

F/A

PRESIDENT'S SECRETARIAT (PUBLIC)
AIWAN-E-SADR

Federal Board of Revenue VS Mr. Fahad Najeeb & others

Subject: **21 IDENTICAL REPRESENTATIONS FILED BY FEDERAL BOARD OF REVENUE AGAINST FINDINGS / RECOMMENDATIONS DATED 25.05.2022 PASSED BY THE LEARNED FTO IN 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.**

Kindly refer to your representations on the above subject addressed to the President in the background mentioned below:-

2. 21 Representations have been filed by Federal Board of Revenue (FBR) on 27.06.2022 against the orders of the learned Federal Tax Ombudsman (FTO), dated 25.05.2022, whereby it has been held that:

"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."*

3. These complaints were filed under Section 10(1) of the Federal Tax Ombudsman Ordinance, 2000 (FTO Ordinance) against the Commissioner IR, D.I. Khan Zone for unlawfully deducting the Income Tax from monthly salaries of the adhoc Teaching Staff (Lecturers) of the Govt Educational Institutions, Bannu. The complaints, being identical in nature, were disposed of through a single consolidated order.

4. The adhoc Teaching Staff (Lecturers) (the complainants) who were provisionally hired for semester to semester basis by the Govt Educational Institutions, Bannu as Temporary Teachers/Lecturers on work charge basis. Statedly, they were paid Rs.36,000/- per month and that Income Tax @ 20% was deducted from their monthly salary, whereas, their salaries were not liable to be taxed. They, therefore, took up the matter with the learned FTO U/S 10(1) of the Ordinance, 2000.

5. The learned FTO called the comments of the Secretary, Revenue Division, Islamabad. In response thereto, the FBR submitted the comments of the Chief Commissioner RTO Peshawar stating that "the 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".

6. Considering the respective stances, the learned FTO proceeded to pass the above mentioned order in the complaints of identical nature. Thus, the representations by the FBR which are being heard and decided together.

7. The hearing of the cases were fixed for 26.07.2022. Mr. Usman Asif, Deputy Commissioner, RTO, Peshawar has represented the FBR, whereas, the complainants have not appeared despite Notices. Needless to mention that Section 15 of the Federal Ombudsman Institutional Reforms Act, 2013 empowers the decision of a representation on the basis of available record without personal hearing of the parties.

8. The learned FTO dealt with the matter vide paras 5,7,8 of the order as follows:-

"5. 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 I 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."

These are findings arrived at on due consideration of the record and no cavil could be found with such an approach to the matter.

9. In the circumstances of the case, it is worth noting that the FBR has issued clarification regarding forms of the employment vide its letter C.No.3(3)/2022-S(CM)/81818-R dated 11th April, 2022 as follows:-

"2. The Honourable FTO vide order in Complaint No.2538/ISB/IT/2021 dated 24.02.2022 has held that in order to determine employer-employee relationship for the purpose of taxation under Income Tax Ordinance, 2001, the basic parameter is the existence of a "Master-Servant Relationship" between persons and Regular/Adhoc/Temporary/Daily Wages all are different shades and forms of employment and the law does not create any distinction among all these forms.

3. In view of above findings and further recommendations made by the Honourable FTO, it is clarified that if on a case to case basis the relationship between payer and payee is found to be that of an employer and an employee respectively, then income of such low paid employee under any of the forms of employment i.e. Regular, Adhoc, Temporary or Daily Wages would be treated as Salary Income under Section 12 of Income Tax Ordinance, 2001."

10. Suffice it to observe that as per the terms and conditions of the appointment letters/Office Orders issued by the Heads of the Govt Education Institutions have unambiguously mentioned the nature of job as "Fresh Appointment" and Section 12 of the Income Tax Ordinance, 2001 explicitly defines the salary as "any pay, wages & other remuneration provided to an employee". Whereas, the basic parameter of any employment i.e. regular, adhoc, temporary, hired, daily wages, contingency etc. all are different shades and forms of employment and the law does not create any distinction among all the above forms. When the law treats hired employees' wages at par with pay then how hired Lecturers' salaries can be excluded from the ambit of salary taxation.

