


FORM OF ORDER SHEET

Court of _____

Appeal No. 2395/2024

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1-	08/11/2024	<p>The appeal of Mr. Paivi Khan presented today by Mr. Nadir Khan Beland Khel Advocate. It is fixed for preliminary hearing before Single Bench at Peshawar on 22/11.2024. Parcha Peshi given to counsel for the appellant.</p> <p>By order of the Chairman</p> <p> REGISTRAR</p>

BEFORE THE SERVICE TRIBUNAL, KP PESHAWAR.

S. ANO: - 2395/24

Paivi Khan SCT etc.
Appellants

VERSUS


Secretary Education KP etc.
Respondents

INDEX

S. No.	Description of documents	Annexure	Pages
1	Memorandum of service appeal and condonation application		
2	Copy of notification endorsement No. 4129-4228 dated 11-09-1997 (selection grade)	A	
3	Copy of notification No. SD(FR)10-22(B)2005 dated 01-10-2007	B	10-11
4	Finance department No. FDE/(SORR-1)2-123/2013 dated 07-02-2014	C	12-13
5	Departmental appeal	D	14
6	Civil Petition No. 1353-L of 2023 dated 12-09-2024	E	15-21
7	Wakalat Nama		22

Appellant

Through:


Nadir Khan Beland Khel
Advocate High Court
Cell 0301-8321929

BEFORE THE SERVICE TRIBUNAL, K.P.K, PESHAWAR.

S.A No: 2395/24

Paivi Khan SCT Government High School Sabir Abad District
Karak (Retired)
Selection Grade Notification No: S.No. 24 / 159

Appellant

VERSUS

1. The Secretary Education Government of KP
 2. The Secretary Finance Government of KP
 3. The Director Elementary & Secondary Education KP Peshawar
- Respondents

**SERVICE APPEAL UNDER SECTION 4 OF THE KHYBER
PAKHTUNKHWA SERVICE TRIBUNAL ACT 1974**

Respectfully Sheweth:-

Facts giving rise to the present appeal are as under:

1. That the appellant was serving against the posts of SCT in Education Department and was awarded with selection grade vide No. 4129-4228/S.Grage/CTs/III-AD dated 11-09-1997 at Annexure "A"
2. That the post of CTs were upgraded in BPS-15 in the same scale of selection grade in the year 2007. (Annexure "B")
3. That the appellants have already been received one increment after awarded with Selectio. Grade 1997, but one increment of the post due to upgradation is still awaited already allowed to the appellant by the KP Government No. FD(SOSR-1)2-123/2013 dated 07-02-2014. (Annexure "C")
4. That departmental appeal is annexure "D,

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5. That as per the Supreme Court of Pakistan decision in Civil Petition No. 1353-L of 2023 decided on 12-09-2024, stated pension constitute recurring cause of action. It has been consistently held by this court that claims constituting payment of lawful dues constituted a recurring cause of action and delay, if any, would not automatically vitiate a claim. Reference may be made to the case of Abdul Jabbar V/s Pakistan Railways 2018 PLC (CS) 375. (Annexure "E")

In view of the above facts and grounds, the appellants are submitted their humble request before the Honourable Tribunal to allowed this service appeal.

Any other efficacious remedy may also be granted in favour of appellants.

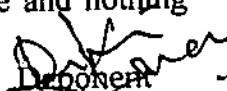

INTERIM RELIEF:

• By way of interim relief the respondents provisionally by allowed to extent the benefit of the notification dated 31-12-2013 till final disposal of the above service appeal.

Appellant
Through: 
Nadir Khan Beland Khel
Advocate High Court
Cell 0301-8321929

Affidavit:

I, Paivi Khan SCT, do hereby affirm and declare on oath that the contents of this appeal are true and correct to the best of my knowledge and nothing has been concealed.


Deponent


BEFORE THE SERVICE TRIBUNAL, KP PESHAWAR.

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Service Appeal No. _____/2024

Paivi Khan SCT etc.
Appellants

VERSUS

Secretary Education KP etc.
Respondents

APPLICATION FOR CONDONATION OF DELAY


Respectfully Sheweth:

1. That appellant has filed the accompanying appeal which is yet to be fix for hearing.
2. That appellant alongwith others filed W.P.No. 413-B of 2016 before the Hon'ble Peshawar High Court Bannu Bench which was disposed vide order dated 03-09-218 with the directions to the respondents to treat the writ petition as departmental appeal and decide the same within one month.
3. That delay in filing the accompanying appeal was not intentional but due to the reason that respondent either by one pretext or other had assured the appellant for redressal of their grievances.
4. That it is settled law that no limitation runs in case of financial benefits.

It is, therefore, humbly prayed that on acceptance of this application, the delay if any in filing the accompanying appeal may graciously be condoned in the interest of justice.

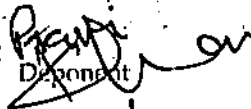
Appellant

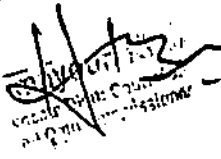
Through:


Nadir Khan Beland Khel
Advocate High Court

Affidavit:

I, Paivi Khan Ali SCT GHSS Bogara Karak, do hereby affirm and declare on oath that the contents of this application are true and correct to the best of my knowledge and nothing has been concealed.


