

IN THE SUPREME COURT OF PAKISTAN
(APPELLATE JURISDICTION)

PRESENT:

MR. JUSTICE DOST MUHAMMAD KHAN
MR. JUSTICE QAZI FAEZ ISA
MR. JUSTICE FAISAL ARAB

CIVIL PETITION NO. 1958 OF 2006

(On appeal against the judgment dated 31.03.2016
passed by the Federal Service Tribunal, Islamabad in
Appeal No. 1891(R)CS/2015)

Controller of Military Accounts (RC) Education Cell, Rawalpindi

... Petitioner

Versus

Muhammad Zafar, Assistant Professor and another

... Respondents

For the Petitioner: Mr. Sajid Ilyas Bhatti, DAG
Mr. Jaffar Raza Khan, AOR (Absent)

For the Respondent (1): Mr. Muhammad Shoaib Shaheen, ASC
Mr. Ahmed Raza Ch, AOR (Absent)

For the Respondent (2): Mr. Mehrban Khan, Admin Officer, FGEI, Dte, Rwp

Date of Hearing: 19.01.2017

JUDGMENT

FAISAL ARAB, J.- In February, 1987, respondent No. 1 was employed by respondent No. 2 on *ad hoc* basis on the post of Director Physical Education (BPS-16). He was later promoted to a post in BPS-17. On 28.06.1992, the respondent No. 1 was served with a termination letter wherein it was stated that in pursuance of government's decision his *ad hoc* service would stand terminated with effect from 30.06.1992 and in lieu thereof he may accept a post in BPS-14. The respondent No. 1 readily accepted the offer and was appointed on permanent basis to the post of UUGT in BPS-14 with effect from 01.07.1992. After serving in this position for about 12 years respondent No. 1 applied for the post of Lecturer through Federal Public Service Commission and was appointed as Lecturer in BPS-17 on 17.10.2003.

2. As the respondent No 1 was holding a BPS-17 post on *ad hoc* basis before his appointment in BPS-14 on 01.07.1992, he sought benefit of pay protection that is available to an employee who on account of government's decision is rendered surplus and is accommodated in a post that is lower than his previous post. The Controller Military Accounts accepted his request and vide letter dated 01.12.2012 re-fixed respondent

No.1's pay from Rs. 32,000/- to Rs.35,200/- per month and paid all his past arrears. However, 2½ years later the Controller of Military Accounts vide letter dated 12.06.2015 informed respondent No.1 that he was inadvertently granted the benefit of pay protection and his revised salary was reverted back to Rs.32,000/- per month. The differential amount that was paid in 2012 was directed to be recovered from him. Aggrieved by such decision, the respondent No. 1 filed departmental representation. Having received no response, he filed Service Appeal in the Federal Service Tribunal, Islamabad, which was accepted and consequently, the order dated 12.06.2015 was set aside and respondent No. 1 was held to be entitled to pay protection. In granting such relief, the Service Tribunal invoked the principle embodied in Section 11-A of the Civil Servants Act, 1973.

3. Aggrieved by such decision, the department filed the present petition.

4. Learned counsel for the petitioner contended that the benefit of pay protection of his previous post on the basis of respondent No. 1's holding BS-17 post was a mistake on the part of the Controller of Military Accounts as the respondent No. 1 was holding BPS-17 post on *ad hoc* basis and being an *ad hoc* employee his services were terminated and not rendered surplus and then he was re-employed on BPS-14 post, therefore, he was not entitled to seek benefit of pay protection in terms of the principle laid down in Section 11-A of the Civil Servants Act and the Controller of Military Accounts rightly recalled his earlier decision vide his letter dated 12.06.2015. Section 11A reads as follows:-

"11A. Absorption of civil servants rendered surplus.- Notwithstanding anything contained in this Act, the rules, agreement, contract or the terms and conditions of service a civil servant who is rendered surplus as a result of re-organization or abolition of a Division, department, office or abolition of a post in pursuance of any Government decision may be appointed to a post, carrying basic pay scale equal to the post held by him before such appointment, if he possesses the qualifications and fulfils other conditions applicable to that post:

Provided that where no equivalent post is available he may be offered a lower post in such manner, and subject to such conditions, as may be prescribed and; where such civil servant is appointed to a lower post the pay being drawn by him in the higher post immediately preceding his appointment to a lower post shall remain protected."

