

IN THE HIGH COURT OF SINDH, CIRCUIT COURT, LARKANA

Present:

Mr. Justice Muhammed Saleem Jessar

Mr. Justice Shamsuddin Abbasi

Constitution Petition No. D-1033 of 2017

Nazeer Ahmed Baqai & others

Vs.

Province of Sindh & others

Constitution Petition No. D-284 of 2018

Mazhar Ali Qureshi & others

Vs

Province of Sindh & others

Petitioners : through M/s. Anwar Ali Jamali and Irfan Hyder
(in both petitions) Jamali, advocates in both the petitions.

The State : through Mr. Abdul Hamid Bhugri, Additional
Advocate General, Sindh.

Date of Hearing : 18.05.2022.

Date of Judgment : 18.05.2022.

JUDGMENT

MUHAMMAD SALEEM JESSAR, J: By this common Judgment, we intend to dispose of the above two Constitution Petitions, as common questions of law and facts are involved in these petitions.

C.P. NO. D-1033/2017:

2. The petitioners in this petition have narrated their grievance in the following manner:

- i) Petitioner No.1 (Nazeer Ahmed Baqai) was appointed as lecturer in BPS-17 on 23.12.1976 and reached maximum of BPS-17 on 01.12.1987 and was given move-over to BPS-18 on 01.12.1988. He was promoted as Assistant

Professor in BPS-18 on 01.12.1991 when scales were revised in the year 1991. His pay was re-fixed by allowing him annual increment for the year 1989-91. He reached maximum of BPS-18, therefore, he was awarded move-over to BPS-19. Again he reached maximum of BPS-19 on 01.12.1997. He claims that he was not given annual increment for the years 1997, 1998, 1999 and 2000 till his retirement from service on 23.10.2011, which has adversely affected his pensionary benefits.

- ii) Petitioner No.02 (Muhammad Ali) was appointed as Lecturer BPS-17 on 08.02.1979 and was given move-over to BPS-18 on 01.12.1990. Thereafter, he was promoted to BPS-18 on 01.07.1991, when the scales were revised in the year 1991. Therefore his pay was re-fixed and annual increment allowed to him for 1991. He reached the maximum of BPS-18, therefore, he was awarded move-over in BPS-19. Again he reached the maximum BPS-19 on 01.12.2000 and his P.P. increment was due and then pay fixation on 01.12.2001, which was not given to him. On 02.12.2002 he was promoted as Associate Professor in BPS-19 till he retired from Government service on 30.09.2010. He was not given increment of years 2001 and 2005 till he retired from service, which has adversely affected his pensionary benefits.
- iii) Petitioner No.03 (Noor Muhammad) was appointed as Lecturer BPS-17 on 13.03.1970. Thereafter, he was promoted in BPS-18 on 07.11.1989; when the scales were revised in the year 1991, therefore, his pay was re-fixed and annual increment allowed to him for 1991. He reached the maximum of BPS-18, therefore he was awarded move-over in BPS-19. Again he was reached to maximum scale of BPS-19 on 01.12.1993 and 01.12.1994; and his next increment was due on 01.12.1996. On 01.12.1995 he was allowed move-over to BPS-20 till voluntary his retirement from Government service on 15.09.2002. He was not given

increment for the years 1999, 2000 till he retired from service, which has adversely affected his pensionary benefits.

- iv) Petitioner No.04 (Altaf Hussain) was appointed as Lecturer BPS-17 on 08.07.1976 and he reached on maximum of BPS-17 on 1.12.1987. Therefore his pay was re-fixed and annual increment allowed to him for the years 1988, 1989 and 1990 and his next increment was due on 01.12.1988, 1989 and 1990, which were not given to him. Thereafter, he was promoted to BPS-18 on 01.07.1991, when the scales were revised in the year 1991, therefore, his pay was re-fixed and annual increment allowed to him for 1991. He reached the maximum of BPS-18, therefore, he was awarded move-over in BPS-19. Again he reached the maximum of BPS-19 on 01.12.1997; and his next increment was due on 01.12.1996, which was not given to him. On 01.12.2001 he was allowed move-over and promoted to BPS-20 on 02.12.2010 till he retired from Government service on 30.01.2013. He was not given increment for the years 1997, 1998, 1999, 2000 and 2001 till retired from service, which has adversely affected his pensionary benefits.
- v) Petitioner No.05 (Atta Muhammad) was appointed as Lecturer BPS-17 on 09.10.1972 and he reached maximum of BPS-17 on 1.12.1983 with annual increments regularly. Thereafter, he was promoted to BPS-18 on 30.05.1989. The scales were revised in the year 1991, therefore, his pay was re-fixed and annual increment allowed to him for 1991. He reached the maximum of BPS-18, therefore, he was awarded move-over in BPS-19. Again he reached the maximum scale of BPS-19 and his next increment was due on 01.12.1996, which was not given to him. On 01.12.1995 he was allowed move-over to BPS-20 till he retired from Government service on 11.09.2004. He was not given