Deponent


Paivi Khan Ali
SCT GHSS Bogara Karak
Deponent

S.M.S. (Kohat)
Sanaullah (Kohat)

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(A)

OFFICE OF THE DIVISIONAL DIRECTOR OF EDUCATION (GENERAL)
 KOHAT DIVISION KOHAT.

AWARD OF SELECTION GRADE
 TO CT TEACHERS

The following trained CT Teachers are hereby awarded Selection Grade of BPS-12 and BPS-15 with effect from the date noted against each:-

S.No./No. in S/List	Name of School	D/O Prom: to the P/Post	D/O Award of S/Grade
1/85	Mansoor Matin GHSS Karak,	21-2-82	01-7-94
2/88	Khadimullah GHS Muslim Road (Kohat).	05-4-83	-do-
3/94	Mohammad Rehman GHS No.1 Hangu.	23-11-83	-do-
4/95	Musharaf Jehan GHS Lahadur Khel (Karak).	27-11-83	-do-
5/96	Muhammad Yasin GHS Jumbher (Karak).	10-12-83	-do-
6/97	Zul Kalim GHS Thall (Kohat).	06-2-84	-do-
7/98	Jamil-ur-Rehman GMS Serkot (Karak).	07-3-84	-do-
8/111	Fazal Ahmad GHSS Takhti Serkot.1 (Karak).	30-10-84	-do-
9/114	Muhammad Reza Bilal GHS Kohat.	26-11-84	-do-
10/137	Amrullah GHS Ganderi Kohat (Karak).	14-7-86	-do-
11/139	Mir Jahan GHS Chorlaki (Kohat).	25-8-86	-do-
12/147	Rasool Badshah GMS Makh Bada (Karak).	01-11-86	-do-
13/148	Wazir Azam CT GHS Rehmat Abed (Karak).	08-11-86	-do-
14/149	Muhammad Shih GHSS Lohi (Kohat).	17-11-86	-do-
15/150	Talib Shah GHS Thall	26-11-86	-do-
16/152	Muzar Ali GHS No. 2 Hangu.	26-11-86	-do-
17/153	Muhammad Anam CT GHS Bogara (Karak).	26-11-86	-do-

Ali
Nadir Khan Behaud Khel
 Advocate
 Dist Courts Kohat

S.No./No. in S/List.	Name/School	D/O prom: to the P/Post.	D/O Award of S/Grade.
18/154	Samen Ali GHS No.2 Hangu	26-11-86	01-7-94
19/155	Shabir Ahmad GHS Nari Fanoos (Karak).	29-3-87	01-5-95
20/156	Muhammad Khan GHS Latamber (Karak).	26-5-87	01-5-95
21/157	Muhammad Khan GHS Daresh Khel (Karak).	26-5-87	01-5-95
22/158	Essa Khan GHS Kowl Bhand	26-5-87	01-5-95
23/159	Akbar Khan GHS Benjakh	26-5-87	01-5-95
24/159 ✓	Feroz Khan GHS Sabir Aved	26-5-87	01-5-95
25/160	Gul Band GHS Takhti Neeratti.	26-5-87	01-5-95
26/161	Muhammad Tariq GHS Lechi Feroz (Kohat).	26-5-87	01-5-95
27/162	Umar Zaman GHS Kerak	26-5-87	01-5-95
28/163	Gul Far Zaman GHS Takhti Neeratti.	26-5-87	01-5-95
29/164	Shafiq Ali GHS Ahmadi Banda.	26-5-87	01-5-95
30/165	Mutaghees-ul-Hessen GHS No.1 Hangu.	26-5-87	01-5-95
31/166	Akbar Zaman GHS Takhti Neeratti.	26-5-87	01-5-95
32/167	Abdul Rasid GHS Gandyali	26-5-87	01-5-95
33/168	Zafar Rahman GHS Sarki Laryaghat.	26-5-87	01-5-95
34/169	Raza Ali CT GHS Ibrahimzai	02-9-87	01-5-95
35/170	Raza Khan GHS Jehangiri	02-9-87	01-5-95
36/171	Khalid Jawaz GHS Garang Siraj Khel.	02-9-87	01-5-95
37/172	Islam-ud-Din GHS Tor Dhand	02-9-87	01-3-96
38/173	Wali-ud-Din Naseem GHS Kot	02-9-87	01-3-96
39/174	Amir Mohammed GHS Sarozai	02-9-87	01-3-96
40/175	Faiz-ur-Rehman CT GHS Irak Khumari.	02-9-87	01-3-96
41/176	Muhammad Tahir GHS Keghza	02-9-87	01-3-96
42/177	Shah Farcoq GHS Keghza	02-9-87	01-3-96
43/178	Tarwoon Ahmad CT GHS Kohat.	12-9-87	01-3-96
44/179	Muhammad Sharif GHS Mitha Khel (Karak).	13-9-87	01-3-96
45/180	Azam Khan GHS Togh Balu	13-9-87	01-3-96
46/181	Habibullah GHS Takhti Neeratti (Karak)	13-9-87	01-3-96

