

JUDGMENT SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

W.P.No.3094/2016

The Deputy Registrar/ Representative of Employees of Federal
Shariat Court

Versus

Federation of Pakistan and others

Date of Hearing: 30.07.2019
Petitioners by: Mr. Aftab Ahmad Khan, Advocate,
Respondents by: Mr. Nadeem Haider, Additional Registrar,
F.S.C.,
Mr. Shumayl Aziz, learned Assistant Attorney-
General.

MIANGUL HASSAN AURANGZEB, J:- Through the instant writ petition, the employees of the Hon'ble Federal Shariat Court seek the implementation of the notification dated 25.10.2014 whereby the Hon'ble Chief Justice of the Federal Shariat Court ("F.S.C.") revised the rate of utility allowance (gas & electricity) in respect of all the officers and staff (BPS-1 to BPS-22) of the said Court with effect from 16.10.2014.

2. Learned counsel for the petitioners drew the attention of the Court to the judgment dated 07.02.2013, passed by this Court in writ petition No.719/2012, titled "*Ajmad Ali Vs. Government of Pakistan*" and contended that this Court had directed the respondents to implement similar notifications dated 12.03.2010 and 14.02.2011 issued by F.S.C. He further submitted that the respondents are coming up with lame excuses for not implementing the said notifications.

3. On the other hand, learned Assistant Attorney-General submitted that the Hon'ble Chief Justice of F.S.C. could not enhance/revise the rates of utility allowance without obtaining the approval of the Prime Minister; that earlier vide notification dated 12.03.2010, the Hon'ble Chief Justice of F.S.C. had sanctioned the enhancement of allowances and perks for the members of the establishment of F.S.C. with effect from 01.07.2009; that after the Finance Division asked F.S.C. to first obtain approval of the Prime Minister, F.S.C., vide letter dated 01.04.2010, requested the Law

and Justice Division to have the approval of the competent authority obtained for payment pursuant to the said notification dated 12.03.2010; that after the Prime Minister accorded the necessary approval, the Law and Justice Division, vide letter dated 28.07.2010, informed F.S.C. about the same; that this prescribed method for obtaining approval for the grant or enhancement of allowances to the members of the establishment of F.S.C. has not been followed by F.S.C. before issuing the notification dated 25.10.2014; that without the approval of the Prime Minister, the said notification dated 25.10.2014 cannot be implemented; that the allowances sought to be granted in terms of notification dated 25.10.2014 have never been granted to civil servants by the Federal Government; that the grant of the allowances under the said notification would result in a change in the terms and conditions of service of employees in the establishment of F.S.C., which change cannot be brought about without the concurrence of the Finance Division in terms of Rule 12(1)(h) of the Rules of Business, 1973; and that F.S.C. could only approach the Finance Division through the Law and Justice Division and not directly. Learned Assistant Attorney-General prayed for the writ petition to be dismissed.

4. I have heard the contentions of the learned counsel for the petitioner as well as the learned Assistant Attorney-General and have perused the record with their able assistance.

5. F.S.C. is the creature of Article 203C of the Constitution. Article 208 of the Constitution provides *inter-alia* that F.S.C., with the approval of the President, may make rules providing for the appointment by F.S.C. of officers and servants and for their terms and conditions of employment. In exercise of the powers conferred by Article 208 of the Constitution, F.S.C., with the approval of the President, made the Federal Shariat Court (Terms and Conditions of Service of Staff) Rules, 1982 ("the 1982 Rules"). These rules provide for the terms and conditions of employment of the officers and servants of F.S.C. and were published in the official Gazette on 18.08.1982. These rules made with a Constitutional sanction have to be given due weight.

6. Vide notification dated 25.10.2014, the Hon'ble Chief Justice of F.S.C., in exercise of the powers conferred under Rule 5 of the 1982 Rules, revised the rates of utility allowance (gas and electricity) for the officers and staff of F.S.C. Apparently, the bills regarding the difference in the utility allowance were submitted to respondent No.2 (Accountant General Pakistan Revenue) which required the enhanced rates to be endorsed by the Finance Division. The matter was placed before the Finance Division, which has till date remained unresolved.

