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JUDGMENT SHEET
IN THE LAHORE HIGH COURT, MULTAN BENCH,
MULTAN
JUDICIAL DEPARTMENT

Writ Petition No.15368 of 2023

Munawar Hussain Toori
Versus
Government of Pakistan, Establishment Division, Cabinet
Secretariat, Islamabad through its Secretary & others

JUDGMENT

Date of hearing: 17.04.2024.

Petitioner by: Malik Muhammad Tariq Rajwana,
Advocate.

Respondents by: Rana Ghulam Hussain, Assistant Attorney
General along with Shahzad Ali, Assistant
and Malik Imdad Hussain, Assistant, NIRC.

MUHAMMAD SAJID MEHMOOD SETHI, J.:-

Through instant petition, petitioner has sought direction from this Court for the respondents to pay the perks and privileges / pay and allowances to petitioner as are being paid to the other Members of the National Industrial Relations Commission (“NIRC”), especially the District & Sessions Judges in other provinces.

2. Learned counsel for petitioner submits that petitioner, who is performing his duties as Member NIRC, is being discriminated in respect of perks and privileges given to the other Members of the NIRC posted at other stations and in other provinces in violation of the equality clause contained in Article 25 of the Constitution of the Islamic Republic of Pakistan, 1973. He argues that the impugned actions of respondents not allowing the perks and privileges to the petitioner as per qualification of petitioner required for appointment for the post in accordance with Rule 5(a), (d) of the Appointment of Chairman and Members (Qualifications) Rules, 2022, are absolutely illegal and without lawful justification. In support of his submissions, he has referred to Government of the Punjab through Secretary,

Finance Department, Lahore v. Mubarik Ali Khan and 8 others (PLD 1993 Supreme Court 375), Government of the Punjab through Chief Secretary, Civil Secretariat, Lahore and 2 others v. Syed Riaz Ali Zaidi [2016 PLC (C.S.) 1074], Abdul Haleem Siddiqui and others v. Federation of Pakistan through the Law Secretary, Ministry of Law and Justice, Pakistan Secretariat, Islamabad and others [2019 PLC (C.S.) 238] and Muhammad Wassay Tareen v. Government of Balochistan through Chief Secretary and 2 others [2023 PLC (C.S.) 457].

3. On the other hand, learned Law Officer has vehemently opposed the above submissions by contending that petitioner is being provided the perks and privileges of BS-21 (initial appointment) with the approval of Finance Division, as he has not tendered any regular service in the Government Establishment / offices as per available record, therefore, he can only be allowed perks and privileges in terms of the contract agreement.

4. Arguments heard. Available record perused.

5. Record shows that petitioner was appointed as Member (BS-21), NIRC on contract basis for a period of three years or till attaining the age of sixty-five years, whichever is earlier vide notification dated 30.04.2023, issued by the Government of Pakistan, Ministry of Overseas Pakistanis and Human Resource Development, along with others, namely Syed Noor-ul-Hussnain, Abdul Ghani, Muhammad Siraj-ul-Islam Khan, Abdul Qayyum, Sohail Ikram, Muhammad Zubair Khan and Shabbir Hussain Awan on same terms and conditions.

6. It is the stance of petitioner that he is being treated differently in respect of perks and privileges given to the other Members of the NIRC; and that at the time of appointment, it was agreed by respondents No. 3 & 4 that they will make payment of pay & allowances to the petitioner as per the pay & allowances of sitting senior District & Sessions Judges of the respective provinces, however, while issuing agreement, pay and allowances of non-judicial officers have been introduced; that petitioner was appointed along with retired

District & Sessions Judges and their pay and allowances have been fixed as per the pay and allowances they were lastly receiving, however, petitioner is being discriminated in the matter qua his perks and privileges. In support, he has annexed salary slips of similarly placed other persons, namely Muhammad Zubair Khan and Shabbir Hussain along with his own, which *prima facie* establishes difference between their pay and allowances.

