

منجانب: ثوبیہ شاہد صاحبہ، رکن صوبائی اسمبلی  
کیا وزیر انتظامیہ ارشاد فرمائیں گے کہ

<p>(الف) آیا یہ درست ہے کہ سیکرٹری انتظامیہ کے زیر نگرانی کمیٹی میں محکمہ خزانہ، محکمہ مال اور محکمہ بلدیات کے نمائندوں کی موجودگی میں ہاؤسنگ سبسڈی کے لئے دی گئی درخواستوں کی جانچ پڑتال کی جاتی ہے؟</p>	<p>جی ہاں۔</p>
<p>(ب) آیا یہ بھی درست ہے کہ سپریم کورٹ آف پاکستان نے 2010 میں قومی اور صوبائی اسمبلیوں کے ملازمین کو سول سرونٹ قرار دیا ہے جو کہ لف (الف) پر موجود ہے</p>	<p>سپریم کورٹ آف پاکستان نے بلوچستان اسمبلی کے ملازمین کو سول سرونٹ قرار دیا ہے جو کہ لف (الف) پر موجود ہے</p>
<p>(ج) آیا یہ بھی درست ہے کہ 2020-21 میں صوبائی اسمبلی ملازمین کے کیسز کو مذکورہ کمیٹی نے منظور نہیں کیا ہے؟</p>	<p>محکمہ خزانہ کی رائے لینے کے بعد صوبائی اسمبلی ملازمین کے ہاؤس سبسڈی کیسز ہاؤسنگ سبسڈی کمیٹی کے سامنے نہیں رکھے گئے۔</p>
<p>(د) اگر (ا) تا (ج) کے جوابات اثبات میں ہوں تو مذکورہ صوبائی اسمبلی کے ملازمین کی کیسز منظور نہ کرنے کی وجوہات فراہم کی جائیں نیز آیا صوبائی محکمہ جات صوبائی اسمبلی کے ملازمین کو سول سرونٹ قرار دیتے ہیں یا نہیں مکمل تفصیل فراہم کی جائے۔</p>	<p>جیسا کہ صوبائی اسمبلی کے ملازمین کے کیسز پر محکمہ خزانہ نے اعتراض اٹھایا تھا، بعد ازاں ان سے باقاعدہ اس سلسلے میں خط و کتابت (Correspondence) کی گئی جو کہ لف (ب) پر ہے۔ تاہم صوبائی اسمبلی ملازمین کو سول سرونٹ قرار دینے یا نہ دینے کے متعلق جواب محکمہ عملہ ہی بہتر انداز میں بیان کر سکتا ہے۔</p> <p>البتہ یہاں یہ امر بھی قابل ذکر ہے کہ صوبائی حکومت نے ہاؤسنگ سبسڈی کے تمام نئے آنے والے تمام کیسز مالی سال 2021-22 سے منقطع کر دیئے گئے ہیں لف (ج)</p>

- (ii) Mst. Kalsoom Malik's case (1996 SCMR 710)
- (iii) Noor Hassan Awan (2001 SCMR 367)
- (iv) Ayyaz Baig's case (2002 SCMR 380)
- (v) Daewoo Corporation's case (2004 SCMR 1213)
- (vi) Muhammad Afzal's case (2004 SCMR 1348)
- (vii) M/s. PIA's case (2004 SCMR 1737)
- (viii) Sh. Muhammad Amjad's case (PLD 2004 SC 32)
- (ix) Syed Wajihul Hassan Zaidi's case (PLD 2004 SC 801)

6. In the interest of justice and fairplay we have re-examined the case keeping in view the aforesaid principles with regard to review of the judgment of the apex court under Article 188 of the Constitution. The learned counsel for the petitioner has failed to bring the case within the parameters prescribed by this Court in the aforesaid judgments. We do not find any infirmity or illegality in the impugned judgment, therefore review petition has no force and the same is dismissed.

M.H./G-31/SC

Review dismissed.

2010 S C M R 1886

[Supreme Court of Pakistan]

Present: Nasir-ul-Mulk, Raja Fayyaz Ahmed, Jawwad S. Khawaja,  
Rahmat Hussain Jafferi and Tariq Parvez Khan, JJ

MUHAMMAD AZAM DAVI and others---Appellants

versus

SPEAKER BALOCHISTAN PROVINCIAL ASSEMBLY

and others---Respondents

Civil Appeals Nos. 1513 of 1996, 844 of 1997, 1187 of 1997, 96 of 2009, 23 and 24 of 2010.

(On appeal from the judgments of the Balochistan High Court dated 20-12-1995 passed in C.P. 328 of 1995, Lahore High Court dated 15-5-1997 in W.P. 1616 of 1996, dated 23-7-1997 in W.P. 1569 of 1997, Federal Service Tribunal dated 2-10-2006 in Appeal No.569 (R)CS of 2004 and dated 6-10-2009 in Appeal No. 521(R)CS of 2006).

