

Present:

Mr. Justice Anwar Zaheer Jamali, CJ
Mr. Justice Mian Saqib Nisar
Mr. Justice Amir Hani Muslim
Mr. Justice Ejaz Afzal Khan
Mr. Justice Mushir Alam

Civil Appeals No.101 & 102-P of 2011.

(On appeal from judgment dated 27.04.2010, of
the Peshawar High Court, Peshawar, passed in
Writ Petitions No.205 of 2010 and 33 of 2009).

Regional Commissioner Income Tax,
Northern Region, Islamabad.
(in Civil Appeal No.101-P/2011)

Commissioner of Income Tax Company Zone,
Income Tax Officer, Peshawar
(in Civil Appeal No.102-P/2011).

í Appellants.

VS

Syed Munawar Ali and others.
(in Civil Appeal No.101-P/2011)

Kiramatu Ullah Khan and others.
(in Civil Appeal No.102-P/2011).

í Respondents.

For the Appellants: Mr Shahid Raza, ASC.
(in both Appeals)

For Respondent No.: Mr Ijaz Anwar, ASC.
1-8 in C.A.No.101-P/11
& for Respondents No.1-39
In C.A.No.102-P/11).

Date of hearing: 17.02.2016.

JUDGMENT

AMIR HANI MUSLIM, J. - These Appeals, by leave of the
Court, are directed against common judgment dated 27.04.2010, passed by
the Peshawar High Court, Peshawar, whereby the Writ Petitions filed by the

f with the direction to the Appellants to act according to law and to do what is required by the law to do within a minimum possible time.

2. The facts necessary for the adjudication of the present proceedings are that the Respondents and others while working as Superintendents/Supervisors with the Appellants filed an Application before the Chairman, Federal Board of Revenue (Revenue Division) for upgradation of their posts from BS-13 to BS-16, *inter alia*, on the ground that since the post of Superintendent has been upgraded to BS-16 in Federal/Provincial Government, therefore, the post of Superintendent may also be upgraded in the Federal Board of Revenue from BS-13 to BS-16. The said Application remained undecided, and the Respondents filed Writ Petitions before the Peshawar High Court, which were disposed of by a learned Division Bench by the consolidated impugned judgment.

3. The Appellants filed Civil Petitions for leave to Appeal against the judgment of the Peshawar High Court in which leave was granted to consider whether in view of the bar contained under Article 212 (3) of the Constitution, the High Court has the jurisdiction to entertain a Constitution Petition relating to the terms and conditions of service of civil servants. Hence these Appeals.

4. The learned Counsel for the Appellants has contended that the jurisdiction of the learned Peshawar High Court was barred under Article 212 (3) of the Constitution, as the issue of upgradation which was the subject matter of the Writ Petitions relates to the terms and conditions of

and could not have been adjudicated upon by the High Court. He next contended that the terms and conditions of service of civil servants fall within the domain of the Service Tribunal, therefore, the impugned judgment was without jurisdiction.

5. As against this, the learned Counsel for the Respondents have contended that the issue of upgradation is not covered by the expression "terms and conditions of service" of a civil servant, therefore, the High Court has the jurisdiction to decide the issue.

6. We have heard the learned Counsel for the parties and have perused the record. The expression "upgradation" is distinct from the expression "Promotion", which is not defined either in the Civil Servants Act or the Rules framed thereunder, and is restricted to the post (office) and not with the person occupying it. The upgradation cannot be made to benefit a particular individual in term of promoting him to a higher post and further providing him with the avenues of lateral appointment or transfer or posting. In order to justify the upgradation, the Government is required to establish that the department needs re-structuring, reform or to meet the exigency of service in the public interest. In the absence of these pre-conditions, upgradation is not permissible.

7. The aforesaid definition of the expression "Upgradation" clearly manifests that it cannot be construed as promotion, but can be granted through a policy. In fact, this Court in the judgment titled as Ali Azhar Khan Baloch vs. Province of Sindh (2015 SCMR 456) and an unreported judgment of this Court passed in the case of Chief Commissioner

vs. Muhammad Afzal Khan (Civil Appeal No.992 of 2014) has held that the issue relating to upgradation of civil servants can be decided by a High Court in exercise of its constitutional jurisdiction and bar contained under Article 212(3) of the Constitution would not be attracted. The policy of upgradation, notified by the Government, in no way, amends the terms and conditions of service of the civil servant or the Civil Servants Act and or the Rules framed there-under. The Service Tribunals have no jurisdiction to entertain any appeal involving the issue of upgradation, as it does not form part of the terms and conditions of service of the civil servants. The question in hand has already been answered by the aforesaid two judgments of this Court.

8. For the aforesaid reasons, we do not find any infirmity in the impugned judgment; consequently these Appeals are dismissed.

Chief Justice

Judge Judge

Judge Judge

Islamabad the,
17th February 2016.
Approved for reporting.
Sohail/**