7. The Constitution requires that public functionaries, deriving authority from or under the law, are obliged to act justly, fairly, equitably, reasonably, without any element of discrimination and squarely within the parameters of law, as applicable in a given situation. Any deviation therefrom can be corrected through appropriate orders under Article 199 of the Constitution. Reliance is placed upon Abdul Malik v. Director General (D.G.) Quetta Development Authority (QDA) and another [2023 PLC (C.S.) Note 63] and Saleem Ahmad v. Government of Khyber Pakhtunkhwa through Secretary Elementary and Secondary Education and others [2023 PLC (C.S.) 1043].

8. Although Article 25 of the Constitution allows for differential treatment of persons who are not similarly placed under a reasonable classification, however, in order to justify this difference in treatment the reasonable classification must be based on intelligible differentia that has a rational nexus with the object being sought to be achieved. The term "reasonable" was explained and elaborated by the Supreme Court of Pakistan Muhammad Nasir Mahmood and another v. Federation of Pakistan through Secretary Ministry of Law, Justice and Human Rights Division, Islamabad (PLD 2009 Supreme Court 107) wherein the august Supreme Court while elaborating the dictionary meaning of the term observed that the dictionary meaning of the word 'reasonable' is just, proper, fair, equitable, and that which is acceptable to a man of common prudence and that of the word 'unreasonable' i.e. unjust, unfair and that which is not acceptable to a man of ordinary prudence. This

means that any distinct treatment meted out to a class of persons can only be sustained under Article 25 if the aforesaid test is satisfied. Reliance is also placed upon *Hadayat Ullah and others v. Federation of Pakistan and others (2022 SCMR 1691)*. Similarly, it is well settled that in order to establish a reasonable classification based on intelligible differentia, the differentiation must have been understood logically and there should not be any artificial grouping for specific purpose causing injustice to other similarly placed individuals. In *Syed Azam Shah v. Federation of Pakistan through Secretary Cabinet Division, Cabinet Secretariat, Islamabad and another (2022 SCMR 201)*, the Supreme Court of Pakistan further held that the concept of reasonableness is rationally a fundamental component of equality or non-arbitrariness. This very question was earlier elaborated by the Supreme Court in the case of *Dr. Mobashir Hassan v. Federation of Pakistan (PLD 2010 Supreme Court 265)*, wherein the Court held that intelligible differentia distinguishes persons or things from the other persons or things, who have been left out. The Court held that the definition of classification "intelligible differentia" means differentiating between two sets of the people or objects, all such differentiations should be easily understood and should not be artificial. Similarly in the case of *Secretary Economic Affairs Division, Islamabad and others v. Anwarul Haq Ahmed and others (2013 SCMR 1687)*, the Supreme Court further held that by now it is well settled that equality clause does not prohibit classification for those differently circumstanced provided a rational standard is laid down. The Supreme Court further held in the case of *Muhammad Shabbir Ahmed Nasir v. Secretary, Finance Division, Islamabad and another (1997 SCMR 1026)*, that a law applying to one person or one class of persons may be Constitutionally valid if there is sufficient basis or reason for it but a classification which is arbitrary and is not founded on any rational basis is no classification as to warrant its exclusion from the mischief of Article 25. It has been further elucidated in *Government*

of Khyber Pakhtunkhwa through Chief Secretary and others v. Syed Sadiq Shah and others (2021 SCMR 747) that it must always rest upon some real and substantial distinction bearing a just and reasonable relation to the object sought to be achieved by the authority. The Court further held that Article 25 forbids class legislation but it does not forbid classification or differentiation which rests upon reasonable grounds of distinction. The classification however must not be arbitrary, artificial or evasive but must be based on some real and substantial bearing, a just and reasonable relation to the object sought to be achieved by the legislation. The Court also held that in order to pass the test of reasonableness there must be a substantial basis for making the classification and there should be a nexus between the basis of classification and the object of action under consideration based upon justiciable reasoning.