Att. Secy.  
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Assistant Secretary  
Khyber Pakhtunkhwa  
Assembly

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(a) Constitution of Pakistan (1973)---

---Arts. 87, 127, 208 & 212(3)---Leave to appeal was granted by Supreme Court to determine whether or not, the petitioner being an employee of Provincial Assembly, fell within the scope of the definition of 'civil servant'. [p. 1889] A

(b) Constitution of Pakistan (1973)---

---Arts. 87, 127, 208, 221 & 240---Service Tribunals Act (LXX of 1973), S. 4---Employees of Constitutional bodies---Parliament/ (Provincial Assembly)---Status---Civil servants---Service Tribunal, jurisdiction of---Dispute was with regard to invoking of jurisdiction of Service Tribunal by employees of Constitutional bodies---Validity---Status of employees of Constitutional bodies as to whether or not they were civil servants for the purpose of being amenable to jurisdiction of Service Tribunal depended upon whether or not the Parliament had been conferred power to regulate the terms and conditions of service of such employees---In case the Parliament had been bestowed with such power, either specifically, like in Arts. 87 and 221, of the Constitution or generally as in Art. 240 of the Constitution, whether or not exercised, the employees of such a body would be civil servants---Applying such principle, Art. 87 read with Art. 127 of the Constitution expressly enabled the Parliament and Provincial Assemblies, as the case might be, to make laws for regulation of the terms and conditions of service of the employees of respective establishments---Employees of such bodies were, therefore, civil servants---Judgment of Service Tribunal, declining to exercise jurisdiction was set aside and appeal filed by appellant was deemed to be pending before Service Tribunal---Appeal was allowed. [p. 1898] B & C

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Muhammad Mubeen-us-Salam v. Federation of Pakistan PLD 2006 SC 602; Shaukat Ali Bokhari v. Secretary, National Assembly Secretariat PLD 1997 SC 877; Shahid Iqbal v. Government of Pakistan 1995 SCMR 660; Hadi Bux v. Government of Sindh and another PLD 1994 SC 532; Shahid Iqbal v. Government of Pakistan and another 1995 SCMR 660; Government of the Punjab v. Mubarak Ali Khan and 8 others PLD 1993 SC 375; Registrar Supreme Court of Pakistan v. Qazi Wali Muhammad 1997 SCMR 141; Abbas v. The Hon'ble Chief Justice 1993 SCMR 715; Manzoor Hussain v. Province of the Punjab 1989 PLC (CS) 42; Mubarak Ali Khan v. government of the Punjab 1990 CLC 136 and Chief Election Commissioner of Pakistan v. Miss Nasreen Pervez 2009 SCMR 329 ref.

Hafiz S.A. Rehman, Senior Advocate Supreme Court for Appellants (in Civil Appeal No.1513 of 1996).

Assistant Secretary  
Khyber Pakhtunkhwa  
Assembly

Nemo. for Appellants (in Civil Appeal No. 844 of 1997).

Zahid Farani, Advocate Supreme Court and M.S. Khattak, Advocate-on-Record for Appellants (in Civil Appeal No. 1187 of 1997).

Appellants in person (in Civil Appeal No. 96 of 2009).

Raja Abdul Ghafoor, Advocate-on-Record for Appellants (in Civil Appeal No. 23 of 2010).

Abdul Rehman Siddiqui, Advocate Supreme Court for Appellants (in Civil Appeal No. 24 of 2010).

Raja M. Afsar, Advocate Supreme Court for Respondent No. 1 and 2 (in Civil Appeal No. 1513 of 1996).

Respondent No. 3 ex parte (in Civil Appeal No. 1513 of 1996).

Raja Abdul Ghafoor, Advocate-on-Record for the Federation (in Civil Appeal No. 844 of 1997).

Kh. M. Haris AG, Punjab, Saeed Yousaf, Additional Advocate-General and M. Akram DR, Lahore High Court for the Government of Punjab (in Civil Appeal No. 1187 of 1997).

Raja Abdul Ghafoor, Advocate-on-Record and Saadat H. Khan, Litigation Officer for Respondents (in Civil Appeal No. 96 of 2009).

Nemo for others (in Civil Appeal No. 96 of 2009).

Haider Hussain, Advocate Supreme Court and M.S. Khattak, Advocate-on-Record for Respondent No. 2 (in Civil Appeal No. 23 of 2010).

Nemo for others (in Civil Appeal No. 23 of 2010).

Haider Hussain Advocate Supreme Court and M.S. Khattak, Advocate-on-Record for Respondent No. 2 (in Civil Appeal No. 24 of 2010).

Raja Abdul Ghafoor, Advocate-on-Record for the Federation (in CA 24 of 2010).

Abid Saqi, Deputy Advocate-General and Ch. Akhtar Ali, Advocate-on-Record for Respondents Nos. 1 and 2 (in Civil Appeal No. 24 of 2010).

Kh. Haris Ahmed, Advocate-General, Punjab and M. Akram Dy, R. (Lahore HC) for Respondent No. 3 (in Civil Appeal No. 24 of 2010).

Date of hearing: 27th May, 2010.

