

IN THE HIGH COURT OF SINDH KARACHI

Before :

Mr. Justice Muhammad Iqbal Kalhoro

Mr. Justice Adnan-ul-Karim Memon

Constitutional Petition No.D-3105 of 2017

(Muhammad Adil Khan and 361 others v. Federation of Pakistan and 03 others)

Constitutional Petition No.D-8295 of 2018

(Tariq Mehmood and 51 others v. Federation of Pakistan and 03 others)

Constitutional Petition No.D-4321 of 2020

(Zahid Akhter Siddique and 26 others v. Federation of Pakistan and 03 others)

Mr. Muhammad Haseeb Jamali, advocate for the petitioners

Mr. Adnan Ahmed, advocate for Pakistan Steel Mills

Mr. Yasir Shah, Assistant Attorney General

Date of hearing : 10.01.2023.

Date of order : 16.01.2023.

ORDER

ADNAN-UL-KARIM MEMON, J. – By this common order, we intend to decide the captioned petitions as all the petitions have been filed against the common cause of action and based on common question of law and facts.

2. Petitioners are retired employees of Pakistan Steel Mills ('PSM') and they approached this court with the narration that in 2009-10 budget, the Government of Pakistan announced 15% increase in the Basic Pay with effect from 1 July 2009 but was paid to the Petitioners with effect from 1st July 2010 and in this way the Petitioners have been deprived of this relief from 1st July 2009 for the whole fiscal year and was/is not included in their salaries, which is outstanding against the Respondent No.3 although afterward this 15% ad-hoc relief was merged in the pay scales while announcing the budget for the year 2011-12. Petitioners have averred that in 2010-11 budget, an increase of 50% in the Basic Pay Scales was announced by the Government of Pakistan and was made applicable to other departments, corporations, and statutory bodies, etc. but on the pretext of financial constraints, it was not paid to the officers of PSM and remains unpaid. They further submitted that in the Budget 2012-13, an increase

of 20% ad-hoc relief allowance in the Basic Pay Scales was announced by the Government of Pakistan and was made applicable to all departments, corporations, statutory bodies, etc. but on the pretext of financial constraints, it was not paid to the officers of PSM and remains unpaid. Petitioners have asserted that the Government of Pakistan, granted 20% Special Allowance for the employees of his Secretariat but was not made applicable to other Government/Semi-Government/Autonomous Body employees against which a Writ Petition was filed in the Islamabad High Court which made the relief applies to all the Government employees and this relief has not been extended to the employees of PSM. They have submitted that in the Budget for the year 2013-14, an increase of 10% ad-hoc relief in the Basic Pay Scales was granted by the Government of Pakistan, but this relief has been denied to the employees of PSM for no valid reasons. Petitioners further averred that in the Budget of the year 2014-2015 the ad-hoc relief in the Basic Pay Scales was granted by Respondent No.3, but again this relief has been denied to the Petitioners (now all have retired during pendency of these petitions). Petitioners have added that for the budget year 2015-2016, through the letters dated 7.07.2015 & 19.08.2015 ad-hoc relief allowance in the Basic Pay Scale of all the employees of autonomous, semi-autonomous, and corporations functioning under the supervision/control of the Federal Government were made, however like previous years no such relief was provided to the Petitioners; that in the year 2016- 2017 through the Letter dated 28/07/2016 ad hoc relief in the Basic Pay Scale of all the employees of Autonomous, Semi-Autonomous and Corporations functioning in the supervision/control of the Federal Government were made but again the employees of the PSM/ Respondent No.2 were discriminated against. Petitioners lastly submitted that the enhanced leave as allowed vide notification dated 29th August 2012 by the competent authority of the Government of Pakistan has not been extended to PSM Employees including the Petitioners.

