary to state the facts of the case briefly.

The respondent Muhammad Himayatullah Farukhi (since deceased) formerly belonged to the Madras Civil Service. On his application for appointment to the General Administrative Reserve, shortly called G. A. R., the Establishment Branch of the Cabinet Secretariat of the Government of Pakistan issued the following office memorandum on the 7th -June 1948 :-

"With reference to his application for appointment to the G. A. R. the undersigned is directed to say that, pending a formal offer being made, Mr. M. H. Farukhi has been posted as Under-Secretary in the Ministry of Economic Affairs. He is therefore, requested to report for duty in that Ministry, Block' No. 44, near the Assembly Building on 8th June 1948 at 10 a. m."

In pursuance of that office memorandum, Mr. Farukhi joined his appointment the next day. In terms of the said office memorandum, a formal Office Order settling the terms and conditions of his appointment was made on the 6th November 1948 as follows:-

"Office Order No. 79/ADMN.

Mr. Md. Himayatullah Farukhi, M. A. (Ions.) has been appointed as Under-Secretary to the Government of Pakistan, Ministry of Economic Affairs, with effect from 8th June 1948, on the terms and conditions specified in O. M. No. 4 (5) E. O./48, dated the 19th October 1948. As stated therein:-

(1) His initial pay will be Rs. 620 in the scale or Rs. 550-35-900-40-1100. He will also be entitled to a special pay of Rs. 100 in addition to the scale pay. This is, however, without prejudice to his representation to the Cabinet Secretariat for fixation of his initial pay at a higher level in this stage.

(2) He will be entitled to usual dearness allowance and to become a subscriber to a Provident Fund (to which Government will also contribute on his behalf).

(Sd.) Nazir Ahmad,

Joint Secretary. Copy to:-

(1) The Accountant-General, Pakistan Revenues, Karachi (Reference Notification No. 9(7)EA/Admn/48, dated 6-11-1948).

(2) Md. H. Farukhi, Esquire, M. A. (Ions.), Under-Secretary to the Government of Pakistan, Ministry of Economic Affairs.

(3) Cashier, Ministry of Economic Affairs.

By order etc.

(Sd.) K. Mushtaq Illahi,

Assistant Secretary to the Government of Pakistan."

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Filed
11/11/48
Sd. Nazir Ahmad

Undisputedly, this formal Office Order was issued with the concurrence of the Ministry of Finance of the Government of Pakistan. The right to make representation for fixation of his initial salary at a higher level having been conceded in the said formal Office Order, Mr. Farukhi went on making such representations, but did not succeed. His representation to the then Prime Minister for fixation of his initial salary at Rs. 1,000 per mensem was rejected by the Prime Minister on the 11th April 1958. Thereafter, Mr. Farukhi made a representation to the President of Pakistan on the 10th June 1958, for the same purpose. On this representation, the President was pleased to make the following order on the 1st October 1959:-

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"Agreeing with the views of the Communication Ministry the President has accepted the appeal of Mr. M. H. Farukhi for re-fixation of his basic pay in G. A. R. at Rs. 1,000 per month effective from 8-6-1948, including payment of arrears and has directed that further necessary action may be taken by the Ministry of Railways and Communication (C & T Division) direct consultation with the Ministry of Finance."

In the implementation stage of this order of the President, the Ministry of Finance took an objection and referred back the matter to the President for reconsideration. Thereupon the President withdrew his earlier order made on the representation of Mr. Farukhi. Mr. Farukhi then made a writ petition in the High Court of West Pakistan, Lahore, calling in question the validity of the President's subsequent order recalling his earlier order fixing his initial salary at Rs. 1,000 per mensem. The High Court allowed the writ petition and held the impugned order to be without lawful authority and of no legal effect as the same was passed without giving Mr. Farukhi an opportunity of being heard.

On the petition of the Government of Pakistan, leave was granted in this case to consider if the President's order of the 1st October 1959, created any vested right entitling Mr. Farukhi to get an initial salary of Rs. 1,000 per mensem.

Before I proceed to consider this question, it would be useful to examine the state of law obtaining at the material time, namely, the 1st October 1959, on which date the President accepted the representation of Mr. Farukhi. Pursuant to the Martial Law Proclamation of the 27th October 1958, the President made the Laws (Continuance in Force) Order, 1958. By Article 4 of this Order, all laws and rules in force before the abrogation of the 1956-Constitution, other than the ones excepted in that Article, were kept alive. Thus, the Rules of Business as in operation before the abrogation of the 1956-Constitution continued to remain in force.

Neither the Laws (Continuance in Force) Order, 1958, nor the Constitution of 1956 conferred upon the President any plenary power to deal with the case of any person in the service of Pakistan in the manner appearing to him to be just and equitable. Such plenary power was available to the Governor.

General and Governors under section 241 (5) of the Government of India Act, 1935, which was as follows:-

"241 (5). No rules made under this section and no Act of any Legislature in India shall be construed to limit or abridge the power of the Governor-General or a Governor to deal with the case of any person serving His Majesty in a civil capacity in India in such manner as may appear to him to be just and equitable:

Provided that, where any such rule or Act is applicable to, the case of any person, the case shall not be dealt with in any manner less favourable to him than that provided by that rule or Act."

A provision, like the provision of the said section 241 (5), was incorporated in the Laws (Continuance in Force) Order, 1958, for the first time on the 25th October 1960, by an amendment of the said Order. By that amendment, clause (11) was added to Article 6 of the Laws (Continuance in Force) Order. The added clause (11) read thus:

"Nothing in this Article or in any rule or enactment relating to conditions of service shall be construed to limit or abridge the power of the President or a Governor to deal with the case of any person in the service of Pakistan in such manner as may appear to him to be just and equitable:

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Provided that where anything in this Article or in any such rule or enactment is applicable to the case of any person, the case shall not be dealt with in any manner less favourable to him than that provided by this Article or the rule or enactment."

As the said clause (11) was introduced by an amendment on the 25th October 1960, the power under that clause was not available to the President when he made an order on the 1st October 1959, fixing the salary of Mr. Farukhi at Rs. 1,000 p. m. The President, however, had power at that time to deal with the case of a Government servant in the exercise of his executive authority conferred by Article 41 of the 1956-Constitution, but that power was exercisable in accordance with the provisions of the Rules of Business. Rule 10 of the Rules of Business, as was in force at the material time i.e. the 1st October 1959, was as follows:-

"No Division shall, without previous consultation with the Ministry of Finance, authorise any orders, other than orders in pursuance of any general or special delegation made by the Ministry of Finance, which will affect directly or indirectly, the finances of the Federation"

This rule required consultation with the Ministry of Finance before settling the terms and conditions of service of a Government servant if such terms and conditions were to affect the finances of the Federation. This was the state of law at the relevant time.

