

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

**CP No. D- 1165 of 2017**

Abdul Haque and others Vs. Federation of Pakistan and others

**CP No. D- 2990 of 2017**

Athar Javed Vs. Federation of Pakistan and others

**CP No. D- 23 of 2018**

Ziauddin Qureshi Vs. Federation of Pakistan and others

**BEFORE :**

Mr. Justice Muhammad Iqbal Kalhoro  
Mr. Justice Adnan-ul-Karim Memon

Petitioners: Abdul Haque and others in CP No. D- 1165 of 2017 through Mir Naeem Talpur, Advocate.

Petitioners: Athar Javed and others in CP No. D- 2990 of 2017 through Mr. K.B. Lutuf Ali Leghari, Advocate

Petitioner: Ziauddin Qureshi in CP No. D- 23 of 2018 through Mr. Sufiyan Zaman, Advocate

Respondents : HESCO through Mr. Muhammad Arshad S. Pathan, Advocate who is busy in the funeral ceremony of his relative today.

Mr. Ashfaq Nabi Qazi, Assistant Attorney General

Mr. Allah Bachayo Soomro, Addl. A.G.

Date of hearing: 11.11.2021

Date of Decision: 02.12.2021

**ORDER**

**ADNAN-UL-KARIM MEMON, J:-** Through the captioned constitutional petitions the petitioners have sought direction to the respondents to pay all the allowances including Special Engineering Allowance of Rs.10,000/- as admissible to the graduate engineers i.e. B.E degree holders. They also seek treatment at par with their

colleagues having the degree of Bachelor of Engineering and subsequent promotion and up-gradation in that line.

2. Learned counsel for the petitioners in unequivocal terms argued that the case of petitioners is akin to the case decided by this court vide Judgments dated 10.10.2017, 19.12.2017 passed in CP No. D- 1934 of 2013 & CP No. D- 1893 & 1894 of 2013. An excerpt whereof is reproduced as under:

“These two petitions involve a common question as to keeping the petitioners at par with Graduate Engineers i.e. B.E / B.Sc. who have been employed by GENCO and PEPCO a generating and distributing Company of electricity. These questions were discussed at length by Division Bench of this Court in C.P No.D-1579 of 2010 and C.P No.D-204 of 2006, whereby the B-Tech (Hons) were treated at par with Graduate Engineers and were also held entitled to Special Allowance of Rs.10,000/-. In addition to this allowance, they were also treated at par with Graduate Engineers insofar as their promotion is concerned. The Hon’ble Supreme Court while dealing with the identical issue observed that the provisions of Pakistan Engineering Council apply only to the Professional Engineers and Consulting Engineers, who are in practice and not to the persons working in Government Department, Autonomous Bodies, Local Authorities, and Private Firms or Companies, therefore, the demand of such degree in civil mechanical or Agricultural Engineering registered with Pakistan Engineering Council by the respondents and not considering B-Tech (Hons) degree holders whose degrees are declared compatible at par with B.E / B.Sc Engineering degree holders i.e. for the allowances and promotion, was not justified, hence, for all intent purposes, this degree of B-Tech (Hons) was kept at par with B.E and B. Sc. Engineering degrees.

The question involved in these petitions is also identical, however, Mr. Muhammad Arshad S. Pathan learned counsel for respondents submits that these petitions have virtually become infructuous as the petitioners have been allowed up-gradation and from now onward they are to be considered at par with Graduate Engineers for their promotion and all such rules shall be made applicable as that to Graduate Engineers.

In view of the above, these petitions are disposed of in the terms of ratio incorporated in C.P No.D-1579 of 2010, C.P No.D-204 of 2006, and C.P No.D-1658 of 2012. In case, the petitioners had already been working in Grade-17 in 2009, they are also entitled to this allowance with effect from 2009 and are also liable to be considered eligible for promotion under law as other Engineers B.E and B. Sc. are entitled.

The petitions are allowed in the above terms.”

3. Mr. Muhammad Arshad S. Pathan learned counsel representing the respondent-HESCO through his written comments reiterated his submissions as discussed in paragraph No.3 of the Judgment discussed supra. However, he submitted that in the light of the ratio of the Judgment dated 3.10.2018 passed by Hon’ble Supreme Court in CP No. 278-K of 2015 the petitioners are not entitled to the allowance with retrospective effect. He also referred to para-wise comments filed on behalf of the respondents and submitted that there are as many as eight petitioners and every petitioner having its date of appointment and date of promotion and their claim concerning Special Allowance and their date of acquiring

degree and promotion BPS-17 is altogether different hence cannot be considered through these petitions; he emphasized that in the light of the ratio of the Judgment passed by Hon'ble Supreme Court in C.P. No. 78-K of 2015 (Moula Bux Shaikh and others v. Chief Minister Sindh and others) whereby Hon'ble Supreme Court held in paragraph Nos. 22 & 23 have declined to keep the colleagues of the petitioners at par with Graduate Engineers i.e. B.E as under:-

“ 22. We may further observe that section 27 of the PEC Act provides for penalty for a person who undertakes any professional engineering work if his name is not borne on the Register but it also makes the employer who employs for any professional engineering work any person whose name is not, for the time being, borne on the Register to perform whose name is not, for the time being, borne on the Register to perform professional engineering work, shall also be liable for penalty as prescribed in the PEC Act itself. Thus both civil servant / employee and their employer would be liable to penalty as provided under section 27 if they undertake or allow a person to undertake professional engineering work whose name is not borne on register under PEC Act.

