

JUDGMENT SHEET

IN THE ISLAMABAD HIGH COURT, **ISLAMABAD**

RFA NO. 97 of 2020

Khushdil Khan Malik

Vs.

The Accountant General Pakistan Revenues (AGPR), etc

Appellant by : Mr. Raheel Azam Khan Niazi, Advocate.

**Respondents by : Ms. Ruqayya Sami, AAG.
Raja Waqas Khan, Sr. Auditor, AGPR
Mr. Shahid Imran (Superintendent), M/o
Commerce.**

Date of hearing : 24.07.2020.

LUBNA SALEEM PERVEZ, J. Through instant Regular First Appeal, the appellant has assailed the order and decree dated 20.02.2020, passed by learned Civil Judge 1st Class, Islamabad-West, whereby, the plaint of the appellant was rejected under Order VII Rule 11 CPC.

2. Brief facts of the case are that the appellant, serving as Joint Secretary in the ministry of Respondent No. 2, was allowed honourarium upto 3 months basic pay, vide Cabinet Division's Memorandum No.24/CM/2018-D, dated 31.05.2018, which amounted to Rs.464,340/-. The said amount was not disbursed by the AGPR upto 01.09.2019, resultantly, appellant filed suit for declaration & recovery of the honourarium of Rs. 464,340/- before the Senior Civil Judge, West-Islamabad, on 14.06.2019. The plaint was rejected, vide order dated 20.02.2020, by the learned Civil Judge 1st Class, West-Islamabad, u/o VII Rule 11 CPC on the ground that the appellant is a civil servant as per definition of civil servant defined under the Civil Servants Act, 1973 and since, the issue falls under the terms and conditions of service, therefore, the civil court is barred by law and have no jurisdiction in the matter. The present RFA has been filed assailing the said order.

3. Learned counsel for the appellant submitted that, admittedly, the appellant is a civil servant serving as Joint Secretary with Respondent No.2, however, the amount of Rs. 464,340/- granted to the appellant as

honourarium is not covered under the terms and conditions of his service. He submitted that the suit was competently filed before the learned Trial Court; that the Federal Cabinet has duly approved the incentive/honourarium to all the employees; that the honourarium is a special incentive absolutely different from monthly salary, as such, it has no nexus with the terms and conditions of service as prescribed under section 17 of the Civil Servants Act, 1973, and rules made thereunder; that the impugned order is a result of misreading and non-reading of facts. Learned counsel in support of his contentions relied on the judgments re: *Chief Secretary, Government of Punjab, Lahore vs. Zia-ur-Rehman* (2020 SCMR 436) and *Madiha Ishaq vs. Estate Officer* [2020 PLC (CS) 510] and prayed for setting aside of the impugned order and decree.

4. Learned Assistant Attorney General submitted that the honourarium awarded to the appellant forms part of the pay and allowances and, therefore, the appropriate forum for such matters lies with Federal Service Tribunal under the Federal Service Tribunal Act, 1973, established under Article 212 of the Constitution of Pakistan for the matters pertaining to the employees in federal services. She submitted that it has been rightly held by the learned Trial Court that jurisdiction of the Civil Court is barred in the service matters. She prayed for dismissal of the appeal on this ground.

5. Arguments heard. Record perused.

6. The documents appended with the appeal has been carefully perused according to which the appellant has been awarded honourarium, vide Cabinet Division's decision dated 31.05.2018, and there is no order of any of the concerned division, whereby, he has been denied the above special incentive/honourarium. The controversy started when the respondent No.1/AGPR refused to release the duly sanctioned special incentive to the appellant. Hence, there was no other option but to file the suit for recovery of the said amount before the civil courts. The learned Civil Judge 1st Class, West-Islamabad, rejected the plaint u/o VII Rule 11 CPC for the only reason that the matters pertaining to terms and conditions of service of the federal employees under the Civil Servants Act, 1973, falls outside the jurisdiction of civil courts. To ascertain the above said finding regarding jurisdiction of

civil courts concerning the issue the Civil Servants Act, 1973, has been perused wherein Chapter II relates to the terms and conditions of civil servants and defines the term “pay” vide section 17 which reads as under:-

“17. Pay.- A civil servant appointed to a post or grade shall be entitled, in accordance with the rules, to the pay sanctioned for such post or grade:

Provided that, when the appointment is made on a current-charge basis or by way of additional charge, his pay shall be fixed in the prescribed manner:

Provided further that where a civil servant has, under an order which is later set aside, been dismissed or removed from service or reduced in rank, he shall, on the setting aside of such order, be entitled to such arrears of pay as the authority setting aside such order may determine.”.

The term pay has also been defined in Civil Service Regulations, vide Article 38 which is also reproduced hereunder:-

“38. Pay and Salary.—

(a) —Pay means “monthly substantive pay”. It includes also “overseas allowance” and “technical allowance”.

