

## **JUDGMENT**

**[Islamabad High Court]**

**Before Shaukat Aziz Siddiqui, J**

**HASHIM KHALID MALIK**

**Versus**

**FEDERATION OF PAKISTAN through Secretary Establishment Division and others**

W.P. No.2557 of 2017, decided on 31st October, 2017.

**SHAUKAT AZIZ SIDDIQUI, J.---** This Court allowed Writ Petition No. 2557/2017, by means of short order dated 31.10.2017, operating part of which is reproduced hereinbelow for ready reference:--

"2. For the reasons to be recorded later on, instant petition is allowed in following terms:-

"(i) That the office memorandum dated 26.12.2016, whereby an officer of a particular occupational group, repeats his examination to improve his score has been directed to undergo Common Training Programme (CTP) which he had already completed successfully is declared to be illegal, unjust, result of an arbitrary exercise of the authority, irrational, unnecessary and burden on the public exchequer.

(ii) On the strength of already completed CTP a repeater with improved score will not be allowed seniority on the basis of same and seniority has to be fixed amongst new batch in a particular occupational group. However, any repeater (candidate) showing his intent to improve score in CTP, may be allowed to join the same.

3. The Establishment Division shall issue direction in this regard to all concerned. Relevant quarters may be informed accordingly."

2. Petitioner invoked the constitutional jurisdiction of this court by way of filing instant writ petition with the following prayer:--

"In view of the foregoing facts and circumstances, it is respectfully prayed that the instant writ petition may kindly be accepted and the impugned office memorandum dated 26.12.2016 may kindly be declared as illegal, unlawful, without lawful authority and be set aside and consequently, the respondents may kindly be directed to exempt the petitioner from undergoing the CTP again which is likely to commence from 8th September, 2017 in the interest of justice.

It is further prayed that during the pendency of the writ petition, the operation of the impugned office memorandum dated 26.12.2016 may kindly be suspended till the final

disposal of the main writ petition.

Any other relief which this honourable court deems fit and appropriate, may also be awarded."

AND presented the facts as under:-

3. Petitioner, after qualifying the Competitive Examination of CSS, was allotted Office Management Group (OMG) and completed 42nd Common Training Programme (CTP) of six months during 2014-2015. He was further required to undergo Specialized Training Programme (STP) of five months but in the year 2016 he once again appeared in CSS exams so as to improve his score and after successfully completing the same he was allotted occupational group of Inland Revenue Service (IRS) in the year 2017, whereas, Respondents vide Memorandum Dated 26.12.2016 introduced the policy under which the repeater candidates were directed to undergo the CTP of six months irrespective of the fact that such candidates have already undergone the same, hence, Petitioner was also supposed to repeat the same allegedly despite the fact that at the time when Petitioner attended the CSS-2016, there was no requirement for the repeater candidate to undergo CTP 'once again, even if he had earlier attended the same.

4. Learned Counsel for Petitioner submitted that the impugned office memorandum is illegal, void ab initio having illegitimate effects on the rights of Petitioner as at the time (March, 2016) when he undertook the CSS exam there was no requirement of repeating the CTP, rather same has been made applicable retrospectively in the case of Petitioner which is against the legal norms and general practice as much as for the last 42 years there exists no such example. Moreover, same is against the principle of legitimate expectancy which Petitioner had at the time of qualifying the CSS Examination, 2016, as he had already completed the CTP after successfully qualifying the CSS examination, earlier. Learned counsel further submitted that principle of locus poenitentiae is applicable in the case of Petitioner as at the time when Petitioner undertook the competitive examination of CSS, a lawful right accrued in his favour as no such requirement existed during that period and if policy was required to be changed Petitioner and any other expected affectee should have been informed well before in time so that they could have taken the right decision in this regard, hence, Respondents are stopped from withdrawing the benefit already available to the officers for the last 42 years. Learned Counsel added that as per law settled through different pronouncements of the Hon'ble Supreme Court of Pakistan all forms of arbitrariness are to be avoided to ensure that action based on discretion is fair and transparent and if any discretion is to be exercised by the public functionary, it must be based upon reasonable grounds in an intelligible and rational manner, whereas, the impugned office memorandum violates the Petitioner's right of meritoriously joining his occupational group and is in conflict with the rights guaranteed to the Petitioner through Articles 2-A, 4, 5, 8, 10-A and 18 of the Constitutional of Islamic Republic of Pakistan. Learned Counsel contended that the issuance of impugned notification is aimed at discouraging the officers from improving their service groups, whereas, there is no

lawful purpose to be served to undergo the same CTP, which leads to nothing new but a repetition of what he has already been trained. Moreover, if Petitioner undergoes the CTP again he would be required to wait for further two years for his results and posting as Assistant Commissioner, Inland Revenue Service, whereas, the Petitioner is already foregoing the 03 years seniority which he earned since the date of commencement of his 42nd CTP. Learned Counsel lastly contended that undergoing the CTP again by Petitioner is not only violative of the fundamental rights of the Petitioner but also a burden on the public exchequer as government of Pakistan has to spend an estimated amount of Rs.0.5 million on each trainee who undergoes CTP.