Referring to the said rule 10 of the Rules of Business, Mr. Shah Jamil Alain, learned counsel for the Government of Pakistan (appellant) submits that, in the instant case, the Ministry of Finance was not consulted in the matter of fixation of Mr. Farukhi's salary and, as such, the President's order allowing Mr. Farukhi's appeal did not confer on him any right to get an initial salary of Rs. 1,000 p. m. Although consultation with the Minister of Finance is obligatory under rule 10 of the Rules of Business in a case involving financial implication, the said rule, in the facts of the present case, does not appear to stand in the way of Mr. Farukhi's right to get an initial salary of Rs. 1,000 p. m. as allowed by the President. As already stated, Office Order No. 79/ Admn., dated the 6th November 1948, fixing the initial salary of Mr. Farukhi at Rs. 620 p. m. in the scale of Rs. 550--35-900-40-1100 was issued with the concurrence of the Ministry of Finance. In that Office Order, it was clearly stated that the fixation of pay as above was "without prejudice to his representation to the Cabinet Secretariat for fixation of his initial pay at a higher level in the stage". Thus the said Office Order issued with the concurrence of the Ministry of Finance, permitted Mr. Farukhi to get his initial salary fixed by representation to the Cabinet Secretariat. Mr. Farukhi made a representation to the President who, besides being the executive head, was the head of the Cabinet Secretariat. Thus the representation made by Mr. Farukhi to the President, the head of the Cabinet Secretariat was entirely in accordance with the clearance given to him in the Office Order No. 79/Admn., dated the 6th November 1948, issued with the concurrence of the Ministry of Finance. That being so, the Ministry of Finance could not turn round and say that the President's order should be recalled as that Ministry had not been consulted. As Mr. Farukhi's representation to the President for fixation of salary at a higher level was just in accordance with the aforesaid Office Order issued with the concurrence of the Ministry of Finance, it can be reasonably said that this was sufficient compliance with the requirement of rule 10 of the Rules of Business in the instant case. The Order of the President fixing Mr. Farukhi's salary at Rs. 1,000 p. m. was, in fact, communicated to him and he signed the order as shown to him by the Secretary of his Department. In these facts and circumstances, Mr. Farukhi acquired a right to an initial salary of Rs. 1,000 p. m. with the passing of the order of the President on his representation.

I entirely agree with the contention of Mr. Shah Jamil At am that whenever a case involves expenditure from the Central Finances, consultation with the Ministry of Finance is

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obligatory under rule 10 of the Rules of Business. If that be not so, the Central finances might be adversely affected by an order of any officer of any rank who is empowered under the Rules of Business to issue orders in the name of the President. Rule 10 of the Rules of Business is a safeguard against such risk. in the present case, however, the question of non-compliance with rule 10 of the Rules of Business does not arise inasmuch as Mr. Farukhi moved the head of the Cabinet Secretariat exactly in accordance with the concurrence of the Ministry of Finance.


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Rule 10 of the Rules of Business thus having been complied with in the instant case, the President's order sanctioning higher initial salary to Mr. Farukhi conferred a right on him to get such salary. This right was protected by Article 234 of the 1962-Constitution and that right, in view of Article 178 (3) of the said. Constitution, was not liable to be varied to his disadvantage.

It is for these reasons that I agree that the impugned order recalling the President's order, dated the 1st October 1959, fixing Mr. Farukhi's salary at Rs. 1,000 per mensem is without lawful authority and of no legal effect.

K. B. A.

Appeal dismissed.

Attested
By the Secretary
to the Government


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[Federal Service Tribunal]

Before Salim Gul Shaikh and Sayed Mehar Hussain Shah, Members

RUKHSANA RAHOOJA

Versus

MINISTRY OF FINANCE, GOVERNMENT OF PAKISTAN and others

Appeal No.208(K)(C.S.) of 2008, decided on 28th April, 2009.

Civil service---

----Recovery of alleged unauthorized payment of house rent---Appeal to Service Tribunal---Employee who was appointed in BS-19 for Works and Housing Research of Ministry of Science and Technology, was being paid house-rent allowance from the time of her appointment in service---During the audit of the accounts of the department it was discovered that payment of rent was being made to employee in violation of instructions issued by the Ministry of Finance as employee was living with her husband who was an employee of Civil Aviation Authority and had been allotted official residence---Department not only stopped the payment of house-rent, but it was also ordered that recovery of unauthorized payment should be effected from her--- Both husband and wife were serving in different departments and both were legally entitled to the house-rent/accommodation in pursuance of the terms and conditions of their service---Order of recovery of payment made to the employee was also hit by the principle of locus poenitentiae as benefits once given to an employee could not be taken away.

Razi Begum v. Ministry of Finance 1986 PLC (C.S.) 754; Abdul Rasheed and others v. Accountant General, Pakistan Revenues, Islamabad and 2 others 1999 PLC (C.S.) 464; 1997 SCMR 1026; Hameed Akhtar Niazi v. Secretary, Establishment Division reported in 1996 SCMR 1185 and Haji Nazar Ahmed v. Member (Revenue) BOR, Punjab 1993 SCMR 606 ref.

Shabbir Ahmed Awan for Appellant.

Mukhtar Ahmed Mughal for Respondents.

Date of hearing: 14th April, 2009.

Attested
And
Signature
Date

ORDER

SALIM GUL SHAIKH (MEMBER).--- This appeal is directed against order dated 29-5-2000 whereby it has been ordered to recover the payment made to the appellant on account of house rent for the period 1-1-1997 to 20-4-2000. The appellant preferred departmental appeal dated 17-6-2000 against this notice of recovery which has remained unactioned and consequently, the appeal in hand has been preferred for the redressal of the grievance.

2. Briefly the facts leading to the filing of this appeal are that the appellant was appointed in BS-19 in the Council for Works and Housing Research, in the Ministry of Science and Technology on 23-7-1987. As per the terms and conditions of her service, she was entitled to receive house-rent according to her entitlement. Consequently, she was being paid house-rent allowance from the time of her appointment in service. But, during the audit of the accounts of the Council in April, 2000, it was discovered that the payment was being made to her in violation of

instructions contained in O.M. dated 18-8-1983 issued by Ministry of Finance because she was living with her husband, who is an employee of the Civil Aviation Authority, and had been allotted official residence (No. D/13) in CAA Colony in Karachi. The Council not only stopped the payment of house-rent but it was also ordered that recovery of the unauthorized payment should be effected from her. Her representation was not responded within the statutory time and she, accordingly exercised the option to knock at the door of the Tribunal for the redressal of her grievance within the stipulated time frame.

