

Order Sheet
**IN THE HIGH COURT OF SINDH,
CIRCUIT COURT, HYDERABAD**

CP No. D- 477 of 2019

Fareed Ahmed and others v. Federation of Pakistan
and others

CP No. D- 517 of 2019

Abid Hussain and another v. Federation of Pakistan
and others

CP No. D- 532 of 2019

Nadeem Arif and others v. Federation of Pakistan
and others

BEFORE :

Mr. Justice Adnan-ul-Karim Memon
Mr. Justice Adnan Iqbal Chaudhry

Petitioners: Fareed Ahmed and others in CP No. D- 477 of
2019 through Mr. Nouman Sahito,

Petitioners: Abid Hussain and others through
M/s. Hameedullah Dahri & Sher Muhammad
Dahri, Advocate

Petitioners: Nadeem Arif and others through Mr. Nouman
Sahito, Advocate

Respondents: through Zafar Imam, Advocate

Mr. Muhammad Humayoon Khan, Deputy
Attorney General

Date of hearing & Decision: 10.11.2021

ORDER

ADNAN-UL-KARIM MEMON, J: - Through this single Order,
this Court intends to decide the captioned constitutional petitions
for having involved similar questions of law and parties.

2. In principle the petitioners are seeking a declaration to the effect that they are entitled to the Performance Allowance as per Circular No. 1 dated 31.10.2006 issued by the competent authority of Central Board of Revenue (CBR), and, the recovery proceedings initiated by the respondent-department from their pension/salary is illegal and unconstitutional.

3. Mr. Hameedullah Dahri learned counsel for the petitioners has submitted that petitioners were/are employees of grade 1 to 16, working in Regional Tax Office, Hyderabad; that vide circular dated 31.10.2006, Special Performance Allowance equal to 100% of the basic pay was allowed to the employees of Board of Revenue (FBR) on certain conditions and criteria which they met and were allowed the subject allowance; and the petitioners and their colleagues were/are entitled to performance allowance as the same was/is given to all the employees of Pakistan working in the same category; that some of the employees who were deprived of the said allowance filed appeals before learned Federal Service Tribunals (FST) and others before High Court at Peshawar, which were allowed and declared them entitled to the allowance discussed supra; that the said decision was challenged by the respondents before Honourable Supreme Court of Pakistan, where they also failed to get the decision in their favour; consequently the deprived employees were also given the subject allowance from the date of circular discussed supra, however, in violation of the order of Honourable Supreme Court of Pakistan, the respondents have curtailed the amount from the salary of two months (January & February 2019) without any lawful justification and further ordered for recovery of whole amount which was paid in compliance of orders of Honourable Supreme Court, hence the petitioners have filed the instant petitions.

4. Mr. Zafar Imam learned counsel for the respondents has argued that this court has no jurisdiction under Article 212 of the Constitution of Pakistan as the issue relates to terms and conditions of service of civil servants; that the special allowance was allowed only to the employees who were/are posted in "Reformed Units" and the petitioners were not posted in any of the reformed units; that the Judgment of Honourable Supreme Court is not in rem and further the said Judgment revolves around the fact that only those officers/officials can claim arrears of IJP allowance who were either posted or attached in the reformed units; that the allowance was

mistakenly allowed to the petitioners without examining the relevant record and without the approval of the competent authority / FBR, hence the decision of authority curtailing the amount from the salaries of the petitioners is legal and proper. He lastly prayed for dismissing the instant petitions.

5. We have heard the learned counsel for the parties as well as learned DAG and perused the material available on record.

6. In view of the above factual position of the case, we do not see any substance in the contention of the respondent department for recovering the special allowance already paid to them, either from pension and/or salary of the petitioners by way of deduction for the simple reason that similar kind of matter was landed in the Honourable Supreme Court in Civil Petitions No. 912-928 & 1142 of 2015, 750 & 1026 to 1170 and 705 of 2016 whereby the decision of the learned Federal Service Tribunal and learned Division Bench of High Court at Peshawar were maintained vide Judgment dated 31.5.2016. However, the respondent department did not stop here and continued to violate the directives of Honourable Supreme Court and curtailed the amount from the salary for the months of January and February 2019 of petitioners without giving any lawful justification and cogent reasons.

7. We have also noticed that the respondents have ordered to recover the entire amount of arrears which was paid to the petitioners in compliance of the orders of the Honourable Supreme Court, prima facie could not be recovered from the pensionary benefits and / or salary of the petitioners for the reasons discussed supra.

8. In our view, this is discriminatory attitude on the part of respondents as they initially paid the special allowance to the petitioners and their colleagues and later on opined to recover from the petitioners only on the plea that they were never posted / attached in the reformed units to which the special allowance was attached; prima facie this attitude / action was / is against the basic spirit of law that ought not to have been done. On the aforesaid proposition, we are fortified with the decision of Honourable Supreme Court in the cases of Government of Punjab, through Secretary Education, Civil Secretariat, Lahore and others v. Samina Parveen

and others (2009 SCMR 01) and WAPDA through Chairman and others v. Raja Iftikhar Ahmed and others (2018 SCMR 394).

9. Record reflects that some of the petitioners have attained the age of superannuation; therefore, the question of availing the remedy before the learned Federal Service Tribunal (FST) is of no effect as the petitioners could only approach the learned FST if their case would have been for enforcement of terms and conditions of service; since the special allowance was allowed to the petitioner vide Circular No. 1 dated 31.10.2006 which could not be termed to be part of terms and conditions of service of civil servant as this was only allowance for certain purpose, thus the jurisdiction of this court under Article 199 of the Constitution could be invoked.

10. In the light of above facts and circumstances of the case, this petition is allowed in the terms that the competent authority of the respondent department shall not recover the performance allowance from the pension or salary of the petitioners; however, subject to all exceptions as provided under the law. The pending applications are also disposed of.

JUDGE

JUDGE