11. In view of above circumstances, the order of the learned FTO is based on valid justifications and sound legal footings. Further, the FBR vide its letter dated 11th April, 2022 has already decided that the income of such employees hired under any of the forms i.e. regular, adhoc, temporary or daily wages, contingency etc. would be treated as Salary Income under Section 12 of the Income Tax Ordinance, 2001. There remains no justification to treat the complainants differently. Thus, the representations of the FBR are liable to be rejected accordingly.

12. Accordingly, the Hon'ble President, as per his decision above, has been pleased to reject the representations of the FBR.

(Anwar-ul-Haq)
Director General (Legal)

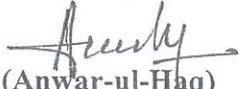
1. The Chairman, Federal Board of Revenue, Islamabad.

2. Mr. Fahad Najeeb, Government Degree College, Kaki, Bannu.
3. Mr. Nekobar Khan, Govt Post Graduate College, Bannu.
4. Mr. Raqiaz Khan, Govt Post Graduate College, Bannu.
5. Mr. Atiq Ullah Khan, Govt Post Graduate College, Bannu.
6. Mr. Muhammad Idrees Khan, Govt Post Graduate College, Bannu.
7. Mr. Muhammad Ismail, Govt Girls Degree College, Mandan, Bannu.
8. Mr. Fawad Khan, Govt Degree College, Kaki, Bannu.
9. Mr. Umar Khan, Govt Degree College, Kaki, Bannu.
10. Mr. Jehan Zeb Khan, Govt Degree College, Kaki, Bannu.
11. Mr. Zia Ullah Khan, Govt Degree College, Kaki, Bannu.
12. Mr. Muhammad Sami Ullah Khan, Govt Degree College, Kaki, Bannu.
13. Mr. Wajid Khan, Govt Degree College, Kaki, Bannu.
14. Mr. Muhsen Ullah Khan, Govt Degree College, Kaki, Bannu.
15. Mr. Arif Ullah, Govt Degree College, SK Bala, Bannu.
16. Mr. Umar Saleem, Govt Degree College, SK Bala, Bannu.
17. Mr. Mahmood Alam, Govt Degree College, SK Bala, Bannu.
18. Mr. Muhammad Sadiq Khan, Govt Degree College, SK Bala, Bannu.
19. Mr. Muhammad Tariq, Govt Degree College, SK Bala, Bannu.
20. Mr. Zaka Ullah, Govt Degree College, SK Bala, Bannu.
21. Mr. Fahim Ullah, Govt Degree College, SK Bala, Bannu.
22. Mr. Rizwan Ullah, Govt Degree College, SK Bala, Bannu.

Nos.188,189,190,191,192, 193,194, 195, 196, 197, 198, 199, 200, 201,202,203,204,205,206,207& 208/FTO/2022 dated 15.08.2022

Copy for information to:

- (1) The Registrar, Federal Tax Ombudsman, Islamabad.
- (2) The Chief (Legal-III), Federal Board of Revenue, Islamabad.
- (3) The Commissioner-IR, RTO, Peshawar.
- (4) Master file.


 (Anwar-ul-Haq)
 Director General (Legal)

PRESIDENT'S SECRETARIAT (PUBLIC)
AIWAN-E-SADR

Federal Board of Revenue VS Mrs. Asma Yousaf & others

Subject: 30 IDENTICAL REPRESENTATIONS FILED BY FEDERAL BOARD OF REVENUE AGAINST FINDINGS / RECOMMENDATIONS DATED 29.04.2022 PASSED BY THE LEARNED FTO IN COMPLAINT NOS. 1248,1249,1252,1258, 1280, 1283, 1286, 1290, 1294, 1299, 1300, 1301, 1302, 1304, 1306, 1308, 1311, 1312, 1313, 1315, 1317, 1370, 1426, 1427,1428,1429,1431,1432,1434 & 1440/PWR/ IT/ 2022.