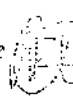
3. In his arguments, the learned counsel for the appellant addressed the issue of maintainability by asserting that the appellant was a civil servant and that the service rules of the Council were statutory in nature. In support of his contention, the learned counsel placed on record a copy of the notification dated 12-6-2000 which clearly states that the employees of the Council were civil servants. With regards to the merit of the appeal, the learned counsel asserted that both husband and wife were serving in different departments and therefore both were legally entitled to the house-rent/accommodation in pursuance of the terms and condition of their service. He further argued that the impugned order was not sustainable in law in view of the judgment of the Federal Service Tribunal in the case of Razi Begum v. Ministry of Finance reported in 1986 PLC (C.S.) 754 wherein similar point of law was raised and it was held that since one of the spouse is a government servant while the other is an employee of a statutory body as such no rule can be made by either side to disentitle employees of other side of their term and conditions of service. The learned counsel even went to the extent of asserting that even if the husband and wife were both government servants still they were entitled to house-rent allowance in terms of the judgment in the case of Abdul Rasheed and others v. Accountant General, Pakistan Revenues, Islamabad and two others reported in 1999 PLC (C.S.) 464 as both were performing their functions as independent civil servants. He further contended that the order of recovery of payments made to the appellant was hit by the Principle of Locus Poenitentiae and as such benefits once given cannot be taken away. According to him the appellant had been receiving these benefits since 1987. It was also argued that the O.M. dated 18-8-1983, on the basis of which the recovery had been ordered, was in conflict with the judgments of this Tribunal mentioned hereinabove which had acquired finality since it had not been challenged before the apex Court. He went on to argue that the entitlement had accrued to the appellant as a result of the terms and conditions of her appointment in service and not due to her marital status. He concluded the submissions by arguing that the impugned order was also violative of Articles 4, 8 and 25 of the Constitution and therefore could not be sustained in the eyes of law.

4. The learned Federal Council, on the other hand, forcefully opposed the appeal on the ground that the payment was unauthorized because it was in clear violation of instructions contained on O.M. No.F.1(1) Imp./83 dated 18-8-1983 wherein it has been categorically laid down that husband and wife living together in official accommodation allotted to anyone of them, the other shall not be entitled to receive the house-rent. He contended that the CAA may be an autonomous body, it was still a government controlled institution and therefore the instructions would mutatis mutandis apply to them as well. It was further contended that the judgment of this Tribunal in the case of Razi Begum was not relevant in this case as it was judgment in personam and not judgment in rem. He therefore pleaded that the appeal was liable to be dismissed.

5. We have heard both parties and have also carefully perused the material placed in record. In our opinion, the following questions have been raised during the discussion, which need determination. The question are: (a) whether the terms and conditions of appointment of a civil servant are determined by the marital status of a person? and (b) whether recovery of house-rent allowance paid to the appellant can be recovered. Since these are seminal issues to the controversy, we propose to discuss each question separately. First, the matter of house-rent allowance. Admittedly, the issue of house-rent entitlement has been examined and decided by this Tribunal in two judgments

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Registered
Under All Pakistan
Supreme Court



referred to c hereinabove. It is also admitted that the said judgments were never agitated before the apex Court and therefore, have attained finality. The question naturally arises why is the respondent-department reluctant to give the same benefits to the appellant? In order to clarify this matter, it will be relevant to mention that the respondents have taken the position that the rules do not allow the grant of this benefit to husband and wife who are living together in an official accommodation allotted to either of them. In our opinion, this position was also taken by the respondents in the earlier case and which was not accepted by the Tribunal. It will be appropriate to reproduce here the relevant portion of our judgment in the case of Razi Begum v. Ministry of Finance as under:---

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"(5) As far as the appellant is concerned, she is to be governed strictly in accordance with the rules applicable to the Federal Government employees. Those rules disallow house rent to one of the spouses if the other is in occupation of a Government accommodation. In the present case, the appellant is a Government servant. The appellant is, therefore, entitled to draw the house rent allowance. It is for the employer of her husband to decide whether he would be given full rent of the house in which he is living or not. As far as the appellant is concerned, the house rent allowance cannot be denied to her by the mere fact that the University has adopted similar rules. The adoption of the Government rules by the University means that where the husband as well as the wife are employees of the University the rule disallowing the house rent allowance to a spouse would be applicable if the other spouse is in occupation of the house the rent of which is being paid by the University. The adoption in fact would be applicable only when both the spouses are employees of the University itself and not otherwise. Neither the University can make a rule affecting the Federal Government Employees nor the Federal Government can make any rule affecting the University employees."

6. A bare reading of the relevant extract of the judgment clearly reflects that the position in the case in hand is not distinguishable but on the contrary it is identical.

7. We next propose to examine the position taken by the respondents that earlier decision of the Tribunal i.e. Razi Begum v. Ministry of Finance 1986 PLC (C.S.) 754 was in personam and not in rem. In our opinion, the position taken by the respondents does not appear to be logical because the cause of grievance is not specific to the appellant alone. The grievance has arisen from the application of a general circular which is applicable to civil servants in general. It will be relevant to give an analogy here about a similar matter pertaining to the grant of secretariat allowance to civil servants. In that case which was agitated by the Government before the Tribunal and the Hon'ble Supreme Court, the position taken by the Government was identical. But the matter was ultimately decided by the apex Court in the favour of the civil servants. (Reference is to the rulings in 1997 SCMR 1026 and the judgment of Federal Service Tribunal in Appeal No.19(K)(CS) of 2003). The Tribunal in the case of Razi Begum v. Ministry of Finance had decided that the question which was relevant to all civil servants similarly placed. Under these circumstances, we are of the considered view that the presumption of the respondent that the earlier judgment of the Tribunal was in personam is neither correct nor supported by any cogent argument or is it in consonance with the principles of natural justice. The honourable Supreme Court has already laid down the law in the case of Hameed Akhtar Niazi v. Secretary, Establishment Division reported in 1996 SCMR 1185 wherein it has been that when the Court decides a point of law relating to the terms of service of a civil servant which cover not only the case of the civil servant who litigated, but also of other civil servants who may have not taken any legal proceedings, in such a case, the dictates of justice and rule of good governance demands that the benefit of above judgment be extended to other civil servants who may not be party to the above litigation instead of compelling them to approach the Tribunal or any other legal forum. In this case the honourable Supreme Court also referred to the judgment reported in 1993 SCMR 606 (Haji Nazar Ahmed v. Member (Revenue) BOR, Punjab). The question of house-rent allowance was not appellant's specific matter and therefore cannot be termed as in

personam. The matter concerns the terms and conditions of service which has general applicability and, therefore, we are unable to sustain their argument.