Ali
 Nadir Khan Bhatti
 Advocate
 Distt Courts Kohat

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- 2 -

S.No./No. in S/List.	Name/School	D/O prom: to the P/Post.	D/O Award of S/Grade.
18/154	Eamon Ali GHS No.2 Hangu	26-11-86	01-7-94
19/155	Shabir Ahmad GHS Nari Fanoos (Karak).	29-3-87	01-5-95
20/156	Nasrullah Khan GHS Latamber (Karak).	26-5-87	01-5-95
21/157(A)	Munabala Khan GHS Daresh Khel (Karak).	26-5-87	01-5-95
22/157	Essa Khilaf GHS Kora Khana	26-5-87	01-5-95
23/158	Akbar Khan GHS Banjakh	26-5-87	01-5-95
24/159 ✓	Picard Khan GHS Sabir Aher	26-5-87	01-5-95
25/160	Gul Rasool GHS Takhti Naeratti.	26-5-87	01-5-95
26/161	Mohammad Tariq GHS Lechi Feroze (Lohat).	26-5-87	01-5-95
27/162	Umar Zaman GHS Kerak	26-5-87	01-5-95
28/163	Gul Rasool Khan GHS Takhti Naeratti.	26-5-87	01-5-95
29/164	Shafiq Ali GHS Ahmedi Bunde.	26-5-87	01-5-95
30/165	Mutaghees-ul-Hassan GHS No.1 Hangu.	26-5-87	01-5-95
31/166	Akbar Zaman GHS Takhti Naeratti.	26-5-87	01-5-95
32/167	Abdul Fakhir GHS Gandyali	26-5-87	01-5-95
33/168	Zafar Rahman GHS Sarki Lowaghot.	26-5-87	01-5-95
34/169	Raza Ali CT GHS Ibrahimzai	02-9-87	01-5-95
35/170	Raza Khan GHS Jehangiri	02-9-87	01-5-95
36/171	Khalid Jawaz GHS Garang Siraj Khel.	02-9-87	01-5-95
37/172	Islam-ul-Din GHS Tor Dhand	02-9-87	01-3-96
38/173	Wali-ud-Din Nazam GHS Kot	02-9-87	01-3-96
39/174	Amir Mohammed GHS Sarozai	02-9-87	01-3-96
40/175	Faiz-ur-Rehman CT GHS Irak Khumari.	02-9-87	01-3-96
41/176	Mohammad Tahir GHS Kaghzai	12-9-87	01-3-96
42/177	Shah Farooq GHS Kaghzai	12-9-87	01-3-96
43/178	Tarwoon Ahmad CT GHS Kohat.	12-9-87	01-3-96
44/179	Mohammad Sharif GHS Mithra Khel (Karak).	13-9-87	01-3-96
45/180	Azam Khan GHS Togh Balu	13-9-87	01-3-96
46/181	Haidullah GHS Takhti Naeratti (Karak)	13-9-87	01-3-96

Madr. Khair Belal
Advocate
Distt Courts Kohat

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S.No.	S.No. in S/List.	Name/School.	D/O Prom: to the P/Post.	D/O Award of S/Grade.
47/182.		Abdul Jalal CT GNS, No.1 Hangu.	13.9.87	01.3.96
48/183.		Akbar Jan CT GNS, Bahadur Khel.	13.9.87	01.3.96
49/184.		Sabz Ali Khan GNS, Dillitang.	13.9.87	01.3.96
50/185		Ihtiaq Ahmad GNS, Fogh Jela.	13.9.87	01.3.96
51/186		Zafar-ur-Rahman CT GNS, No.1 Kohat.	13.9.87	01.3.96
52/187		Arshad Mahmood GNS, No.2 Kohat.	13.9.87	01.3.96
53/188		Syed, Badshah GNS, Gurguri, Krl.	13.9.87	01.3.96
54/189		Liaqat Ali GNS, Kohat.	13.9.87	01.3.96
55/190		Mohammad Ali GNS, Dhand Saghri.	14.9.87	01.3.96
56/191		Noor Saleem GNS, Dhand Saghri.	14.9.87	01.3.96
57/192		Subhan-ud-Din GNS, Shakardarra.	14.9.87	01.3.96
58/193		Javid Iqbal GNS, Sheikhhan, Kht.	14.9.87	01.3.96
59/194	✓	Abdus Samad GNS, Kani Khel, Krl.	14.9.87	01.3.96
60/195	✓	Mohammad Naseer GNS, Rahmat Abad.	15.9.87	01.3.96
61/196		Gul Pajo Noor GNS, Chanyari.	16.9.87	01.3.96
62/197		Farid Akbar GNS, Kani Tones.	16.9.87	01.3.96
63/198		Mir Fio Khan GNS, Shahidan, Krl.	20.9.87	02.1.97
64/199	✓	Rahmatullah GNS, Kani Khel.	20.9.87	02.1.97
65/200.	✓	Shamshad Ali GNS, Latambar.	20.9.87	02.1.97
66/201.	✓	Mokhtiar Ali GNS, Dogara, Krl.	20.9.87	02.1.97
67/202		Gul Basim GNS, Dogara, Krl.	21.9.87	02.1.97
68/203.		Khalid Rehman GNS, Karak.	22.9.87	02.1.97
69/204	✓	Rahim Khalid GNS, Sepi, Kark.	22.9.87	02.1.97
70/205		Pir Aslam GNS, Farana, Krl.	01.10.87	02.1.97
71/206		Hajet Hussain GNS, Nari Panos.	08.10.87	02.1.97
72/207		Inayatullah GNS, Murran, Krl.	19.10.87	02.1.97
73/208		Istikhhar-ul-Mulk GNS, Bangi Eila.	21.10.87	02.1.97
74/209		Alamdar Hussain GNS, No.2 Hangu.	21.10.87	02.1.97
75/210		Ibrahim Mohammad Shah GNS, Keri Dhand, Kark.	22.10.87	02.1.97
76/211.		Hasean Mahmood GNS, No.1 Hangu.	23.10.87	02.1.97
77/212		Syed Rehman GNS, No.1 Hangu.	24.10.87	02.1.97