23. The net result of above discussion is that this petition fails. It is dismissed and leave refused, however with note of caution that government shall not allow or permit any person to perform professional engineering work as defined in the PEC Act, who does not possess accredited engineering qualification from the accredited engineering institution and his name is not registered as a registered engineer or professional engineer under the PEC Act.”

4. He has submitted that the petitioners during their tenure of service were found involved in misconduct hence disciplinary proceedings were initiated against them again certain penalties imposed against them. In this regard he referred to paragraph 15 of the para-wise comments and demonstrated that they do not deserve for such relief sought through the instant petitions; per learned counsel, the petitioners cannot be treated at par with B.E. degree holders for the simple reason that they were appointed as upper technical subordinate cadre and promoted in BPS-17 in their respective quota of 5% reserved for them, thus they cannot be extended Special Engineering Allowance; as, it is extendable to only Graduate Engineers having the degree of Bachelor of Engineering, whereas the petitioners are not at par with graduate engineers. He prayed for dismissal of instant petitions.

5. We have noticed that respondent-HESCO being aggrieved by and dissatisfied with the aforesaid decisions approached the Hon'ble Supreme Court in CP No. 717-K of 2017 and CP No. 7818-K of 2017 which was dismissed vide order dated 3.9.2018 with the observation that “any proceedings followed in another forum could always be considered by the court to condone the delay. Accordingly both these petitions are dismissed and leave to appeals are refused”.

6. We have considered the stance of learned counsel for the parties in the light of the ratio of the judgments of Honorable Supreme Court on the subject allowance. Primarily, the subject issue has already been decided by the Hon'ble Supreme Court in Civil Appeal Nos. 1032 to 1036 of 2019 vide Judgment dated 26.9.2019 with the following observation:-

“The submission of the learned ASC for the appellants is that the respondents are not entitled to the grant of benefit of office order dated 20.2.2009 because it was only to be given to Graduate Engineers in BPS-17 and above working in all Engineering Cadres of WAPDA. Learned ASC for the respondents at the outset has placed on record a copy of memorandum dated 15.01.2013, which is as follows:-

Dated 13<sup>th</sup> January 2013

OFFICE MEMORANDUM

Sub: SPECIAL WAPDA ALLOWANCE FOR OFFICERS OF ADMN CADRE

In continuation of the Authority's Office Memorandum No. F.O (B&F)/3-78/Vol-1/9358-9457 dated 19.9.2012 approval of the Authority is hereby conveyed to the grant of Special WAPDA Allowance at uniform rate of Rs.10,000/- (Ten thousand only) per month w.e.f. 7.9.2012 to remaining thirty-six (36) officers in Grade-17 and above (Post Graduate/ Graduates) of HR & Admn Cadre WAPDA

Director General (HR& Admn)  
(Aziz ur Rehman)

Learned counsel for the appellants states that this office memorandum does not apply to the respondents. In response, learned counsel for the respondents states that respondents are also in BPS-17 working in Engineering Cadres of WAPDA and thus such benefit could not have been denied to them for that it has also been extended to simple B.Sc. degree holders. We have noted that the Tribunal in the impugned Judgment has made in-depth discussion on the point to find as to whether the respondents are entitled to the grant of allowance of the office order dated 20.2.2009 and after giving a finding of fact that nature of job being performed by BPS-17 Engineers working in Engineering Cadre of WAPDA either holding a degree of B.Tech Honors or being graduate in engineer are the same, therefore, no discrimination for grant of this benefit can be made between the two because there is no rational nexus of object on the basis of intelligible differentia. We have examined the matter and are also of the view that the view taken by the Tribunal apparently does not suffer from any illegality nor any such has been pointed out to us by the learned ASC for the appellant. The appeals, therefore, are dismissed. All the CMAs are disposed of accordingly.

7. Keeping in view the above facts and looking at the decision of this Court as discussed supra, which was based on conceding statement of learned counsel representing the WAPDA, therefore, at this juncture, we have no option but to direct the respondents to implement and apply the ratio of Judgment dated 10.10.2017 passed by this court merged into the order dated 3.9.2018 passed by Honourable Supreme Court in CP No. 717-K & 718-K of 2017 to the cases of petitioners in case they fell in the said category; and, it for the competent authority to thrash out each case of the petitioners so far as engineering allowance is concerned.

8. In the light of the above facts and circumstances of the case, we are of the considered view that this petition can be disposed of in terms of the Judgment passed by Hon'ble Supreme Court in Civil Appeal Nos. 1032 to 1036 of 2019.

9. The competent authority of respondents is directed to scrutinize the candidature of each petitioner; and, apply the ratio of Judgment passed by this court as well as Hon'ble Supreme Court as discussed in the preceding paragraph in their case without discrimination, if they are at all entitled for Special Engineering Allowance of Rs.10,000/- in all respect, the same allowance be disbursed to them accordingly. The said exercise shall be completed within 30 days of receipt of this order, and a compliance report be submitted through Additional Registrar of this Court. Disposed of accordingly.

JUDGE

JUDGE