increment for the years 1998, 1999, 2002, 2003 and 2004, which has adversely affected his pensionary benefits.

- vi) Petitioner No.06 (Muhammad Ameen) was appointed as Lecturer BPS-17 on 05.01.1977 and he reached maximum of BPS-17 on 1.12.1987 with increase of annual increments regularly. Thereafter, he was promoted to BPS-18 on 01.07.1991, when the scales were revised in the year 1991. Therefore his pay was re-fixed and annual increment was allowed to him for 1991. He reached the maximum of BPS-18, therefore, he was awarded move-over in BPS-19. Again he reached the maximum of BPS-19 on 01.12.1997; and his next increment was due on 01.12.1996, which was not given to him. On 01.12.2001 he was allowed move-over and promoted to BPS-20 on 21.12.2010. He was not given increment for the years 1997, 1998, 1999 and 2000 till retired from service, which has adversely affected his pensionary benefits.

C.P. No. D-284 of 2018

In this petition, the petitioners of 2018 have stated the following facts in respect of their service record and grievance:

- i) Petitioner No.01 (Mazhar Ali) was appointed as Lecturer BPS-17 on 15.11.1973. Thereafter, he was promoted to BPS-18 on 8.5.1990 and given move-over to BPS-19 on 01.12.1990. Therefore, he was promoted to BPS-19; his pay was re-fixed and annual increment allowed to him. He was not given increment for the years 1995, 1996 and 1999 till his retirement from service on 23.02.2000, which has adversely affected his monthly and yearly pensionary benefits.
- ii) Petitioner No.02 (Khalil-ur-Rehman) was appointed as Lecturer BPS-17 on 23.01.1982 and thereafter he was promoted in BPS-18 on 31.07.2001. Therefore his pay was re-fixed and annual increment allowed to him. He reached

the maximum of BPS-18, therefore he was promoted to BPS-19 on 31.5.2011. He was not given increment for the years 1998, 1999 and 2000 till he retired from service on 14.4.2017, which has adversely affected his pensionary benefits.

- iii) Petitioner No.03 (Rasheed Ahmed) was appointed as Lecturer BPS-17 on 01.9.1972. Thereafter, he was promoted to BPS-18 on 02.11.1989. He reached the maximum of BPS-18, therefore, he was awarded move-over in BPS-19. Again he reached to maximum scale of BPS-19 and got move-over to BPS-20 on 01.12.1995; that he was reverted from BPS-20 to BPS-19 on 01.12.2001 as per new scale policy. He retired from Government service on 03.01.2005. He was not given increment for the years 1999 and 2000 till he retired from service, which has adversely affected his pensionary benefits.
- iv) Petitioner No.04 (Abdul Rehman) was appointed as Lecturer BPS-17 on 01.2.1973. Thereafter, he was allowed move-over to BPS-18 on 01.12.1984, again reached the maximum of BPS-18 and was allowed move-over to BPS-19 on 01.12.1995, while the scales were revised in the year 2001. He was not given increment for 1999 and 2000 till he retired from service, which has adversely affected his monthly as well as yearly pensionary benefits.

3. Learned counsel for the petitioners submitted that the petitioners approached the District Accounts Officer, who advised them to approach the Secretary Finance, Government of Sindh, for redressal of their grievance. Thereafter, the petitioners moved an application to the Secretary Finance, Government of Sindh, however, no action was taken on their applications. Per learned counsel, the respondents are denying the benefit of annual increment for the intervening period, on the basis of para-3 of Circular No.FD(SR-I)-3(2)/2000, dated 28th March, 2001 [available at page-51 of C. P. No.D-1033/2017]. It would be

advantageous if Circular dated 28th March, 2001 is reproduced, which reads as under:

"I am directed to refer to the subject noted above and to state that under Rule 11 of the Sindh Non-Gazetted Civil Service National Scale of Pay, 1972 and Rule 7 of Sindh Gazetted Civil Service National Scale of Pay, 1974, annual increment falling due on the 1st day of December, following the completion of at least six months service; Civil Servants retiring from service between 2nd June and 30th November, were not entitled to the benefit of annual increment.

