

# IN THE HIGH COURT OF SINDH AT KARACHI

Present: **Adnan-ul-Karim Memon** and **Agha Faisal, JJ.**

Constitution Petition D-1412 of 2015

Sajjad Hussain & Others

Versus

Province of Sindh & Others

For the Petitioner : Mr. Ghulam Muhammad  
Advocate

For Respondents : Mr. Sheheryar Mehar  
Assistant Advocate General

Date of Hearing : 09.08.2018

## **JUDGMENT**

**Agha Faisal, J:** By this judgment we seek to address the issue of whether the Petitioners, being public sector science teachers, may continue to be treated and remunerated under the classification of untrained, in the presence of their assertion of being endowed with qualifying credentials of higher education.

2. The salient features of the Petitioners' case are encapsulated and presented in chronological order herein below:

- i. The Petitioners were appointed as untrained science teachers, on B.Sc. basis at the respective times in BPS-15.
- ii. It was submitted that notwithstanding the Petitioners having obtained qualifying credentials of higher education they continued to be classified and remunerated as untrained, in

violation of the orders of the learned Federal Service Tribunal upheld by the honorable Supreme Court.

iii. The pronouncement of the Federal Service Tribunal under reference is the judgment dated 23.04.2002 in *Appeal No.239(R)CS of 2000* in the case titled *Qamar Hussain Bhatti v. Secretary, Education Division, Ministry of Education, Islamabad and Others* (“**Qamar Bhatti**”). It may pertinent to reproduce the relevant portion of the said judgment herein below:

“7. Arguments heard and available record perused. We find weight in the arguments of the appellant. Qualification required for Primary Teacher is Matric 2<sup>nd</sup> Division with PTC or CT. The appellant was F.A. 2<sup>nd</sup> Division at the time of appointment He worked satisfactorily as a primary teacher and later also obtained the requisite qualification of C.T. and B.A. degree. The appellant was appointed to a post in BS-7 and worked on it during the period apparently to the satisfaction of the department. Section 17 of the Civil Servants Act, 1973 declares:

“17. Pay.-A Civil Servant appointed to a post shall be entitled in accordance with the rules, to the pay sanctioned for such post;

Provided that, when the appointment is made on a current charge basis or by way of additional charge, his pay shall be fixed in the prescribed manner;

Provided further that, where a civil servant has, under an order which is later set aside, been dismissed or removed from service or reduced in rank, he shall, on the setting aside of such order, be entitled to such arrears of pay as the authority setting aside such order may determine.”

8. Logically the pay referred to the Section 17 should include periodical raise on account of annual increments. The appellant, having been made to work on a post of BS-7, was entitled to annual increments. Ruling of the august Supreme Court of Pakistan in their judgment in Civil Appeals No.117, 118 and 595 to 613 of 2000 support this view.

9. In the light of above discussion, the appeal is accepted. Impugned Orders dated 25.01.2000 and 13.03.2000 are set aside. The Respondents are directed to allow increments for the years 1989, 1990 & 1991 i.e. the pay of the appellant accordingly. Arrears are, however, allowed only w.e.f. 27.04.2000 the date of filing of this appeal.”

iv. The reference to the pronouncement of the honorable Supreme Court in *Qamar Bhatti* was to the Judgment, dated 24.09.2001 in Civil Appeals No.117, 118 and 595 to 613 of 2000, in the case titled Hafiz-ur-Rehman vs. Secretary Govt of NWFP Education department & Others “(**Hafiz-ur-Rehman**)”. It may be pertinent to refer to the relevant segment of the cited judgment herein below:

“13. We have considered the arguments addressed at the Bar by the learned counsel and the learned Additional Advocate General NWFP and have also gone through the available material with their help. Last paragraph of the impugned judgment dated 5.5.1999 makes the following reading:

“On factual side the case is quite simple and clear. This issue has been adjudicated upon time and again by this Tribunal and the judgments have been upheld by the honourable Supreme Court of Pakistan. As far as the qualification is concerned, the appellant is the holder of B.Sc. (Agriculture) Degree. He has worked on SET post for about 13/14 years with a spotless record and has got sufficient teaching experience at his credit and is entitled for the grant of graded pay and benefits attached to the post. His other colleagues have been given the pay and benefits while the appellant has been denied the same for no obvious reasons and there is no hurdle in awarding graded pay and advance increments to the appellant right from his induction and his service should be regularized accordingly. As far as the arrears are concerned, he is only allowed the arrears from the date of submission of his departmental appeal and as far as the training is concerned, according to the honourable Supreme

Court of Pakistan (on no discoverable principle the untrained teachers could be refused graded pay to their disadvantage by an executive flat. (1976-SCMR-297) and last of all finding to the famous judgment of the honourable Supreme Court of Pakistan, benefit once extended by the Service Tribunal or Supreme Court should be followed by the department, "1996-SCMR-1185". With these observations, we accept the appeal with no orders as to costs..."

The relevant para of the impugned judgment dated 13.1.2000 is in the following items:

"A perusal of the record would show that the appellant appointed as S.V. Teacher (Untrained) on fixed pay. He was awarded running pay w.e.f. 29.11.87 i.e. the date when he qualified C.T. training. It has been held by the Service Tribunal as well as honourable Supreme Court of Pakistan in various judgment (SCMR-1996-1195-C), that if a person is made to work against a post, he is entitled to the running pay scale of the post. As the appellant was made to work against the post of S.V. and he performed his duties to the entire satisfaction of his superiors, therefore, he is entitled to the pay of the post. The Tribunal therefore, on acceptance of this appeal, orders that the appellant should be awarded the running pay from the date of his initial appointment. The appellant is however, entitled to the arrears of pay from the date of his departmental appeal i.e. 8.12.1998."

A joint reading of the aforementioned excerpts from both the impugned judgments of the Tribunal makes it abundantly clear that appellant Hafizur Rehman:.....

- (a) being B.Sc. (Agricultural) .....
- (b) having worked against the post of SET for about 13/14 years with a spotless record.....AND
- (c) having gained sufficient teaching experience.....

was held to be entitled to 'graded pay' and other benefits attached to the post with the result that he was brought at par with other colleagues similarly placed with. The Tribunal was quite right in bringing to bear the ratio of Ghulam Rasul (supra) on the facts and circumstances of the case of Hafizur Rehman with the observation that benefits once extended in similar cases to the employees does not call for being ignored in other similar situations/causes as ruled in Hameed Akhtar Niazi v. The Secretary, Establishment Division, Government of Pakistan and others (1996 SCMR 1185). Similarly, it is not the case of the

Government/Department that the Tribunal was in error in referring to Hameed Akhtar Niazi (supra) in the impugned judgment dated 13.1.2000 and holding that if a civil servant is made to work against a post, he becomes entitled to the running pay scale of that post. We find that as the appellants in Civil Appeals No.595 of 2000 and others were made to work against the posts of S.V. and as they performed their duties to the entire satisfaction of their superiors, they were entitled to the pay of the relevant/respective posts.

14. Before parting with this matter, we may observe that in the absence of any justifiable cause whatsoever for interfering with judgments in personam, the impugned judgments dated 5.5.1999 and 13.1.2000 do not call for any tinkering therewith in these proceedings.”

v. It was demonstrated from the record that similar matters came before the Division Bench of this High Court in *C.P. Nos. D-579 of 2009, 1121 of 2009 and 599 of 2009* and the contentions raised were addressed in favour of the Petitioners and the same is illumined by the Judgment dated 27.04.2010 in the case titled *Irshad Ahmed and others v. The Province of Sindh through Secretary Services & General Administration Department Sindh Secretariat Karachi and Others (“Irshad Ahmed”)*, wherein it was maintained as follows:

“The Petitioners in all these petitions are HST Science Teachers who have prayed that they may be treated on equal footing with HSC Science teachers of other Districts. Provinces and be given benefits which are being paid to other HST Science Teachers and has been granted to them in accordance with the judgment of the Honorable Supreme Court in Civil Appeal No.117, 118 and 595 to 613 of 2000 dated 24.09.2001, wherein the Honorable Supreme Court had held that the Petitioners being Science Teachers were entitled to graded pay and other benefits of the post which are being denied to the Petitioners despite the recommendation by the Education Department, by the Finance Department. The Petitioners have relied on the judgment of the Honorable Supreme Court in the case of Hameed Akhtar Niazi v. The Secretary Establishment Division, Government of Pakistan and others (1196