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Assistant Secretary  
Khyber Pakhtunkhwa  
Assembly

JUDGMENT

NASIR-UL-MULK, J.---Muhammad Azam Davi, the appellant in Civil Appeal No. 1513 of 1996, was serving as Assistant Secretary (BPS-17) in the Secretariat of Balochistan Provincial Assembly. The respondent Khair Muhammad Shahwani, who was then serving as Protocol Officer in the Secretariat, was appointed as Deputy Secretary (BPS-18) by transfer by notification dated 6-4-1995. The appellant assailed the legality of the said notification before the Balochistan High Court, through a Constitutional petition, praying that since the respondent belonged to a different category of service he was not eligible for appointment to the said post and that instead the appellant be considered for such appointment. Without discussing the merits of the plea of the appellant, the Constitutional petition was dismissed on 20-12-1995, on the ground of its non-maintainability. The Court held that as the appellant was a civil servant and the question raised related to his eligibility to be appointed to a post, the matter fell within the exclusive jurisdiction of the Service Tribunal. Leave to appeal, the contents whereof would be reproduced later, was granted to the appellant on 18-6-1996 to determine whether or not, the appellant being an employee of the Provincial Assembly, fell within the scope of the definition of "civil servant".

2. Syed Shaukat Ali Bokhari, appellant in Civil Appeal No. 844 of 1997, was serving as Additional Secretary (BPS-21) in the Secretariat of the National Assembly. He was suspended by the order of the Speaker of the Assembly on 10-4-1996. His representation for reinstatement was accepted by the Speaker on 14-5-1996. However, he was reinstated with effect from the date of the notification issued on 18-9-1996. The appellant challenged the validity of this notification before the Lahore High Court. His petition was dismissed on the ground that being a civil servant his petition was barred under Article 212 of the Constitution. To determine his status in the light of the previous judgments of this Court, leave to appeal was granted on 8-7-1997.

3. The appellant in Civil Appeal No. 1187 of 1997, Muhammad Aslam Shami, was a judicial officer in the subordinate judiciary of Punjab and was sent on deputation to the Ministry of Law, Justice and Human Rights Division in the year 1994. In the year 1995, his services were placed at the disposal of the National Assembly Secretariat. Apprehending his repatriation to the judicial service of Punjab, the appellant filed writ petition before the Lahore High Court, claiming permanent absorption in the National Assembly Secretariat. The writ petition was dismissed on 13-5-1997 on the ground, inter alia, that the appellant being a civil servant could not invoke the Constitutional jurisdiction of the High Court in view of the bar contained in Article 212

*Attest*  
*A. Chohan*

Assistant Secretary  
Assistant Secretary  
Khyber Pakhtunkhwa  
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of the Constitution. In the light of the grant of leave in two cases referred to above, leave to appeal was also granted to the appellant on 8-10-1997. Prior to this a Single Judge-in-Chambers had, on 31-7-1997, suspended a notification dated 5-7-1997 repatriating the appellant to his parent department. The order of suspension has remained in operation since then. We have been informed that the appellant has in the meanwhile reached the age of superannuation.

4. In Civil Appeal No.96 of 2009, filed by Malik Ghulam Jillani, arising from the judgment of the Federal Service Tribunal, the Tribunal took a different view. Dismissing the appeal of the appellant against his placement in the seniority list the Tribunal held that the appellant being an employee of the National Assembly Secretariat was not a civil servant. The Tribunal took this view in the light of the judgments of this Court in Muhammad Mubeen-us-Salam v. Federation of Pakistan (PLD 2006 SC 602), Shaikh Ali Bokhari v. Secretary, National Assembly Secretariat (PLD 1997 SC 877) and Shahid Iqbal v. Government of Pakistan (1995 SCMR 660).

5. Civil Appeals Nos. 23 and 24 of 2010, arise from the judgment of the Federal Service Tribunal dated 6-10-2009, whereby the appeal of the respondent, Sikandar Hayat Khattak, Stenographer in the Senate Secretariat, was allowed and he was granted seniority from the date of his first appointment as Stenotypist. The Chairman Senate has impugned the said judgment in Civil Appeal No.23 of 2010, and Abid Faraz whose seniority has been affected, has filed Civil Appeal No. 24 of 2010.

6. Leave to appeal in the first of these cases was granted to Muhammad Azam Davi on 18-6-1996 and since divergent views in different cases decided by this Court were highlighted in the leave granting order, it is appropriate to reproduce the same in extenso:--

"In exercise of powers conferred upon him under Rule 10 of the Balochistan Provincial Assembly Secretariat (Recruitment) Rules, 1973 and on recommendations of the Promotion Committee, Speaker, Balochistan Provincial Assembly, vide Notification dated the 6th April, 1995, appointed respondent No.2 to a newly-created post of Deputy Secretary (B-18) by transfer who was already serving in the Balochistan Provincial Assembly as Protocol Officer (B-18). The petitioner, who claims to be senior to respondent No. 2 made a representation to the Governor, Balochistan and having failed to get any response, filed Constitutional Petition No.328 of 1995 in the High Court of Balochistan, Quetta, which was dismissed by a learned Division Bench vide order dated 20-12-1995 and while relying

Assistant Secretary  
Khyber Pakhtunkhwa  
Assembly

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on the law laid down by this Court in Hadi Bux v. Government of Sindh and another (PLD 1994 SC 532) it was held that the petitioner despite being the employee of the Balochistan Provincial Assembly "was holding a civil post in connection with the affairs of Province" therefore, he was covered by the definition of section 2(a) of the Balochistan Civil Servants Act (IX of 1973) for the purpose of invoking the jurisdiction of the Balochistan Service Tribunal. The petitioner seeks leave to appeal against this judgment of the High Court of Balochistan.