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8. The next question relates to the matter of effecting recovery of the amount from the appellant. The learned counsel for the appellant has brought into assistance the Principle of Locus Poenitentiae. We have given our anxious consideration to the matter of recovery and have come to the conclusion that discussion on this matter would have been relevant if the appeal had not succeeded before us. Under the circumstances, the question of recovery does not arise.

9. For the reason discussed hereinabove, we have no hesitation in setting aside the impugned order.

H.B.T./15/FST

Appeal allowed.

Attested
As per the records
Supreme Court



[Supreme Court of Pakistan]

Before Ajmal Mian, Saiduzzaman Siddiqui and Mukhtar Ahmad Junejo, JJ

HAMEED AKHTAR NIAZI---Appellant

versus

THE SECRETARY, ESTABLISHMENT DIVISION, GOVERNMENT OF
PAKISTAN and others---Respondents

Civil Appeal No.345 of 1987, decided on 24th April, 1996.

(On appeal from the judgment dated 11-12-1986 of the Federal Service Tribunal, Islamabad,
passed in Appeal No. 124(L) of 1980).

Per Ajmal Mian, J.; Saiduzzaman Siddiqui, J. agreeing---

(a) Civil Servants Act (LXXI of 1973)---

---S. 8(4)---Constitution of Pakistan (1973), Art. 212(3)---Establishment Secretary's D.O. Letter No.2/4/75-AVI, dated 2-10-1975---Seniority---Merger of four occupational groups of civil servants---Leave to appeal was granted to consider the questions as to whether the seniority list of 1979 was properly prepared in accordance with law and what was the effect of the reliance from the Government side in the Supreme Court in another appeal on the list of 1976; whether when preparing the list of 1979, S. 8(4) of the Civil Servants Act, 1973 and other related provisions of law had been kept in view; whether a civil servant could be allowed to count his seniority in a post from a date earlier than the one of his actual regular continuous officiation in that post; if not whether the fact that the respondents in appeal belonged to the different civil services of Pakistan would make any difference; whether one uniform principle of seniority would apply to all members of the Secretariat Group or the officers joining the Group from different sources/cadres would have to be treated differently; if so, whether such treatment with or without the support of statutory rules or directions would not be in contravention of the relevant provisions of Civil Servants Act, 1973 and in that context what was the effect of the abolition of C.S.P. Cadre; whether the eligibility of civil servant for appointment to a selection post conferred any right of seniority in that post and cadre without issuance of a formal promotion/appointment order in accordance with the prescribed procedure and whether in that context a civil servant belonging to ex C.S.P. Cadre was entitled to 'automatic promotion to the post of Deputy Secretary after he had completed eight years of service but without the requirement of being actually selected/promoted or appointed; and what was the effect of the Supreme Court judgment in Khizar Haider Malik ad others v Muhammad Rafiq Malik and another 1987 SCMR 78 on the case.

(b) Civil Servants Act, (LXXI of 1973)---

---Ss. 8 & 23---Seniority---Merger of C.S.P and P.S.P cadres and creation of APUG---Seniority of such an officer, who was working in province or elsewhere, could not be distorted/disturbed to his detriment on account of the merger of said groups and creation of APUG and junior of such civil servant could not be made senior to him nor a junior to his junior could be made senior to him but this has to be done within the framework of the rules of reorganization of services---If the case of any civil servant does not fall within the ambit of said re-organisation rules, S. 23 of the Civil Servants Act, 1973 can be pressed into service by the President of Pakistan to oblivate the inequitable and unjust result arising out of the merger of the two cadres in respect of seniority of any of the civil servants.

ESTACODE, 1989 Edn., pp. 1014, 1096 and 1097 ref.

(c) Service Tribunals Act (LXX of 1973)---

Aux EE

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Secretary
Establishment Division
Government of Pakistan

---S. 4---Constitution of Pakistan (1973), Art.212---Appeal to Service Tribunal or Supreme Court---Effect---If the Service Tribunal or Supreme Court decides a point of law relating to the terms of service of a civil servant which covers not only the case of civil servant who litigated, but also of other civil servants, who may have not taken any legal proceedings, in such a case, the dictates and rule of good governance demand that the benefit of such judgment by Service Tribunal/Supreme Court be extended to other civil servants, who may not be parties to the litigation instead of compelling them to approach the Service Tribunal or any other forum.

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Per Mukhtac Ahmad Junejo, J.---

(d) Service Tribunals Act (LXX of 1973)---

---S. 4---Appeal to Service Tribunal, scope and extent.

M. Bilal, Senior Advocate Supreme Court and Ejaz Muhammad Khan, Advocate-on-Record for Appellant.

Raja Muhammad Bashir, Deputy Attorney-General and Ch. Akhtar Ali, Advocate-on-Record for Respondents.

Dates of hearing: 7th and 8th April, 1996.

JUDGMENT

Accepted
Chief Justice
Supreme Court

AJMAL MIAN, J.---This is an appeal with the leave of this Court against the judgment dated 11-12-1986 passed by the Federal Service Tribunal, Islamabad, hereinafter referred to as the Tribunal, passed in Appeal No.124(1)

of 1980, filed by the appellant, praying for the following reliefs:--

"16. In view of the above, the appellant (who was eventually promoted with effect from 28-8-1980) humbly prays that this honourable Tribunal may kindly direct the respondent No. 1 to proceed in accordance with law and to declare him to have been promoted before the ineligible and junior officers promoted in August, 1979 and February and May, 1980. It is further prayed that full salary and all other benefits may also kindly be allowed to the appellant from the date on which he would have been promoted if his name had been put up for the consideration of the C.S.B. according to his seniority. Cost may also graciously be allowed."

dismissing the same for the reasons recorded in Appeal NO. 116(R) of 1981, filed by one M. Ramizul Haq.

2. Leave to appeal was granted to consider inter alia the following questions:--

(a) Whether the seniority list of 1979 was properly prepared in accordance with law and what is the effect of the reliance from the Government side in the Supreme Court in another appeal on the list of 1976?

(b) Whether when preparing the list of 1979, section 8(4) of the Civil Servants Act, 1973 and other related provisions of law, have been kept in view?

(c) Whether a civil servant can be allowed to count his seniority in a post from a date earlier than the one of his actual regular continuous officiation in that post; if not, whether the fact that the respondents belonged to the defunct Civil Service of Pakistan will make any difference?