3. Mr. Muhammad Haseeb Jamali, learned counsel for the petitioners, has argued that the Petitioners have not been paid the ad-hoc relief allowance and now all petitioners have retired from service, therefore the instant petitions have been filed. Learned counsel submitted that the officers of PSM including the petitioners have been denied the ad-hoc relief allowance on the sole pretext of financial constraints, whereas on the other hand, 11,000 workers of PSM have

got more relief through two charters of demands duly accepted by the management of PSM, more-so 5000 daily wages, and contract employees have been regularized in service, but the petitioners have been discriminated and have not been granted legally entitled relief since 2009. It is further submitted that the said ad-hoc relief allowance has already been granted to the employees of PSM as is evident from the office order/notifications dated 23.07.1999, 30.07.2003, 1.7.2004 & 24.6.2006 even though the above reliefs mentioned from Paragraph 5 & 6 remain to be paid to the petitioners for that Articles 4, 10A, 18 & 25 of the Constitution attract to the case of petitioners. Learned counsel further submitted that similar relief has already been granted by this Court to the employees of Pakistan Industrial Development Corporation in vide order dated 05.04.2010 passed in CP No.1812 of 2008 and the employees of the Industrial Development Corporation are at par with the present petitioners. Learned counsel contended that the respondents in an illegal manner amended the Gratuity Fund Rules and via inserting clause 12 in the same, they have limited the scope of such beneficial amendment to the extent of unionized staff of PSM only, such action of the management of PSM is discriminatory against the petitioners and Clause 12 of the Gratuity Fund Rules are liable to be brought in line with the decision No.156 as recorded in PSM's Circular dated 19.05.2009. Learned counsel for the petitioners submitted that in an illegal and malafide manner, since the year 2011, the petitioners' right to special pay and allowance are being withheld/frozen in alleged compliance with Clause No.9 of the Office Memorandum dated 07.07.2011 and such continuous freezing of benefits against the employees of PSM including the petitioners is illegal, arbitrary as well as discriminatory. He prayed for allowing the petitions.

4. Mr. Adnan Ahmed, advocate for Pakistan Steel Mills, averred that the case of grant of Adhoc Relief Allowance 2009 @ 20% & 15% to Management / Executive grade officers was placed before the Board of Directors in its meeting held on 07.10.2010 and the Board allowed said allowance w.e.f. 01.07.2010 instead of 01.07.2009 vide Corporate Secretary Memo dated 20.10.2010 subject to fulfillment of other formalities as the financial status of PSM did not permit to allow the said allowance from retrospective effect or to sustain the heavy burden of arrears from 01.07.2009. He submitted that Government approves ad-hoc relief allowance for civil servants (BPS-1 to BPS-22) and not for the employees

of Corporations' Autonomous/Semi-Autonomous Bodies. The Corporations that have adopted their own pay scales are subject to approval/recommendations by the Board of Directors and subsequent approval of the standing committee in the Ministry of Finance. The revision is to be met from the own resources and subject to the sound balance sheet of the previous financial year. Since the financial state of PSM was not encouraging therefore no ad-hoc relief allowance was extended to any officer. However, efforts are being made and the case of revision of pay scale -2015 and 2016 and all ad-hoc relief allowances since 01.07.2010 are being placed before BHRC for deliberation/recommendation before the matter is placed before the Board of Director's formal approval and thereafter the case will be submitted to Ministry of Finance through Ministry of Industries for approval.

5. We have heard the learned counsel for the parties and perused the record with their assistance.

6. The questions involved in these petitions are whether petitioners have been discriminated against and have not been granted legally entitled ad-hoc relief since the year 2009 and whether the same relief was being granted to unionized staff of PSM and the classification in question was based on intelligible differentia and contrary to Article 25 of the Constitution of Islamic Republic of Pakistan, and whether this Court while exercising the power of judicial review has the authority to interfere in policy matters of PSM.