SCMR 1185), wherein the Honorable Supreme Court had observed that a

Since we had directed the learned A.A.G. to produce an officer of the Finance Department before this Court but the learned A.A.G. submit that despite writing a letter to the Finance Department, no officer is present and no comments have been filed by them nor have been filed by Secretary Education Government of Sindh. Therefore, we have no opinion but to accept these petitions and direct that the Petitioners are entitled to the graded pay and other benefits attached to this post and these benefits will be granted from the date of the departmental appeal if any filed by such Petitioners or from the date of this petition has been filed whichever is earlier.”

vi. It was further observed that the judgment in *Irshad Ahmed* was assailed before the honorable Supreme Court in the case titled *Province of Sindh v. Dawarkadas and Others in Civil Appeals No.163-K, 164-K and 165-K of 2010* (“**Dawarkadas**”), wherein *Irshad Ahmed* was maintained and it was held as follows:

“2. .... According to learned Assistant Advocate General, Sindh, the ratio of earlier judgment of the apex Court referred to above dated 24.09.2001 was misapplied by the High Court in its impugned judgment as the present Respondents were not trained teachers. This assertion is strongly disputed and questioned by Mr. Shabbir Ahmad Awan, learned ASC for the private Respondents as well as the other private respondent present in Court. In this regard reference has also been made to the contents of their memo of petitions before the High Court, which contained such statement in an unambiguous term. This being the position and upon careful perusal of the two judgments of this Court referred to in the impugned judgment as well as other earlier judgments of this Court in the case of *Muhammad Riasat versus Secretary of Education* (1997 SCMR 1626 and *Federation of Pakistan versus Shahzada Shahpur Jan* (1986 SCMR 991), we are of the considered opinion that all the private Respondents, being in similar position, are entitled to avail the benefit of such judgments and the plea raised by the appellants to controvert this position is wholly misconceived and not tenable in law.

3. From the foregoing reason, these appeals are dismissed with directions to the appellants to implement the impugned judgment of the High Court within thirty days, failure whereof may entail contempt proceedings against the concerned officials of the Government.”

vii. The record reflected that the aforesaid dicta of the honorable Supreme Court judgment was followed by the Federal Directorate of Education, Government of Pakistan in identical cases and the relevant documents to substantiate the same were available on the Court file.

viii. It was next seen that Government of Sindh, Finance Department had issued a Notice dated 26.01.2009 (“**Impugned Notice**”), the relevant content whereof is reproduced herein below:

“2/- Education & Literacy Department.....issuing orders for allowing running scale and annual increments in respect of un-trained teacher from the date of their appointments and also cancel all such previous orders under intimation to Finance Department.”

ix. It was pleaded that the Impugned Order, in addition to being contrary to the dicta of the honorable Supreme Court and being discriminatory in nature, was also incompetently issued as the respondent No.2, being the Secretary, Finance Department, Government of Sindh, had no authority to issue the same.

x. We are also apprised of two orders delivered by the Divisional Bench of this Court in *C.P. No.D-1286 of 2010* and *C.P. No.D-233 of 2011*, wherein it had been demonstrated that the Impugned Order had been withdrawn and that the

respective petitioners had been allowed the benefits of running scale and annual increments from the date of their appointment in due consonance with the pronouncements of the honorable Supreme Court. It may be pertinent to reproduce the content of one said order dated 04.09.2013 in *C.P. No.D-1286 of 2010* titled *Hussain Baksh Kaka & Others vs. Province of Sindh & Others* ("**Hussain Baksh**") by way of illustration.

"In the instant petition the Petitioners have called in question letter of the Finance Department No.FD.SO(SR-V)1-275/2007, dated 26.01.2009 whereby the order directing allowing of running scale, annual increments from the date of their appointments in respect of untrained teachers was stopped.