7. The matter regarding the revision of rates of utility allowance to the officers and staff of F.S.C. was referred to the Attorney-General for Pakistan for advice in terms of Rules 14(2) of the Rules of Business, 1973. The office of the Attorney-General for Pakistan has rendered an opinion that the *"Honourable Chief Justice of F.S.C. has the exclusive power to regulate the terms and conditions of service of its officers and servants while remaining within the limits of the budgetary allocation"*. It has also been opined that *"any increase in remuneration and allowances beyond the approved budget will require the approval of the Federal Government."*

8. The vital question that needs to be decided is whether the decision taken by the Hon'ble Chief Justice of F.S.C. to revise the rates of the utility allowance to the officers/staff of F.S.C. is to be implemented by the Federal Government without further ado or whether the implementation of said decision is subject to or contingent upon the approval of the Prime Minister.

9. The matter regarding the enhancement of the judicial and ad-hoc allowance for the staff of the superior judiciary became the subject matter of writ petition No.5406/2011 before the Hon'ble Lahore High Court. The matter was taken to the High Court due to the inaction on the part of Government of the Punjab to honour the budgetary approval for the said allowances. Rule 17 of the High Court Rules and Orders provides that the members of the High Court Establishment shall be entitled to pay (including special pay) and allowances as fixed by the Hon'ble Chief Justice from time to time with the approval of the Governor to the rules.

The said petition was decided vide judgment reported as Riaz Ali Zaidi Vs. Government of the Punjab (2015 PLC (C.S.) 831). In the said judgment, Rule 17 of the High Court Rules and Orders was interpreted. It was held that the said rule does not mean that the decision of the Hon'ble Chief Justice fixing the pay and allowances of the members of the High Court Establishment will be subjected to the approval of the Governor. Furthermore, it was explained that what was required was the approval of the Governor to the making of the rules and not to the decisions of the Hon'ble Chief Justice issued from time to time under the rules. After referring to a catena of case law, it was *inter-alia* held by the Hon'ble Lahore High Court that if the financial and budgetary management of the High Court in terms of its administrative expenses is left to the Executive or the Legislature, it would generate a public perception of dependence of the judiciary on the other two branches of the State and would weaken the public confidence reposed in the judicial system.

10. The intra Court appeal against the said judgment was dismissed and the appellate judgment of the Hon'ble Lahore High Court is reported as Government of the Punjab Vs. Riaz Ali Zaidi (2016 PLC (C.S.) 1074). Vide order dated 09.11.2015 passed in civil petition No.1930-L/2015, leave to appeal against the said judgment was granted by the Hon'ble Supreme Court. Furthermore, the operation of the said judgment of the Hon'ble Lahore High Court was suspended. I am told that the said suspension order is still in the field.

11. Coming back to the case at hand, the Law and Justice Division, in its office memorandum dated 11.02.2016, made reference to the litigation before the Hon'ble Lahore High Court and the Hon'ble Supreme Court in Riaz Ali Zaidi's case, and took the position that since the matter is pending before the Hon'ble Supreme Court, it would be appropriate to pend the case regarding the revision in the rates of the utility allowance to the officers and staff of F.S.C. until a decision is given by the Hon'ble Supreme Court.

12. With utmost respect, I cannot bring myself to agree with the stance taken by the Law and Justice Division in its office memorandum dated 11.02.2016. This is because the 1982 Rules (pertaining to the F.S.C.) have no provision similar to or in *pari materia* to Rule 17 of the Lahore High Court Rules and Orders, which had been interpreted by the judgments of the Hon'ble Lahore High Court, and the operation of the said judgments has been suspended by the Hon'ble Supreme Court as revealed through the order dated 09.11.2015

13. In the case at hand, what we are concerned with is the interpretation of Rule 5 of the 1982 Rules. By virtue of this rule, the rules and orders applicable to civil servants of the corresponding grade in the service of the Federal Government are to regulate the terms and conditions of service of the persons on the staff attached to F.S.C. The *proviso* to the said rule provides that the powers exercisable under the said rules and orders applicable to civil servants by the President or any authority subordinate to the President shall be exercisable by the Hon'ble Chief Justice of F.S.C. For the purposes of clarity, Rule 5 of the 1982 Rules and its *proviso* is reproduced herein below:-

“Subject to any special provisions contained in these rules, the rules and orders for the time being in force and applicable to civil servants of corresponding grades in the service of the Federal Government shall regulate the terms and conditions of service of persons on the staff attached to the Federal Shariat Court:

Provided that the powers exercisable under the said rules and orders by the President, or by any authority subordinate to the President, shall be exercisable by the Chief Justice of the Federal Shariat Court or by such person as he may, by general or special order, direct.”

