

**BEFORE
THE FEDERAL TAX OMBUDSMAN
ISLAMABAD**

**COMPLAINT NOS. 1488, 1489, 1491, 1493, 1495, 1496, 1502,
1504, 1505, 1506, 1507, 1509, 1510, 1524, 1525, 1526, 1527,
1528, 1529, 1530 & 1531/PWR/IT/2022**

Dated: 19.04.2022*R. O. Peshawar

Mr. Fahad Najeeb,

Government Degree College Kaki,
Bannu & Others.

... Complainant

Versus

The Secretary,
Revenue Division,
Islamabad.

... Respondent

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

FINDINGS/RECOMMENTATIONS

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 are that complainant lecturer, Computer Science Government Degree College Kaki, Bannu is hired by Higher Education Department (HED), previously by Project Management Unit (PMU) Khyber Pakhtunkhwa. The Government Degree College Kaki, Bannu deducted income tax 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.1488/PWR/IT/2022	Mr. Fawad Khan	11101-6695257-1	Class-IV/Government Post Graduate College No.1, Bannu
2	C.No.1489/PWR/IT/2022	Mr. Nekobar Khan	11101-8821770-3	Class-IV/Government Post Graduate College, Bannu
3	C.No.1491/PWR/IT/2022	Mr. Raqiaz Khan	11101-4327756-5	DO
4	C.No.1493/PWR/IT/2022	Mr. Atiq Ullah Khan	11101-2224093-3	DO
5	C.No.1495/PWR/IT/2022	Mr. Muhammad Idrees Khan	11101-2327447-9	Junior Clerk/Government Post Graduate College, Bannu
6	C.No.1496/PWR/IT/2022	Mr. Muhammad Ismail	11101-3085686-1	Class-IV/Government Girls Degree College Mandan, Bannu
7	C.No.1504/PWR/IT/2022	Mr. Umer Khan	11101-2202000-7	Lecturer/Government Degree College Kakki, Bannu
8	C.No.1505/PWR/IT/2022	Mr. Jehan Zeb Khan	11101-0208798-5	DO
9	C.No.1506/PWR/IT/2022	Mr. Zia Ullah Khan	11101-5507599-7	DO
10	C.No.1507/PWR/IT/2022	Mr. Sami Ullah Khan	11201-6397026-5	DO
11	C.No.1509/PWR/IT/2022	Mr. Wajid Khan	11101-4338148-8	DO
12	C.No.1510/PWR/IT/2022	Mr. Muhsen Ullah Khan	11101-6802923-1	DO
13	C.No.1524/PWR/IT/2022	Mr. Arif Ullah	11101-4201032-3	Lecturer/Government Degree College, SK Bala Bannu
14	C.No.1525/PWR/IT/2022	Mr. Umar Saleem	11101-1424658-1	Do
15	C.No.1526/PWR/IT/2022	Mr. Mahmood Alam	11101-9076753-7	DO
16	C.No.1527/PWR/IT/2022	Mr. Muhammad Sadiq Khan	11101-7177586-1	DO
17	C.No.1528/PWR/IT/2022	Mr. Muhammad Tariq	11101-8669090-5	DO
18	C.No.1529/PWR/IT/2022	Mr. Zaka Ullah	11101-9915768-9	DO
19	C.No.1530/PWR/IT/2022	Mr. Fahim Ullah	11101-6385587-3	DO
20	C.No.1531/PWR/IT/2022	Mr. Rizwan Ullah	11102-0365297-9	Do

As the issue raised in the above 21 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 No. CCIR/2021-2022/2535 dated 25.04.2022, reproduced as under:

"Not correct: College authority has hired the subject complainant on semester basis and the taxpayer providing services to the Govt Degree College Kaki Bannu in private capacity upon which tax is withheld u/s 153(1)(b) of the Income Tax Ordinance 2001 @ 10% in case of filer and @ 20% in case of non filer. As the complainant is neither registered nor filed returns(s), of income therefore, tax deduction @ 20% has rightly been made as per prescribed rates.

