

ORDER SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

I.C.A.No.211 of 2018

Rizwan Ahmad

Versus

Federation of Pakistan and others

S. No. of order / proceedings	Date of order/ Proceedings	Order with signature of Judge and that of parties or counsel where necessary.
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04.02.2021

Mr. Taimoor Aslam Khan and Barrister Rizwan Ahmad, Advocates for the appellant
Mr. Saqlain Haider Awan, learned Assistant Attorney-General
Mr. Aslam Raza Hussaini, Accounts Officer, Ministry of Foreign Affairs

Through the instant intra Court appeal, the appellant, Rizwan Ahmad, impugns the judgment dated 03.04.2018 passed by the learned Judge-in-Chambers whereby writ petition No.3111/2017 filed by him was dismissed. Through the said writ petition, the petitioner / appellant had prayed for a declaration to the effect that he is entitled to the payment of *ad-hoc* relief allowance-2013 ("*ad-hoc* relief allowance") under the Finance Division's Office Memorandum ("O.M.") dated 16.07.2013, and that the demand made by the Ministry of Foreign Affairs from the appellant for the repayment of the *ad-hoc* relief allowance which had been paid to him is unlawful.

2. The record shows that vide letter dated 06.05.2014 issued by the Ministry of Foreign Affairs, the appellant was appointed as Assistant Legal Advisor to the said Ministry on contract basis in MP-III scale for a period of two years. On 16.05.2014, the appellant assumed the charge of the said office. Vide letter dated 28.07.2016, the duration of his contract appointment was extended up to 15.05.2017.

3. According to the Finance Division's O.M dated 16.07.2013, the President had sanctioned *ad-hoc* relief allowance at the rate of 10% of the basic pay to all the civil employees of the Federal Government as

well as civilians paid from Defence Estimates including contingent paid staff and contract employees employed against civil posts in basic pay scales on standard terms and conditions of contract appointment. Vide Finance Division' O.M. dated 21.01.2015, *ad-hoc* relief allowance was also granted to officers holding management grade i.e. M-I to M-III with effect from 01.07.2013. The appellant's salary slip shows that he was paid *ad-hoc* relief allowance.

4. Vide letter dated 14.03.2017, the Ministry of Foreign Affairs informed the appellant that the Finance Division had clarified that the *ad-hoc* relief allowance was not admissible to officers holding MP scales as their terms and conditions of contract did not include such allowance. Furthermore, the appellant was called upon to deposit Rs.281,834/-. Letter dated 06.02.2017 from the office of the Chief Accounts Officer in the Ministry of Foreign Affairs shows that the appellant's revised pay slips would not include *ad-hoc* relief allowance. Vide letter dated 22.03.2017, the Ministry of Foreign Affairs again requested the appellant to deposit the amount paid to him as *ad-hoc* relief allowance. The appellant assailed the said demand by the Ministry of Foreign Affairs in writ petition No.3111/2017 which was dismissed by this Court vide impugned judgment dated 03.04.2018. The said judgment has been assailed by the appellant in the instant appeal.

5. Learned counsel for the appellant, after making reference to the law laid down by the Hon'ble Supreme Court in the case of Government of the Punjab, Education Department Vs. Muhammad Imran (2019 SCMR 643), submitted that the *ad-hoc* relief allowance paid to the appellant could not be recovered from him; that the appellant had played no role in the decision to pay *ad-hoc* relief allowance to

him; that *ad-hoc* relief allowance was paid by the Ministry of Foreign Affairs to the appellant on the basis of Finance Division's O.M. dated 21.01.2015 which had made the grant of *ad-hoc* relief allowance applicable to officers holding management grade i.e. M-I to M-III with effect from 01.07.2013; and that the learned Judge-in-Chambers erred by holding that the appellant was liable to deposit the *ad-hoc* relief allowance paid to him. Learned counsel for the appellant prayed for the appeal to be allowed and for the impugned judgment to be set-aside.

6. On the other hand, learned Assistant Attorney-General appeared along with Aslam Raza Hussaini, Accounts Officer, Ministry of Foreign Affairs, and submitted that since the Finance Division, vide its letter dated 09.03.2017, had clarified that *ad-hoc* relief allowance was not admissible to officers holding MP scales, the Ministry of Foreign Affairs committed no illegality by requiring the appellant to deposit the *ad-hoc* relief allowance that was mistakenly paid to him; and that the terms and conditions on which the appellant was appointed did not include the payment of *ad-hoc* relief allowance. Learned Assistant Attorney-General prayed for the appeal to be dismissed.

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

8. The sole question that needs to be determined is whether the Ministry of Foreign Affairs was justifying in calling upon the appellant to deposit the amount which had been paid to him as *ad-hoc* relief allowance. It is an admitted position that the appellant had played no role in the decision to pay *ad-hoc* relief allowance to him. The Ministry of

Foreign Affairs had stopped paying the *ad-hoc* relief allowance to the appellant only after the Finance Division's letter dated 09.03.2017 which had clarified that *ad-hoc* relief allowance was not admissible to officers holding MP scales.

9. In paragraph 5 of the written comments filed on behalf of respondents No.1 and 3, it had been pleaded that the *ad-hoc* relief allowance had been *"paid inadvertently by the office of the Chief Accounts Officer, Ministry of Foreign Affairs."* We are of the view that where public funds are inadvertently or mistakenly paid, the Government has the right to seek recovery of the same. A person in receipt of public funds cannot retain the same if such payment was not authorized by the law or applicable rules. This is our view, which appears to be in consonance with the one taken by the learned Judge-in-Chambers. However, the Constitution binds us to follow the law laid down by the Hon'ble Supreme Court. Indeed in paragraph 10(IV) of the judgment in the case Government of the Punjab, Education Department Vs. Muhammad Imran (supra), it has been held as follows:-

"IV) None can retain the benefits of a withdrawn order, claiming the protection of having taken a decisive step, when the very order passed by the authority is illegal, void or without lawful authority. In such circumstances, it would not matter, even if decisive steps have been taken by the person in pursuance of the illegal order passed by the authority. However, the pecuniary benefit accrued and already received by a person in pursuance of an illegal order passed by the competent authority cannot be recovered from him unless the benefiting order was obtained by the person through fraud, misrepresentation or concealment of material facts."

10. In view of the above, the instant intra Court appeal is allowed and consequently writ petition No.3111/2017 is allowed only to the extent of setting-aside the demand made by the Ministry of Foreign

Affairs from the appellant to deposit the *ad-hoc* relief allowance inadvertently paid to him during his contractual service as Assistant Legal Advisor. There shall be no order as to costs.

(LUBNA SALEEM PERVEZ)
JUDGE

(MIANGUL HASSAN AURANGZEB)
JUDGE

Qamar Khan

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