2. Learned counsel for the petitioner has contended that the learned Judges in the High Court while making reference to the case of Hadi Bux supra have not taken notice of the case of Shahid Iqbal v. Government of Pakistan and another (1995 SCMR 660) wherein contrary view had been expressed. It was next submitted that in this context the principle enunciated by this Court in the case of Government of the Punjab vs. Mubarak Ali Khan and 8 others (PLD 1993 SC 375) was followed holding that 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 a Province for the limited purpose of upholding their claim for Secretariat Allowance. But the ouster of jurisdiction of the High Court under Article 212 of the Constitution was not approved.

3. Leave to appeal is, therefore, granted to the petitioner to examine whether the learned High Court of Balochistan had correctly held that an employee of the Balochistan Provincial Assembly was a Civil Servant and entitled as such to maintain an appeal in respect of terms and conditions of his service under the Balochistan Service Tribunals Act, 1974?"

7. After leave was granted in the above case, another petition was filed by Syed Shaukat Ali Bokhari involving the same question as to whether the petitioner serving in the National Assembly Secretariat was a civil servant. Leave to appeal was granted to him with reference to the same judgments cited in the leave granting order in the case of Muhammad Azam Davi with the addition of a later judgment Registrar Supreme Court of Pakistan v. Qazi Wali Muhammad (1997 SCMR 141).

8. The judgments mentioned in the leave granting order and cited at the bar can broadly be divided into two categories, one involving employees of the establishment of the Supreme Court of Pakistan and the High Courts and the other relating those serving in the Houses of Parliament or the Provincial Assemblies.

9. In the first category fall the judgments in Abbas v. The Hon'ble

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Assistant Secretary  
Khyber Pakhtunkhwa  
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Chief Justice (1993 SCMR 715), *Government of the Punjab v. Mubarak* (ibid) and *Registrar Supreme Court of Pakistan v. Qazi Wali Muhammad* (ibid). In the second are the cases of *Hadi Bux v. Government of Sindh* and *Shahid Iqbal v. Government of Pakistan* (ibid). The cases before us belong to the second category. This distinction is to be kept in mind while examining the manner in which the Courts have dealt with each category in determining whether or not employees of these institutions are civil servants for the purpose of seeking redressal of their grievances before the Service Tribunals.

10. It will be useful to first have a look at the case law relating to the status of the employees of the establishments of the Supreme Court of Pakistan and the High Courts, as it provides useful guidance to determine the status of the employees of the other category. The judgment in the case of *Abbas v. The Hon'ble Chief Justice* (ibid) authored by Shafi-ur-Rehman, J. is generally cited for the proposition that the employees of the High Court are civil servants and thus amenable to the jurisdiction of the Service Tribunal. In that case an employee of the Establishment of the Sindh High Court had filed an appeal before the Service Tribunal assailing the order of the Chief Justice of the Court regarding his seniority. The Tribunal declined to exercise jurisdiction on the ground, inter alia, that the order impugned before it arose out of the High Court Rules and not the Rules framed under section 26 of the Sindh Civil Servants Act, 1973. This reasoning of the Tribunal was rejected by this Court and it was held that the High Court Establishment Rules would be deemed to be Rules under section 26 of the Act in view of the Article 241 of the Constitution, which provides that until an appropriate legislature enacts law under Article 240 of the Constitution, all existing Rules and Orders shall continue to be in force. The petitioner had also pleaded that he was not civil servant in view of the pronouncement made by the Lahore High Court in *Manzoor Hussain v. Province of the Punjab* (1989 PLC(CS) 42) and *Mubarak Ali Khan v. Government of the Punjab* (1990 CLC 136). The Court declined to accept this contention holding, "we would not undertake an examination of it because the Tribunal has not recorded any finding on it. Besides, the appellant having himself invoked the jurisdiction of the Service Tribunal cannot be permitted to express doubts about it. Additionally, it is not a question on which leave to appeal has been granted under Article 212(3) of the Constitution". The question as to whether or not an employee of the High Court establishment was a civil servant was thus never determined in *Abbas v. The Hon'ble Chief Justice* (supra) and the same was left open. The case of *Abbas* was decided on 2-2-1993 and soon thereafter on 30-3-1993 this Court decided *Government of Punjab v. Mubarak Ali Khan* (ibid) and incidentally the judgment in the case was also authored by Shafi-ur-Rehman, J. The issue

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Assistant Secretary  
Khyber Pakhtunkhwa  
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before the Court was the grant of Secretariat Allowance to the employees of the High Courts, granted to them by the High Courts in Constitutional Petitions. On behalf of the Governments of Balochistan and N.-W.F.P. objection was raised to the exercise of jurisdiction by the High Courts on the ground that the employees of the High Court Establishment were civil servants. Rejecting this argument, the Court held, "In the context of the Constitutional provisions reproduced above, it is clear that in the matter of the officers and servants employed in the establishment of the Supreme Court of Pakistan and the High Courts the legislature had not been given any role to determine the terms and conditions of the employees which of course would include their remuneration also. Such an exclusionary role was attributed to the requirement of maintaining the independence of judiciary in the case of Supreme Court Employees Welfare Association v. Union of India and others (AIR 1990 SC 334). In exercise of this or its predecessor provision both the Supreme Court and the High Courts have framed Rules."

