

**JUDGMENT SHEET**  
**IN THE ISLAMABAD HIGH COURT, ISLAMABAD**  
**JUDICIAL DEPARTMENT**

W.P.No.195 of 2017  
Arif Saleem  
**Versus**  
The Secretary, Finance Division, Islamabad etc.

W.P.No.407 of 2017  
Umar Farooq  
**Versus**  
Federation of Pakistan etc.

W.P.No.1325 of 2017  
Saman Rauf  
**Versus**  
Pakistan Science Foundation, Islamabad etc.

<b>Date of Hearing:</b>	27.04.2017
<b>Petitioners by:</b>	Mr. M. Habibullah Khan, M. Umer Khan Verdag, Advocates and the petitioner, Mr. Umar Farooq, in person.
<b>Respondents by:</b>	M/s Naubahar and Khurram Ibrahim Baig, Advocates. Ms. Sitwat Jahangir, Assistant-Attorney General.

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**MIANGUL HASSAN AURANGZEB, J:-** Through this common judgment I propose to decide writ petition Nos.195/2017, 407/2017, and 1325/2017, as they involved common questions of law and similar questions of fact.

2. The petitioner in writ petition No.195/2017, is serving in the Capital Development Authority ("C.D.A.") as System Operator (BPS-16), Capital Hospital, C.D.A.; his qualification is Master of Science in Electrical Engineering from COMSATS Institute of Information Technology. Vide office order dated 22.11.2016, the C.D.A. sanctioned the grant of M.Phil Allowance amounting to Rs.2,500/- per month to the petitioner with effect from 01.07.2016. According to the said office order, the office memorandum dated 01.07.2016 issued by the Finance Division, Government of Pakistan, had been adopted by the C.D.A. on 22.07.2016. Vide letter dated 21.09.2016, the Higher Education Commission ("H.E.C.") confirmed that the Master's degree held

by the petitioner was equivalent to an M.Phil degree. The petitioner is aggrieved by the office memorandum dated 04.01.2017, whereby the Finance Division, Government of Pakistan, has clarified that M.Phil Allowance payable at the rate of Rs.2,500/- per month to employees holding an M.Phil degree was not admissible to those employees who hold other degrees/qualifications recognized by the H.E.C. as equivalent to M.Phil. Furthermore, the petitioner prayed for a direction to the respondents to extend the benefit of the M.Phil Allowance to him.

3. The petitioner in Writ Petition No.407/2017 is serving in the Islamabad High Court since 12.04.2008 as Assistant Registrar (BPS-18). During his service, the petitioner was awarded an LL.M degree on 17.09.2015 by the Federal Urdu University of Arts and Technology. The petitioner in his writ petition has pleaded that the H.E.C. in its meeting dated 23.08.2000 had decided that an LL.M of two years after an LL.B from a Pakistani University was equivalent to M.Phil for the purpose of job, promotion and financial benefits. Under Section 10(o) of the Higher Education Commission Ordinance, 1999, the H.E.C. has the authority to determine the equivalence and recognition of degrees, diplomas and certificates awarded by institutions within the country and abroad. It is pleaded that the benefit of M.Phil Allowance on the basis of office memorandum dated 01.07.2016 was extended to all those employees who had acquired degrees equivalent to M.Phil. The petitioner had, on 21.11.2016, submitted an application for the payment of the M.Phil Allowance on the basis of the said office memorandum dated 01.07.2016 to the Registrar of the Islamabad High Court. The Finance Division, Government of Pakistan, vide its letter dated 20.10.2016, clarified that under the office memorandum dated 01.07.2016, M.Phil Allowance was payable only to those employees having an M.Phil degree recognized by the H.E.C. It was also clarified that no other degree had been acknowledged as at par for the grant of M.Phil Allowance. The impugned office memorandum dated 04.01.2017 was issued by the Finance

Division, Government of Pakistan, while the petitioner's application for grant of M.Phil Allowance on the basis of his LL.M degree was pending. The petitioner in the instant writ petition had impugned the said office memorandum dated 04.01.2017.

4. The petitioner in writ petition No.1325/2017 is serving as Scientific Officer (BPS-17) in the Pakistan Science Foundation. He was awarded an M.Sc. (Hons.) in Agriculture by the Pir Mehar Ali Shah University of Arid Agriculture. Vide office order dated 07.10.2016, the petitioner was provisionally granted M.Phil Allowance at the rate of Rs.2,500/- per month subject to a formal approval by the Finance Division, and the verification of the petitioner's degree. The petitioner asserts that the Equivalence Committee of the H.E.C. in its meeting dated 12.01.1986 decided to equate a degree in M.Sc. (Hons.) in Agriculture to an M.Phil degree. The petitioner is aggrieved by the stoppage of the M.Phil Allowance on the basis of impugned office memorandum dated 04.01.2017.

