

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI
C.P.No.D-1825 of 2021

Date	Order with signature of Judge
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Present: Mr. Justice Muhammad Iqbal Kalhoro
Mr. Justice Adnan ul Karim Memon

Naseem-us-Sami & others..... Petitioners.
Vs.

Federation of Pakistan & others Respondents.

09.02.2023.

Mr. Muhammad Arshad Khan Tanoli, advocate for the petitioners.
Syed Yasir Ahmed Shah, Assistant Attorney General.
Mr. Imtiaz Ali Solangi, advocate for respondents No.4 & 5.
Mr. Khalid Ali Lashari, Assistant Director Legal PSQCA.
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MUHAMMAD IQBAL KALHORO J: Petitioners, permanent employees of respondent No.4 Pakistan Standards and Quality Control Authority (PSQCA), have filed this petition seeking restoration of 20% special allowance on their running basic pay approved by the PSQCA Board of Governors (BoG) in its 11th meeting held on 25.07.2016, and a further remedy of directing respondents No.1 to 3 to act upon item No.9 (a) (b) and 10(a) of minutes of the said meeting and item No.10 of the approved minutes of 16th meeting of PSQCA BoG and in the light of which grant house rent ceiling at 65% of running basic salary w.e.f. 25.07.2016 alongwith arrears.

2. Learned counsel for petitioners quoting various provisions of the Pakistan Standards and Quality Control Authority Act, 1996 (Act, 1996) has argued that special allowance at 20% and house rent ceiling allowance at 65% of running basic pay have been approved by

the BoG of PSQCA, which is an independent and self-generating authority, and it is maintaining its expenditure from its own resources; that despite approval of such allowances by the BoG in 11th and 16th meeting, stoppage of special allowance and not granting house rent ceiling at running basic pay scale is against the natural justice and in violation of provisions of the Act, 1996 and decision of BoG. Learned counsel has further emphasized element of discrimination in the case of petitioners by stating that civil servants placed similarly like the petitioners have been getting the same allowances and it is only the petitioners, who have been kept out of benefit of decisions of BoG; that for two years the petitioners were extended 20% special allowance that shows that said allowance was duly sanctioned and made part of the budget estimates therefore, its stoppage afterwards is illegal and void abinitio.

3. On the other hand learned Assistant A.G and learned counsel for respondents No.4 & 5 have opposed this petition stating that Federal Government is the competent authority and that special allowance was given to the petitioners without approval from the Federal Government in violation of Act, 1996. Learned Assistant A.G has also referred to various provisions of Act, 1996 to support his arguments.

4. We have considered submission of the parties and perused material available on record. A perusal of section 4 of the Act, 1996 indicates that the decision of the BoG is subject to such directions as the Federal Government may give it from time to time. Powers and functions of the Authority (PSQCA) have been enumerated in section 8, none of such powers conferred upon the Authority permits it to extend any kind of allowances, barring what are already part of the salary and approved by the Federal Government, to its employees. Section 32 of the Act, 1996 provides for that there shall be created a

fund to be known as Pakistan Standards and Quality Control Authority Fund, which shall vest in the Authority and shall be utilized by the Authority to meet charges in connection with its functions under the Act including payment of salary and other remuneration to the Director General, Members, officers, servants, experts and consultants of the Authority.

5. Much emphasis has been laid by learned counsel in his arguments on section 32 of the Act, 1996 to show that the Authority was competent to give special allowance to its employees: the petitioners. However, we do not agree with such proposition because the first and foremost source of such Fund is grants and loans made by the Federal Government firstly. And secondly, in terms of subsection (2) & (3) of section 4, it is abundantly clear that every decision of the BoG/Authority is subject to the directions of the Federal Government and if any question arises as to whether any matter is a matter of policy or not, the decision of the Federal Government shall be final. In this case, after approval of special allowance by BoG the matter was sent for final sanction to respondent No.3/ Ministry of Science and Technology. However, it decided against doling out of the special allowance to the petitioners. In its comments, respondent No.3 has revealed that respondent No.4/ PSQCA had in fact concealed the facts from the Ministry and no concurrence/ guidance was taken from it as well as from respondent No.2, Ministry of Finance before placing the case in the meeting of BoG for granting special allowance to the petitioners, which is in violation of relevant rules, policy and procedure. Respondent No.3 has further clarified in its comments that earnings of PSQCA belong to government exchequer, and there is proper procedure for its disbursement and in case no proper procedure is adopted, it will tantamount to violation of government policy.

6. Be that as it may, it appears that after receiving the proposal of BoG, Ministry of Science & Technology approached Finance Division for sanction of the said allowance. In response, the Finance Division advised vide O.M.No.4(3)R-4/2017-PSQCA dated 05.03.2018 that grant of special allowance to any public sector organization entails relaxation of policy of the government which requires approval of the Prime Minister. Respondent No.2/ Ministry of Finance on its part in comments has reiterated such facts that proposed allowances i.e. house rent ceiling at 65% and special allowance at 20% of basic pay of employees of PSQCA were special allowances over and above the normal allowances admissible in the scheme of basic pay scales. Hence these special allowances cannot be granted without approval of the Prime Minister in relaxation of government approved policy. In the present case, it is undisputed that without concurrence and guidance from the controlling Ministry i.e Ministry of Science & Technology, the BoG in its meeting held on 25.07.2016 granted 20% special allowance, renamed latter as technical allowance, of the running basic salary to the petitioners in violation of the government policy.

7. Insofar as house rent ceiling at 65% is concerned, a perusal of item No.9.2 of the minutes of said meeting reflects that BoG had approved the said allowance subject to concurrence from the Finance Division. And, it is undisputed fact that such concurrence has not been granted by the Finance Division, therefore, the extension of which to the petitioners is out of question. As to extension of technical allowance at 20%, in view of above discussion plus various provisions of Act, 1996, quoted above that it is subject to the approval by the Federal Government, which in this case is lacking, the petitioners are not entitled to it either. Further, since this allowance is over and above the normal allowances being received by

the petitioners in their salary, its grant is subject to final approval to be granted by the Prime Minister in relaxation of the government policy in this regard which too in this case has not been sought either, nor such a decision has been made by the Prime Minister on his own in favour of petitioners. It is clear that extension of such allowance to the petitioners since from very onset was illegal, against government policy, the rules and the Act, 1996, and therefore the same cannot be granted a sanction by this court in jurisdiction under Article 199 of the Constitution, which is essentially discretionary in nature. This being the position, We do not find any merits in this petition and accordingly dismiss it.

The petition stands disposed of alongwith pending application(s) accordingly.

JUDGE

JUDGE

A.K.