

**BEFORE
THE FEDERAL TAX OMBUDSMAN
ISLAMABAD**

**COMPLAINT NOS. 0541, 1068, 1069, 1070, 1071, 1076, 1126,
1128, 1129, 1131, 1133, 1134, 1135, 1136, 1138, 1140, 1143,
1166, 1168, 1169, 1170, 1171, 1172, 1176, 1178, 1181, 1193,
1194, 1195, & 1196/PWR/IT/2022**

Dated: 16.02.2022*R. O. Peshawar

Mr. Umer Ayaz Khan,
Govt. Post Graduate College,
Bannu & Others.

... Complainant's

V e r s u s

The Secretary,
Revenue Division,
Islamabad.

... Respondent

Dealing Officer	:	Mr. Ziauddin Wazir, Advisor
Appraisal by	:	Mr. Muhammad Tanvir Akhtar, Advisor
Authorized Representative	:	N/A,
Departmental Representative	:	N/A,

FINDINGS/RECOMMENDATIONS

This complaint has been filed under Section 10(1) of the Federal Tax Ombudsman Ordinance, 2000 (FTO Ordinance) against Commissioner IR, D.I. Khan Zone.

2. Briefly, the facts of the case that complainant is a temporary lecturer at Post Graduate College, Bannu. The said college deducted income tax at rate of 20% from salary of the complainant. According to complainant his salary is not liable to tax.

3. Identical complaints have been filed by lecturers of education institutions tabulated below:

S.NO	COMPLAINT NO.	NAME OF COMPLAINANT	CNIC NO.	DESIGNATION/PLACE OF POSTING
1	C.No.1068/PWR/IT/2022	Mrs. Firdous Syed	11101-9572167-4	Government Girls Post Graduate College, Bannu
2	C.No.1069/PWR/IT/2022	Mrs. Tamheeda	36302-3962680-0	DO
3	C.No.1070/PWR/IT/2022	Mrs. Mahwish Iqbal	11101-0223917-8	DO
4	C.No.1071/PWR/IT/2022	Mrs. Farheen Khan	11101-1439183-4	DO
5	C.No.1076/PWR/IT/2022	Mrs. Memoona Gul	11101-1531484-0	Government Girls Degree College KDA Karak
6	C.No.1126/PWR/IT/2022	Mr. Waqar Ali Shah	11101-4018827-7	Lecturer/ Post Graduate College, Bannu.
7	C.No.1128/PWR/IT/2022	Rauf Khan	11101-7097390-7	DO
8	C.No.1129/PWR/IT/2022	Mr. Muhammad Fawad	11101-2818717-9	DO
9	C.No.1131/PWR/IT/2022	Mr. Sohail Khan	11101-5790572-3	DO
10	C.No.1133/PWR/IT/2022	Mr. Faizan Ullah	11102-0371048-5	DO
11	C.No.1134/PWR/IT/2022	Mr. Rehmat Ullah Khan	11101-8397498-5	DO
12	C.No.1135/PWR/IT/2022	Mr. Mansoor Khan	11101-9251482-5	DO
13	C.No.1136/PWR/IT/2022	Mr. Muhammad Aqib Khan	11101-4370502-1	DO
14	C.No.1138/PWR/IT/2022	Mr. Israr Ullah	21505-4719100-7	DO
15	C.No.1140/PWR/IT/2022	Muhammad Tayyeb Khan	11101-8904438-9	DO
16	C.No.1143/PWR/IT/2022	Mr. Sufian Mehmood	11101-3334971-3	DO
17	C.No.1166/PWR/IT/2022	Mrs. Asma Gul	11101-5525406-4	Government Girls Post Graduate College, Bannu.
18	C.No.1168/PWR/IT/2022	Mrs. Laila Amin	11101-5720278-2	DO
19	C.No.1169/PWR/IT/2022	Mrs. Hassina Bibi	11101-899752-8	DO
20	C.No.1170/PWR/IT/2022	Mrs. Shumaila Bibi	11101-2038286-2	DO
21	C.No.1171/PWR/IT/2022	Mrs. Noreen Jamal	11101-3654826-0	DO
22	C.No.1172/PWR/IT/2022	Mrs. Haseena Khan	11101-9764618-8	DO
23	C.No.1176/PWR/IT/2022	Mrs. Shandana Mahnoor	11101-4356028-4	DO
24	C.No.1178/PWR/IT/2022	Mrs. Sajila Karim Khan	11101-5359458-2	DO
25	C.No.1181/PWR/IT/2022	Mrs. Noor Nama Jamal	11101-4609763-8	DO
26	C.No.1193/PWR/IT/2022	Mrs. Nudrat Shaheen	11101-8778405-8	DO
27	C.No.1194/PWR/IT/2022	Mrs. Muzdalfa Rehman	11101-6916231-6	DO
28	C.No.1195/PWR/IT/2022	Mrs. Faiza Sarwar	11101-1813737-4	DO
29	C.No.1196/PWR/IT/2022	Mrs. Rimsha Younas	11101-3732023-2	DO

As the issue raised in the above 29 complaints is identical therefore, all cases are being disposed of through single order.