Kindly refer to your representations on the above subject addressed to the President in the background mentioned below:-

2. 30 Representations have been filed by Federal Board of Revenue (FBR) on 31.05.2022 against the orders of the learned Federal Tax Ombudsman (FTO), dated 29.04.2022 whereby it has been held that:

"FBR is directed to:-

- (i) *ensure that hired lecturers of Post Graduate College for Women, 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 45 days."*

3. These complaints were filed under Section 10(1) of the Federal Tax Ombudsman Ordinance, 2000 (FTO Ordinance) against the Commissioner IR, D.I. Khan Zone for unlawfully deducting the Income Tax from monthly salaries of the adhoc Teaching Staff (Lecturers) of the Govt Educational Institutions, Bannu. The complaints, being identical in nature, were disposed of through a single consolidated order.

4. The adhoc Teaching Staff (Lecturers) (the complainants) who were provisionally hired for semester to semester basis by the Govt Educational Institutions, Bannu as Temporary Teachers/Lecturers on work charge basis. Statedly, they were paid Rs.36,000/- per month and that Income Tax @ 20% was deducted from their monthly salary, whereas, their salaries were not liable to be taxed. They, therefore, took up the matter with the learned FTO U/S 10(1) of the Ordinance, 2000.

5. The learned FTO called the comments of the Secretary, Revenue Division, Islamabad. In response thereto, the FBR submitted the comments of the Chief Commissioner RTO Peshawar stating that the complainants were Lecturers hired by the Govt Educational Institutions, Bannu. The payments made to the complainants fell under the head services and tax under Section 153 (1) (b) was deductible under Division III, of the 1st Schedule to the Income Tax ordinance, 2001 @ 10% of the gross amount payable and when the recipients were non- filers/not Appearing on Active Taxpayers List, then the tax

required to be deducted or collection should be increased by 100% of the rate specified in accordance with the rules in Tenth Schedule of the Income Tax Ordinance, 2001 i.e. @ 20% of the gross amount payable. Moreover, as per Clause 2(c) (i) of the Khyber Pakhtunkhwa Employees of Elementary and Secondary Education Deptt (Appointment and Regularization of Services) Act, 2017. The Teaching Staff engaged on work charge basis or who are paid out of contingencies are not included in the definition of employee. Thus, the complainants were not employee then the payments made to them fell in the definition of services and Tax U/S 153(1)(b) had rightly been deducted.

6. Considering the respective stances, the learned FTO proceeded to pass the above mentioned order in the complaints of identical nature. Thus, the representations by the FBR which are being heard and decided together.

7. The hearing of the cases were fixed for 26.07.2022. Mr. Usman Asif, Deputy Commissioner, RTO, Peshawar has represented the FBR, whereas, the complainants have not appeared despite Notices. Needless to mention that Section 15 of the Federal Ombudsman Institutional Reforms Act, 2013 empowers the decision of a representation on the basis of available record without personal hearing of the parties.

8. The learned FTO dealt with the matter vide paras 5,7,8 of the order as follows:-

"5. 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.
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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 I 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."

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9. In the circumstances of the case, it is worth noting that the FBR has issued clarification regarding forms of the employment vide its letter C.No.3(3)/2022-S(CM)/81818-R dated 11th April, 2022 as follows:-

"2. The Honourable FTO vide order in Complaint No.2538/ISB/IT/2021 dated 24.02.2022 has held that in order to determine employer-employee relationship for the purpose of taxation under Income Tax Ordinance, 2001, the basic parameter is the existence of a "Master-Servant Relationship" between persons and Regular/Adhoc/Temporary/Daily Wages all are different shades and forms of employment and the law does not create any distinction among all these forms.

3. In view of above findings and further recommendations made by the Honourable FTO, it is clarified that if on a case to case basis the relationship between payer and payee is found to be that of an employer and an employee respectively, then income of such low paid employee under any of the forms of employment i.e. Regular, Adhoc, Temporary or Daily Wages would be treated as Salary Income under Section 12 of Income Tax Ordinance, 2001."

10. Suffice it to observe that as per the terms and conditions of the appointment letters/Office Orders issued by the Heads of the Govt Education Institutions have unambiguously mentioned the nature of job as "Fresh Appointment" and Section 12 of the Income Tax Ordinance, 2001 explicitly defines the salary as "any pay, wages & other remuneration provided to an employee". Whereas, the basic parameter of any employment i.e. regular, adhoc, temporary, hired, daily wages, contingency etc. all are different shades and forms of employment and the law does not create any distinction among all the above forms. When the law treats hired employees' wages at par with pay then how hired Lecturers' salaries can be excluded from the ambit of salary taxation.