11. Elaborate discussion as to whether the employees of the Supreme Court were civil servants or not was subsequently made in the Registrar Supreme Court of Pakistan v. Qazi Wali Muhammad (ibid). The judgment lays down the litmus test for determining as to which of the employees in the 'Service of Pakistan' can be termed as civil servant for the purpose of filing appeals before the Service Tribunals regarding their terms and conditions of service. The question before the Court was whether an employee of the Supreme Court was a civil servant within the scope of the definition in the Civil Servants Act, 1973. The case was heard by a three Member Bench and each Hon'ble Member wrote his individual opinion, all agreeing that the Federal Service Tribunal had wrongly held that the employees of the Supreme Court were civil servants and thus amenable to the jurisdiction of the Tribunal. The common theme in the three opinions was that since the Supreme Court, the Federal Shariat Court and the High Courts, and not the Parliament, have been conferred powers under Article 208 of the Constitution to make rules regarding terms and conditions of employment of their officers and servants, they cannot be termed 'civil servants'.

12. In the light of the case-law on the subject, Hafiz S.A. Rehman, Senior Advocate Supreme Court, appearing for Muhammad Azam Davi, submitted that a distinction be made between the employees of the Constitutional bodies for whom provisions have been made in the Constitution regarding their terms and conditions of service and those regarding whom the Constitution is silent. In this context, the learned counsel referred to Articles 168, 228 and 242 of the Constitution, relating respectively to the office of the Auditor General for Pakistan, Council of Islamic Ideology and Public Service Commission of Pakistan.

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which do not make any provisions for regulating the services of the employees of such bodies. The learned counsel contended that such employees are civil servants as their terms and conditions of service are to be determined by the Parliament or the Provincial Assemblies, as the case may be, under Article 240 of the Constitution. On the other hand, it was argued, that Article 87 of the Constitution, though empowers the Parliament, to regulate by law the recruitment and conditions of service of appointment of the secretarial staff of the Parliament, however, until such laws are enacted, the services of the staff are to be regulated by Rules framed by the Speaker of the National Assembly or the Chairman of the Senate with the approval of the President of Pakistan. The learned counsel pointed out that no such law has till now been enacted by the Parliament and the services of the employees of both the Houses of Parliament are regulated by the Rules framed by the Speaker of the National Assembly and the Chairman of the Senate. That the provision of Article 87 of the Constitution are applicable to the Provincial Assemblies by virtue of Article 127 of the Constitution and that even the Provincial Assemblies have not enacted any law for regulating the services of their employees. The learned counsel, therefore, contended that the Civil Servants Act, which provides definition of 'civil servant', has been enacted under Article 240 of the Constitution and not under Article 87 of the Constitution. That so long as the, terms and conditions of the employees of the Parliament or the Provincial Assemblies are regulated by Rules framed by the heads of the institutions, their employees cannot be treated as 'civil servant'. It was thus contended that the High Court of Balochistan had erred in dismissing the petitioner's Constitutional Petition on the ground that he was a civil servant and his remedy lay before the Service Tribunal.

13. Raja M. Afsar, Advocate Supreme Court, representing the Speaker of the Balochistan Provincial Assembly, argued that there was no conflict in the opinions expressed in the judgments referred to in the leave granting orders. Referring to para-2 of the leave granting order, that the High Court had not taken note of the case of *Shahid Iqbal v. Government of Pakistan* (ibid), the learned counsel pointed that the said case was brought to the notice of the High Court and was duly discussed, but not followed on the ground that it was made on concessional statements by the parties. The learned counsel submitted that the petitioner being an employee of the Balochistan Assembly was holding a post connected with the affairs of the Province as defined in section 2(1)(b) of the Balochistan Civil Servants Act, 1974. That the provisions of Article 212 of the Constitution relating to setting up the Administrative Tribunals is not confined to terms and conditions of 'civil servant' but those in the 'service of Pakistan' as defined in Article 250 of the Constitution. He concluded by submitting that by virtue of

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Khyber Pakhtunkhwa  
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pronouncement made in the Hadi Bux's case (supra), the petitioner was a civil servant and thus his Constitutional Petition before the High Court, regarding terms of his service was not maintainable.

14. Khawaja Haris Ahmed, the learned Advocate-General, appearing on behalf of Government of Punjab, which was later impleaded as respondent (in Civil Appeal No. 1187 of 1997) read out extensively from the judgment in Qazi Wali Muhammad's case (ibid) and contended that a clear distinction has been drawn between the status of employees of the Supreme Court and the High Courts and those of the other Constitutional bodies, including the Parliament and the Provincial Assemblies. That the latter, and not the former, were declared civil servants.

15. We agree with the learned Advocate General Punjab. The distinction between the status of the employees of the two categories of the Constitutional bodies have been drawn from the contents of the relevant Constitutional provisions; Article 87 relates to the employees of the Parliament and the Provincial Assemblies and Article 208 of the superior Courts. They read:--

Article 87:

(1) Each House shall have a separate Secretariat:

Provided that nothing in this clause shall be construed as preventing the creation of posts common to both Houses.

(2) Majlis-e-Shoora (Parliament) may by law regulate the recruitment and the conditions of service of persons appointed to the secretarial staff of either House.