5. The principle laid down in Section 11-A is clear. Where a civil servant is declared surplus pursuant to any government decision, then he is

to be accommodated to a post carrying equal pay scale. In case equal post is not available then he can be appointed to a lower post but the pay which he was drawing in the higher post shall remain protected. In our view, this benefit cannot be denied to respondent No. 1 merely because previously he was holding a post on *ad hoc* basis, by virtue of Section 11(1)(iii) and (3) of the Civil Servants Act. Section 11(1)(iii) and (3) reads as under:-

"11. Termination of service.- (1) The service of a civil servant may be terminated without notice-

(i)

(ii)

(iii) if the appointment is made ad hoc terminable on the appointment of a person on the recommendation of the selection authority, on the appointment of such person.

(3) Notwithstanding the provisions of sub-section (1), but subject to the provisions of sub-section (2), the service of a civil servant in temporary employment or appointed ad hoc shall be liable to termination on fourteen days' notice or pay in lieu thereof."

6. The above provisions of Section 11 are ample proof that *ad hoc* employee is regarded as civil servant. An *ad hoc* employee in government service is also to be treated as civil servant. In a decision rendered by this Court in the case of Muhammad Sarfraz Vs. Government of Punjab (2001 PLC (CS) 1224), it was also held that *ad hoc* employees in government service are also civil servants. In our view all the requirements of Section 11-A and its proviso exist in the present case.

7. As to respondent No. 1's entitlement for pay protection, a bare reading of the letter dated 28.06.1992 would show that the same was though titled as termination of *ad hoc* lecturers, but in effect it was issued pursuant to the government's decision and based on such decision respondent No.1, who was then holding BPS-17 post, was offered a post in lower pay scale i.e. BPS-14. Thus respondent No. 1 was appointed to a lower post, not on account of any disciplinary action against him or that he did not possess the requisite educational qualifications to hold a BPS-17 post but purely on account of the general decision of the government that rendered him surplus. By then respondent No. 1 had already put in five long years of service to the satisfaction of the department. His status remained that of an *ad hoc* employee for no fault of his own and ultimately in 2003 he succeeded in seeking appointment through FPSC and was appointed as a regular employee

in BPS 17 post. This peculiar service record by itself entitles the respondent No. 1 to seek benefit of pay protection on the basis of the principle laid down in Section 11-A of the Civil Servants Act, 1973, which entitles an employee to claim protection of his pay that he was getting in his previous post. Hence, the Service Tribunal rightly extended the benefit of the principle laid down in Section 11-A of the Civil Servants Act, 1973 though on somewhat different reasoning.

8. We, therefore, find no legal basis to interfere with the conclusion drawn by the Service Tribunal in the impugned judgment. This petition is dismissed and leave is refused.

JUDGE

JUDGE

JUDGE

Islamabad, the
19th of January, 2017
Approved For Reporting
Khurram

(3)

"2. Definitions.-(1) In this act, unless there is anything repugnant in the subject or context,-

(b) "civil servant" means a person who is a member of an All-Pakistan Service or of a civil service of the Federation, or who holds a civil post in connection with the affairs of the Federation, including any such post connected with defence, but does not include-

(i) a person who is on deputation to the Federation from any Province or other authority;

(ii) a person who is employed on contract, or on work-charged basis or who is paid from contingencies; or

(iii) a person who is "worker" or "workman" as defined in the Factories Act, (XXV of 1934), or the Workman's Compensation Act, 1923 (VIII of 1923);"