4. The instant complaint was referred to the Secretary, Revenue Division for comments in terms of Section 10(4) of the FTO Ordinance, read with Section 9(1) of the Federal Ombudsmen Institutional Reforms Act, 2013. In response thereto, Chief Commissioner RTO Peshawar forwarded comments vide letter dated 17.03.2022, reproduced as under:

"the complainant is a lecturer, hired by Govt Post graduate College, Bannu. The payment made to the complainant falls under the head services and tax under Section 153 (1) (b) is deductible under Division III, of the 1st Schedule to the Income Tax ordinance, 2001 @ 10% of the gross amount payable and when the recipient is non filer/not appearing on active taxpayer's list, then the tax required to be deducted or collection shall be increased by 100% of the rate specified in accordance with the rules in Tenth Schedule of the Income Tax Ordinance, 2001."

EXAMINATION OF RECORD AND FINDINGS:

5. Under section 153(1) (b) of Income Tax Ordinance 2001, income tax is deducted at rate of 10% in case of filer and 20% in case of non-filer. The complainant has, however, agitated vide his application dated 16.01.2022, that after paying tax, he is not given any solid proof and slip where it is mentioned that he has paid 20% income tax out of this. The complainant has prayed that his salary is below the taxable limits for salaried persons.

6. Contention of the department has been examined in the light of submissions by the complainant as above and relevant legal provisions i.e. sections 12 and 149 of the Income Tax Ordinance, 2001. Resulting position is as under:

Section 12. **Salary-** (2) Salary means any amount received by an employee from any employment, whether of a revenue or capital nature, including—

- (a) **any pay, wages or other remuneration provided to an employee**, including leave pay, payment in lieu of leave, overtime payment, bonus, commission, fees, gratuity or work condition supplements (such as for unpleasant or dangerous working conditions).

Section 149. **Salary.** — (1) Every [person responsible for] paying salary to an employee shall, at the time of payment, deduct tax from the amount paid at the employee's average rate of tax computed at the rates specified in Division I of Part I of the First Schedule on the estimated income of the employee chargeable under the head "Salary".

7. Examination of FBR's reply dated 09.02.2022, has been examined in depth but found deficient due to the following:

- i. Legal provisions governing "Salary Taxation" i.e. Section 12 and 149 of Income Tax Ordinance, 2001 neither obligate any **valid contract of employment**, nor place any other condition for a case to be treated as a salaried case except for **employer-employee** equation based on "**Master-Servant Relationship**". This **criterion** forms the basic parameter for any employment. Regular / Adhoc / Temporary / Hired / Daily Wages, all are the different shades & forms of employment and law doesn't create any distinction among all the above forms.
- ii. While law treats hired employee's wages at par with PAY, while defining salary, how hired lecturer's salary can be excluded from the ambit of salary taxation?

In view of above FBR's treatment of the instant cases u/s 153(1)(b) of the Ordinance is against the dictates of law and excessive tax deductions from the pay / wages of a hired employee of educational institution tantamount to maladministration in terms of FTO Ordinance, 2000.

8. This office has already issued recommendations in a similar Complaint **No. 2538/ISB/IT/2021** filed by an employee of Pakistan Broadcasting Corporations, wherein during Investigation and Review proceedings, the FBR conceding the wrong being done in such cases has not only implemented the recommendations rather widely circulated the same among all concerned.

RECOMMENDATIONS:

9. FBR is directed to:-

- i. ensure that hired lecturers, of Post Graduate College, Bannu or other such educational institutions are not burdened with excessive tax deductions at withholding stage. While Taxpayers facilitation constitutes the core function of FBR, its implementation on ground should also be visible;
- ii. direct RTO Peshawar to process the instant cases on priority basis and under relevant legal provisions, so as to save the complainants from grave hardship they are suffering ever since hired by the concerned institution;
- iii. issue necessary clarification for all withholding agents to safeguard such employees against excessive deductions; and;
- iv. report compliance within 60 days.

(Dr. Asif Mahmood Jah)
(Hilal-i-Imtiaz) (Sitara-i-Imtiaz)
Federal Tax Ombudsman

Dated: 18-4-2022
U.f

*Approved for reporting
and press release.*

Sanctioned to be True Copy

[Signature]
Deputy Registrar
RTO Secretariat
Islamabad

