

IN THE SUPREME COURT OF PAKISTAN
(APPELLATE JURISDICTION)

PRESENT:

MR. JUSTICE JAWWAD S. KHAWAJA.
MR. JUSTICE EJAZ AFZAL KHAN.
MR. JUSTICE MAQBOOL BAQAR.

Civil Appeals Nos.80-L to 109-L of 2014.

(Against the judgment dated 28.10.2013 of the Punjab Service Tribunal, Lahore passed in Appeals Nos.2974/12, 2978/12, 2979/12, 2980/12, 2981/12, 2982/12, 2983/12, 2984/12, 2985/12, 2986/12, 2988/12, 2989/12, 2990/12, 2991/12, 2992/12, 2993/12, 2994/12, 2995/12, 2996/12, 2997/12, 2998/12, 2999/12, 3000/12, 3001/12, 3002/12 and 3003 of 2012)

Government of the Punjab through Chief Secretary, Lahore, etc. ...Appellants
(in all cases)

Versus

Ch. Abdul Sattar Hans.
Muhammad Ayub.
Nazam ud Din Anjum.
Muhammad Ayub Khan.
Khalid Mahmood (Dy. Accountant).
Abdul Rauf Khan.
Atta-ur-Rehman.
Akhtar Ali.
Fazal-ur-Rehman.
Amjad Iqbal.
Naseem Ullah.
Ahmad Nadeem.
Malik Ijaz Ali.
Rana Zulfiqar Ali.
Mian Muhammad Khalid.
Muhammad Shakeel Ahmad.
Talib Ul Maula.
Shahid Rafique.
Muhammad Yasin.
Muhammad Toufeeque Gill.
Irfan Ahmad.
Muhammad Ashraf.
Zafar Iqbal Awan.
Mahmood Ahmad Sabri.
Shahid Younas.
Malik Qaisar.
Muhammad Asif.
Munir Ahmad.
Asghar Ali.
Muhammad Javed.

...Respondents

For the appellants: Mr. Mudassar Khalid Abbasi, AAG

For the respondents: Ch. Amir Hussain, Sr. ASC
Mr. Muhammad Aslam Zar, ASC

Date of hearing: 18.03.2015.

Judgment

Jawwad S. Khawaja, J.- These appeals are by leave of the Court. The respondents are employees of the Provincial Government. Leave to appeal was granted in these matters vide order dated 26.3.2014 which is reproduced as under:-

"Refers to a judgment of this Court reported as Muzaffar Khan and others Vs. Government of Pakistan and others (2013 SCMR 304 at page 313 para 17) to contend that each Province is autonomous under the Constitution and is empowered to make its own laws and rules inter alia for civil servants and the rules framed either by the Federal Government or the Provincial Government cannot be cited to make out a case of discrimination.

2. *Ch. Amir Hussain, learned ASC, has appeared for the caveats. He has raised a preliminary objection to the effect that these petitions are barred by time. Office has not submitted any report, as to whether these petitions are barred by time. Let the office make the report in this behalf.*

3. *Having heard the learned Addl. Advocate General, Punjab and the learned counsel for the respondents at some length, leave to appeal is granted, inter alia, to consider whether in accepting the appeals, the learned Tribunal kept in view the principle of law that a reasonable classification is permissible notwithstanding the mandate of Article 25 of the Constitution of the Islamic Republic of Pakistan, 1973."*

2. We have gone through the impugned judgment rendered by the Chairman, Punjab Service Tribunal. He has proceeded on the assumption that Federal Government employees and employees of the Provincial Government should receive the same emoluments and perquisites if they are performing the same type of duties. This finding is flawed for two reasons. Firstly, we have not found any exercise undertaken by the Tribunal or indeed any other government functionary which would show that the actual work being performed by Sr. Auditors of the Audit Department who are employees of the Federal Government is exactly the same as the work being done by the Deputy Accountants employed by the Province. Secondly, it has been held by the Service Tribunal as under:-

"The appellants possess the similar qualifications, nature of the duties performed are similar, work under the same roof and same officer. Similarly placed are to be treated similarly. No doubt the Provincial Govt. works independently under the Constitution but generally it follows the pay scales sanctioned by the Federal Govt. If two different pay scales are given to the Federal Govt. employees and the Provincial Govt. employees it may amount to extracting labour and exploitation under Article 3 of the Constitution of Islamic Republic of Pakistan. I tend to agree with the judgment of the Lahore High Court 2004 PLC(CS) 586 that it is violation of articles 2-A, 3, 25, 37 and 38 of the Constitution of Islamic Republic of Pakistan, 1973."

The above reproduced observation, however, is also flawed because Article 3 of the Constitution has no application in the present case. We may note that the respondents who were appellants before the Service Tribunal were not conscripted in service. They had joined service voluntarily and had accepted the terms and conditions of service. It is evident that they did not compete with the Sr. Auditors (BPS-16) of the Federal Government and, therefore, cannot claim that they should be given perks and emoluments as the Sr. Auditors of the Federal Government. The question of exploitation would only have arisen if the respondents had been forcibly inducted into compulsory service. This is not the case and it appears that they had happily joined service and are enjoying the benefits of the same.

3. Thirdly, it is important to note that the Provincial Government has to remain within its own budgetary constraints. The finding of the Service Tribunal that the "*Punjab Government will have to bear extra financial burden of Rs.46.44 millions, suffice to say that the service structure and financial constraints cannot stand in the way of the Constitution*". This is not a tenable position because the amounts paid by way of salaries, are extracted from the pockets of citizens by means of taxation. The Province and its Government can genuinely come to the conclusion that they are not prepared to burden the people of the Province by imposing an extra levy on them. It is not for the Service Tribunal to tell the Government of Punjab to impose additional taxes/levies for the purpose of meeting the command of the Service Tribunal. We are cognizant that there may still be duties imposed on Governments which are absolute and may require allocation or reallocation of financial resources with the object of ensuring performance of such duties. In an appropriate case this can be examined. However, this case does not raise such issues.

4. It is also important to bear in mind that Article 25 of the Constitution is only attracted where there is an apple-to-apple comparison. In the present case, this is not the position because both sets of individuals i.e. Sr. Auditors of the Federal Government (BPS-16) and Dy. Accountants of the Provincial Government (BPS-14) are not equally placed. There is an obvious criterion which differentiates the two categories i.e. they are employed by different employers with different financial and other resources. Thus a very fundamental issue of federalism has arisen in this case. If the reasoning of the Service Tribunal is upheld, tomorrow a Province or the Federation which is more affluent than

other Provinces and is prepared to raise the salaries of its employees or as a policy decides that government servants should be paid according to the market salaries it will not be constitutionally permissible for a Court to hold that the Province which is less affluent should pay the same emoluments and provide the same perquisites as has been done by the more affluent Province. The federation and each of the Provinces exercise independent powers as per distribution of powers set out in Chapter 1 of part V of the Constitution. This indeed is the essence of a truly federal constitutional structure.

5. In view of the above discussion, we are clear that the impugned judgment of the Service Tribunal proceeds on erroneous premises. The same is, therefore, set aside. These appeals are allowed.

Judge

Judge

Judge

ISLAMABAD.
18.03.2015.
M. Azhar Malik
APPROVED FOR REPORTING.