Next Sheet Please

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 Nadir Khan Belamchi
 Advocate
 Dist Courts Kohat

S.No. No. in S/List.	Name/School.	Date of Prom to P/Post.	D/O Award of S/Grade.
✓ 78/213	Gul Piao Khon GHS, Official Colony Karak.	27.10.87	02.1.97
79/214	Gul Shah Jehan GHS, Warana, Karak.	18.11.87	02.1.97
80/215	Gul Mamoor Jan GHS, Dabb (Karak).	24.11.87	02.1.97
81/216	Khadrat Ali CT GHSS, Ustersai, Kht.	29.11.87	02.1.97
82/217	Nesir Usman GHS, Mithe Khel, Karak.	29.11.87	02.1.97
83/218	Maula Khan GHSS, Jehangiri (Karak).	29.11.87	02.1.97
84/219	Abdul Hanid GHS, Mithe Khel, Karak.	29.11.87	02.1.97
85/220	Anwar Saeed GMS, Suroti Killa, Karak.	29.11.87	02.1.97
86/221	Pio Khan GMS, Tapi Kanda Karak.	29.11.87	02.1.97
87/222	Ahmad Wali Shah GHSS, Takhti Nasrati.	29.11.87	02.1.97
88/223	Sami-ud-Din GHS, No. 1 Hangu.	29.11.87	02.1.97
89/224	Mohammad Farooq GHS, Doli Mela, Kerk.	29.11.87	02.1.97
✓ 90/225	Fahimullah GHS, Town Committee, Karak.	29.11.87	02.1.97
91/226	Gul Habib F'S, Mandawa, Karak.	29.11.87	02.1.97
92/227	Noor Iqbal GHS, Ahmad Abad, Kerk.	29.11.87	02.1.97
93/228	Salehullah GHS, Surdag, Karak.	29.11.87	02.1.97
94/229	Hamidullah GHS, Malgin, Kohat.	29.11.87	02.1.97
95/230	Abdul Haleem GMS, Hayat Abad, Kerk.	29.11.87	02.1.97
96/231	Mohammad Ayaz GHS, Teri, Karak.	29.11.87	02.1.97
to 97/232	Rayat Khan GMS, Sarana, Kohat.	29.11.87	02.1.97
98/233	Mohammad Maqsood GHS, Karak.	29.11.87	02.1.97
99/234	Abidur Rehman GHS, Dabb, Kerk.	29.11.87	02.1.97
100/235	Muhammad Khan GHS, Maundi Mir Khan Khel.	29.11.87	02.1.97
101/235	Naseem Gul GHS, No. 2 Kohat.	01.12.87	02.1.97
102/236	Dilawar Khan GHS, No. 2 Kohat.	04.2.88	02.1.97
✓ 103/236	Mohammad Zaman GHS, Warana, Kerk.	11.5.88	02.1.97
104/238	Anirullah GHS, Lodhi Khel.	22.5.88	02.1.97
105/239	Tehsil-ur-Rehman GHS, Mohammad Khoja.	31.8.88	02.1.97
106/240	Mohammad Farid GMS, Mangani, Karak.	01.8.88	02.1.97
107/241	Mohammad Jamal GMS, Banjakh, Karak.	01.8.88	02.1.97
108/242	Khushal Khan GHS, Surdag, Karak.	01.8.88	02.1.97

Attest
 Nadir Khan, Beland Khel
 Addl. Secy
 Distt Courts Kohat

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No. S/List	Name/School	Date of P/Post.	D/O of award.
109/243	Mumtaz Khan GESS, Karak.	01.8.88	02.1.97
110/244	Shani-ur-Rehman GMS, Usterzai Bala.	01.8.88	02.1.97
111/245	Qaisar Gul CT GMS, Sabir Abad, Karak.	01.8.88	02.1.97
112/246	Niamatullah GMS, Zar Khan Eilla, Karak.	01.8.88	02.1.97
113/247	Mohammad Nazir GMS, No. 4 Kotat.	01.8.88	02.1.97
114/248	Aziz-ur-Rehman GMS, Sabir Abad, Karak.	01.8.88	02.1.97
115/249	Zarmast Khan GMS, Surgul, Kohat.	01.8.88	02.1.97
116/250	Shoaib Khan GMS, Doaba, (Kohat).	01.8.88	02.1.97

Note:-- Necessary entry to this effect should be made in their S/Books. An undertaking on the prescribed form below should be obtained from the above named CTs and pasted in their S/Books duly attested by their respective heads of institutions before the award of pay/ gratuity of arrears.

UNDERTAKING (Duly Attested)

I _____ hereby given an undertaking to the effect that if any overpayment is made to me as a result of incorrect award of S/Grade and detected later on, it will be made good by recovery from my pay/pension/gratuity as may be fixed by the Govt.