14. It may also be mentioned that Rule 6 of the 1982 Rules provides that any question arising as to which rules and / or orders are applicable to the case of any person serving in the staff attached to F.S.C. shall be decided by the Chief Justice of F.S.C.

15. The thrust of the stance of the Ministry of Law, Justice and Parliamentary Affairs, in its written comments, is that the allowances and perks of the members of the establishment of F.S.C. cannot be enhanced without the approval of the Prime Minister.

16. Vide notification dated 12.03.2010 issued by F.S.C., the Hon'ble Chief Justice of F.S.C. sanctioned the enhancement in the allowances and perks of the members of the establishment of F.S.C. with effect from 01.07.2009. On 01.04.2010, the Registrar of F.S.C. wrote to the Law and Justice Division, requesting the latter to obtain the necessary approval of the competent authority for the payment of the increased allowances and perks. Vide letter dated 28.07.2010, the Law Reforms Section of the Ministry of Law, Justice and Parliamentary Division informed the Registrar of F.S.C. that the Prime Minister had sanctioned the enhancement in the allowances and perks of the members of the establishment of F.S.C. with effect from 01.07.2010.

17. Additionally, the Law and Justice Division, along with its written comments, has filed letter dated 03.03.2010 which shows that the Ministry of Law, Justice and Parliamentary Affairs, had conveyed the approval/sanction of the Prime Minister of Pakistan as regards the allowances and perks for the members of the establishment of the Hon'ble Supreme Court.

18. The above referred letters dated 28.07.2010 (regarding the Prime Minister's sanction for the enhancement in the allowances and perks of the F.S.C's employees) and 03.03.2010 (regarding the Prime Minister's sanction allowances and perks of the Supreme Court's employees) were relied upon by the learned Assistant Attorney-General to show that as a matter of standard practice the approval/sanction of the Prime Minister was required for an enhancement of the allowances and perks of the employees of the Hon'ble Supreme Court and of the F.S.C. This argument has not impressed me. The Supreme Court Establishment Service Rules were made in the year 2015. Rule 4 of the Supreme Court Establishment Service Rules, 2015 ("the 2015 Rules"), is in *pari materia* to Rule 5 of the 1982 Rules. It may be emphasized that the wordings of these two rules are exactly the same. The 2015 Rules and the 1982 Rules have both been made in exercise of the powers conferred by Article 208 of the Constitution, and with the approval of the President. The said approval of the Prime Minister in the year 2010, i.e. prior to the making of the 2015 Rules, has no

bearing whatsoever on the exclusive power of the Hon'ble Chief Justice of Pakistan to regulate the terms and conditions of service of the persons on the staff attached to the Supreme Court, especially when Rule 4 of the 2015 Rules requires no such approval or sanction of the Prime Minister. This principle would perforce also apply to the powers exercised by the Hon'ble Chief Justice of F.S.C. under Rule 5 of the 1982 Rules to regulate the terms and conditions of service of the persons on the staff attached to F.S.C.

19. The *proviso* to Rule 5 of the 1982 Rules clearly provides that the powers exercisable by the President under the rules and orders applicable to civil servants in the service of the Federal Government, shall be exercisable by the Hon'ble Chief Justice of F.S.C. There is no express requirement for the exercise of such powers by the Hon'ble Chief Justice of F.S.C. to be subject to the approval of the Finance Division or the Prime Minister. Therefore, the contention of the learned Assistant Attorney-General to the effect that the payment of the enhanced allowances and perks sanctioned by the Hon'ble Chief Justice of F.S.C. under Rule 5 of the 1982 Rules cannot be made unless approved by the Finance Division or by the Prime Minister is without substance.

