

Returning Advance Fees Due to Not Attending or Dropping Out of Tuition Without Notice

Darulifta Ahlesunnat (Dawateislami)

Question

What do the noble scholars and jurists of Islamic law say about the following: A woman teaches Urdu classes and takes the fees in advance every month. One of her students paid the advance fee but couldn't attend the classes because of a wedding at her home. But she attended the next month. In this case, will the fees be refunded even though the tuition remained open and other students would attend? Please provide guidance regarding this.

Furthermore, please clarify the following: A student paid the advance fee and attended for only 10 or 12 days, then left the tuition without any notice. At the end of this month, her mother said that we have found another teacher who will give tuition for a lower price, which is why my daughter was not attending, so now return the fees for the remaining days. In such a case, does the teacher have to return the fees for the remaining days, or is she entitled to the fee for the entire month?

Answer

بِسْمِ اللَّهِ الرَّحْمَنِ الرَّحِيمِ
الْجَوَابُ بِعَوْنِ الْمَلِكِ الْوَهَّابِ اللَّهُمَّ هِدَايَةَ الْحَقِّ وَالصَّوَابِ

The answers to both questions are mentioned below:

(1) If the student did not attend the tuition classes after having paid the fee in advance while the classes continued regularly and other students continued to attend the classes, and she was also able to attend the classes, but didn't merely due to a wedding function, in such a case, the teacher will be entitled to the fee for the entire month at the end of the month, and the student cannot demand the fee to be refunded.

(2) If the student paid the advance fee but left the tuition after attending for a few days because another teacher agreed to teach for a lower price, in this case, the previous teacher will be entitled to the entire fee at the end of that month. This is because finding another teacher who will teach for cheaper is not a valid sharī'ah reason to terminate the ijarah contract. Even if we assume that it is a valid excuse, it would then be necessary to terminate the contract with the teacher's approval during the month for which the advance fee was paid, whereas this is not the case. Moreover, because the teacher remained available to teach the entire month, she will be entitled to the entire fee for this reason as well.

Explanation:

In our schools and tuitions, the teaching contract is generally an Ijarah Khaas (time-based contract), where the time and location are mutually agreed upon (that the classes will take place at so-and-so location at so-and-so time). In this case, the teacher must be available at that place and time without any impediment in teaching from their side. Now, whether the students come to learn or not, the teacher will be entitled to the fee. This is because the student was capable of benefiting from the

teacher's service, and the jurists state that if the Musta'jir (student) can obtain the specified benefit from the Ajeer (teacher) at the agreed-upon time and place, the Ajeer will be entitled to the Ujrah (fee) regardless of whether they actually obtain the benefit.

It is stated in Durar al-Hukkam Sharh Majallah al-Ahkam:

لو استؤجر أستاذاً لتعليم علم أو صنعة فإن ذكرت مدة انعقدت الإجارة على المدة حتى أن الأستاذ يستحق الأجرة لكونه حاضراً ومهيأً للتعليم
قرأ التلميذ، أو لم يقرأ

(Durar al-Hukkam Sharh Majallah al-Ahkam, Vol. 01, p. 653-654, Publ. Dar al-Jeel)

A'la Hazrat, The Imam of Ahl al-Sunnah, Imam Ahmad Raza Khan عليه رحمة الله تعالى writes:

مدرسين وامثالهم اجير خاص ہیں اور اجير خاص پر وقت مقررہ معہود میں تسلیم نفس لازم ہے اور اسی سے وہ اجرت کا مستحق ہوتا ہے اگرچہ کام نہ ہو۔ مثلاً
مدرس (ٹپجر) وقت معہود پر مہینہ بھر برابر حاضر رہا اور طالب علم کوئی نہ تھا کہ سبق پڑھتا، مدرس کی تنخواہ واجب ہو گئی۔

Translation: Teachers and those in similar fields are Ajeer Khas. An Ajeer Khas is obligated to make himself available at a specific time, and he becomes entitled to the wage because of this, even if there is no work to do. For example, a teacher was present at the specified time for the entire month, but there were no students for him to teach, the wage of the teacher will become wajib (upon the Musta'jir). (Fatawa Razawiyah, Vol. 19, p. 506, Publ. Raza Foundation, Lahore)

In an Ijarah contract, the Ijarah (wage) becomes obligatory by being capable of obtaining the benefit at the specified time in the specified place. It is stated in Majallah al-Ahkam:

تلزّم الاجرة ايضا في الاجارة الصحيحة بالاعتقاد على اسيفاء المنفعة--ان يكون التمكن من استيفاء المنفعة في المحل المضاف اليه العقد
في المدة التي ورد عليها العقد

(Sharh al-Majallah, Vol. 01, p. 209-210, Publ. Dar al-Kutub al-'Ilmiyah)

It is stated in Bahar-e-Shari'at:

منفعت حاصل کرنے پر قادر ہونے سے اجرت واجب ہو جاتی ہے اگرچہ منفعت حاصل نہ کی ہو۔

Translation: The wage becomes obligatory by being capable of obtaining the benefit, even if the benefit is not obtained. (Bahar-e-Shari'at, Vol. 03, p. 111, Publ. Maktaba-Tul-Madinah, Karachi)

If the wage is paid in advance in an Ijarah Sahihah (valid ijarah contract) and the Ajeer (employee) remains available for the service without any impediment from his side, he will be entitled to the entire wage. However, in the case that the contract is terminated within the contract period due to a valid reason, the Ajeer (employee) will be obligated to return the wage for the remaining days. But the condition is that the contract is terminated within the days of the contract.

It is stated in Durar al-Hukkam Sharh Majallah al-Ahkam:

لو سلم المستاجر الاجرة نقداً ملكها الآجرو ليس للمستاجر استردادها--وذلك مالم تنفسخ الاجارة قبل انتهاء مدتها فللمستاجر حينئذ
استرداد ما زاد من الاجرة من المدة

(Durar al-Hukkam Sharh Majallah al-Ahkam, Vol. 01, p. 478-479, Publ. Dar al-Kutub al-'Ilmiyah, Beirut)

If there was no negligence by the first teacher in teaching, and the student found another teacher who would teach for cheaper, this is not a valid reason to terminate the ijarah contract. Similarly, if a shopkeeper of an operating market finds another

shop elsewhere for lower prices, this is not a valid reason to terminate the contract (with the previous shop owner). It is stated in Bahar-e-Shari'at:

اگر بازار چالو ہے مگر یہ دکاندار دوسری دکان میں منتقل ہونا چاہتا ہے جو اس سے زیادہ کثادہ ہے یا اس کا کرایہ کم ہے اور اس دکان میں بھی یہی کام کریگا جو یہاں کر رہا ہے تو دکان نہیں چھوڑ سکتا۔

Translation: If the market is operating and the shopkeeper wishes to move to another shop that is more spacious and the rent is cheaper, and the operations there will be the same as those in this shop, he cannot leave the shop. (Bahar-e-Shari'at, Vol. 03, p. 173, Publ. Maktaba-Tul-Madinah, Karachi)

It is stated in Fatawa Razawiyah:

اور کسی شخص کو اصلاً اختیار نہیں کہ بے اطلاع اجیر جب چاہے بطور خود عقد اجارہ فسخ کر دے، مگر جب کوئی عذر بین واضح ظاہر ہو جس میں اصلاً محل اشتباہ نہ ہو جب تک ایسا نہ ہو اجیر بیشک مستحق تنخواہ ہوگا۔ فی الدر المختار الاجارة تفسخ بالقضاء والرضاء الخ، وفي رد المحتار الاصح ان العذر ان كان ظاهراً اينفرد وان مشتبه لا ينفرد۔ واللہ تعالیٰ اعلم۔

Translation: No one has the right to terminate the Ijarah contract by themselves without informing the Ajeer, unless there is a clear and obvious reason in which there is no room for doubt. But until then, the Ajeer will certainly be entitled to the wage. It is stated in al-Durr al-Mukhtar: "The Ijarah contract can be terminated either by the judicial decree or by mutual consent." It is stated in Radd al-Muhtar: "The Asah (most accurate) opinion is that if the excuse is apparent, he can terminate the contract independently. But if the excuse has doubt, he cannot act independently. (Fatawa Razawiyah, Vol. 19, p. 438-439, Publ. Raza Foundation, Lahore)

وَاللّٰهُ اَعْلَمُ عَزَّ وَجَلَّ وَرَسُوْلُهُ اَعْلَمُ صَلَّى اللّٰهُ تَعَالٰى عَلَيْهِ وَاٰلِهٖ وَسَلَّمَ

(Allah Almighty knows best and His Messenger صَلَّى اللّٰهُ تَعَالٰى عَلَيْهِ وَاٰلِهٖ وَسَلَّمَ knows best.)

Answered By: Mufti Muhammad Qasim Attari

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