Sign: of Teacher _____

- Arrears due to the award of S/Grade should be drawn and disbursed to them.
- All concerned should be informed accordingly, if any one of them is not working at the school mentioned against his name he may be informed at his present school through the H.O.
- The above award is subject to condition that no judicial, departmental, or any kind of enquiry/adverse remarks should be made against them.

Hafiz Bahadur Khan
 Divl: Director of Education (Schools)
 Kohat Division, Kohat.

Encl: No. 4129-4228 / S.Grade/CTs/III-IB. Dt: Kohat the 11-9-1997.

- Copy forwarded for information and n/action to the:-
- Director of Secondary Education NWFP Peshawar.
- Distt: Education Officer, (Male) Secondary Kohat/Karak.
103. Principals/Headmasters concerned.
106. P/A Local office.

Checked and found correct.

[Signature]
 Khadam Ali Dealing Assistant.

M. Shaukat/-

[Signature]
 11-9-1997
 For/Divl: Director of Edu: (Schools)
 Kohat Division Kohat.

[Signature]
 Nadir Khan Beland Khel
 Advocate
 Distt Courts Kohat

Annex (B) to

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~~15~~ C

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Government of N.W.F.P.
Finance Department
No SO(FR)10-22(S)/2005
Dated: 01-10-2007

To: The Secretary to Govt. of NWFP,
Schools & Literacy Department

Annex C
PK

Subject: UP-GRADATION OF VARIOUS POSTS OF
TEACHERS/CAREER STRUCTURE IN SCHOOLS &
LITERACY DEPARTMENT GOVERNMENT OF N.W.F.P.

I am directed to refer to your letter No.SO(G)S&L/1-47/2007 dated 01-10-2007 on the subject noted above and to inform that the Chief Minister NWFP has been pleased to up-grade various posts of teachers in Schools & Literacy Department N.W.F.P. as per details given below in respect of those incumbents who acquire or possess the qualification and experience mentioned against each with immediate effect.

S.N	Designation/Existing Pay Scale	Qualification	Revised Pay Scale
1.	Primary School Teacher (PST) BPS-07	F.A/F.Sc. at least 2 nd Division with PTC/Diploma in Education	09
2.	PST with requisite experience renamed as Head Teacher/Head Mistress of Primary School BPS-07	On the basis of 10 years service/experience as Primary School Teacher in BPS-09	12
3.	C.T BPS-09	B.A/B.Sc. at least 2 nd Division with Diploma in Education	15
4.	A.W./C.T (Technical/Industrial Arts/Home Economics) BPS-09	B.A/B.Sc. at least 2 nd Division with Diploma in Education/ Certificate from Directorate of Curriculum & Teachers Education NWFP Abbottabad in Agro. Tech/ Industrial Arts/Home Economics	15
5.	D.M. BPS-09	B.A/B.Sc. at least 2 nd Division with Drawing Master Course	15
6.	PET BPS-09	B.A/B.Sc. at least 2 nd Division with JDPE	15
7.	Qari/Qaria BPS-07	Hafiz-e-Quran with SSC at least 2 nd Division and Saraf in Qur'an	12
8.	Teacher/Teacher-in-Charge with requisite experience renamed as ST/ SST/Sr. SST Tech/Sr. SST Agr. BPS-16	B.Ed./M.Ed./M.A. Edu. or equivalent qualification	17
9.	IDPE BPS-16	M.Sc. at least 1 st Division in (HPE)	17
10.	Librarian BPS-16	Master degree in Library Science, at least 2 nd Division	17

The Promotion/Direct Recruitment against the upgraded posts shall be made as per laid down procedure and in accordance with the Service Rules to be framed pursuant to the relevant provisions of the NWFP Civil Servants (Appointment, Promotion, & Transfer) Rules, 1989 read with the NWFP Civil Servants Act, 1973 in the light of the

Attested
Nadir Khan Beland Khel
District Librarian Kohat

Attested

Attested

11/12

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meeting held on 26-09-2007 of the committee constituted vide Schools & Literacy Department Notification No. SO(G/S&L)/17/2007 dated 01-08-2007.

Audit copy may please be prepared and sent to this Department for authentication/signature.

[Signature]
Section Officer (FR)

Enclst: of even No. & Date

Copy for information & necessary action is:

1. Accountant General NWFP
2. Director Schools & Literacy NWFP Peshawar
3. Director of Education FATA NWFP Peshawar
4. PSO to Chief Minister NWFP
5. PSO to Chief Secretary NWFP
6. PS to Secretary Finance Department NWFP
7. All District/Agency Accounts Officers in NWFP

Section Officer (FR)



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GOVERNMENT OF KHYBER PAKHTUNKHWA
FINANCE DEPARTMENT
(REGULATION WING)

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NO. FD (SOSR-1) 2-123/2013
Dated Peshawar, the 7th February, 2014

To:

1. All Administrative Secretaries to Govt. of Khyber Pakhtunkhwa.
2. The Senior Member, Board of Revenue, Khyber Pakhtunkhwa.
3. The Secretary to Governor, Khyber Pakhtunkhwa.
4. The Principal Secretary to Chief Minister, Khyber Pakhtunkhwa.
5. The Secretary, Provincial Assembly, Khyber Pakhtunkhwa.
6. The Secretary Finance FATA, FATA Secretariat, Peshawar.
7. All Heads of Attached Departments in Khyber Pakhtunkhwa.
8. All Divisional Commissioners in Khyber Pakhtunkhwa.
9. All Political Agents / District & Sessions Judges in Khyber Pakhtunkhwa.
10. The Registrar, Peshawar High Court, Peshawar.
11. The Chairman, Public Service Commission, Khyber Pakhtunkhwa.
12. The Chairman, Services Tribunal, Khyber Pakhtunkhwa.
13. The Accountant General, Khyber Pakhtunkhwa, Peshawar.