20. Vide order dated 13.07.1988, the Hon'ble Chief Justice of F.S.C. made the secretariat allowance at the rate of 20% of the basic pay applicable to the staff attached to the F.S.C. In spite of the said order, the staff attached to the F.S.C. were not paid the said allowance. This caused them to file a writ petition before the Hon'ble Lahore High Court. Along with the said writ petition, the staff attached to the F.S.C. also filed an application for interlocutory relief, which was allowed. A petition for leave to appeal against the interlocutory order was dismissed by the Hon'ble Supreme Court in the judgment reported as Government of Pakistan, through Ministry of Finance Vs. M.I. Cheema, Deputy Registrar, Federal Shariat Court (1992 SCMR 1852). In the said judgment, after reference was made to Rule 5 of the 1982 Rules, it was held as follows:-

“A perusal of the above-quoted rule 5 shows that the employees of the Federal Shariat Court subject to any special provision contained in the rules are subject to the rules and orders for the time being in force applicable to the civil servants in corresponding grades in the service of Federal Government, in respect of their terms and conditions. It is also evident that under the proviso to the above rule 5 the powers which are exercisable by the President under the relevant rules and orders in respect of civil servants are exercisable by the Chief Justice of the Federal Shariat Court in relation to the staff of the Federal Shariat Court.

It may also be noticed that under rule 6 of the rules, it has been provided that if any question arises as to which rules or orders are applicable to the case of any person serving on the staff attached to the Federal Shariat Court, the same shall be decided by the Chief Justice.

6. We may observe that the approval granted by the learned Chief Justice, Federal Shariat Court to the proposal contained in the above-quoted summary, was accorded pursuant to the powers conferred under above rules 5 and 6 and, therefore, prima facie the competent authority had decided that the respondents were entitled to the above Secretariat Allowance.”

21. Vide judgment dated 07.02.2013, this Court allowed two writ petitions filed by the employees of the F.S.C. seeking the implementation of notifications issued by the Hon’ble Chief Justice of F.S.C. for enhancing their perks and allowances. The argument advanced on behalf of the Federation of Pakistan through the Secretary, Ministry of Finance, that an enhancement in the perks and allowances of the employees of the F.S.C. could not be made without the approval of the Prime Minister, was spurned by this Court in the said judgment. Paragraph 12 of the said judgment is reproduced herein below:-

“12. It would also not be out of context to mention here that through the writ petitions in hand, issue regarding implementation of sanctions accorded by the Hon’ble Chief Justice of Federal Shariat court is agitated, however, this Court while dealing with W.P. No.1613/2003 has already held that Ministry of Finance is under obligation to obey the sanction accorded by the Hon’ble Chief Justice of Federal Shariat court in the light of Rules-5 & 6 of the Federal Shariat Court (Terms and conditions of Staff) Rules, 1982.”

22. Since under the *proviso* to Rule 5 of 1982 Rules, the powers exercisable by the President under the rules and orders applicable to civil servants, are exercisable by the Chief Justice of F.S.C., it now needs to be determined whether the rules and orders applicable to civil servants in the service of the Federal

Government empower the President or any authority subordinate to the President to grant or enhance allowances payable to such civil servants. Rule 4 of the Fundamental Rules provides that the powers specifically granted by the Fundamental Rules to local Governments may be exercised by them in relation to those Government servants only who are under their administrative control. Furthermore, it is provided *inter-alia* that these powers may be exercised by the Governor General in respect of all other Government servants. Now Rule 44 of the Fundamental Rules titled “*Compensatory allowances*” provides that subject to the general rule that the amount of the compensatory allowance should be so regulated that the allowance is not on the whole a source of profit to the recipient, a local Government may grant such allowances to any Government servant under its control and may make rules prescribing their amounts and the conditions under which they may be drawn. For the purpose of clarity, Rules 4 and 44 of the Fundamental Rules, are reproduced herein below:-

“F.R.4. The powers specifically granted by these rules to local Government may be exercised by them in relation to those Government servants only who are under their administrative control. These powers may be exercised by the Governor-General in respect of all other Government servants, and may be delegated by him, without regard to the limitations of rule 6 and subject to any conditions which he may think fit to impose, to a Chief Commissioner.