(b) For the purposes of the leave rules in chapter XIII, “Pay” includes also the Subsistence allowance of a member of the late Indian Civil Service or a Pakistan Military officer subject to the Civil Leave Rules who has an officiating but not a substantive appointment.

(c) “Salary” means the sum of pay and acting allowance, or charge allowance under article 94 or Chapter VIII.”.

7. The Hon’ble Supreme Court vide judgment passed in the case titled *Chief Secretary, Government of Punjab, Lahore vs. Zia-ur-Rehman* (2020 SCMR 436), while dilating upon the definition of the term “pay” observed as under:-

“11. We have carefully gone through the judgments cited at the bar by learned ASC for the Respondent including Government of NWFP v. I. A. Sherwani (PLD 1994 SC 72), Secretary, Railways Board v. Muhammad Zubair Rana (PLD 2000 SC 61) and Abdul Hameed v. Special Secretary, Education (2016 SCMR 1611). The two earlier judgments are distinguishable on facts as well as the law, while the judgment reported in the case of Abdul Hameed (supra) defines the term “pay” which has also been defined in Rule 2.44 of the CSR, Volume I. For ease of reference, Rule 2.44 is reproduced below:

“2.44 (a). Pay means the amount drawn monthly by a Government servant as:

(i) the pay, other than special pay or pay granted in view of this personal qualifications, which has been sanctioned for a post held by him, substantively or in an officiating capacity or to

which he is entitled by reason of his position in a cadre, and

(ii) overseas pay, technical pay, special pay and personal pay and

(iii) any other emoluments which may be specially classed as pay by the competent authority."

A perusal of the afore noted definition also shows that special pays granted in lieu of personal qualification are excluded from the general definition of "pay" and the reasoning adopted by the Service Tribunal to include it in the pay of Respondent is incorrect and based upon wrong interpretation and comprehension of the said Rule. "

8. Perusal of the above definition and judgment clearly shows that the special pay, special incentive and honourarium have not been included in the pay of the civil servant. The Hon'ble Supreme Court, vide judgment in case of *Mirza Muhammad Tufail v. District Returning Officer (PLD 2007 Supreme Court 16)* has defined the term "honourarium" and observed as under:-

The "honorarium" has been defined in Corpus Juris Secundum Vol. 44 at page 325 as under:--

"In common understanding, the word means a voluntary reward for that for which no remuneration could be collected by law, hence a voluntary payment for a service rendered, an expression of gratitude for which an action cannot be maintained, a voluntary donation, in consideration of services which admit of no compensation in money. While it has been said to denote a compensatory payment, it may, be context, be construed as a gift."

13. The term honorarium, the other condition of remuneration, also exist in the instant case, which according to the aforesaid definition is a voluntary payment for the services rendered for which no remuneration under the law has been provided. "

Careful examination of the above referred definition of "pay" and "salary" provided in the laws relating to civil servant and the expression "honourarium" as defined by the Hon'ble Supreme Court of Pakistan I am of the considered opinion that the special incentive/honourarium awarded to the appellant cannot by any stretch of imagination be included in the terms and condition of a civil servant as same is in the nature of voluntary reward, compensatory allowance or gift for rendering services for which no remuneration has been provided. Moreover, section 4 of Federal Service Tribunal Act, 1973, relates to filing of Appeal to Tribunal, provides that *any civil servant aggrieved by any order whether original or appellate made by the departmental authority in respect of any terms and condition may, within*

30 days of the communication of such order to him prefer an appeal to the tribunal. Thus, appeal before the Tribunal lies against the order of the departmental authority which causes grievance to the civil servant, whereas, in the present case, as no adverse order of any departmental authority against the appellant is available on record against which an appeal can be preferred before the FST. In fact, there is a beneficial decision dated 31.05.2018, issued by the Cabinet Division for awarding honourarium upto three (03) months basic pay to all the Secretaries/Additional Secretaries-in-Charge of Divisions. Thus, on this score also I am of the opinion that there is no scope of filing of appeal before the FST.

9. For the foregoing reasons, it is held that the honourarium/special incentive does not form part of the expression ‘terms and conditions’ of a civil servant and under the facts and circumstances of the present case no appeal can be filed before the FST, as there exists no order issued by the departmental authority, causing grievance to the appellant, therefore, the learned Civil Judge has jurisdiction to entertain the case of the appellant. Resultantly, impugned order and decree dated 20.02.2020 is set-aside and matter is remanded back to the learned Civil Judge-1st Class, Islamabad-West for decision of the petitioner’s suit, afresh on merits, as per law.

(LUBNA SALEEM PERVEZ)
JUDGE

Announced in the Open Court on 29.07.2020.

JUDGE

APPROVED FOR REPORTING

M. JunaidUsman