11. In view of above circumstances, the order of the learned FTO is based on valid justifications and sound legal footings. Further, the FBR vide its letter dated 11th April, 2022 has already decided that the income of such employees hired under any of the forms i.e. regular, adhoc, temporary or daily wages, contingency etc. would be treated as Salary Income under Section 12 of the Income Tax Ordinance, 2001. There remains no justification to treat the complainants differently. Thus, the representations of the FBR are liable to be rejected accordingly.

12. Accordingly, the Hon'ble President, as per his decision above, has been pleased to reject the representations of the FBR.

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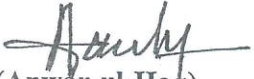
1. The Chairman, Federal Board of Revenue, Islamabad.
2. Mrs. Asma Yousaf, Government Girls Post Graduate College, Bannu.
3. Mrs. Bakhtawar Hameed, Government Girls Degree College, Mandan Bannu.

4. Mrs.Ujala Sharif, Government Girls Degree College,Mandan Bannu.
5. Mrs.Seemab Sardar, Government Girls Degree College, Mandan Bannu.
6. Mrs.Safia Nabi, Government Girls Degree College, Mandan Bannu.
7. Mrs. Huma Arif, Government Girls Degree College, Mandan Bannu.
8. Mrs. Aiman Qureshi, Government Girls Degree College, Mandan Bannu.
9. Mrs. Ammara Khan, Government Girls Degree College, Mandan Bannu.
10. Mrs.Noreen Khan Government Girls Degree College, Mandan Bannu.
11. Mrs.Asawera Khan, Government Girls Degree College, Mandan Bannu.
12. Mrs. Sadaf Aziz, Government Girls Degree College, Mandan Bannu.
13. Mrs. Mehr un Nisa, Government Girls Degree College,Mandan Bannu.
14. Mrs. Bushra Latif, Government Girls Degree College, Mandan Bannu.
15. Mrs. Sana Sadiq Government Girls Degree College, Mandan Bannu.
16. Mrs. Khadija, Government Girls Degree College, Mandan Bannu.
17. Mrs. Madiha Saleem, Government Girls Degree College, Mandan Bannu.
18. Mrs.Ambreen Sabahat, Government Girls Degree College, Mandan Bannu.
19. Mrs. Shayra Rehan, Government Girls Degree College, Mandan Bannu.
20. Mrs. Iffat Saad, Government Girls Degree College,Mandan Bannu.
21. Mrs. Hurma Javed, Government Girls Degree College, Mandan Bannu.
22. Mrs. Ghulfam Ameer, Government Girls Degree College,Mandan Bannu.
23. Mr. Usman Farooq, Government Degree College No. 2, Bannu.
24. Mr. Safi ullah Khan, Government Degree College No. 2, Bannu.
25. Mr. Fida ullah Khan, Government Degree College No. 2, Bannu.
26. Mr. Asif Raza, Government Degree College No. 2, Bannu.
27. Mr. Sikandar Hayat Khan, Government Degree College No. 2, Bannu.
28. Mr. Faheem ullah, Government Degree College No. 2, Mandan Bannu.
29. Mr. Shah Nawaz Khan, Government Degree College No. 2,Bannu.
30. Mr. Mati ullah Khan, Government Degree College No. 2,Bannu.
31. Mr. Sawaid Khan, Government Degree College No. 2,Bannu.

**Nos.135,136,137,138,139,140,141,142,143,144,145,146,147,
148,149,150,151,152, 153, 154, 155, 156, 157, 158, 159, 160,
161,162,163 & 164/FTO/2022/FTO/2022 dated 15.08.2022**

Copy for information to:

- (1) The Registrar, Federal Tax Ombudsman, Islamabad.
- (2) The Chief (Legal-III), Federal Board of Revenue, Islamabad.
- (3) The Commissioner-IR, RTO, Peshawar.
- (4) Master file.