5. The petitioner, in writ petition No.407/2017, appeared in person and made submissions in re-iteration of his pleadings. It was further submitted that admittedly the petitioner's LL.M degree is equivalent to an M.Phil degree on the basis of the decision taken by the Equivalence Committee of the H.E.C. on 23.08.2000; that various institutions have been paying M.Phil Allowance to employees who had been awarded degrees equivalent to M.Phil; that the degree of M.Phil in law is not offered by any University in Pakistan; that the policy of Federal Government to extend the benefit of M.Phil Allowance only to those employees who hold an M.Phil degree, and not to those who have been awarded degrees equivalent to an M.Phil degree is anomalous and discriminatory; that such a policy is bereft of reasonable classification based on intelligible differentia; that the Finance Division, Government of Pakistan, could not restrict the benefit of M.Phil Allowance to employees with M.Phil degrees on the basis of Civil Servants Regulations, which are a compendium of Fundamental Rules and do not have any

statutory status. In making his submissions, the petitioner placed reliance on the law laid down in the case of Al-Raham Travels and Tours (Pvt.) (Ltd.) etc. Vs. Ministry of Religious Affairs, Hajj, Zakat and Ushr through Secretary etc (2011 SCMR 1621), wherein it has been held that if a policy is in conflict with any provision of law or is violative of the fundamental rights of a citizen, the same can be called in question before High Court in its constitutional jurisdiction. Reliance was also placed on the case of Secretary, Establishment, Government of Khyber Pakhtunkhwa etc Vs. Syed Shamsheer Khan etc. (2013 SCMR 559) wherein the principle of “equal pay for equal work” was emphasized. The petitioner prayed for the impugned office memorandum dated 04.01.2017 to be set-aside and for the benefit of M.Phil Allowance to be extended to all those employees who have been awarded degrees equivalent to an M.Phil degree and recognized as such by the H.E.C.

6. The learned counsel for the petitioners in W.P.Nos.195/2017 and 1325/2017, made submissions in reiteration of their pleadings in the said writ petition. In making their submissions, learned counsel for the petitioners also placed reliance on the law laid down in the case of Muhammad Arshad Teja etc. Vs. Chairman, Technical Education and Vocational Training Authority, Lahore etc (2014 PLC (C.S) 620), wherein the petitioners had prayed for his B.Tech. (Hons.) degree to be treated as equivalent to B.E./B.Sc. Engineering. The petitioners had also sought allowances payable to holders B.E./B.Sc. degrees to be paid to them. The Hon'ble Lahore High Court, allowed the petitioners' constitutional petition, *inter alia*, on the ground that the H.E.C. had determined B.Tech. (Hons.) degree to be equivalent to B.E./B.Sc degree.

7. The learned counsel for the respondents and the learned Assistant Attorney-General submitted that the benefit of office memorandum dated 01.07.2016 could only be extended to employees who acquired or possessed M.Phil degrees, recognized by the H.E.C.; that M.Phil Allowance could not be paid to an employee who did not have an M.Phil degree but had

a degree which was equivalent to an M.Phil degree and recognized as such by the H.E.C.; that since various organizations had been unauthorizedly paying M.Phil Allowance to their employees who did not have M.Phil degrees, the Finance Division, Government of Pakistan, vide its office memorandum dated 04.01.2017 clarified that M.Phil Allowance was not admissible to those employees having other degrees or qualifications whether or not recognized by the H.E.C. as equivalent to M.Phil; and that there is no prohibition on autonomous and semi autonomous body to extend benefits to holders of other degrees from their own resources in accordance with their own rules and regulations.

8. I have heard the contentions of the petitioner in writ petition No.407/2017, and learned counsel for the petitioners in Writ Petitions No.195/2017 and 1325/2017. I have also heard the submissions of learned Assistant Attorney-General, assisted by learned counsel for the respondents.

9. None of the petitioners possess M.Phil degrees. They, however, have acquired degrees which are recognized by the H.E.C. as equivalent to an M.Phil degree. There is no dispute with the petitioners' contention that under Section 10(o) of the Higher Education Commission Ordinance, 2002, one of the functions of the H.E.C. is to determine the equivalence and recognition of degrees, diplomas and certificates awarded by institutions within the country and abroad. It is also not disputed that in exercise of the said power, the H.E.C. had declared (1) M.Sc. in Electrical Engineering, (2) L.L.M degree (two years) after L.L.B, and (3) M.Sc. (Hons.) in Agriculture as equivalent to an M.Phil degree. The vital question that needs to be answered in these petitions is whether the benefit of M.Phil Allowance at the rate of Rs.2,500/- per month could also be extended to the petitioners, who although do not possess M.Phil degrees but have acquired qualifications which has been determined as equivalent to an M.Phil degree by the H.E.C.