9. Petitioner had legitimate expectancy to receive the same perks and privileges as were being granted to similarly placed other persons / colleagues. In judgment dated 19.10.2016, passed by another learned Bench of this Court in **W.P. No. 15184 of 2013**, it was settled that there would be no discrimination regarding allowances paid to regular judicial officers and advocates appointed on contracts against same judicial posts. Even, the revised terms & conditions conveyed vide letter dated 11.02.2022 clearly stipulated that the incumbents will draw pay / allowances and emoluments at the last stage of BS-21 “alongwith all admissible allowances including special judicial allowance under the rules”. This term clearly means all admissible allowances to regular judicial officers in same grade would be admissible to the petitioner. Petitioner was appointed against the judicial post having requisite qualification and practice as an advocate and as such, he could not have been discriminated for the perks and privileges being paid to other appointees / Members of NIRC, who were retired District & Sessions Judges. It is manifestly clear from the pay slips annexed by petitioner in this regard that petitioner is being treated differently as

compared to his colleagues, which is absolutely unwarranted under the equality clause contained in Article 25 of the Constitution of the Islamic Republic of Pakistan, 1973.

10. At this stage, learned counsel for petitioner submits that the issue raised through instant petition has already been resolved by learned Division Bench of the Hon'ble High Court of Balochistan, Quetta vide judgment dated 18.03.2022, passed in **C.P. No.384 of 2020** titled *Muhammad Ishaque Notezai v. Government of Pakistan, Establishment Division, Cabinet Secretariat, Islamabad through its Secretary & others*, therefore, petitioner, being a similarly placed person, is entitled to the same relief.

For facility of reference, operative part of afore-referred judgment is reproduced hereunder:-

“15. According to the detailed difference between the pay and allowances of the petitioner and that of other members of NIRC, the petitioner received Basic Pay of Rs. 81,720/- while the member of NIRC Multan Bench who was appointed on the same date received Basic Pay of Rs. 136,720/-. The petitioner received Rs. 77,640/- as a special judicial allowance while the member of NIRC Multan Bench received Rs. 145,080/-. The petitioner received a Medical Allowance of Rs. 4353/- but on the other hand, the member of NIRC Multan Bench received Rs. 5087/-. The petitioner's Adhoc Relief Allowance of 2017 was Rs. 8172/- whereas the member of NIRC Multan Bench received Rs. 13,672/- as Adhoc Relief Allowance of 2017.

16. The above is sufficient to make it clear that the petitioner is being discriminated against with a person similarly placed in other provinces. It is a matter of record that the petitioner was appointed on the same terms and conditions of service as that of the members of NIRC of other provinces. Thus, the learned AAG would not be legally justified in opposing the instant relief.

Under such circumstances, the petitioner is also entitled to the allowance equivalent to that paid to the member at Multan Bench of the NIRC.

For the above reasons and to avoid disparity of the pay and other allowances of the employees of the same class, the instant petition is partly allowed. Consequently, the petitioner is held entitled to receive Basic Pay of Rs. 136,720/- instead of Rs. 81,720/-, the allowances, i.e. Special Judicial Allowance (Rs. 145,080/- instead of Rs. 77,640/-), Medical Allowance (Rs. 5087/- instead of Rs. 4353/-) and Adhoc Relief of 2017 (Rs. 13,672/- instead of Rs. 8172/-) equal to that of Member of NIRC Multan Bench as mentioned hereinabove. The respondents are directed to

pay the arrears of the above allowances to the petitioner accordingly."

11. In the instant case, there is no reasonable distinction between the petitioner and other similarly placed individuals mentioned above and there is no justified reason to isolate the case of the petitioner from the said other similarly placed individuals because the discrimination met with the petitioner is not based on any rational ground or reasonable classification rather it is tantamount to creating artificial grouping. In view of the above, instant petition is **allowed** and petitioner is held entitled to receive perks and privileges equal to the similarly placed other Members of the NIRC. The respondents are directed to pay the arrears of the above allowances to the petitioner accordingly.

(Muhammad Sajid Mehmood Sethi)
Judge

APPROVED FOR REPORTING

Judge

A.H.S.