(Anwar-ul-Haq)
Director General (Legal)

PRESIDENT'S SECRETARIAT (PUBLIC)
AIWAN-E-SADR

Federal Board of Revenue VS Mr. Umer Ayaz Khan & other

Subject: 30 IDENTICAL REPRESENTATIONS FILED BY FEDERAL BOARD OF REVENUE IN COMPLAINT Nos. 541, 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

Kindly refer to your representations on the above subject addressed to the President in the background mentioned below:-

2. 30 Representations have been filed by Federal Board of Revenue (FBR) on 19.05.2022 against the orders of the learned Federal Tax Ombudsman (FTO), dated 18.04.2022 whereby it has been held that:

"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."*

3. These complaints were filed under Section 10(1) of the Federal Tax Ombudsman Ordinance, 2000 (FTO Ordinance) against the Commissioner IR, D.I. Khan Zone for unlawfully deducting the Income Tax from monthly salaries of the adhoc Teaching Staff (Lecturers) of the Govt Educational Institutions, Bannu. The complaints, being identical in nature, were disposed of through a single consolidated order.

4. The adhoc Teaching Staff (Lecturers) (the complainants) who were provisionally hired for semester to semester basis by the Govt Educational Institutions, Bannu as Temporary Teachers/Lecturers on work charge basis. Statedly, they were paid Rs.36,000/- per month and that Income Tax @ 20% was deducted from their monthly salary, whereas, their salaries were not liable to be taxed. They, therefore, took up the matter with the learned FTO U/S 10(1) of the Ordinance, 2000.

5. The learned FTO called the comments of the Secretary, Revenue Division, Islamabad. In response thereto, the FBR submitted the comments of the Chief Commissioner RTO Peshawar stating that the complainants were Lecturers hired by the Govt Educational Institutions, Bannu. The payments made to the complainants fell under the head services and tax under Section 153 (1) (b) was deductible

under Division III, of the 1st Schedule to the Income Tax ordinance, 2001 @ 10% of the gross amount payable and when the recipients were non- filers/not Appearing on Active Taxpayers List, then the tax required to be deducted or collection should be increased by 100% of the rate specified in accordance with the rules in Tenth Schedule of the Income Tax Ordinance, 2001 i.e. @ 20% of the gross amount payable. Moreover, as per Clause 2(c) (i) of the Khyber Pakhtunkhwa Employees of Elementary and Secondary Education Deptt (Appointment and Regularization of Services) Act, 2017. The Teaching Staff engaged on work charge basis or who are paid out of contingencies are not included in the definition of employee. Thus, the complainants were not employee then the payments made to them fell in the definition of services and Tax U/S 153(1)(b) had rightly been deducted.

6. Considering the respective stances, the learned FTO proceeded to pass the above mentioned order in the complaints of identical nature. Thus, the representations by the FBR which are being heard and decided together.

7. The hearing of the cases were fixed for 26.07.2022. Mr. Usman Asif, Deputy Commissioner, RTO, Peshawar has represented the FBR, whereas, the complainants have not appeared despite Notices. Needless to mention that Section 15 of the Federal Ombudsman Institutional Reforms Act, 2013 empowers the decision of a representation on the basis of available record without personal hearing of the parties.

8. The learned FTO dealt with the matter vide paras 6 to 8 of the order as follows:-

"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 I 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."

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"2. The Honourable FTO vide order in Complaint No.2538/ISB/IT/2021 dated 24.02.2022 has held that in order to determine employer-employee relationship for the purpose of taxation under Income Tax Ordinance, 2001, the basic parameter is the existence of a "Master-Servant Relationship" between persons and Regular/Adhoc/Temporary/Daily Wages all are different shades and forms of employment and the law does not create any distinction among all these forms.

3. In view of above findings and further recommendations made by the Honourable FTO, it is clarified that if on a case to case basis the relationship between payer and payee is found to be that of an employer and an employee respectively, then income of such low paid employee under any of the forms of employment i.e. Regular, Adhoc, Temporary or Daily Wages would be treated as Salary Income under Section 12 of Income Tax Ordinance, 2001."