7. The recent judgment of the Honorable Supreme Court in the case of House Building Finance Company Ltd. Vs. Muhammad Irfan Khan (2020 SCMR 98). In this case, the House Building Finance Company had granted financial relief to one group of employees while denying relief to the other group of employees. The respondents in this case, who were deprived of financial relief, went to High Court and succeeded in getting the relief.

8. To the first proposition, the Honorable Supreme Court while allowing the appeal of the department has settled the issue and held as under:-

“To arrive at the conclusion as noted in para-12 as reproduced above, no rational basis has been identified as to how the 'Officers and Executive' cadre which does not enjoy a statutory protection of collective bargaining could be equated with the workmen cadre in service of HBFCL. We have also noted that Government of Pakistan in a recent fiscal year, 2019-2020

increased the salary from Grade-01 to Grade-16 employees and revision was ordered to the extent of 10% whereas for the Gazetted Officers of Grade-17 to Grade-20 the increase was only ordered to the extent of 05% and salary of BPS-21 and above was not increased. Even we have noted that no increase was considered in respect of the armed personnel on account of the financial crunch faced by the State of Pakistan. As such, financial exigency as has been expressed above, do empower the employer to consider different yardstick for revision in the salary of different categories of its employees. All employees cannot claim to be treated alike irrespective of their grades, domain and class. There is a clear distinction between the employees covered by the labour laws and other statutory dispensation vis-a-vis employees in 'Executive and Officers' cadre. This principle was so held in Sail Ex-Employees Association case (Supra). In a case reported Muhammad Shabbir Ahmed Nasir v. Secretary, Finance Division, Islamabad (1997 SCMR 1026) and Farman Ali v. State (1997 SCMR 1026 = 1997 PLC (C.S.) 903) it was held by this Court that grouping for good governance by the employer of its employees serving in BPS-01 to BPS-16 into one category and those serving in BPS-17 to BPS-22 to another category for the purpose of granting greater monetary benefit, cannot be challenged on ground of arbitrariness or unreasonable classification and as violative of Article 25 of the Constitution.”

9. Adhoc relief allowance is a financial incentive allowed to Government Employees from time to time and sometimes merged into their Basic Pay Scale. In the present case, the petitioners claim ad-hoc relief allowance with retrospective effect in the light of the Office Memorandum issued by the Government of Pakistan Finance Division Islamabad from time to time, whereas the respondents have denied the claim of the petitioners on the plea that the Board of Directors deliberated that rise in salary could not be made due to financial condition of PSM which is in limbo since 2015 and not able to earn profit as such the grant of allowance to the petitioners is not possible. Besides that, the ad-hoc relief allowance was not extended to the officer category as they were already getting the handsome salaries. So far as the implementation of the Office Memorandum dated 04.7.2011 issued by the Ministry of Finance, it is urged that respondent PSM has not been earning profit as such the aforesaid Office Memorandum could not be implemented due to precarious financial conditions, thus PSM was unable to revise the Pay Scales.

10. As per the profile of PSM, it is a State Enterprise, however, Steel Mills is shut since June 2015 but its retired employees are still claiming all sorts of benefits including ad-hoc relief allowance and other perks and privileges. The learned counsel for the respondents submitted that certain numbers of employees are still on the payroll of the PSM, who are being paid from the grants received

from the federal government. He further submitted that a scheme for retrenchment has already been filed before the learned Labor Court.

11. We have been informed that PSM, has suffered a financial loss of over Rs. 100 Billion with overall liabilities of more than Rs. 110 Billion, and on the contrary petitioners being retired officers of PSM are claiming financial benefits i.e. ad-hoc relief allowance through these petitions, which is not conducive at this juncture to direct PSM to grant such financial relief to the petitioners for the reasons discussed supra.

12. In view of the above reasoning, the relief so sought by the petitioner cannot be granted, therefore these petitions being not maintainable against the claim of ad-hoc/special relief allowance are dismissed together with the pending application(s).

JUDGE

JUDGE

Nadir*