2. *It has been decided that a retiring civil servant shall be entitled to the usual annual increment, for the purpose of calculation of his pension only, on completion of six months service in the year of his retirement, irrespective of due date of 1st December following the completion of six months.*

3. *The above decision shall be effective from the calendar year 1998. No claim of pension / commutation prior to 01.06.1998 will be entertained."*

(Emphasis supplied by us)

4. Learned counsel for the petitioners further submitted that subsequently, vide Circular No.FD/SR-I/3(2)/2000, dated 06.03.2008, the respondent No.2, namely, Secretary Finance, Government of Sindh, was pleased to withdraw / cancel para-3 of the above-quoted Circular dated 28th March, 2001. The relevant of the Notification dated 06.03.2008 reads as under:

"SUBJECT: GRANT OF USUAL INCREMENT IN THE YEAR OF RETIREMENT"

I am directed to refer to this department's circular of even number dated 06.03.2001 and to state that the Government of Sindh, Finance Department, has been pleased to withdraw / cancel para 3 of the circular referred above."

5. Learned counsel for the petitioners also submitted that every civil servant on completion of each calendar year of service becomes entitled to one annual increment as a matter of right and if he reaches the maximum pay scale, he is entitled to grant of move-over to the next higher scale, so that the employee is not deprived of his hard earned annual increment. This practice of granting move-over to the employees was stopped by the government, as a result thereof the employees/civil servants resisted by making representations, and thereafter they were

allowed annual increments by naming it as "Personal Pay" for all purposes including pensionary benefits, but while granting such benefit of increments, the respondents have imposed a bar that same can only be granted from 01.12.2005 and have denied those who had attained the maximum of Pay Scale prior to 01.12.2005 and they are being victimized for no fault on their part and they are suffering due to poor performance of government functionary, therefore, such action of the respondents tantamount to punishment to the civil servants because of no fault on the part of employees. Per learned counsel, denial to release increments by the respondents is in violation of the basic rights of the employees, as the annual increment is not a bounty, but is a right of the employee which in any case cannot be denied. Therefore, any such notification denying the same to the employees would be illegal, in excess of authority, discriminatory and *ultra vires*, thus unconstitutional.

6. Learned counsel for the petitioners, apart from arguing the matter on its merits, also referred to the case of Dr. Mohammad Siddique Bhutto (C.P. No. D-454/ 2010), wherein, on identical questions of facts and law, the petition was allowed by a Division Bench of this Court, vide Judgment dated 18.08.2010. This Judgment was assailed by the Province of Sindh before the Hon'ble Apex Court, however, without any success, as the Hon'ble Apex Court, vide its order dated 16.07.2013, upheld the Judgment of this Court dated 18.08.2010.

7. The learned Additional Advocate General, appearing for the respondents, vehemently opposed these petitions, mainly on the ground that by virtue of section 4 of the Sindh Service Tribunals Act, 1974, every civil servant, even after retirement from service, can approach the Sindh Service Tribunal for redressal of his grievance with regard to terms and conditions of his service, and, as such, these petitions are not maintainable. However, he was unable to rebut the submission of the learned counsel for the petitioners that these petitions are also required to be disposed of in terms of Order dated 27.10.2021 passed by the Hon'ble Supreme Court of Pakistan in C.P.L.A. No. 398-K of 2019.

8. We have considered the arguments of both the parties and have gone through the record and proceedings of the case in minute particulars.

9. The objection raised by the learned AAG with regard to maintainability of the petitions in view of section 4 of the Sindh Services Tribunals Act, 1974, is not tenable for two reasons. The first reason is mentioned in the Judgment rendered in C.P. No. D-655 of 2014 and C.P. No.D-656 of 2014, by a Division Bench of this Court, of which one of us (Muhammad Saleem Jessar, J) was a member and also author of the judgment. In the above petitions also, the same objection with regard to maintainability of the petitions was raised by the AAG for the State and with regard to the above objection in respect of maintainability of the petitions the following observation was made:

“22. It is astonishing that in identical case the respondents have benefited Dr. Muhammad Siddique Bhutto under the cover of notification dated 06.03.2008 and umbrella of Court orders passed by this Court as well as the Apex Court. For the petitioners, the learned Additional A.G. has objected by referring to section 3 of the Sindh Service Tribunal Act, 1974 but the same plea or objection was not raised by them in Const. Petition No.D-454/2010.”

