

IN THE HIGH COURT OF SINDH KARACHI

Before:

Mr. Justice Aftab Ahmed Gorar

Mr. Justice Adnan-ul-Karim Memon

C.P. No. D-1707 of 2019

Rawal Khan and 75 others
Petitioners through : Mr. Obaid-ur-Rehman Khan, advocate

Respondents
through: : Mr. Ali Safdar Depar, AAG along with Dr. Liaquat Ali Abro and Nadeem Ahmed Qureshi, Law Officers, Law Department, Government of Sindh, Sanaullah, Section officer (SR-III) Finance Department and Mengraj Mal, R.E (Legal) Finance Department, Government of Sindh.

Date of hearing
& order : **03.02.2022**

ORDER

The petitioners are working as Stenographers in District Judiciary of Sindh, seeking a declaration to the effect that they are entitled to up-gradation of their post from BPS-15 to BPS-16 with effect from 01.07.2012, inter-alia, on the ground that their colleagues filed CP No.D-791/2014 before this Court which was disposed of vide order dated 22.11.2018 as their grievances stood redressed by the respondent-Finance Department, Government of Sindh; and, subsequently, their posts were upgraded with effect from 01.07.2012.

2. Mr. Obaid-ur-Rehman Khan, learned Counsel for the petitioners, at the outset has submitted that the case of petitioners is akin to the matter decided by this Court vide order dated 22.11.2018 in CP No.D-791/2014 as the respondent-Finance Department under the policy decision dated 19.11.2018 had already agreed to allow the upgradation of the post of Stenographers in BPS-16 in District Judiciary with effect from 01.07.2012. He claims similar treatment as meted out with the colleagues of the petitioners. In support of his contentions, he relied upon the policy decision dated 19.11.2018 of the Finance Department Government of Sindh, disbursement of the amount of arrears to the 13 Stenographers in District Judiciary of Sindh by the Finance Department, Government of Sindh, vide letter dated 2.4.2019.

3. Mr. Ali Safdar Depar, learned AAG, has opposed the request of the petitioners on the premise that the retrospective effect to the upgraded post could not be given under the law; and, if allowed 379 Stenographers are in line to claim similar treatment and take benefit of the order of this Court, therefore, upgradation with retrospective effect is not permissible under the law. Besides that, there is a financial crunch, therefore, the request of the petitioners is without justification. He prayed for dismissal of the instant petition.

4. On the query by this Court, as to how 13 Stenographers in District Judiciary of Sindh were allowed upgradation with effect from 2012, he replied that before the order could be passed on Petition bearing No.791/2014, the Finance department agreed to allow

the upgradation of (13) Stenographers with effect from 01.07.2012; and, the petitioners have been allowed the benefit of upgradation with effect from 2018; and, due to financial crunch, the case of petitioners cannot be considered at this point, which requires huge finance.

5. We have heard learned Counsel for the parties on the analogy of similar treatment and perused the material available on record.

6. Primarily, this disparity in payment is discriminatory, amounting to a violation of fundamental rights guaranteed under the Constitution of 1973. The learned AAG has urged that the Finance department, Government of Sindh has expressed apprehension that if such arrears are extended to the petitioners, working in subordinate Courts, then the Government of Sindh will face many such other claims from other Stenographers in District Judiciary of Sindh. Prima facie, this apprehension is ill-founded for the reasons that the respondent-Finance Department vide policy decision dated 19.11.2018 has already granted the relief to 13 Stenographers in District Judiciary with effect from 01.07.2012 and the petitioners cannot be left in the lurch. Primarily, the above officers attached to the subordinate judiciary perform the same function and it is, therefore, the judiciary as a whole is a class in itself and must be treated alike, in terms of Articles 3, 37(d), and 38(e) read with Article 25 of the Constitution 1973. On the aforesaid proposition, we are guided by the decision of the Honourable Supreme Court rendered in the cases of *Government of Balochistan v. Azizuallah Memon* **PLD 1993 SC 341** and *Attiya Bibi v. Federation of Pakistan* **2001 SCMR 1161**.

7. To elaborate further on the subject point of law, Article 25 of the Constitution of the Islamic Republic of Pakistan, 1973, guarantees equal treatment to all persons similarly placed. In terms of Article 27 of the Constitution, no citizen in the service of Pakistan or other persons shall be discriminated against in any manner. Article 27 of the Constitution does not only safeguard against discrimination at the time of appointment of service but after the appointment as well. The disparity in the pay scale allowances of Stenographers in the District Judiciary is in the clear negation of law laid down by the Honourable Supreme Court in its various pronouncements.

8. In the light of the above facts and circumstances of the case, and in addition to the jurisdiction conferred upon this Court under Article 199 (1)(c) of the Constitution 1973, we deem it appropriate to direct the Government of Sindh and the Finance Department, Government of Sindh, to disburse the arrears of upgradation of the post of Stenographers in District Judiciary with effect from 01.07.2012.

JUDGE

JUDGE