(d) Whether one uniform principle of seniority will apply to all members of the Secretariat Group or the officers joining the Group from different source/cadres would have to be treated differently; if so, whether such treatment whether with or without the support of

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statutory rules or directions would not be in contravention of the relevant provisions of the Civil Servants Act, 1973, and in this context what is that effect of the abolition of the C.S.P. Cadre? and

(e) Whether the eligibility of a civil servant for appointment to a selection post confers any right of seniority in that post and cadre without issuance of a formal promotion/appointment order in accordance with the prescribed procedure and whether in this context a civil servant belonging to ex-C.S.P cadre is entitled to automatic promotion to the post of Deputy Secretary after he completes eight years of service but without the aforesaid requirement of being actually selected/promoted or appointed? and

(f) What is the effect on this case of the judgment of this Court in Khizar Haider Malik and others v. Muhammad Rafiq Malik and another 1987 SCMR 78.?

3. It may be observed that the order of granting leave was recalled on 10-2-1992, but upon review, the same was set aside through an order dated 14-2-1994 and thereby the aforesaid leave granting order was restored.

4. The brief facts are that the appellant joined Pakistan Military Lands and Cantonments Service on the basis of the results of competitive examination held in June, 1960. It is the case of the appellant that in 1967, he proceeded to U.S.A. on study leave and obtained a Master's Degree in Public Administration from the Maxwell School of Public Affairs and Citizenship, Syracuse University. It is also his case that in June/July, 1972, the Planning Division recommended him for promotion to the post of Deputy Secretary to the Government of Pakistan. It is his further case that pending approval of the Establishment Division, Planning Division promoted him as Deputy Secretary by an order dated 9-8-1972. The above order reads as follows:-- .

"OFFICE ORDER

Attested
By Mr. Hameed Akhtar Niazi
Deputy Secretary (Administration)

It has been decided that Mr.Hameed Akhtar Niazi, PML & CS will look after the work of Deputy Secretary (Administration) with immediate effect. He will be designated as Officer on Special Duty (Administration).

Mr. Zafar Iqbal is posted as Deputy Secretary, Programming."

It has also been averred by the appellant that he was promoted as Deputy Secretary on regular basis on 9-4-1973 and posted in the Establishment Division.

5. It seems that in August, 1973, C.S.P. and P.S.P. cadres were merged into All Pakistan Unified Grades, hereinafter referred to as APUG. It further seems that after the aforesaid merger, four occupational groups were created, namely, Tribal Areas Group, District Management Group,, Secretariat Group and Police Group. The appellant opted for the Secretariat Group. It is the case of the appellant that the Gradation List of Deputy Secretaries i.e. of the Secretariat Group was prepared in accordance with the provision of section 8(4) of the Civil Servants Act, 1973, hereinafter referred to as the Act, which provides that "Seniority in a post, service or cadre to which a civil servant is promoted shall take effect from the date of regular appointment to that post". According to the appellant, the above Gradation List was circulated in June, 1976, wherein the appellant's name appeared at Serial No. 69. However, the appellant learnt in August, 1979, that civil servants belonging to erstwhile Civil Service of Pakistan (C.S.P.), whose names appeared much below the appellant in the aforesaid Gradation Lists of 1976, were being promoted to the rank of Joint Secretary (Grade-20) and his name had not been put up for promotion to the General Selection Board for consideration . He first made efforts to get redress from the department, but eventually, he filed the aforementioned service appeal in the Tribunal, which way dismissed as stated above. After that he filed a petition for leave to appeal in this Court, which was granted to consider the above questions.

6. It may be pertinent to observe that in the above appeal, besides the Federation, 14 civil servants were arrayed as respondents. It may further be observed that, in addition to the above respondents, 7 other civil servants were impleaded pursuant to an application dated

4-1-1988. Dr. Sh. Aleem Mehmood was impleaded as a respondent (respondent No. 23 in the present appeal) on his own application, whereas the applications of Muhammad Aslam and Tariq Junejo for being impleaded, remained pending till today: However, they were heard. One, Malik Zahoor Akhtar, has also appeared though he had not filed any application for getting himself impleaded in the aforesaid appeal.

7. Be that as it may, in support of the above appeal, Mr. M. Bilal, learned Sr. A.S.C. for the appellant, has vehemently contended that after the merger of the two cadres, namely, C. S. P. and P. S. P. and creation of APUG, the Gradation List of the Deputy Secretaries prepared in 1976 could not have been disturbed and that certain civil servants could not have been given seniority over the appellant from a date prior to their regular appointments as the Deputy Secretaries in the above cadre. To reinforce the above submission, reliance has been placed by him inter alia on section 8(4) of the Act and para. 8 of ESTACODE, 1989 Edition, under the caption 'Secretariat Group' at Serial No. 19 incorporated on the authority of O.M.No.2/2/75-ACR, dated 12-4-1976.

The aforementioned newly added respondent supports Mr. Bilal's contention. *Attested*

On the other hand, Mr. Raja Muhammad Bashir, learned Deputy Attorney-General, has contended that seniority inter se of the civil servants belonging to C.S.P. cadre obtaining prior to its merger could not have been distorted to the detriment of any of the above civil servants and, therefore, if C.S.P. officers, who were not actually posted as Deputy Secretaries but were deputed to various Provinces on account of public exigencies, could not have been made junior to civil servants who were junior to them prior to the merger of aforesaid two cadres and who were working as Deputy Secretaries and were senior inter alia to the appellant.

8. It appears that the Tribunal proceeded on the premises as urged by learned Deputy Attorney-General. It may be advantageous to reproduce the relevant portion of the impugned judgment, which reads as follows:--