Subject: CLARIFICATION REGARDING GRANT OF ONE SPECIAL ADVANCE INCREMENT EXTENDED TO THE EMPLOYEES WHO WERE HOLDING SELECTION GRADE PRIOR TO UPGRADATION OF THEIR POSTS IN BASIC PAY SCALES ALREADY HELD BY THEM.

Dear Sir,

I am directed to invite your attention to the subject matter and to state that certain queries have been received from different quarters about the admissibility of one special advance increment allowed under this Department's letter of even number dated 31-12-2013.

2. In this connection, it is to clarify that the above stated increment has been extended only to those employees who were holding Selection Grade prior to up-gradation of their posts but neither availed the benefit from up-gradation of posts under this Department's Notification No. FD/SOFR/7-2/2007 dated 28-07-2007 nor one special advance increment granted vide Notification No. FD (SR-1) 24/2009 dated 04-04-2009.

Yours faithfully,

(MASOOD KHAN)
Deputy Secretary (Reg-II)



Handwritten notes: "Please to me 9/12"

Handwritten initials: "AAO"

Handwritten initials: "P.R. - E."

Handwritten note: "Pl. Link with the references mentioned in this letter as discuss"

Handwritten note in Urdu: "ہاں ذرا توجہ سے دیکھیں"

Handwritten date: "9/12"

Handwritten signature and stamp: "Atiqul Khan, Advocate, Dist. Courts Kohat"

Official Registrar

REGISTERED

EXAMINER
Peshawar High Court
Bannu Road

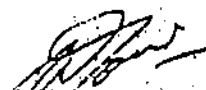
13

19

Endst: No. & C...

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

1. The Director, Treasuries & Accounts, Khyber Pakhtunkhwa.
2. All the Deputy Commissioners of Revenue in Khyber Pakhtunkhwa.
3. The Director, Local Fund Accounts, Khyber Pakhtunkhwa, Peshawar.
4. The Director, Public Finance Department, Peshawar.
5. The Director, Finance Department, Peshawar.
6. The Secretary, Board of Revenue, Khyber Pakhtunkhwa.
7. All the Agency Accounts Officers, Khyber Pakhtunkhwa / FATA.
8. All the Deputy Secretaries to Secretary, Finance Department, Khyber Pakhtunkhwa.
9. The Private Secretary to Secretary, Finance, Khyber Pakhtunkhwa.
10. The Private Secretary to Secretary, P. As to Special Secretary, Additional Secretary, Deputy Secretary, Finance Dept.


 Wazir Muhammad Afsar
 Section Officer (SR-1)

16 جناب ڈیپٹی کمشنر ایجوکیشن انٹرنیشنل تعلیم ضلع ٹرک

دعاؤ استمبراد عطا پٹی - one premature لبلد اپگرادیٹیشن Post Improvement

جناب عالی۔ سائل پیادوی خان محمد، تعلیم ضلع ٹرک سے طلبہ SET سرس انجام دے رہے تھا۔ اور 2017 میں ریٹائرڈ ہوا۔

۱۔ ۱۹۹۶ میں صوبہ سرحد اور موجودہ کے پی حکومت کے SET سہولتیں گریڈ دے سکیں 15 میں آیا۔

۲۔ 2007 میں کے پی حکومت نے تمام ریٹائرڈ اسٹاف کو upgrade کر کے سائل کو بھی 15 اسکیل میں upgrade کیا۔

۳۔ یہم اس سلسلے میں سائل کو سہولتیں گریڈ کی اضافی ترقی کی رقم ملی۔ جیٹ اپگرادیٹیشن Post کی premature اضافی ترقی نہ ملے گی۔

۴۔ اس سلسلے میں یہی بعض colleges نے بنوں ہائی کورٹ میں رجسٹرڈ کی۔ جس پر ہائیکورٹ نے آرڈر ٹو پبلسٹیشن میں convert

کرنے Director Education کو ملتا ہے اس پر ایسے کے اندر قانون کے تحت منیفیسٹ کر کے

2016 سے آنے Director Education نے اس پر منیفیسٹ کیا۔ اور باہری مجبور کیا ہمارے 2 سالہ رعایت قانون۔ گریڈ سائل نے ٹرک میں صفوں میں سرس میں ایسے نہیں۔ جو فنڈز ہوں۔

جناب عالی اب سے گزارش ہے۔ کہ ہائیکورٹ نے واضح منیفیسٹ کر کے دیا ہے۔

کی سرس اسل میں معائنات کی بنا پر سائل کی واضح یہ بات کی اور سائل میں

مجھے اپگرادیٹیشن کی premature اضافی ترقی دلانے کی احکامات صادر فرمائی جائیں۔ لہذا دیگر سائل بھی ملانوی جاوے جوئی کا حق محفوظ رکھا جائے۔