F.R.44. Compensatory allowances.---Subject to the general rule that the amount of a compensatory allowance should be so regulated that the allowance is not on the whole a source of profit to the recipient, a local Government may grant such allowances to any Government servant under its control and may make rules prescribing their amounts and the conditions under which they may be drawn.”

23. A cumulative reading of Rules 4 and 44 of the Fundamental Rules provide that the Governor General can exercise the power to grant allowances to Government servants in the same manner as can be granted by the local Government to the Government servants under its control. The Fundamental Rules continue to remain in force by virtue of Article 268 of the Constitution and Rule 25(2) of the Civil Servants Act, 1973. Under Article 2(2) of the Central Laws (Adaptation) Order, 1961 (President's Order No. 1 of 1961), the expression “Government” was ordered to be

substituted for the expressions “Crown”, “His Majesty” or “Her Majesty” occurring in the Central Acts and Ordinances, and the word “President” for the expression “Governor-General”.

24. In the case reported as PLD 2014 SC 131 "In the matter of: Action against distribution of development funds by Ex-Prime Minister Raja Pervez Ashraf", it was held by the Hon'ble Supreme Court that since the Rules of Procedure and Conduct of Business in the National Assembly, 2007, were made under Article 67 of the Constitution, they had the status of law. In the case of Mehran Security Service (Pvt.) Ltd. Vs. Pakistan Vs. Pakistan (2000 YLR 2655), the Division Bench of the Hon'ble High Court of Sindh held that since the Rules of Business, 1973, were framed under Article 99 of the Constitution, the said rules had a higher status than ordinary delegated legislation on account of having being made on the authority of the Constitution itself. In the case at hand, the 1982 Rules derive their mandate from Article 208 of the Constitution and therefore have the status of law.

25. If this Court were to accept the contention of the learned Assistant Attorney-General and hold that the decision of the Hon'ble Chief Justice of F.S.C., made in exercise of the powers under Rule 5 of the 1982 Rules, is subject to the approval of the Prime Minister or that such a decision cannot be implemented unless approved by the Prime Minister, it would be reading into the said Rule words that are not mentioned therein. It is well settled that in the garb of interpretation, Courts have no power to add or omit even a single word from the provisions of law. Nothing could be added to a statute or a rule to rewrite the same as that would be against accepted principles of interpretation. Reference in this regard may be made to the law laid in the cases of Khan Gul Khan Vs. Daraz Khan (2010 SCMR 539) and Crescent Jute Products Ltd. Vs. Government of the Punjab (PLD 2004 Lahore 686).

26. In view of the above, the position that emerges is that since the President has the power to grant or sanction allowances to civil servants in the service of the Federal Government, such powers by virtue of the *proviso* to Rule 5 of the 1982 Rules can be

exercised by the Hon'ble Chief Justice of F.S.C.; and since Rule 5 of the 1982 Rules does not make the exercise of the powers by the Hon'ble Chief Justice of F.S.C. to regulate the terms and conditions of service of the persons on the staff attached to F.S.C. conditional on or subject to the approval or sanction of the Finance Division or the Prime Minister; and since the notification dated 25.10.2014 was issued pursuant to a decision taken by the Hon'ble Chief Justice of F.S.C. in exercise of the powers conferred under Rule 5 of the 1982 Rules to revise the rates of utility allowance (gas and electricity) for the officers and staff of F.S.C., the objection raised by the respondents that such revision could not be made without the approval of the Finance Division or the Prime Minister is declared to be without lawful authority and of no legal effect. The instant writ petition is allowed in the above terms. In allowing this petition, I have not taken into account the ratio in the judgments of the Hon'ble Lahore High Court in the cases of Riaz Ali Zaidi Vs. Government of the Punjab (Supra) and Government of the Punjab Vs. Riaz Ali Zaidi (Supra).

27. Before parting with this judgment, I deem it appropriate to express my appreciation regarding the invaluable assistance rendered by Mr. Umar Farooq, posted as Research Officer with this Court.

(MIANGUL HASSAN AURANGZEB)
JUDGE

ANNOUNCED IN AN OPEN COURT ON ____/2019

(JUDGE)

*Qamar Khan**

APPROVED FOR REPORTING