"It appears that the question of seniority was not examined when persons not being Members of the Service were appointed to APU J with the approval of the President vide Notification No.1/1/73-ARC, dated 14-9-1973. Nevertheless, the seniority lists were prepared of the Deputy Secretaries and Joint Secretaries, etc. and they included only those officers of the former C.S.P. who at the relevant time were serving against these posts. At that time, the Rule for appointment of the Deputy Secretaries was that a C.S.P. Officer who had completed 8 years' service could be appointed as Deputy Secretary. No doubt, subsequently by Office Memo. No.3/7/74-AR.II, dated the 20th May, 1974, 12 years period was provided for Grade-19 and for horizontal movement of Grade-18 Officers to the post of Deputy Secretary vide para. 3 of Office Memo. No. 2/2/75-ARC, dated 21-2-1975, but this deviation in the length of service is immaterial as far as C.S.P. Officers are concerned. Their names already existed as Members of C.S.P. and subsequently of APUG. Their seniority was to be changed in accordance with some principle and not by making any, rule affecting their vested right. All Rules made under the Civil Servants Act or the Civil Servants Ordinance have to be construed with prospective operation and not with retrospective operation. All those Rules which affect the former Officers of the C.S.P. have to be applied for the situations existing after the enactment of the Civil Servants Ordinance, 1973, and the Rules made thereunder. The seniority of the C.S.P. Officers in APUG could not, therefore, be distorted. Any seniority to which a Member of the Cadre was entitled before the constitution of Secretariat Group, could not be affected by the provisions of section 8(4) of the Civil Servants Act, 1973. In other words, the seniority of such, a person cannot be destroyed by any subsequent change in the principles of seniority. By making a provision in the relevant Officer Memorandum that seniority shall count from the date when an officer becomes Deputy Secretary or is promoted to Grade-19, whichever is earlier, the distortion in the seniority of other Federal Services was removed, but in case of C.S.P. Officers this formula could not work as there was no scale comparable to Grade-19 (Junior Administrative Grade) and the C.S.P. Officers used to be promoted to the Joint Secretary's grade from Senior C.S.P. Scale which is comparable with Grade-18, and the post of Deputy Secretary was never a promotion post in the cadre. Thus, in our opinion, if after the coming into force of the Civil Servants Act, an officer of former C.S.P. who was senior to his colleagues working as Deputy

Secretary in the Secretariat, but an officer who was working, in the Province or elsewhere would, when brought to the Secretariat later, retain his seniority vis-a-vis his own colleagues. In other words, if an officer of the former C.S.P. is appointed as Deputy Secretary in the Secretariat Sub-Group, within APUG, he would count his seniority from the date he completes 8 years of service if any of his colleagues junior to him had already been promoted. It is this principle, which the Establishment Division has applied and we think that this is a proper course by which the distortion in the seniority can be removed."

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9. In this regard, it may be pertinent to refer to page 1014 of the ESTACODE, 1989 Edition, in which under the caption "Reorganisation of APUG in to four Occupational Groups Seniority of members of the Group" at Serial No. 17 has provided as under on the basis of Establishment Secretary's D.O. Letter No.2/4/75-AVI, dated 2-10-1975:--

"Sl. No. 17:

Kindly refer to Establishment Secretary's Circular D.O. Nos.5/1/73ARC, dated the 7th September, 1973, 2/2/73-AVI, dated the 26th November, 1973, and 2/1/74-AVI, dated the 29th May, 1974, alongwith which the combined seniority lists of officers of All-Pakistan Unified Grades in various grades were circulated.

2. In the meantime, the All-Pakistan Unified Grades has been organised into four Occupational Groups--the Secretariat Group, the District Management Group, the Police Group and the Tribal Areas Group. The rules and procedures etc. governing the administration of each of these Groups have already been issued and sent to you vide the Establishment Division's Office Memoranda No.2/2/75-ARC, dated 21st February, 1975 (Secretariat Group) No.2/2/74-ARC, dated 23rd February, 1974 (District Management Group), No.3/2/75-ARC, dated 31st May, 1975 (Police Group) and D.O. No. 1/6/73-ARC, dated 20th October, 1973 (Tribal Areas Group). Consequently the seniority lists have now been drawn up separately in respect of each Group.

3. As already indicated, each group will henceforth be managed under the respective rules quoted above. A member of a particular Group will be governed by prospects of promotion and advancement available within the Group. While entry into other Groups by horizontal movement is possible with the approval of Central Selection Board, there will be no automatic mobility from one Group to the other. In other words, officers shown in any particular Group will now belong to that Group once for all unless specifically selected and approved for movement to another Group.

4. You may now kindly inform the officers under your administrative control accordingly. Officers shown in the Secretariat Group but belonging originally to some other Group may let this Division know finally as to whether they would like to remain in the Secretariat Group or go back to their parent Group. Option once exercised will- be final. Such option should reach us not later than 31st October, 1975. Failure to exercise option by that date will be presumed to be an option for the Group where the name appears presently.

5. In the meantime, these lists may be treated as provisional and in case there are any omissions or discrepancies, these may please be communicated to us immediately for rectification."

10. Reference may also be made to paras. 3 and 8 of the ESTOCODE, 1989 Edition, at pages 1096 and 1097 thereof under the caption "Secretariat Group" at Serial No. 19 and which read as under:--

Para. 3 of the ESTACODE: 3. Deputy Secretary.--Appointment to the post of Deputy Secretary will be made in accordance with the following methods: --

(i) By promotion of Grade-18 Officers of Office Management Group and the Secretariat Group on the recommendations of the Central Selection Board.

(ii) By horizontal movement from other Occupational Groups of Grade 19 Officers who have been recommended by the Ministries/Divisions, Departments or Provincial Governments and have been found fit by the Central Selection Board.

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(iii) By direct appointment or the recommendations of the Federal Public Service Commission of persons possessing such qualifications and experience etc., as may be prescribed.

Para. 8 of the ESTACODE: 8. Deputy Secretary.--Seniority would be determined from the date of continuous regular officiation as Deputy Secretary, or in a post in Grade-19, whichever is earlier."

11. We may observe that in the present case, section 8(4) of the Act is relevant as it will be covered by the rules framed for regulating APUG. It is evident from afore-quoted para. 4 of ESTACODE, 1989 Edition, at page 1014 that after the creation of Secretariat Group, the civil servants were given the option to opt the above Group or any other Group by 31-10-1975. Whereas above quoted para. 3 of the ESTACODE at page 1096 under the caption "Secretariat Group" at Serial No.19, indicates as to how the appointment to the post of Deputy Secretary will be made i.e. by promotion of Grade-18 Officers by horizontal movement and by direct appointment on the recommendation of the Federal Public Service Commission.

12. It may further be noticed that para. 8 of the above ESTACODE at page 1097 provides that seniority would be determined from the date of continuous regular officiation as Deputy Secretary or in a post in Grade-19, whichever is earlier.

13. The Tribunal has not taken into consideration that above relevant provisions of the ESTACODE while dilating upon the controversy in issue. It should have decided, whether the respondents had exercised the options in terms of aforesaid para. 4 of the above ESTACODE at page 1014, by 31-10-1975 and whether the seniority list was prepared as per aforequoted para. 8 of the ESTACODE, i.e. from the date of continuous regular officiation as Deputy Secretary or in a post in Grade-19, whichever is earlier.

14. There is no doubt that the seniority of an officer, who is working in a Province or elsewhere, cannot be distorted/disturbed to his detriment on account of the merger of above two cadres of C.S.P. and P.S.P. and creation of APUG. His junior cannot be made senior to him nor a junior to his junior can be made senior to him. But, this is to be done within the framework of the rules of reorganisation as given in the above ESTACODE. If the case of any civil servant does not fall within the ambit of the above rules, section 23 of the Act can be pressed into service by the President to oblivate the inequitable and unjust result arising out of the above reorganisation in respect of seniority of any of the civil servants.

