

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR
AT CAMP COURT, ABBOTTABAD

BEFORE: RASHIDA BANO Member (Judicial)

Aftar S/O Muhammad Anwar Khan, SCT GHS Jhangi Abbottabad.

Execution Petition No. 372/2022 in Execution Petition No. 40/2022 in Service
Appeal No. 1115/2016 in Service Appeal No. 1276/2016

Versus

1. District Comptroller of Accounts, Abbottabad.
2. Accountant General Khyber Pakhtunkhwa, Peshawar.
3. Government of Khyber Pakhtunkhwa through Secretary Elementary & Secondary Education, Peshawar.
4. Secretary to Government of Khyber Pakhtunkhwa, Finance Department, Peshawar.

Date of Institution.....27.06.2022

Date of Hearing.....30.10.2024

Date of Decision.....30.10.2024

Mr. Rashid Iqbal, Advocate..... For Petitioner

Mr. Asif Masood Ali Shah, AAG..... For respondents

**EXECUTION PETITION FOR IMPLEMENTATION OF
FINAL JUDGMENT DATED 12.05.2009 PASSED IN APPEAL
No.1276/2007 READ WITH, ORDER DATED 19.01.2022
PASSED IN EXECUTION PETITION No. 40/2022 BY THE
Khyber Pakhtunkhwa SERVICE TRIBUNAL PESHAWAR
CAMP COURT.**

ORDER

RASHIDA BANO, MEMBER (J): Through this petition, the petitioner is seeking implementation of the judgment dated 12.05.2009 passed by this Tribunal in Service Appeal No.820/2008. Petitioner filed Service Appeal No. 1115/2016 which was converted in Execution Petition No. 40/2022 which was decided through a consolidated order dated 19.01.2022. The petitioner filed instant execution petition for implementation of the said judgment which was already decided through consolidated order dated 19.01.2022.



2. At the time of passage of the judgment (12.05.2009), the Tribunal had no power to execute its judgment. It was then, some of the petitioners, Muneeb Ur Rehman & others had filed Writ Petition No.22 of 2010 in the Peshawar High Court, which, according to the petitioners, was sent to the Tribunal for implementation and here, it was given No.84 of 2012. Execution Petition No.84 of 2012 was decided by the Tribunal on 18.11.2013 in the following manner:

"The respondents have brought to the notice of the Tribunal that the Provincial Government has promulgated the Khyber Pakhtunkhwa Cessation of Payment of Arrears on Advance Increments on Higher Educational Qualification Act, 2012 (Khyber Pakhtunkhwa Act No.IX of 2012), thereby revoking any order, letter, office memoranda, notification, instructions and other instruments issued before 01.12.2001, whereby, payment of advance increments were allowed on acquisition of higher educational qualification. At the same time, in section 2 of Act No.IX of 2012 it has been clearly provided that all cases in respect of such claims pending in any Court or Tribunal including High Court and Supreme Court of Pakistan shall stand abated.

In pursuance of the said Act, this Tribunal vide judgment/order dated 30.01.2013, rejected/filed implementation petition No.49 of 2012 in Service Appeal No.506 of 2009 titled "Muhammad Haroon vs EDO E&SE, Haripur and others". The petitioner in the above referred petition lodged appeal in the august Supreme Court of Pakistan, which too met the same fate and leave to appeal was refused and petition dismissed vide judgment of the august Supreme Court of Pakistan dated 29.08.2013.

In view of the aforementioned clear provision of law and judgments/orders of this Tribunal as well as august Supreme Court of Pakistan in support thereof, this petition for implementation stands abated and is accordingly filed at this stage. File be consigned to the record."

3. One of the appellants/petitioners namely Muhammad Haroon, who had filed Appeal No.267/2008 and decided vide the same/above judgment dated 12.05.2009, had separately filed



and other instruments shall be deemed to be non-existent, ceased or revoked and no further claim whatsoever on the basis of these instruments shall be entertained and all cases in respect of such claims pending in any Court or Tribunal including High Court and Supreme Court of Pakistan shall stand abated.

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

5. A bare reading of the above sections from the Khyber Pakhtunkhwa Act No.IX of 2012, makes it crystal clear that whatever benefit the petitioner was claiming through the judgment dated 12.5.2009 has been nullified by the legislature through clear intendment in unequivocal terms, while vires of the said Act have not been challenged before any forum."

4. The Supreme Court of Pakistan has already held in the above judgment that the judgment (12.05.2009) of the Tribunal, passed in the said appeal, had lost efficacy for the purpose of implementation by clear intendment of provisions of the above referred Act, also terming the judgment to be un-implementable. The Hon'ble Supreme Court of Pakistan in Para-5 of the judgment has also held that the provisions of the above Act were crystal clear that, whatever benefit the petitioner was claiming through the judgment dated 12.05.2009, had been nullified by the legislature through clear intendment in unequivocal terms, while vires of the said Act have not been challenged before any forum.



Implementation Application No.49/2012 which was also dismissed vide order dated 30.01.2013 in view of Sections 1 & 2 of the Khyber Pakhtunkhwa Cessation of Payment of Arrears on Advance Increments on Higher Educational Qualification Act, 2012. He then challenged the above order before the Supreme Court of Pakistan in Civil Petition No.360/2013, which was dismissed by the Supreme Court vide judgment dated 29.08.2013 in the following manner:

"4. We have considered the above noted admissions made before us by the petitioner and the learned Addl. A.G KPK and seen that indeed as per judgment of the Tribunal dated 12.05.2009, the petitioner was held entitled for the benefit of advance increments on the basis of his higher qualification, but such judgment has lost its efficacy for the purpose of implementation by clear intendment through sections 1 and 2 of thekp Act No.IX of 2012 which read as under:-

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

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


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

2. Cessation of payment of arrears on advance increments on higher educational qualification. ---(1) Notwithstanding anything contained in any decision, judgment and order of any Tribunal or Court including High Court or Supreme Court of Pakistan, for the purpose of any claim for payment of arrears on account of advance increments on higher educational qualification sanctioned in pursuance of any order, letter, office memoranda, notification, instructions and other instruments issued before 01.12.2001, such orders, letters, office memoranda, notifications, instructions



5. Learned counsel for the petitioners referred to two different judgments of the Peshawar High Court. One from the Principal Seat and the other from the Abbottabad Bench and submitted that vide judgment passed by the Peshawar High Court at the Principal Seat, the above Act was set aside. He, however, very fairly informed the Tribunal that the said judgment of the Peshawar High Court was set aside by the Supreme Court of Pakistan in Civil Appeal No.2139 of 2019 vide order dated 02.06.2021, remanding the matter to the Peshawar High Court for re-deciding the writ petitions after issuing notice to the Advocate General Khyber Pakhtunkhwa. It was then the Peshawar High Court decided the writ petition vide judgment dated 14.06.2023 without commenting upon the vires of the Act. Nothing more has been said about the Act by the Peshawar High Court in its judgment dated 14.06.2023. The Act is, therefore, still in the field, therefore, execution application of the petitioner, was dismissed on promulgation of the Act, which order was maintained by the Supreme Court of Pakistan as discussed above. Therefore, the instant petition has no force and dismissed. Consign.

6. *Pronounced in open Court at Abbottabad and given under my hand and seal of the Tribunal on this 30th day of May, 2024.*


(Rashida Bano)
Member (E)
Camp Court, Abbottabad