

**In the Supreme Court of Pakistan**  
(Appellate Jurisdiction)

**Present:**

Mr. Justice Anwar Zaheer Jamali, HCJ.  
Mr. Justice Amir Hani Muslim  
Mr. Justice Iqbal Hameedur Rahman

**CIVIL APPEAL NO. 308 OF 2014**

(on appeal from the judgment of the  
Islamabad High Court, Islamabad dated  
17.09.2013 passed in ICA-872 of 2013)

Government of Pakistan M/o Railways, through its Secretary, etc

**...Appellants**

**VERSUS**

Jamshed Hussain Cheema & others

**...Respondents**

For the appellants: Rai Muhammad Nawaz Khan Kharal, ASC  
Syed Rifaqat Hussain Shah, AOR

For the respondents: Ch. Muhammad Anwar Bhindar, Sr. ASC

Date of Hearing: 07.12.2015

**JUDGMENT**

**Anwar Zaheer Jamali, C.J.** – This civil appeal with leave of the Court is directed against the judgment dated 17.9.2013, in Intra Court Appeal No.872/2013, passed by the learned Division Bench of the Islamabad High Court, Islamabad, whereby the said Intra Court Appeal at the instance of present appellants was dismissed, and consequently the judgment dated 20.5.2013, passed by learned single Judge in chambers of the Islamabad High Court, Islamabad in Writ Petition No.975/2011, filed by respondents, thereby granting them requisite relief, was maintained.

2. Briefly stated, relevant facts of the case are that in the month of March 2011, the respondents No.1 to 20 (in short "the respondents") had instituted the above referred writ petition under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973 with the grievance of discrimination in the matter of upgradation of their posts as against other employees of the appellants in different categories and in that context they had prayed for following reliefs:-

"In view of the above circumstances, it is, therefore, most respectfully prayed that the instant writ petition may kindly be accepted and the act of the respondents not to upgrade the scales of the petitioners may graciously be declared as illegal, unlawful, ineffective and inoperative upon the rights of the petitioners and direction may graciously be issued to the respondents to upgrade the post of Claim Inspector BS-13 to the BS-16, which is in the interest of justice."

3. In the parawise comments submitted by the appellants before the Islamabad High Court, the maintainability of the writ petition was challenged on various legal grounds. On facts also, claim of respondents was challenged, inter alia, on the plea that they have been also upgraded one scale from BS-12 to BS-13, duly approved by the competent authority. Thus, there was no occasion of any discrimination in this regard, as those who were given upgradation in scales by more than one step were in different categories than the respondents.

4. The petition was heard by a learned single Judge in the Islamabad High Court and it was allowed vide judgment dated 20.5.2013 with directions to the appellants to initiate process for upgradation of posts of Claim Inspectors/respondents, keeping in view

the earlier recommendations, and such process be completed within two months.

5. Being dissatisfied by the above judgment, Intra Court Appeal under section 3 of the Law Reforms Ordinance, 1972, was filed by the appellants, which was dismissed vide impugned judgment, as the learned Division Bench endorsed the view of the learned single Judge contained in his impugned judgment.

6. Leave to appeal was granted in this case, inter alia, to examine whether the private respondents, being civil servants, could have invoked the writ jurisdiction of the High Court as regards their grievance, which according to learned ASC for the appellants, related to terms and conditions of their service. Today, when the learned ASC for the appellants was confronted with the ratio of judgment in the case of Ali Azhar Khan Baloch v. Province of Sindh (2015 SCMR 456), relating to concept of upgradation of posts, he candidly did not dispute the legal position that upgradation to higher scale is not equivalent to promotion and no concept of upgradation, as one of the terms and conditions of service, was provided under the Civil Servants Act, 1973. Therefore, for any grievance with reference to upgradation, remedy was not available to the respondents before the Service Tribunal. However, he forcefully argued that upgradation of scales was purely a policy decision, which was to be taken by the competent authority with the approval of the Government and in this regard the decision of the competent authority regarding upgradation of different employees of the appellants was

final and it could not be interfered with by the Court, as has been done in the instant case by both the Courts below.

7.           Conversely, Ch. Muhammad Anwar Bhindar, learned ASC for the private respondents made reference to the concise statement submitted by him on behalf of respondents, which is accompanied with a chart to show the manner in which some other employees of the appellants in different other categories have been given upgraded scales, in some cases up to five steps, though the present respondents have been given upgradation only by one step.

8.           We have considered the above submissions and with the assistance of learned ASCs, perused the material placed on record, which reveals that a policy decision has been taken by the competent authority with the approval of Federal Government for upgradation of pay scales of different categories of its employees in a conscious manner, looking to the nature of their jobs etc, therefore, such decision cannot be challenged in writ jurisdiction on the purported plea of discrimination. More so, when Article 25 of the Constitution itself provides a provision for such discrimination on the principle of reasonable classification. In the present case, respondents have also been granted upgradation by one step from BS-12 to BS-13 alongwith many others, who have been also given only one step upgradation in the scales and in many other cases upgradation is allowed by two steps. Thus, such classification/categorization by the competent authority cannot be struck down on the plea of discrimination, at the whims of respondents, who had approached the Islamabad High Court in this

regard. In addition to it, learned ASC for the respondents has also failed to show that due to the impugned action of the appellants any fundamental rights of the respondents have been violated or they have any vested right for such upgradation as per their choice. If any case law is needed to fortify the above view, reference can be made to the following cases:-

**Case law.**

9. Foregoing are the reasons for our short order, which reads thus:-

“We have heard arguments of the learned ASCs for both parties. For reasons to be recorded separately, this appeal is allowed. The impugned judgment dated 17.09.2013, passed by the learned Division Bench of the Islamabad High Court in Intra Court Appeal No.872 of 2013 and judgment dated 20.05.2013, passed by the learned single Judge in Chambers of the Islamabad High Court in Writ Petition No.975 of 2011, are set aside, and the Writ Petition filed by Respondents No.1 to 20 is accordingly dismissed.

2. At this stage, learned ASC for appellant has clarified that Respondents Nos. 1 to 20 have been earlier upgraded to Scale-13, therefore, he will ensure payment of their salaries along with arrears, if any, from the date of their upgradation in Scale-13. Moreover, if need be, their cases for further upgradation will also be considered. Order accordingly.”

Chief Justice

Islamabad,  
07<sup>th</sup> December, 2015.  
Not approved for reporting.  
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Judge

Judge