سائل پیادوی خان محمد، ایجوکیشن انٹرنیشنل تعلیم ضلع ٹرک سے طلبہ SET ریٹائرڈ ہوا۔

Nadir Khan Beland Khel Advocate Distt Courts Kohat

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

PRESENT:

Mr. Justice Munib Akhtar
Mr. Justice Athar Minallah
Mr. Justice Syed Hasan Azhar Rizvi

Civil Petition No.1353-L of 2023

[Against the Judgment dated 20.02.2023 passed by the Federal Service Tribunal, Lahore
in the Appeal No.8(L)/2020]

Chairman/Dean Sheikh Zayed Hospital, ...Petitioner(s)
Lahore.

Versus

Anjad Mehmood Khan.

...Respondent(s)

For the Petitioner(s) : Mr. Imran Aziz, ASC
For the Respondent(s) : Mr. Aurangzeb Mirza, ASC (via
video link from Lahore)
Date of Hearing : 12.09.2024

JUDGMENT

Syed Hasan Azhar Rizvi, J. Through this petition, the petitioner has called in question the judgment dated 20.02.2023 ("Impugned Judgment") passed by the Federal Service Tribunal, Lahore whereby Appeal No.8(L)/2020 preferred by the respondent was allowed.

2. Facts in brief are that the respondent was appointed to the post of Anaesthetist (BS-18) on 03.04.1988, initially for a period of two years on contract basis. Vide notification dated 11.11.1992, upon the recommendation of the Departmental Promotion and Selection Committee, the competent authority regularized his contract appointment in BS-18 and thereafter he was promoted to BS-19, vide order dated 19.04.2004.

3. On attaining the age of superannuation respondent retired on 20.11.2007. However, his contract period of 4 ½ years was not included in the calculation of his pensionary benefits.

Upon learning that the department had excluded his contract period from the pension calculations, the respondent filed a representation on 27.10.2014 seeking recalculation of his pension. This representation was dismissed on 19.02.2015. The respondent submitted another representation on 07.05.2019, which remained undecided by the department within the prescribed statutory period. Consequently, the respondent invoked the jurisdiction of the Punjab Service Tribunal after 90 days, but the appeal was dismissed for want of jurisdiction *vide* order dated 15.11.2019. The respondent then filed an appeal before the Federal Service Tribunal, which was allowed through the impugned judgment. Hence, this petition.

4. Learned counsel for the petitioner contends that the decision of the Federal Service Tribunal is tainted with illegality and infirmity; that the respondent retired on 20.11.2007, whereas the first representation was filed on 27.10.2014, which was time-barred and that, under the applicable service laws, the contractual period is not counted towards pension entitlement, therefore, petitioner prays that the impugned judgment may be set aside.

5. On the contrary, the learned counsel for the respondent contends that the impugned judgment is well-reasoned and based on a proper interpretation of the law; that the respondent was unaware of the department's failure to include the contract period towards the pension calculation and he filed the representation immediately upon gaining this knowledge. Furthermore, pensionary benefits constitute a recurring cause of action; thus, the representation is not time-barred.

6. We have heard the contentions advanced by the learned counsel for the parties and have gone through the material available on the record.

7. As far as issue of time barred representation is concerned, it has been rightly noted by the learned Federal Service Tribunal that pension constitutes a recurring cause of action. It has been consistently held by this court that claims constituting payment of lawful dues constituted a recurring cause of action and delay, if any, would not automatically vitiate a claim. Reference may be made to the case of Abdul Jabbar vs. Pakistan Railways (2018 PLC (CS) 375) wherein it has been ruled that:-

10. Though it has been repeatedly held by this Court that pension is in fact a deferred part of the pay of an employee while he was putting his best efforts in rendering service to his employer during his hay days and this part is deferred to be paid to him periodically or otherwise to meet his old age needs as such pensionary benefits were neither a bounty nor a concession from any one and in the latter case are paid month wise and therefore, grievance in respect thereof provides a recurring cause, consequently, the limitation could not come in the way of such relief. Reference can readily be made to the case of Chief Executive Progressive Paper Ltd./The Chairman National Press Trust, Islamabad v. Sh. Abdul Majeed (2005 PLC (C.S.) 1439). However, in our opinion, where such pensionary benefit is withheld or interpreted to the disadvantage of a civil servant or his pension is reduced or his maximum pension is withheld including an additional pension admissible to him under the rules then his grievance to that extent has to be regulated in terms of Rule 4(1) of the Civil Servant (Appeal) Rules, 1977."

Moreover, in the case of Umar Baz Khan vs. Jehanzeb (PLD 2013 SC 268) it has been observed that the bar of laches cannot be overemphasized in the cases where the relief claimed is based on a recurring cause of action and that no court could dismiss a *lis* on account of laches if such a decision would perpetuate injustice.

8. An examination of jurisprudence of various countries reflects that pension is considered as a recurring cause of action. Supreme Court of India in the cases of M.R. Gupta Vs. Union of

India & Ors. [(1995) 5 SCC 628] and Union of India & Ors. Vs. Tarsem Singh [(2008) 8 SCC 648] has similarly recognized that the right to pecuniary benefit in service jurisprudence in the form of pay or pension is a recurring cause of action.