(3) Until provision is made by Majlis-e-Shoora (Parliament) under clause (2), the Speaker or, as the case may be, Chairman may with the approval of the President, make rules regulating the recruitment, and the conditions of service, of persons appointed to the secretariat staff of the National Assembly or the Senate.

Article 127 of the Constitution makes the provisions of Article 87 applicable to the Provincial Assemblies with corresponding modification.

Article 208:

"The Supreme Court and the Federal Shariat Court, with the approval of the President and a High Court, with the approval of the Governor concerned, may make rules providing for the appointment by the Court of officers and servants of the Court and for their terms and conditions of employment."

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16. Though the issue before us is the determination of the status of the employees of the Parliament and the Provincial Assemblies, for resolving this issue, the reasoning given in the judgments for declaring the employees of the superior Courts as not civil servants is of immense help. In the passage reproduced from the case of Mubarik Ali Khan's case (supra) in Para-10 above, it was held that the officers and servants in the Establishments of the Supreme Court of Pakistan and the High Courts were not civil servants, as in order to maintain the independence of the judiciary, the Parliament was not given any role in determining their terms and conditions of service. This principle was reiterated in Qazi Wali Muhammad's case (ibid) and Saiduzzaman Siddiqui, J, in his judgment held that "It was observed by this Court in Mubarik's case, supra, 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."

17. Of direct relevance to the issue before us is a very clear enunciation of the law and distinction drawn by Fazal Karim, J, in his separate opinion in Qazi Wali Muhammad's case (ibid) between the Articles 87 and 208 of the Constitution. The learned Judge observed as under:--

"This special provision granting power to the Supreme Court, the Federal Shariat Court and the High Courts to make law for the appointment of their officers and servants and the terms and conditions for their employment is to be contrasted with the Articles of the Constitution such as Articles 87, 221 and 240 of the Constitution. Article 87, by its clause (2), empowers the Parliament to make law for regulating the recruitment and the conditions of service of persons appointed to the Secretarial Staff of either House of Parliament..."

Further elaborating, Fazal Karim, J, held that "While there is no doubt that the Parliament and the Provincial Assemblies are supreme in the sphere of the powers granted to them by Articles, as such Articles 87, 221 and 220 of the Constitution, there is equally no doubt that the Parliament has no legislative role to play in respect of the officers and servants specially dealt with by Article 208 of the Constitution." Adverting to Bux's case (supra) relied upon by the counsel for the respondents, Fazal Karim, J, distinguished it by holding "it was a case of an employee of the Sindh Provincial Assembly; it has been seen above that in respect of the employees of the Parliament and the Provincial Assemblies, the power to make law vests in the Parliament or, as the case may be, in the Provincial Assemblies."

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Assistant Secretary  
Khyber Pakhtunkhwa  
Assembly

18. From the above discussion in the two judgments, it follows that the factor which distinguishes the status of the employees of the two categories is the exclusion or inclusion of the role of the Parliament in laying down Rules of service for the employees. Because of the non-conferment of power on the Parliament to make rules in case of the employees of superior Courts, such employees have been held not to be civil servants. That as a corollary such status cannot be granted to the employees of the Establishments of the Parliament and the Provincial Assemblies as the Constitution has conferred on the Parliament and the Provincial Assemblies the powers to make law for the service of their employees.

19. The two cases directly relevant to the issue in these appeals are Hadi Bux v. Government of Sindh and Shahid Iqbal v. Government of Pakistan (ibid). In the first case, the appellant had impugned the judgment of the Sindh Service Tribunal, dismissing his service appeal on the ground of its non-maintainability, holding that being an employee of the Sindh Assembly Secretariat he could not enjoy the status of the civil servant. This finding was reversed and it was held that "the appellant was holding a civil post and as the meaning of the word "Government" includes legislative functions, the appellant was holding civil post in connection with the affairs of the Province." We need not reiterate the reasoning given in the judgment in holding members of Provincial Assemblies Secretariat as civil servants but agree that such an employee does hold a post in connection with the affairs of the Province. The case was, therefore, remanded to the Tribunal for deciding the appellant's appeal on merits. The latter case of Shahid Iqbal (ibid) is generally cited for a contrary view. Upon perusal of the judgment in this case, we found that there was no discussion, whatsoever, on the issue, nor the earlier case of Hadi Bux (supra) was cited before the Court. As to the status of the petitioner, an employee of the Senate Secretariat, it was observed that "It is not disputed before us that the employees of Senate do not fall in the category of civil servants in view of the provisions contained in Article 87(3) of the Constitution". Since these observations were based on a concessional statement without any discussion, it does not lay down any principle of law. Thus in the absence of any judgment to the contrary, the principle laid down in Hadi Bux's (supra) case holds the field.

20. More recently a similar question arose in the case of an employee of another Constitutional Body, the Election Commission of Pakistan, in the case of Chief Election Commissioner of Pakistan v. Miss Nasreen Pervez (2009 SCMR 329). Refuting the arguments on behalf of the Chief Election Commissioner that the respondent, who was granted relief by the Federal Service Tribunal, was not a civil servant, it was

Att. Secy  
AC/Secy  
Assistant Secretary  
Khyber Pakhtunkhwa  
Assembly

held that "obviously the respondent whose terms and conditions were determinable by the Federal Legislature under Article 221 of the Constitution and was governed by statutory Rules are to be considered civil servants". While so holding, the Court distinguished the cases of Mubarak Ali Khan, and Qazi Wali Muhammad (ibid) on the ground that the Parliament had not been giving any role in regulating the terms and conditions of service of the Courts' employees under Article 208 of the Constitution. That, thus, the principle laid down in the said judgments were held not applicable to the case before the Court because Article 221 of the Constitution, like Article 240 expressly enables the Parliament to regulate the terms and conditions of the employees of the Election Commission of Pakistan.