15. It was also contended by Mr. Raja Muhammad Bashir, learned Deputy Attorney-General, that since that appellant has already been promoted to Grade-20, the above appeal has become in fructuous. However, this contention was refuted by Mr. Bilal and it was urged by him that the appellant is entitled to get his seniority restored according to the rules.

16. In our view, it will be just and proper to remand the case to the Tribunal with the direction to re-examine the above case after notice to the affected persons and to decide the same afresh in the light of above observations. We may observe that if the Tribunal or this Court decides a point of law relating to the terms of service of a civil servant which covers not only the case of the civil servant who litigated, but also of other civil servants, who may have not taken any legal proceedings; in such a case, the dictates of justice and rule of good governance demand that the benefit of the above judgment be extended to other civil servants, who may not be parties to the above litigation instead of compelling them to approach the Tribunal or any other legal forum.

17. The above appeal stands disposed of in the above terms, with no order as to costs.

(Sd.)
Ajmal Mian, J.
(Sd.)

Attested
Ajmal Mian, J.
Supreme Court



MUKHATAR AHMAD JUNEJO, J.--My learned brother Ajmal Mian, J. was kind enough to send me draft of the judgment proposed to be delivered by him in Civil Appeal No.345 of 1987 (Hameed Akhtar Niazi v. The Secretary, Establishment Division, Government of Pakistan etc.) With due respects to my learned brother, I am unable to agree with him that this matter be remanded to the Federal Service Tribunal with some directions including the direction to re decide the case.

The facts of the case have already been given by my learned brother and they need not be reiterated. In the context of the facts given in para.4 of the draft judgment, appellant Hameed Akhtar Niazi filed his appeal before the Federal Service Tribunal under section 4 of the Service Tribunals Act with prayer in the following words:--

"In view of the above the appellant who was eventually promoted with effect from 28-8-1980 humbly prays that this Honourable Tribunal may kindly direct the respondent No.1 to proceed in accordance with law and to declare him to have been promoted before the ineligible and junior officers promoted in August, 1979 and February and May, 1980. It is further prayed that full salary and all other benefits may also kindly be allowed to the appellant from the date on which he would have been promoted if his name had been put up for the consideration of the C.B.S. according to his seniority. Cost may also graciously be allowed."

Perusal of the prayer shows that the appellant seeks his promotion from a date earlier than the dates of promotion of certain officers termed by him to be ineligible and junior. According to section 4 of the Service Tribunals Act, a civil servant can invoke jurisdiction of the Tribunal in respect of any of his terms and conditions of service. However, no appeal shall lie to a Tribunal against an order or decision of a departmental authority determining the fitness or otherwise of a person to be appointed to or hold a particular post or to be promoted to a higher post or grade, vide clause (b) of the proviso to section 4 of the said Act. By asking the Tribunal to direct his promotion on a date earlier than the promotion of ineligible and junior officers, the appellant wanted the Tribunal to determine him to be fit for promotion and to determine the other officers to be ineligible for promotion by labelling them as ineligible. As regards the claim for salary and monetary benefits, the same is again based on the presumptive promotion of the appellant. Since the main relief of promotion cannot be given to the appellant by the Tribunal, the consequential relief can also not be given to him.

In my humble view appellant's appeal before the Federal Service Tribunal was not maintainable and it required to be rejected. In my humble view this appeal merits dismissal.

(Sd.)

Mukhtar Ahmad Junejo, J.

ORDER OF THE COURT

By majority judgment this appeal is allowed, .The case is remanded to the Tribunal in terms of the majority view.

(Sd.)

Ajmal Mian, J.

(Sd.)

Saiduzzaman Siddiqui, J.

(Sd.)

Mukhtar Ahmad Junejo, J.

M.B.A./H-251/S

Wasted
Judged at 10:30 AM
Supreme Court

Appeal allowed

2009 S C M R 1

[Supreme Court of Pakistan]

Present: Abdul Hameed Dogar, C.J., Ijaz-ul-Hassan Khan, Muhammad Qaim Jan Khan
and Ch. Ejaz Yousaf, JJ

GOVERNMENT OF PUNJAB, through Secretary Education, Civil Secretariat,
Lahore and others----Petitioners

Versus

SAMEENA PARVEEN and others----Respondents

Criminal Petitions Nos.71-L and 72-L, Civil Petitions 215-L, 216-L, 217-L, 218-L,
224-L to 236-L of 2006, decided on 29th April, 2008.

(On appeal from the judgment, dated 29-1-2008 of the Lahore High Court, Lahore
passed in Cr.O.P. No.370/W and 561/W of 2007, Writ Petitions Nos.11525, 11263,
11516, 11662, 11663, 11766, 11881, 11835, 12136 and 12185 of 2007, 86, 123, 274,
345, 599, 643 and 11619 of 2008).

Civil service---

---Administration of justice---If a Tribunal or the Supreme Court decides a point of
law relating to the terms and conditions of a civil servant who litigated, and there were
other civil servants, who may not have taken any legal proceedings, in such a case,
the dictates of justice and rule of good governance demand that the benefit of the said
decision be extended to other civil servants also, who may, not be parties to that
litigation, instead of compelling them to approach the Tribunal or any other legal
forum---All citizens are equal before law and entitled to equal protection of law as per
Art.25 of the Constitution.

Hameed Akhtar Niazi v. The Secretary, Establishment Division, Government of Pakistan
and others 1996 SCMR 1185 and Tara Chand and others v. Karachi Water and Sewerage
Board, Karachi and others 2005 SCMR 499 fol.

Mst. Muqqadas Akhtar and another v. Province of Punjab through Secretary Education
Department, Government of Punjab and another 2000 PLC (C.S.) 867 ref.

Ms. Afshan Ghazanfar, A.A.-G., Punjab and Rana Abdul Qayyum, D.S. (Education)
Punjab for Petitioners.

S.M. Tayyab, Senior Advocate Supreme Court for Respondents (in Cr.Ps. Nos.71-L, 72-
L and C.P.224-L of 2008).

Nemo for other Respondents.

ORDER

ABDUL HAMEED DOGAR, C.J.---Through this order we intend to dispose of above
captioned petitions filed against common judgment, dated 29-1-2008 passed by learned
Judge in Chambers of Lahore High Court, Lahore whereby Cr.O.P. No.370/W and 561/W
of 2007, Writ Petitions Nos.11525, 11263, 11516, 11662, 11663, 11766, 11881, 11835,
12136 and 12185 of 2007, 86, 123, 274, 345, 599, 643 and 11619 of 2008 filed by
respondents were allowed and the impugned orders passed by petitioner/authority were
set aside.