9. With regard to the contention of learned counsel for the petitioner that contract period cannot be counted towards service for purpose of pension, Article 371-A of the Civil Service Regulations (CSR) being relevant is reproduced below:-

"371-A. Notwithstanding anything contained in Articles 355(b), 361, 368, and 371 of these Regulations, temporary and officiating service, in the case of Government servants who retired on or after the 1st January, 1949, or who joined service thereafter, shall count for pension according to the following rule:—

(i) Government servants borne on temporary establishments who have rendered more than 5 years continuous temporary service shall count such service for the purpose of pension or gratuity excluding broken periods of temporary service, if any, rendered previously, and

(ii) Continuous temporary and officiating service of less than 5 years immediately followed by confirmation shall also count for gratuity or pension, as the case may be.

[Emphasis Added]

At this juncture, it is needless to observe that the use of the phrase 'temporary service' in Article 371-A of CSR includes contractual service.

10. The perusal of the Article 371-A of CSR reveals that clause (i) stipulates that government servants employed in temporary positions who have rendered more than five years of continuous temporary service are entitled to have such service counted towards their pension or gratuity. The use of the term "continuous" indicates that only uninterrupted service exceeding five years qualifies, and any prior broken periods of temporary service are to be excluded from the calculation.

11. In the present case, since temporary service (contract period) of respondent was 4 ½ years therefore clause (ii) is

applicable. Clause (ii) provides for situations where a government servant has rendered less than five years of continuous temporary or officiating service. In such instances, the period of service shall also be counted towards pension or gratuity, provided that it is immediately followed by confirmation/regularization as a permanent employee.

12. Perusal of the notification dated 11.11.1992 reveals that the contract appointment of the respondent was regularized. The record reveals that the respondent's service from his contractual appointment to regularization and retirement was continuous and uninterrupted and this has not been disputed by the petitioner. The only grievance of the petitioner is that the contractual period should not be counted for the calculation of pension. However, established law and decisions of this Court clearly state that the contractual period must be included towards the calculation of pension provided the case falls either under clause (i) or clause (ii) of Article 371-A of the CSR.

13. In the case of Chairman, Pakistan Railway, Government of Pakistan, Islamabad and others v. Shah Jehan Shah (PLD 2016 Supreme Court 534) this court has interpreted Article 371-A of the CSR and observed as follows:-

16. However, it is important to note that Article 371-A presupposes that such a government servant, whether falling under clause (i) or (ii), is otherwise entitled to pension (or gratuity, as the case may be). In other words, Article 371-A cannot be used as a tool to bypass the conditions for qualifying service of pensionary benefits, and such government servant has to fulfill the minimum number of years for grant of pension. This is due to the use of the word "count" as opposed to "qualify" or "eligible", as rightly argued by the learned counsel for the appellant. As per the settled rules of interpretation, when a word has not been defined in the statute, the ordinary dictionary meaning is to be looked at. Chambers 21st Dictionary defines "count" as "to find the total amount of (items), by adding up item by item; to include". Oxford Advanced Learner's Dictionary of Current English (7th Ed.) defines "count" as "to calculate the total number,

of people, things, etc. in a particular group; in include sb/sth when you calculate a total; to consider sb/sth in a particular way; to be considered in a particular way". Thus in light of the above, service rendered for more than five years as contemplated by Article 371-A would only be added, included, or taken into account for the purposes of pensionary benefits, and not make such government servant qualify for pension per se. This interpretation is bolstered by logic, reason and common sense. ..."

14. This decision was affirmed in the case of M/o Finance through Secretary, etc. v. Syed Afroz Akhtar Rizvi & others (2021 SCMR 1546) wherein it has been observed that:-

"6. ... An analysis of the said provisions and judgments of this Court more specifically a relatively recent judgment of this Court in Shah Jahan Shah's case shows that the following general principles apply to employees who have worked against contractual posts which were subsequently converted into regular posts for the purpose of grant and calculation of pension:

1. an employee who was employed on contractual basis and is subsequently regularized may be entitled to pensionary benefits provided:

- i) he is eligible for pension having served for the qualifying period (10 years) as a regular employee.
- ii) for the purpose of calculating pensionary benefits his service as a contractual employee can be factored in to provide him any financial benefit that may be due to him.
- iii) the period spent in employment as a contractual employee and as a regular employee cannot be aggregated in order to determine his eligibility for entitlement to pension.
- iv) eligibility to receive pension is directly related to rendering qualifying service as a regular employee. Unless an employee has performed services in a regular appointment for the duration of the qualifying period (10 years), he is not entitled to receive pension".

Thus, the law is clear that the contractual period, being temporary service, is recognized by Article 371-A of the CSR for inclusion in the calculation of pension provided that the contractual period is followed by regularization or confirmation without any gap or interruption, in accordance with clause (ii) of Article 371-A of the CSR. Therefore, Federal Service Tribunal has rightly allowed the appeal of the respondent.

15. In view thereof, we find that impugned judgment is well-reasoned and has considered all legal and factual aspects of the matter. The petitioner has failed to make out a case warranting

any interference. Consequently, this petition, being devoid of merit,
is dismissed and leave refused.

DocId: 31
12/09/2024
~~NOT APPROVED FOR REPORTING~~
Papa Zahir, LC