10. Suffice it to observe that as per the terms and conditions of the appointment letters/Office Orders issued by the Heads of the Govt Education Institutions have unambiguously mentioned the nature of job as "Fresh Appointment" and Section 12 of the Income Tax Ordinance, 2001 explicitly defines the salary as "any pay, wages & other remuneration provided to an employee". Whereas, the basic parameter of any employment i.e. regular, adhoc, temporary, hired, daily wages, contingency etc. all are different shades and forms of employment and the law does not create any distinction among all the above forms. When the law treats hired employees' wages at par with pay then how hired Lecturers' salaries can be excluded from the ambit of salary taxation.

11. In view of above circumstances, the order of the learned FTO is based on valid justifications and sound legal footings. Further, the FBR vide its letter dated 11th April, 2022 has already decided that the income of such employees hired under any of the forms i.e. regular, adhoc, temporary or daily wages, contingency etc. would be treated as Salary Income under Section 12 of the Income Tax Ordinance, 2001. There remains no justification to treat the complainants differently. Thus, the representations of the FBR are liable to be rejected accordingly.

12. Accordingly, the Hon'ble President, as per his decision above, has been pleased to reject the representations of the FBR.

(Anwar-ul-Haq)
Director General (Legal)

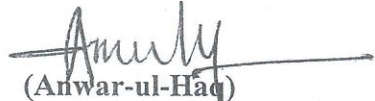
1. The Chairman, Federal Board of Revenue, Islamabad.

2. Mr. Umar Ayaz Khan, Government Post Graduate, College, Bannu.
3. Mrs. Firdous Syed, Government Girls Post Graduate College, Bannu.
4. Mrs. Tamheeda, Government Girls Post Graduate College, Bannu.
5. Mrs. Mahwish Iqbal, Government Girls Post Graduate College, Bannu.
6. Mrs. Farheen Khan, Government Girls Post Graduate College, Bannu.
7. Mr. Faizan ullah, Government Post Graduate College, Bannu.
8. Mr. Rehmat ullah Khan Government Post Graduate College, Bannu.
9. Mr. Mansoor Khan, Government Post Graduate College, Bannu.
10. Mr. Muhammad Aqib Khan, Government Post Graduate College, Bannu.
11. Mr. Israr ullah, Government Post Graduate College, Bannu.
12. Mr. Muhammad Tayyab Khan, Government Post Graduate College, Bannu.
13. Mr. Sufian Mehmood, Government Post Graduate College, Bannu.
14. Mrs. Asma Gul, Government Girls Post Graduate College, Bannu.
15. Mrs. Laila Amin Government Girls Post Graduate College, Bannu.
16. Mrs. Hassina Bibi, Government Girls Post Graduate College, Bannu.
17. Mrs. Memoona Gul, Government Girls Degree College, KDA Karak.
18. Mr. Waqar Ali Shah, Government Post Graduate College, Bannu.
19. Mr. Rauf Khan, Government Post Graduate College, Bannu.
20. Mr. Muhammad Fawad, Government Post Graduate College, Bannu.
21. Mr. Sohail Khan, Government Post Graduate College, Bannu.
22. Mrs. Shumaila Bibi, Government Girls Post Graduate College, Bannu.
23. Mrs. Noreen Jamal, Government Girls Post Graduate College, Bannu.
24. Mrs. Haseena Khan, Government Girls Post Graduate College, Bannu.
25. Mrs. Shandana Mahnoor, Government Girls Post Graduate College, Bannu.
26. Mrs. Shajeela Karim Khan, Government Girls Post Graduate College, Bannu.
27. Mrs. Noor Nama Jamal, Government Girls Post Graduate College, Bannu.
28. Mrs. Nudrat Shaheen, Government Girls Post Graduate College, Bannu.
29. Mrs. Muzdalfa Rehman, Government Girls Post Graduate College, Bannu.
30. Mrs. Faiza Sarwar, Government Girls Post Graduate College, Bannu.
31. Mrs. Rimsha Younas, Government Girls Post Graduate College, Bannu.

Nos. 95, 96, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 130, 131, 132 & 133/FTO/2022 dated 15.08.2022

Copy for information to:

- (1) The Registrar, Federal Tax Ombudsman, Islamabad.
- (2) The Chief (Legal-III), Federal Board of Revenue, Islamabad.
- (3) The Commissioner-IR, RTO, Peshawar.
- (4) Master file.


 (Anwar-ul-Haq)
 Director General (Legal)