2. Briefly, stated facts giving rise to the filing of instant petitions are that respondents were appointed as PTC Teachers during the year 1995/1996 after completion of all legal requirements and they joined their respective place of posting. After sometime, their appointments were cancelled being bogus vide order No.277/E-1, dated 3-4-1998. This order was assailed before learned Lahore High Court, Lahore and same was declared to be without lawful authority in the case reported as Mst. Muqqadas Akhtar and another v. Province of Punjab through Secretary Education Department, Government of Punjab and another 2000 PLC (C.S.) 867. The relevant paragraph is reproduced as under:--

"Consequently the petitioners are declared to be in service and the action of the Headmasters/Incharge of the Schools stopping the petitioners from performance of their duties as PTC Teachers on the basis of the above said impugned order, is declared to be without lawful authority. It is, however, clarified that the department is at liberty to proceed against petitioners, if so desired, on individual basis under the relevant law and under the Punjab Civil Servant (Efficiency and Discipline) Rules, 1975."

In view of above judgment, the respondents were absolved of the charges of bogus appointments. But later on once again the services of respondents were terminated vide order, dated 3-8-2005, which order was challenged before learned Lahore High Court, Lahore through Writ Petition No.16864 of 2005. The said writ petition was allowed vide judgment, dated 11-12-2006 and the impugned order, was declared as illegal and without lawful authority. Similarly, one of the teachers namely Mst. Naseem Akhtar assailed the order, dated 3-8-2005 before Punjab Service Tribunal, Lahore through Appeal No.903 of 2006 which was also allowed vide judgment, dated 4-9-2006. The said judgment was maintained by this Court in Civil Petition No.1960-L of 2006 vide judgment, dated 2-11-2006. On 26-9-2007 once again the services of respondents were terminated. Feeling aggrieved they filed above mentioned petitions before the learned Lahore High Court, Lahore which were allowed vide impugned judgment as stated above.

3. It is mainly contended by learned A.A.-G. Punjab appearing on behalf of petitioners that the jurisdiction of the learned High Court is barred under Article 212 of the Constitution of Islamic Republic of Pakistan, 1973 in matters involving determination of terms and conditions of civil servants. She further contended that the appointments of the respondents were bogus and fake as they were never selected by the competent authority, therefore the orders of dismissal passed by departmental authority were in accordance with law, which did not call for any interference by this Court.

4. On the other hand, Mr. S. M. Tayyub, learned Senior Advocate Supreme Court appearing on behalf of some of the respondents supported the impugned judgment and contended that appointments of respondents had taken place in accordance with rules and prescribed procedure. They submitted their applications in pursuance of advertisement of the posts of PTC Teachers. They passed the required test and were appointed by the competent authority. According to him, the respondents were in service for about 9-10 years and during this period no objection was raised, and subsequently on vague allegations they were dismissed from service. He further contended that cases of respondents were at par with Mst. Naseem Akhtar which was decided by this Court in Civil Petition No. 1960-L of 2006 vide judgment, dated 2-11-2006.

5. We have considered the arguments of both the parties and have gone through the record and proceedings of the case in minute particulars. The matter has already been decided by this Court in the case of Mst. Naseem Akhtar (supra), and it has been held that the appointment orders of the respondents as PTC Teachers were genuine. It was held by this Court in the case of Hameed Akhtar Niazi v. The Secretary, Establishment Division, Government of Pakistan and others 1996 SCMR 1185 that if a Tribunal or this Court decides a point of law relating to the terms and conditions of a civil servant who litigated, and there were other civil servants, who may not have taken any legal proceedings, in such a case, the dictates of justice and rule of good governance demand that the benefit of the said decision be extended to other civil servants also, who may not be parties to that litigation instead of compelling them to approach the

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Tribunal or any other legal forum. This view was reiterated by this Court in the case of Tara Chand and others v. Karachi Water and Sewerage Board, Karachi and others 2005 SCMR 499 and it was held that according to Article 25 of the Constitution of Islamic Republic of Pakistan, 1973 all citizens are equal before law and entitled to equal protection of law.

6. In this view of the matter, we are of the view that no ground for interference in the impugned judgment is made out. Accordingly, the petitions being devoid of force are dismissed and leave to appeal refused.

M.B.A./G-13/SC

Petitions dismissed

Attested
And
[Signature]

صبر بخوانا صبر و صبر سزا سزا سزا

Appellant 224

26/8/2024
سہ ماہ نمود

بنام حکومت پاکستان
کا پوزیشن
انڈسٹری

باجعہ تحریر آف

پتہ: ...
آئی ایم 224
کیلے امجد علی ایڈووکیٹ سپریم کورٹ آف پاکستان / محکمہ انڈسٹری

مقررہ کے اقرار کیا جاتا ہے کہ صاحب موصوف کو مقدمات کی نقل کارروائی کا مکمل اختیار ہوگا، نیز وکیل صاحب کو راضی نامہ کرنے و تقریر ثالث و فیصلہ پر توجہ دینے کی ضرورت ہے اور اقبال کوئی اور بصورت ڈگری کرنے اجراء وصولی بیک در پیسہ عرضی ڈیوٹی اور درخواست ہر قسم کی تمدیق زاریں پر اختیار کرنے کا اختیار ہوگا۔ نیز صورت عدم بیرونی یا ڈگری یک طرفہ یا ایبل کی برادگی اور منسوخی نیز دائر کرنے ایبل نگرانی و نظر ثانی و بیرونی کرنے کا اختیار ہوگا۔ از بصورت مقدمہ مذکور کے کل یا جزوی کارروائی کے واسطے اور وکیل یا مختیار قانونی کو اپنے ہمراہ یا اپنے بجائے تقریر کا اختیار ہوگا اور صاحب مقررہ کو بھی وہی جملہ مذکورہ اختیارات حاصل ہوں گے اور اس کا ساختہ پرواختہ منظور قبول ہوگا دوران مقدمہ میں جو شرط چاہانہ ایشیے مقدمہ کے سبب سے ہوگا۔ کوئی تاریخ پیشی مقام دورہ پر ہوا عدالت باہر ہو تو وکیل صاحب پابند ہوں گے کہ بیرونی مذکور کریں۔

2024
الحکم

سہ ماہ اگست

26
الحکم

Accepted by:

Amjad Ali
SUPERIOR COURT

کے لئے منظور ہے
الحکم
Nalwa
High Court

Amjad Ali

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