23. In our view the contention raised by learned Addl. A.G. has no force on the ground that whereas identical issue was decided by this Court and subsequently was recognized by the Apex Court there was no option for respondents but to accommodate the petitioners by resolving their grievance. Even otherwise, if the contention of the learned Addl. A.G. may be considered even then the rule of propriety is existing, which favors the petitioners as in identical case their junior Dr. Muhammad Siddique Bhutto was benefited and, therefore, the petitioners are entitled to have drawn their increments for the period 1997, 1998 and 1999 with respectively cut date and in this context reference can be had from the case of Government of Punjab and others v. Sameena Parveen and others (2009 SCMR 01). The relevant observation is reproduced below:

“It was held by this Court in the case of Hameed Akhtar Niazi v. The Secretary, Establishment Division, Government of Pakistan and others 1996 SCMR 1185 that if a Tribunal or this Court decides a point of law relating to the terms and conditions of a civil servant who litigated, and there were other civil servants, who may not have taken any legal proceedings, in such a case, the dictates of justice and rule of good governance demand that the benefit of the said decision be extended to other civil servants also, who may not be parties to that litigation instead of compelling them to approach the Tribunal or any other legal forum. This view was reiterated by this Court in the case of Tara Chand and others v. Karachi Water and Sewerage Board, Karachi and others 2005 SCMR 499 and it was held that according to Article 25 of the Constitution of Islamic Republic of Pakistan, 1973 all citizens are equal before law and entitled to equal protection of law.”

10. The second reason, due to which the above objection raised by the learned AAG is not tenable, is that these petitions are not for enforcing the terms and conditions of service of the petitioners. In fact, these petitions are for implementation of the earlier judgments of this Court as well as the Order of the Hon'ble Supreme Court of Pakistan, referred to above, in respect of the petitioners in these petitions, for which the Sindh Services Tribunal has no jurisdiction. Therefore, the objection raised by the learned AAG has no force and is hereby repelled.

11. Finally, in para-24 of the Judgment in C.P. No.D-655/2014 and C.P. No.D-656 of 2014, the entire crux of the matter i.e. impact of the withdrawal of para-3 of the Notification dated 28th March, 2001; the objection raised by the learned AAG as to the maintainability of these petitions; and the impact of the Judgments of this Court as well as the Order of the Hon'ble Supreme Court in the above-referred petitions / appeal was discussed in the following terms:

“24. We have examined the Impugned Notifications and have gone through the orders passed by this Court as well as the Hon'ble Supreme Court of Pakistan in the case of Dr. Muhammad Siddique Bhutto (ibid) and find that the case of petitioners was identical to the case of Muhammad Siddique Bhutto and the petitioners should have been benefited at the par by extending equal treatment to them in terms of the judgment of the Hon'ble Supreme Court in case of Government of Punjab Vs. Sanmina Parveen and others (supra). As far as contention of learned Additional A.G. with regard that the petitioners being civil servants could have approached to Service Tribunal for redressal of their grievance is concerned the same objection was never ever raised by them in case of Dr. Muhammad Siddique Bhutto, even the Hon'ble Supreme Court of Pakistan has not considered such aspect of their case and therefore the appeal filed by the Government of Sindh was dismissed. Moreover, the conditions contained in para No.3 of the notification dated 28.03.2001 was withdrawn by the Government through notification dated 06.03.2008, which was in terms of the existing policy of the Government. In our view, the case of petitioners is at par to the case of Dr. Muhammad Siddique Bhutto (ibid) and the respondents have denied their benefits which is clear discrimination and requires interference by this Court.”

