

L-7/16

**IN THE SUPREME COURT OF PAKISTAN**  
(Appellate Jurisdiction)

PRESENT: Mr. Justice Mian Saqib Nisar  
Mr. Justice Iqbal Hameedur Rahman

**Civil Appeals No. 398-L to 405-L/2010,**  
**179-L to 183-L, 231-L, 424-L & 425-L/2011, 17 to 23/2012**  
**and C. M. As. No. 20-L, 41-L/2011 & 99-L/2012.**

(On appeal against the judgment dated 17.05.2010 passed by the Punjab Service Tribunal, Lahore, in Appeals No. 1644, 1645/2006, 823, 830, 831/2008, 2691/2009, 2785/2005, 2859/2007, 2561, 2563 to 2566/2006, 987/2010, 2926, 2927/2010, 988/2010, 1786/2008, 3714 to 3717/2010 & 1271/2011)

Abdul Hameed.	(in C. A. 398-L/2010)
Muhammad Maqsood Shah.	(in C. A. 399-L/2010)
Jaffar Ali Jaffar.	(in C. A. 400-L/2010)
Muhammad Javed.	(in C. A. 401-L/2010)
Nusra Ali.	(in C. A. 402-L/2010)
Muhammad Arif.	(in C. A. 403-L/2010)
Executive District Officer (E) Khushab, etc.	(in C. A. 404-L/2010)
District Education Officer (SE), Sialkot, etc.	(in C. A. 405-L/2010)
Special Secretary Education (S) Govt. of Punjab, Lahore, etc.	(in C. As. 179-L to 183-L/11)
Executive District Officer (E) Rawalpindi, etc.	(in C. As. 231-L/11, 17 & 23/12)
Executive District Officer (E) Attock, etc.	(in C. As. 424-L & 425-L/11)
District Education Officer, (EE-M), Multan, etc.	(in C. A. 18/2012)
Province of Punjab through Secretary (Education), etc.	(in C. As. 19 to 22/2012)

.....Appellant(s)

Versus

Special Secretary Education, Govt. of Punjab, Lahore, etc.	(in C. A. 398-L/2010)
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The Special Secretary (S), Govt. of Punjab, etc.	(in C. A. 399-L/2010)
The District Officer (E), Sheikhpura, etc.	(in C. A. 400-L/2010)
The District Officer (Education), etc.	(in C. As. 401-L & 402-L/10)
Province of Punjab through Special Secretary (S), Lahore, etc.	(in C. A. 403-L/2010)
Ghulam Sarwar.	(in C. A. 404-L/2010)
Fahad Saeed.	(in C. A. 405-L/2010)
Abu Bakar.	(in C. A. 179-L/2011)
Muhammad Hussain Rizvi.	(in C. A. 180-L/2011)
Mst. Munawar Firdous.	(in C. A. 181-L/2011)
Allah Ditta.	(in C. A. 182-L/2011)
Muhammad Waheed-uz-Zaman (decd.) through L.Rs., etc.	(in C. A. 183-L/2011)
Muhammad Zafar Iqbal.	(in C. A. 231-L/2011)
Nusrat Parveen.	(in C. A. 424-L/2011)
Muhammad Yousaf (Drawing Master).	(in C. A. 425-L/2011)
Qari Hassan.	(in C. A. 17/2012)
Qari Ghulam Rasool.	(in C. A. 18/2012)
Muhammad Waheed, etc.	(in C. A. 19/2012)
Muhammad Shabbir, etc.	(in C. A. 20/2012)
Muhammad Younis, etc.	(in C. A. 21/2012)
Fazal-ur-Rehman.	(in C. A. 22/2012)
Ghulam Abbas.	(in C. A. 23/2012)

.....Respondent(s)

**For the Appellant(s):**

(in C. As. 398-L to 402-L/10):

Mr. Mehmood Ahmed Qazi, ASC.

(in C. A. 403-L/10):

Ch. Atta Ullah, ASC.

(in C. As. 404-L, 405-L/10,  
179-L to 183-L, 231-L, 424-L  
& 425-L/11, 17-23/12):

Mr. Khalid Waheed, Addl. AG.



**For the Respondent(s):**

(in C. As. 398-L to 402-L/10):

Mr. Khalid Waheed, Addl. AG.

(in C. As. 404-L/2010):

Mian Jaffar Hussain, ASC.

(in C. As. 179-L, 180-L, 182-L/11):

Syed Fayyaz Ahmed Sherazi, AOR.

(in C. As. 231-L/11, 17 &amp; 18/12):

In-person.