10. Vide office memorandum dated 01.07.2016 the Finance Division (Regulations Wing), Government of Pakistan, conveyed

to all the Ministries, Divisions and Departments the decision of the President of Pakistan to allow the payment of M.Phil Allowance at the rate of Rs.2,500/- per month with effect from 01.07.2016 to all those who acquired/possessed a degree of M.Phil recognized by the H.E.C. This decision was subject to the following two conditions:-

- "a) M.Phil Allowance will not be admissible to those who are getting Ph.D Allowance @ Rs.10,000/- per month.*
- b) M.Phil Allowance will not be admissible to those who had already got the benefit of advance increments possessing on / acquiring M.Phil degree prior to 01.12.2001 under Finance Division's O.M.No.F.1/1/Imp/83, dated 18.08.1983."*

11. It appears that several departments started paying M.Phil Allowance to those employees who had not acquired an M.Phil degree, but had possessed qualifications equivalent to an M.Phil degree. Some quarters enquired from the Finance Division, Government of Pakistan whether M.Phil Allowance was allowed under the office memorandum dated 01.07.2016 to those employees who had acquired qualifications determined by the H.E.C. to be equivalent to an M.Phil degree. Vide the impugned office memorandum dated 04.01.2017, it was clarified that the benefit of M.Phil Allowance under the office memorandum dated 01.07.2016 was to be given to those employees who possessed an M.Phil degree recognized by the H.E.C. It was also clarified that M.Phil Allowance could not be paid to the holders of other degrees or qualifications whether or not considered equivalent to an M.Phil degree by the H.E.C.

12. Now, perusal of office memorandum dated 01.07.2016 shows that M.Phil Allowance was to be paid only to those employees who possessed an M.Phil degree recognized by the H.E.C., the said office memorandum could not be stretched to give the benefit of an M.Phil Allowance to those employees having degrees which are considered as equivalent to an M.Phil degree. The purpose behind the decision of the President of Pakistan to pay M.Phil Allowance is to encourage employees to gain an M.Phil degree. The decision to pay M.Phil Allowance at a

certain rate is a policy decision. This policy enunciated in the office memorandum dated 01.07.2016 is clear and unambiguous. The Finance Division, Government of Pakistan, in its letter dated 20.10.2016, had also clarified that no other degree had been acknowledged as at par for the grant of M.Phil Allowance. Through the impugned office memorandum dated 01.07.2016, the Finance Division, Government of Pakistan simply clarified its policy decision to pay M.Phil Allowance to the holders of M.Phil degrees. In the case of Azra Jamali and others Vs. Federation of Pakistan through Secretary, Ministry of Commerce and another (2017 PLC (C.S.) 533), it has been held as follows:-

*“28. ... In our view it is neither within the domain of the Courts nor the scope of the judicial review under Article 199 of the Constitution to embark upon an enquiry as to whether a new policy is wise or whether the earlier policy was better. The wisdom and viability of policies of the Government are not amenable to judicial review. The Government is entitled to make pragmatic changes in its policies from time to time so long as they are not patently arbitrary, discriminatory or mala fide.*

*29. Now judicial review of administrative actions is a well-established norm. It is permissible on the ground of illegality or irrationality or procedural impropriety. But it is also well settled that administrative decisions involving policy considerations have been put on a different pedestal. Though they are not totally immune from judicial review, yet certain grounds, which are available in the case of administrative decisions not involving policy considerations, are not open for challenging the policy decisions. By and large the courts observe restraint in deciding the validity of issues involving policy. Since, Courts do not sit as an appellate authority over the policy considerations, it cannot examine the correctness, suitability and appropriateness of the policies. The executive has the authority to formulate a policy and the courts can interfere with it only if it violates the fundamental rights enshrined in the Constitution or is opposed to the provisions of the Constitution or is opposed to a statutory provision. A court cannot interfere with a policy either on the ground that it is erroneous or that a better and fairer alternative was available. The administrative actions and policies of the government which relate to the enforcement of fundamental rights of the people and are of public importance, must be framed in consonance with the policy of law and mandate of the Constitution. The consistent view taken by the Superior Courts in Pakistan has been that the Courts would not interfere in the policy making domain of the executive unless the policy was in violation of the Constitution, smacked of arbitrariness, favoritism and a total disregard of the mandate of law.”*

12. The petitioners have not been able to point out any provision of a statute which had been violated by the respondent (Finance Division, Government of Pakistan) in issuing the clarification through the impugned office memorandum dated 04.01.2017. As regards the case of Muhammad Arshad Teja etc. Vs. Chairman, Technical Education and Vocational Training Authority, Lahore etc. (2014 PLC (C.S) 620), the same is distinguishable, because in the instant case the respondents (Finance Division, Government of Pakistan) had adopted a clear position that M.Phil Allowance could not be paid to holders of other degrees and qualifications having equivalence with an M.Phil degree. There is nothing preventing the petitioners from applying to their respective employers to formulate a policy for the payment of allowance in accordance with their own respective statutes/service regulations.

13. In view of the aforementioned, I do not find the impugned office memorandum dated 04.01.2017 to be arbitrary or in disregard of the mandate of the law. Consequently, these petitions are dismissed with no order as to costs.

**(MIANGUL HASSAN AURANGZEB)  
JUDGE**

**ANNOUNCED IN AN OPEN COURT ON \_\_\_\_\_/2017**

**(JUDGE)**

Qamar Khan\*