21. From a detailed examination of the case-law mentioned in the leave granting orders and that of the case of Chief Election Commissioner of Pakistan v. Miss Nasreen Pervez (ibid), decided recently in the year 2009, we do not find inconsistency in the case-law. The principle emerging from these judgments is that the status of the employees of the Constitutional bodies as to whether or not they are civil servants for the purpose of being amenable to the jurisdiction of the Service Tribunal depends upon whether or not the Parliament has been conferred power to regulate the terms and conditions of service of such employees. In case the Parliament has been bestowed with such a power, either specifically, like in Articles 87 and 221, or generally as in Article 240, whether or not exercised, the employees of such a body would be civil servants. Applying this principle to the cases before us, Article 87 read with Article 127 of the Constitution expressly enables the Parliament and the Provincial Assemblies, as the case may be, to make laws for regulation of the terms and conditions of service of the employees of the respective Establishments. The employees of such bodies are, therefore, civil servants.

22. After holding as above, we now take up the individual cases. The judgments of the High Courts impugned in Civil Appeals Nos. 1513 of 1996, 844 of 1997 and 1187 of 1997, dismissing the appellants' Constitutional petitions, by holding them to be civil servants are, therefore to be maintained. Civil Appeal No. 96 of 2009, filed against the judgment of the Service Tribunal, declining to exercise its jurisdiction, cannot be sustained. Civil Appeals Nos. 23 and 24 of 2010, arise from exercise of jurisdiction by the Federal Service Tribunal in appeal filed by an employee of the Senate Secretariat, the same does not, therefore, suffer from any jurisdictional defect.

23. Resultantly, Civil Appeals Nos. 1513 of 1996, 844 of 1997 and 1187 of 1997 are dismissed. Civil Appeal No. 96 of 2009, is allowed and

Assistant Secretary  
Khyber Pakhtunkhwa  
Assembly

The Secretary to Govt. of Khyber Pakhtunkhwa,  
Finance Department.

Subject: HOUSE SUBSIDY ALLOWANCE FOR GOVERNMENT SERVANTS.

Dear Sir,

I am directed to refer to the subject noted above and to state that vide Finance Department letter No. FD.SO(SR.IV)1-44/79 dated 07.04.1979 all the Civil Servants stand eligible/ entitled for House Subsidy Allowance.

During a recent meeting of House Subsidy Committee, it has been observed that Government Servants of KP PSC, Provincial Assembly Secretariat, Police Department etc, also approach this department for sanctioning of the said allowance. The committee thus decided that advice/ opinion of Finance Department may be solicited that

- i. Whether the employees of above referred department are entitled for the House Subsidy Allowance or otherwise ?
- ii. If otherwise would it be appropriate to include all the government servants in the "entitled" category for this allowance or otherwise ?

Yours Faithfully,

*OK*

*Faw*  
ESTATE OFFICER

Endst of Even No and Date:  
Copy forwarded to the:-

*A/S*

- 1. PS to Secretary Administration Department.
- 2. PS to Additional Secretary-1, Administration Department.

*OK*

*Faw*  
ESTATE OFFICER

Dated Peshawar, 19.02.21

To:

The Secretary to Govt. of Khyber Pakhtunkhwa,  
Administration Department,  
Peshawar.

489 19.02.21

Atten: Estate Officer.

Subject: HOUSE SUBSIDY ALLOWANCE FOR GOVERNMENT SERVANTS.

Dear Sir,

I am directed to refer to your letter No. EO(Admn)/R-I/House Subsidy, dated 11<sup>th</sup> January, 2021 on the subject noted above and to state that housing subsidy policy, 1979 is meant for Civil Servants only and other employees are not entitled to the housing subsidy allowance.

Therefore, Finance Department regrets its ability to accede to the proposal of the Administration Department which is not covered under the existing policy.

Yours faithfully

*(Signature)*  
(Niamat Khan)  
Section Officer (SR-III)

PA to Addl. Secy. I. Admn Deptt.  
Diary No. 442. Dated. 19.2.21

19/2

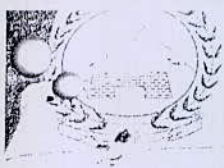
*(Signature)*  
SECY (ADMIN)  
As Admn

*(Signature)*

*(Signature)*  
EO

No Put up  
22/2  
AED





GOVERNMENT OF  
KHYBER PAKHTUNKHWA  
ADMINISTRATION DEPARTMENT

32

No. EO(Admn)R-1/House Subsidy  
Dated Peshawar the 03.03.2021

To,

The Secretary to Govt. of Khyber Pakhtunkhwa,  
Finance Department.

Subject: HOUSE SUBSIDY ALLOWANCE FOR GOVERNMENT SERVANTS.