As the complainant is paid from college fund, therefore under the Khyber Pakhtunkhwa Employees of the Elementary & Secondary Education Department (Appointment & Regularization of services) Act, 2017 the complainant is not an employee under Clause 2 (c)(i) of the said Act and under the provision of Section 12 of the Income Tax Ordinance, 2001, the salary has been defined under Section 12 (2) that "salary means any amount received by an employee from any employment".

As the complainant is not an employee therefore, the payment made to him falls under the Head "services" from which tax U/s 153 (1) (b) is rightly deducted".

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 03.03.2022, that the tax deducted on monthly pay is unjustified. His salary is not liable to tax. He requested to resolve the matter.

EXAMINATION OF RECORD AND FINDINGS:

5. Contention of the department and submissions by the complainant have been examined at length. There can be two criterions to evaluate merits of both: Legal parameters and material facts in the instant and other similar cases.

I. Legal parameters

Salary taxation is governed through sections 12 and 149 of the Income Tax Ordinance, 2001. Both are reproduced hereunder:

- 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".

FBR's reply dated 25.04.2022, has been examined in depth but it fails to rebut the following:

- i. If Appointment & Regularization of services) Act, 2017 creates any distinction between regular and temporarily hired/adhoc employees how the status of employment can be denied under tax laws. Salary taxation is governed under tax laws and not under the act referred by RTO Peshawar.
- ii. Nowhere in the tax laws or in the case law has any distinction been created between a permanent employee, and an adhoc/temporary/contract/hired employee.
- iii. RTO Peshawar while responding has not quoted any legal provision or any decision by the superior judiciary which lays down any specific criteria other than Legal provisions governing "Salary Taxation" i.e. Section 12 and 149 of Income Tax Ordinance, 2001.
- iv. Nowhere requirement of any **valid contract of employment** has been mandated for a case to be qualified under salary taxation.
- v. 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?

Thus plain reading of aforesaid legal provisions merely indicate **employer-employee** equation based on "**Master-Servant Relationship**". This **criterion alone** 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. Material facts in the instant cases

Complete details obtained from Directorate of Higher Education, Government of KPK, Peshawar suggest the following:

- a. In view of prolonged recruitment proceedings at Provincial Public Service Commission the said Directorate has evolved a separate and streamlined mechanism for hiring and appointment of lecturers on semester to semester basis.
- b. Project Management Unit, Higher Education Department KPK has developed, circulated and enforced detailed guidelines on hiring of lecturers under the instant stream.
- c. Hiring procedure has been developed and enforced across the board.
- d. Composition of Selection Committees has also been developed and notified.
- e. Hiring and selection criterion includes;
 - Institutional workload
 - Advertisement
 - Selection Committee Notification/Minutes of the meeting
 - Merit List
 - Credentials of the selected candidates
 - Office Order of the selected Candidates: the said office order enlists detailed "Terms & Conditions" of hiring as well.
 - The above hiring policy is being implemented across the board at all institutions in KPK.

FINDINGS:

6. In view of above discussions;

- a. In the face of a streamlined, transparent and well documented hiring mechanism RTO Peshawar is not justified in alleging that "College authority has hired the subject complainant on semester basis and the taxpayer providing services to the Govt Degree College, Kaki, Bannu in private capacity upon which tax is withheld u/s 150(1)(b) of the Income Tax

ordinance 2001 @ 10% in case of filer and @ 20% in case of non filer."

- b. 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.

The above discriminatory and unjust and extra legal treatment of salary cases tantamounts to maladministration in terms of section 2(3)(i) and (ii) of FTO Ordinance, 2000.

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:

7. FBR is directed to:-

- i. ensure that hired lecturers, of Government Degree College Kaki, Bannu or other such educational institutions are not burdened with excessive tax deductions at withholding stage;
- 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 30 days.

Approved for reporting

Certified to be True Copy

Dated: 25-5-2022
Akif

**Registrar
FTO Secretariat
Islamabad**

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