

**BEFORE
THE FEDERAL TAX OMBUDSMAN
ISLAMABAD**

**COMPLAINT NOS.1631, 1633, 1634, 1635, 1636, 1654, 2419,
2420, 2421, 2423, 2428 & 2430/PWR/IT/2022**

Dated: 26.04.2022* & 14.06.2022 R. O. Peshawar

Mr. Abdul Majid,

Government College, City Faqirabad,
Peshawar & Others.

... Complainant

V e r s u s

The Secretary,
Revenue Division,
Islamabad.

... Respondent

Dealing Officer	: Mr. Ziauddin Wazir, Advisor
Appraised by	: Mr. Muhammad Tanvir Akhtar, Advisor
Authorized Representative	: Mr. Abdul Majid, Complainant
Departmental Representative	: None

FINDINGS/RECOMMENDATIONS

This complaint has been filed under Section 10(1) of the Federal Tax Ombudsman Ordinance, 2000 (FTO Ordinance) against Commissioner IR, Peshawar Zone on account of non issuance of refund of excessive tax deduction.

2. Briefly, the facts of the case are that complainant is a hired lecturer at Government College Peshawar on semester to semester basis @ monthly salary of Rs.36000/-. The said college deducts income tax from salary of the complainant. According to complainant his salary is below the thresh hold of 600,000/-, therefore, Income Tax deducted unlawfully is liable to be refunded.

3. Identical complaints have been filed by hired lecturers of Govt: Post Graduate College for Women, Bannu, tabulated below:

* Date of registration in FTO Secretariat

S.No.	COMPLAINT NO.	NAME OF COMPLAINANT	CNIC NO.	DESIGNATION/PLACE OF POSTING
1	1633/PWR/IT/2022	Mr. Muhammad Tayyad	17301-6131940-3	Lecturer/Government College, City Faqirabad, Peshawar
2	1634/PWR/IT/2022	Mr. Ajmal Hussain	17301-9343048-9	DO
3	1635/PWR/IT/2022	Mr. Naeem Nasir	17301-4412546-9	DO
4	1636/PWR/IT/2022	Mr. Hijrat Khan	17301-4874414-9	DO
5	1654/PWR/IT/2022	Mr. Asif Khan	21407-9138078-3	DO
6	2419/PWR/IT/2022	Mrs. Asma Gul	11101-5525406-4	Teacher/Government Post Graduate College For Women Bannu.
7	2420/PWR/IT/2022	Mrs. Shandana Mahnoor	11101-2038286-2	DO
8	2421/PWR/IT/2022	Mrs. Hassina Bibi	11101-8990752-8	DO
9	2423/PWR/IT/2022	Mrs. Shumaila Bibi	11101-2038286-2	DO
10	2428/PWR/IT/2022	Mrs. Shzmeen	11101-3542437-4	DO
11	2430/PWR/IT/2022	Mrs. Haseena Khan	11101-9764618-8	DO

As the issue raised in the above 11 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 10.05.2022, reproduced as under:

"Not correct: The complainant is unregistered person having no tax record with the department. Tax deductions, as claimed by the complainant, are being made in the current tax year, ending on 30.06.2022. If the complainant deems that excess deductions were made during tax year 2022, he will file return along with refund application u/s 170 (1) of the Income Tax ordinance, 2001. As and when the needful is done, the case of the complainant will be decided, as per law, accordingly".

5. The case was fixed for hearing on 18.05.2022. Mr. Abdul Majid, the Complainant and Mr. Muhammad Ashraf DCIR RTO, Peshawar (DR) attended the hearing. Complainant informed that

he is hired as lecturer on Rs: 36000/- per month salary for six months by Directorate of Education KPK. Govt College, Peshawar deducted income tax at the rate of 20% from his salary. According to him, the income tax unlawfully deducted is liable to be refunded because College Administration is not supposed to deduct tax. DR submitted that FTO has no jurisdiction to interfere in matters relating to refund or assessment. DR submitted that the income tax is payable on salary of 600,000/- annually, however, the hired lecturer does not come under category of salaried persons but come under purview of services rendered. According to him these individuals are hired by respective Colleges and are providing services to these Colleges, therefore, tax withheld under Section 153 (1)(b) of Ito 2001 is lawful. As regard refund, the complainant is to file proper return, claiming refund, which will be examined on merits and under law. DR submitted several orders of Hon'ble President, setting-aside Findings/Recommendation of FTO on assessment matters or where the case is pending appeal before competent jurisdiction or remedy is available under Income Tax Ordinance, 2001.

6. Examination of arguments and counter arguments:

The case record has been examined and following facts emerge from the arguments and counter arguments:

Departmental contention	Legal and factual position
Jurisdiction of FTO in the instant cases	FTO's instant intervention doesn't aim at assessment. Excessive tax deduction unjustly burdening hired employees has been mainly alleged in the instant complaint. In identical cases FTO office has already held that the complainant lecturers being the hired employees of provincial education department fall u/s 12 of Income Tax Ordinance, 2001 and

<p><i>"The complainant is unregistered person having no tax record with the department. Tax deductions, as claimed by the complainant, are being made in the current tax year, ending on 30.06.2022. If the complainant deems that excess deductions were made during tax year 2022, he will file return along with refund application u/s 170 (1) of the Income Tax ordinance, 2001. As and when the needful is done, the case of the complainant will be decided, as per law, accordingly".</i></p>	<p>qualify under salary taxation. Departmental reply reflects apathy and indifference. Once an employee falls under salary taxation the department is legally bound to ensure that the employer deducts the tax u/s 149 and not u/s 153. Excessive & unjust deductions need to be preempted.</p>
<p>According to department these individuals are hired by respective Colleges and are providing services to these Colleges, therefore, tax withheld under Section 153 (1)(b) of Ito 2001 is lawful.</p>	<p>Lecturers are hired in a unified, parametric and streamlined hiring scheme evolved by directorate of higher education KPK, the employer.</p>

Examination of department's main contention: Salary Taxation VS Services rendered

7. 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:

- P*
- 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 10.05.2022, and contention of DR that the complainants i.e hired lecturers does not come under category of salaried person has been examined in depth but it fails to rebut the following:

- i. 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.
- ii. Nowhere in law or in the case law has any distinction been created between a permanent employee, and an adhoc/temporary/contract/hired employee.
- iii. Nowhere requirement of any **valid contract of employment** has been mandated for a case to be qualified under salary taxation.
- iv. 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

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- 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:

7. 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 Government College Peshawar 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."
- 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:

8. FBR to direct Chief Commissioner RTO, Peshawar:-

- i. that the applications filed or to be filed by the hired lecturers of Government College Peshawar or Government Post Graduate College for Women, Bannu must be taken up with the concerned withholding agents so as to ensure that no unjust and excessive tax deduction is made in these salary cases.
- ii. That the complainants are briefed on the process of refund of already deducted excessive tax deductions.
- iii. that necessary clarification may be issued to all withholding agents i.e. College institutions and;
- iv. report compliance within 60 days.


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

Dated: 22/6/ 2022
Akif

*Approved for
reporting*

22/6/22
Certified to be True Copy

**Registrar
FTO Secretariat
Islamabad**