Dear Sir,

I am directed to refer to your letter No. SO(SR-III)/FD/1-27/2021 dated 16-02-2021 on the subject noted above and to state that as per practice in vogue House Subsidy Allowance is being sanctioned to all Civil Servants (who fulfill the criteria) alongwith the below mentioned departments/authorities.

- > Provincial Assembly Secretariat, Khyber Pakhtunkhwa.
- > Police Department Khyber Pakhtunkhwa.
- > Khyber Pakhtunkhwa Public Service Commission.
- > Provincial Ombudsman.
- > Khyber Pakhtunkhwa Highways Authority, etc.

The employees of above mentioned departments who are not civil servants are availing the House Subsidy Allowance and most of them are retired from service as well. Moreover, Finance department being member of Housing Subsidy committee has never made any observations during the meetings to sanction house subsidy allowance to above mentioned department's employees.

It is further stated that as per decision of Supreme Court of Pakistan in its judgment (copy enclosed) the employees of Parliament & Provincial Assemblies have been declared Civil Servants.

In view of the above, it is requested to guide this department, whether the employees who are availing the allowance since long may be discontinued/ cancelled or the policy may be revised to the extent of all government servants, making them eligible/entitled for the said allowance.

An early reply will be highly appreciated.

Yours Faithfully,

(Encls As Above)

Endst of Even No and Date:

Copy forwarded to the:-

1. PS to Secretary Administration Department.
2. PS to Additional Secretary-I, Administration Department.

o/c  
ESTATE OFFICER

o/c  
ESTATE OFFICER



GOVERNMENT OF KHYBER PAKHTUNKHWA  
FINANCE DEPARTMENT

33

SO(SR-III)/FD/1-27/360/2021  
Dated Peshawar, the 29.03.2021

To

*M. Khan*

The Secretary to Govt. of Khyber Pakhtunkhwa,  
Administration Department,  
Peshawar

968 01.04.21

Atten: Estate Officer

Subject: HOUSE SUBSIDY ALLOWANCE FOR GOVERNMENT SERVANTS.

Dear Sir,

I am directed to refer to your letter No. EO(Admn)R-1/House Subsidy, dated 03<sup>rd</sup> March, 2021 on the subject noted above and to state that housing subsidy policy, 1979 is meant for Civil Servants only and other employees are not entitled to the housing subsidy allowance which is not covered under policy and thus cannot be extended to other public servants.

Therefore, Finance Department regrets its ability once again to accede to the proposal of the Administration Department.

Yours sincerely

*Niamat Khan*

(Niamat Khan)  
Section Officer (SR-III)

PA to Addl Secy-I Admn Deptt:  
Diary No. 890 DATED 30.3.21

SECY:(ADMIN)

*As Admn*

*20/04*

*mm*  
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*Opd*  
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*5/4/21*

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*tm*  
*6/4/21*

*As Admn*

*As Admn*



GOVERNMENT OF KHYBER PAKHTUNKHWA  
FINANCE DEPARTMENT  
(REGULATION WING)

Dated Peshawar the: 07-07-2021

NOTIFICATION

No. FD(SOSR-II)2-5/2021/H.R Allow; The Government of Khyber Pakhtunkhwa has been pleased to increase the rate of House Rent Allowance to the Civil Servants, Khyber Pakhtunkhwa w.e.f. 01.06.2021 as per breakup given below:

BPS	HOUSE RENT ALLOWANCE			
	Existing rate per month		Revised rate per month	
	Peshawar (45% of initial Basic Pay 2008)	Rest of KP (30% in all other districts)	Peshawar	Rest of KP (45% of initial Basic Pay 2008)
1	2,005	1,337	2,697	2,005
2	2,049	1,366	2,719	2,049
3	2,120	1,413	3,542	2,120
4	2,187	1,458	3,576	2,187
5	2,255	1,503	3,610	2,255
6	2,315	1,544	3,640	2,315
7	2,383	1,589	4,968	2,383
8	2,474	1,649	5,013	2,474
9	2,579	1,719	5,066	2,579
10	2,670	1,780	5,111	2,670
11	2,778	1,852	6,909	2,778
12	2,940	1,960	6,990	2,940
13	3,135	2,090	7,088	3,135
14	3,321	2,214	8,640	3,321
15	3,524	2,349	8,741	3,524
16	4,091	2,727	9,024	4,091
17	6,649	4,433	12,557	6,649
18	8,714	5,810	13,590	8,714
19	13,284	8,856	18,684	13,284
20	15,758	10,505	23,074	15,758
21	17,469	11,646	27,024	17,469
22	18,684	12,456	32,292	18,684

2. All Autonomous/Semi-Autonomous/Medical Teaching Institutions/Other Institutions and Authorities under Provincial Government shall adopt this notification within their respective organizations with the approval of their Competent Forum within their available resources.
3. Housing subsidy for new entrants shall stand discontinued forthwith.
4. All other existing terms and conditions regulating the House Rent Allowance will continue to apply.

- Sd -  
Secretary to Govt. of Khyber Pakhtunkhwa  
Finance Department

Endst. No. No. FD (SOSR-II)2-5/2021

Dated Peshawar the: 07<sup>th</sup> July, 2021

A copy of the above is forwarded for information & necessary action to the:

1. Secretaries to Government of Sindh, Punjab and Baluchistan, Finance Department
2. All Administrative Secretaries to government of Khyber Pakhtunkhwa.