5. On the other hand, Respondents through their written arguments and learned Assistant Attorney General, during the arguments submitted that there is no mala fide involved in the policy made by the authority rather it is being introduced in order to bridge anomalies in the length of service between repeaters candidates and their newly recruited batch mates on the basis of CSS examination and the authority decided that an officer who repeats CSS Competitive Examination, and as a result changes his/her Occupational Groups/Services, will also repeat common Training Programme (CTP) which was communicated through O.M. No.2/3/2015-T-V dated 17.03.2015, hence, repeaters of CSS-2014-2015 were required to repeat the CTPs, whereas, as far contentions of learned Counsel for Petitioner regarding issuance of instructions in this regard on 26.12.2016 are concerned same are baseless as is reflected by the above said office memorandum which was issued on 17.03.2015, whereas, the O.M. dated 26.12.2016 was in continuation of the earlier O.M. Learned A.A.G. further submitted that the Petitioner appeared in CSS CE-2016 and qualified the same in May, 2017, whereas, decision to repeat the CTP by a repeater of CSS competitive examination was taken by the competent authority on 17.03.2015, thus the stance of the Petitioner that there was no policy in field requiring a repeater candidate to again undergo the CTP is totally false. Moreover, repetition of CTP has nothing to do with the seniority of the candidate as same is to be determined by adding the marks obtained by the candidates in CSS Examination, Common Training Programme (CTP), Specialized Training Programme (STP) and Final Passing out Examination (FPOE), in terms of Rule 7(4) of Occupational Groups and Services (Probation, Training and Seniority), Rules, 1990, whereas, as far as service rendered by the Petitioner in his previous cadre is concerned same shall not be considered for the purpose of promotion in his new cadre being non-cadre service in light of section 9 of Civil Servants Act, 1973 rather Petitioner can claim benefit of pay protection/pension under the rules. Learned Counsel lastly contended that as per procedure in vogue, Petitioner has to repeat his CTP in Civil Services Academy, Lahore complete mandatory Specialized Training Programme of Inland Revenue Service (IRS) and thereafter he will be posted for his new assignment by the Chairman, Federal Board of Revenue being the appointing authority and there is no shortcut in the Rules to post him as Assistant Commissioner IRS without having completed said mandatory trainings.

6. Learned Counsel appointed as amicus by this Court supported the stance of

Respondents regarding implementation of the new policy on the Petitioner as he repeated the CSS exam after its implementation during CSS-2016, whereas, the new policy was implemented from CE-2015 thus was bound to repeat the CTP, whereas, his ex-cadre service would be counted for the pensionary benefits and not for the seniority purposes, however, Barrister Faisal Khan Toro and Barrister Syed Masood Raza further opined that the policy of repeating the CTP by a repeater candidate is not feasible as it would adversely affect the rights of the public servants and would be an extra burden on the public exchequer having no productive outcome, thus, the candidates who repeat CSS should be exempted from repeating the CTP and should be allowed to join the STP.

7. I have heard the learned counsel for Petitioner, learned Assistant Attorney General as well as Amicus appointed by this Court and perused the appended documents.

8. The grievance of the Petitioner is that he passed the CTP after qualifying the CSS exam and after his repeating the CSS he should have been allowed to undergo the STP as when in the year 2016 he qualified the CSS exam again no policy was in field regarding repeating the CTP by a repeater candidate, whereas, Respondents' contention is that the policy of rejoining the CTP by a repeater candidate was introduced in the year 2015 communicated vide O.M. No.2/3/2015-T-V dated 17.03.2015, and was made applicable from the CSS-2014 and 2015. Perusal of the said O.M. as well as record provided by the Respondents along with their parawise comments shows that the said policy was implemented from CSS-2014 and the candidate who repeated CSS in CS-2014 and 2015 repeated the CTP, whereas, the Petitioner has repeated CSS exam in CS-2016 when the impugned policy was in field. Basic factor which is to be seen by the Court while inspecting a government policy is its feasibility by determining that whether it is in larger benefit of the public and not violative of their fundamental rights guaranteed under the Constitution and what effect it would have on the public exchequer as according to the constitution, the government should keep these in mind while framing policies/laws, whereas and in my view forcing a repeater candidate to undergo CTP again which he has already successfully completed would serve no productive purpose and will also put an extra burden on the public exchequer as it costs huge amounts. In this regard, it would be appropriate to observe that at the time when a candidate opts for improving his/her CSS grading he/she should have been made clear by the authority that marks obtained by such candidate by repeating the CSS exam would have no bearing on his / her previous inter-se seniority amongst the then successful candidates and occupational group rather if he/she would claim his/her seniority on the basis of newly acquired marks his seniority would be determined from amongst the successful candidates of second CSS Exam against a particular occupational group. The policy introduced by the Respondents in the present circumstances would also affect the rights of the candidates who qualifies the CSS exam with a repeater candidate in the first exam as their inter-se seniority would be affected thus it would be appropriate for the authority to make it clear to the candidate opting for improving his marks obtained in CSS exam that his/her seniority would in this case be determined from amongst the candidates of second exam in a particular occupational group.

9. These are the reasons for my short order dated 31.10.2017.

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