**For the Applicant(s):**

(in CMAs. 20-L &amp; 41-L/2011):

Mian Ghulam Rasool, ASC.

(in CMA. 99-L/2012):

Agha I. A. Imran, ASC.

(in CMA. 144-L/2012):

Nemo.

Date of Hearing:

09.03.2016.

**JUDGMENT**

**Iqbal Hameedur Rahman, J.-** Through this judgment we intend to decide all the above listed appeals which have arisen with the leave of the Court against the judgment dated 17.05.2010 of the Punjab Service Tribunal, Lahore (hereinafter to be referred as the Tribunal). Civil Appeals No. 398-L to 403-L/2010 have been filed by the PTC/Un-Trained Teachers (hereinafter to be referred as the Teachers) while Civil Appeals No. 404-L, 405-L/2010, 179-L to 183-L, 231-L, 424-L, 425-L/2011 and 17 to 23/2012 have been filed by the different departments (hereinafter to be referred as the Department). The Tribunal has partially allowed the appeals of the Teachers by holding that *they are allowed benefit of full increments for the period of first two years from the date of their original appointment till the regularization and in case the period exceeds two years, then for the period exceeding two years, they would be entitled to only 1/2 of the annual increment till their regularization*. Both the parties being aggrieved of the same judgment approached this Court by filing the listed appeals.

2. The controversy giving rise to the listed appeals is that the Teachers were appointed in the year 1982-84 under the Special Development





Programme initially for a period of six months on temporary basis likely to be made permanent at the fixed monthly salary plus usual allowances. They were subsequently confirmed in the year 1991 on different dates. Some of them after their regularization/confirmation demanded increment from the Department prior to the period of their regularization/confirmation. The Department declined the same with the remarks that they were not entitled to annual increment for the period they served as Un-Trained Teachers. The Teachers being aggrieved after exhausting their departmental remedy filed Service Appeals No.1947 to 1949/2003 before the Tribunal which were allowed vide judgment dated 22.01.2004 and the Education Department was directed to pay the increments of the said period. The Department challenged the said judgment before this Court by filing Civil Petitions No.1249-L, 1286-L and 1287-L/2004 which were dismissed vide order dated 23.01.2006 in the following terms:-

" These petitions for leave to appeal have been filed against the judgment dated 22<sup>nd</sup> January 2004 passed by Punjab Service Tribunal, Lahore.

2. Learned counsel for petitioners when called upon to satisfy as to how beyond the scope of Section 16 of the Punjab Civil Servants Act, 1974 (hereinafter referred to as the Act, 1974) fixed pay was allowed to PTC Teachers, he could not answer satisfactorily.

3. The Tribunal has granted relief to the respondents, on having taken into consideration that salary is to be fixed according to Section 16 of the Act, 1974. Therefore, impugned judgment being in consonance with the provisions of law, warrants no interference of this Court."

In light of the above judgments of the Tribunal as well as this Court several other Teachers approached the Tribunal for seeking the same relief while some of them invoked the jurisdiction of High Court for grant of the same relief by placing reliance on the case of Hamid Akhtar Niazi (1996



SCMR 1185) whereupon the Hon'ble Single Judge of the High Court directed the Education Department for grant of the said relief. However, the said judgment also was assailed by the Department before this Court by filing Civil Appeals No.89-L to 105-L/2009 etc. which were disposed of by means of order dated 7.7.2009 relevant part whereof reads as under:-

"..... Consequently, writ petitions filed by the respondents shall be treated as appeals and transmitted to the learned Punjab Service Tribunal forthwith who shall decide the same as appeals within a period of thirty days of respondents' appearance before it. Both the parties are directed to appear before Punjab Service Tribunal alongwith copies of their writ petitions on 15.7.2009. Needless to observe, the Tribunal shall decide the appeals on merits. Learned Law Officer has very fairly stated that the appellants shall not raise question of limitation."

Keeping in view the above background the Tribunal proceeded to decide the controversy involved in these appeals and passed the impugned judgment in terms mentioned above.

3. On 5.11.2010 leave to appeal was granted in these matters in the following terms:-

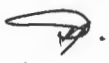
" After having heard learned ASC and learned Additional Advocate General, Punjab, we are inclined, *inter alia*, to grant leave in these petitions on the point as to whether the judgment impugned is in consonance with the dictum laid down by this Court in Province of Sindh thr. The Secretary, Education Department, Karachi and 2 others versus Ghulam Rasul and 35 others (1976 SCMR 297) & in Civil Petitions Nos.1249-L, 1286-L to 1287-L of 2004 titled (District Education Officer etc. versus Nazir Ahmad etc.) decided on 23.1.2006. It is further to be examined as to whether being temporary employees they are entitled to get increments in accordance with the relevant provisions of Punjab Servants Act and Rules made thereunder. The appeals be fixed at some early date."