12. In the case of Rasool Khan and others v. Federation of Pakistan and others (2021 PLC (CS) 14), the Hon'ble Islamabad High Court held as under:

“37. Since the law laid down by the Hon'ble Supreme Court in the cases of Pakistan Telecommunication Employees Trust (PTET) v. Muhammad Arif (supra), Muhammad Riaz v. Federation of Pakistan (supra), and P.T.C.L. v. Masood Ahmed Bhatti (supra) is binding not just on this Court but also on

*P.T.C.L. and P.T.E.T. in terms of Articles 189 and 190 of the Constitution, P.T.C.L. and P.T.E.T were bound to give all the departmental employees the very same benefit as had been given to the similarly placed departmental employees who were parties to the litigation in the cases of Pakistan Telecommunication Employees Trust (PTET) v. Muhammad Arif (supra) and Muhammad Riaz v. Federation of Pakistan (supra). The petitioners who are similarly placed and similarly circumstanced as the departmental employees to whom the same relief had been given by the Courts as the one sought in these petitions have a right to be given the same relief. This relief should have been given to them by P.T.E.T. and P.T.C.L. and they should not have been made to go through the acrimony of litigation. It is well settled that "equal protection of law" and "equality before law" means that all persons similarly placed should be treated alike. A party who does not litigate ought to be given the same relief/benefit as a similar party who had litigated. Reference in this regard may be made to the following case law:-
(emphasis supplied by us)*

(i) In the case of WAPDA v. Abdul Ghaffar (2018 SCMR 380), the Hon'ble Supreme Court held the respondents in the said case to be entitled to the same relief as had been granted to a number of similarly placed respondents by the Hon'ble Supreme Court a few years earlier.

(ii) In the case of Federation of Pakistan v. Ghulam Mustafa (2012 SCMR 1914), it was observed inter alia that the pensioners before the Court had to be treated at par with the pensioners in whose favour decisions had been given by the Hon'ble Supreme Court."

13. As a matter of fact, after the Judgment of this Court in the case of Muhammad Siddique Bhutto (C.P. No.D-454 of 2010), Rab Nawaz and others (C.P. No.D-655 of 2014), and Muhammad Mithal and others (C.P. No.D-656 of 2014), and Order dated 16.07.2013 passed by the Hon'ble Apex Court in C.P.L.A. No.53-K of 2011, whereby the Judgment passed in the case of Muhammad Siddique Bhutto was upheld by the Hon'ble Apex Court, there was no need to render such an elaborate Judgment in these petitions. However, in order to impress upon the respondents that once this Court decides a point of law, which is not successfully assailed before the Hon'ble Supreme Court or the Hon'ble Supreme Court of Pakistan decides a point of law, which covers not only the case of the Civil Servants who litigated, but also of other civil servants, who may have not taken any legal proceedings, in such a case, the dictates of justice and rule of good governance demand that the benefit of the judgment be extended to other civil servants also, who may not be parties to the above litigation and they should not be compelled to approach the Tribunal or any other legal forum for redressal of their grievance. This is for the simple reason that ultimately,

after a long-drawn litigation process, the result would be the same i.e. that similarly placed persons are to be treated similarly, as held by the superior courts.

14. In view of the law laid down by this Court as well as by the Hon'ble Apex Court in the above-referred cases, the respondents should have allowed the same relief to all the employees placed in the same position, but they kept refusing the due relief of the retired employees compelling them to knock at the door of judiciary. This only results in piling up of cases before the superior Courts resulting in unnecessary delays in disposal of cases. Once the law was laid down by this Court and it was not challenged before the Apex Court or it was assailed by an aggrieved party before the Hon'ble Supreme Court of Pakistan and was upheld, then there is no choice available with the respondents but to treat all the similarly placed persons similarly in accordance with law by applying the law laid down by the superior Court across the board without any pick and choose and without any discrimination.

15. We are of the considered view that all the issues raised in these petitions and the objection raised by the learned AAG as to the maintainability of these petitions have already been decided by this Court as well as the Hon'ble Supreme Court in the above-referred cases. All that was required of the respondents was to issue a Notification / Office Order similar to the one issued in the case of Dr. Muhammad Siddique Bhutto [available at page 107 of C.P. No.D-1033/2017), so that the petitioners in these petitions were also treated at par with the petitioners in the above-cited petitions. However, due to the denial of the rights of the petitioners in these petitions, they were forced to file these petitions for implementation of the earlier judgments / orders in their cases also.

16. We are, therefore, of the view that the respondents have no option but to allow annual increments to the petitioners in these petitions, as have been earlier allowed to the petitioners in the above-referred petitions, including that of Dr. Muhammad Siddique Bhutto, keeping in view the well-settled law that "equal protection of law" and "equality before law" means that all persons similarly placed should be treated

alike regardless of the fact that some of those persons have approached the Court or not.

17. The above petitions were heard on 18.05.2022 and, vide a short order of the same date, the same were allowed for reasons to be recorded. The above are the detailed reasons for the short order dated 18.05.2022.

Larkana, the 30th May, 2022.

Judge

Judge