Mr. Allah Bachayo Soomro, Addl. A.G. Sindh has placed before us today in Court letter No.FD(SR-IV)1-275/2007 dated 2<sup>ND</sup> November 2012, whereby Government of Sindh Finance Department has withdrawn its impugned letter and further states that the Petitioner would be meted out treatment in accordance with the judgment of the Supreme Court by allowing them running scale and annual increments from the date of their appointments.

In view of this position this petition has served its purpose and consequently disposed of."

3. Mr. Ghulam Mohammad, learned counsel for the Petitioners, submitted that the act of the Respondents, treating the Petitioners as untrained teachers, be declared unlawful and the Respondents be directed to classify the Petitioners as qualified and entitle them to all service benefits from their respective dates of appointment in accordance with their qualifications.
4. Mr. Sheheryar Mehar, learned Assistant Advocate General, Sindh, submitted at the very onset that the Respondents had no cavil to the legal position enunciated by the judgments of the

superior courts referred to supra but that there had been no determination of whether the Petitioners were in possession of qualifying credentials of higher education.

5. Per learned counsel the Petitioners were appointed as untrained Science Teachers in BPS-15 with different terms and conditions to other cadres and their seniority in respect thereof was required to be maintained in accordance with applicable regulations, which was distinct from those applicable to other cadres.

6. Learned counsel controverted the factual assertion that the Petitioners had earned higher professional qualifications, which would entitle them to be treated otherwise than being presently done. It was categorically submitted that when an untrained science teacher qualifies with a professional degree such as B.Ed., the said teacher was allowed all the benefits attached to the post announced by the Government from time to time, however, the same could not be done unless such qualifications had been earned. It was next submitted that the ratio of the afore cited judgments of the superior courts permitted persons to enjoy the relevant rights and benefits once it was established that they had obtained the requisite educational credentials. It was submitted that in the absence of such a determination, no benefit could be advanced on the basis of presumptions and assertions.

7. We have heard the arguments of the respective learned counsel and have also had the benefit of consideration of the record. The issue before the Court may be ring fenced to determine whether this Court was the appropriate forum for the determination of the entitlement of each of the fifty two (52) Petitioners.

8. The judgments of the Division Benches of this Court in *Irshad Ahmed* and *Hussain Baksh* demonstrate that similar claims were entertained and adjudicated by this Court upon being directly petitioned. The judgment in *Irshad Ahmed* was also maintained by the honorable Supreme Court in *Dawarkadas*.

9. However, the record before us does not demonstrate whether each respective Petitioner possesses the qualifying credentials of higher education entitling him to the relief sought herein. The learned Assistant Advocate General has also categorically stated that prior to any such verifiable determination of the status of each Petitioner no benefit can be considered or advanced thereto.

10. We have also appreciated the dicta of the honorable Supreme Court in the case of *Hameed Akhtar Niazi v. The Secretary Establishment Division, Government of Pakistan and Others* reported as 1196 SCMR 1185, relied upon in *Irshad Ahmed*, that the benefit extended by the superior courts have to be provided to others who are placed on identical footing even if they had not approached the Court.

11. In view of the forgoing we are of the considered opinion that the determination of the entitlement of each respective Petitioner be undertaken by the competent authority (Respondent No. 1) in accordance with the law, preferably within two months of being applied to by the respective Petitioner.

12. It is just and proper that certain instructions and directions be rendered in reference to the determination, as required supra. It is therefore directed as follows:

- i. Each Petitioner may prefer an application to the competent authority (Respondent No. 1) supported by all such material, record and / or evidence as may be relevant, inclusive of without limitation the degree certificates and any further relevant documentation corroborating the qualifying educational credentials of the said Petitioner.
- ii. The competent authority (Respondent No. 1) shall verify the credentials of each Petitioner in accordance with the law and thereafter, by way of a reasoned order, issue a determination of entitlement, inter alia in the light of judgments cited herein above, with respect to each Petitioner.
- iii. Any person aggrieved by any such determination, in whole or in part, may be entitled to seek such relief before such forum and in such proceedings as may be appropriate.

13. The present petition, along with listed applications, is thus determined and disposed of in the terms as aforesaid.

Judge

Judge

Karachi.

Dated 15<sup>th</sup> August 2018.