4. Learned counsel representing the Teachers contended that they were appointed as Un-Trained Primary Teachers being matriculate in BPS-07 at a fixed salary of Rs.560/- per month plus usual allowances in



the year 1982-84; that after joining service they performed duties and qualified PTC examination and were awarded regular pay scale in BPS-07 and their services were regularized during the year 1989 to 1991 but after their regularization/confirmation they were deprived of the annual increment and other benefits drawn by them prior to their regularization. Learned counsel while referring to Section 16 of the Punjab Civil Servants Act, 1974 stated that earlier a controversy of the same nature was agitated before the Federal Service Tribunal in which vide judgment dated 23.04.2002 the Tribunal while relying upon the said section had granted the same relief. Learned counsel laid stress that Section 16 *ibid* is applicable to the case of the present Teachers and when the salaries received by them prior to their regularization were in accordance with law then they are entitled also to all the benefits including annual increment provided to their class of service. Learned counsel while relying on the case of Province of Sindh through the Secretary, Education Department, Karachi and 2 others Vs. Ghulam Rasul and 35 others (1976 SCMR 297) states that there is no distinction between Trained and Un-Trained Teachers. At the end learned counsel contends that the Tribunal while partially allowing their appeals restricted their annual increment to ½ if the period exceeds two years from the original appointment till their regularization/confirmation which is not justifiable as such they are entitled to full annual increment.

5. Learned counsel representing the Department states that the Teachers were not entitled to the grant of annual increment from the date of their initial appointment; that they had been inducted under a scheme for a period of six months and subsequently were regularized; that they had accepted the terms and conditions knowingly as such are not entitled to any increment prior to their regularization and cannot claim the same.





Learned counsel asserts that during their temporary appointment and training period they cannot be considered to be civil servants as such the Tribunal while passing the impugned judgment has not taken into consideration the above aspects of the matter and has erroneously held them entitled to full annual increment for a period of two years and subsequent to that for ½ of the increment till their regularization/confirmation as such seeks setting aside of the impugned judgment.

6. We have heard the learned counsel for the parties and have perused the impugned judgment as well as the earlier judgments passed by this Court and the Tribunal and have also examined the material placed on the record. For proper adjudication of the lis first of all we have to examine the appointment letter of the Teachers and their terms and conditions so propounded therein. From perusal of the said letter clause 3 would be of importance wherein it has been specifically mentioned that The Service of the candidate will be governed under the Punjab Civil Servants (Appointment and Conditions of Service) Rules, 1974. Keeping in view the quoted clause of the appointment letter it can safely be said that the services of the Teachers are to be governed under the Punjab Civil Servants Act, 1974. Once it is determined that the services of the Teachers are to be governed under the Act *ibid* then definitely Section 16 of the said Act being relevant would be applicable to the case in hand. Section 16 of the Act *ibid* for ease of reference is reproduced as under:-

"16 . Pay.—A civil servant appointed to a post shall be entitled, in accordance with the rules, to the pay sanctioned for such post.

From the above provision it is definite that when a civil servant appointed to a post is entitled to the pay sanctioned for such post then obviously he would also be entitled to the ancillary privileges of such pay. As such it



has been held that when their salaries which they have received prior to their regularization/confirmation were in accordance with law then they are entitled also to the annual increment on the basis of the same no distinction can be drawn between the Un-Trained and Trained Teachers, so the findings of the Tribunal by allowing the Teachers to full annual increment for a period of first two years from the date of their original appointment till their regularization/conformation and restricting them only to ½ of the increment for rest of their services would not be just and fair and does not meet the ends of justice.

7. In the light of the above discussion, Civil Appeals No. 398-L to 403-L/2010, filed by the Teachers, are allowed entitling them to receive full annual increments for the whole period prior to their regularization whereas Civil Appeals No. 404-L, 405-L/2010, 179-L to 183-L, 231-L, 424-L, 425-L/2011 and 17 to 23/2012, filed by Department, are dismissed. All the listed C.M.As. are also disposed of.

**Sd/- Mian Saqib Nisar, J**  
**Sd/- Iqbal Hameedur Rahman, J**

LAHORE  
09.03.2016  
NOT APPROVED FOR REPORTING  
(Nasir Khan)

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