

ORDER SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

W.P.No.3809 of 2017
Muhammad Javed Iqbal Kasi
Versus.
Federal Government of Pakistan through Secretary, Law, Justice and
Human Rights Division and others

S. No. of order / proceedings	Date of order/ Proceedings	Order with signature of Judge and that of parties or counsel where necessary.
	08.11.2017	Mr. Muhammad Aftab Alam Rana, Advocate for the petitioner.

Through the instant writ petition, the petitioner, Muhammad Javed Iqbal Kasi, who is a Member of the Federal Service Tribunal, seeks a direction to the respondents to grant/pay him judicial allowance with effect from the date he assumed the charge of the said post.

2. Learned counsel for the petitioner submitted that vide notification dated 06.11.2014, issued by respondent No.3, the President of Pakistan, in exercise of the powers conferred by Section 3(4) of the Services Tribunal Act, 1973, appointed the petitioner as a Member of the Federal Service Tribunal for a period of three years; that as per the said notification, the petitioner was entitled to such pay, allowances and perquisites as may be prescribed from time to time; that on 10.11.2014, the petitioner assumed charge of the said post; that on 21.05.2015, the petitioner submitted a representation to respondent No.3 for judicial allowance to be paid to the petitioner; that the Service Tribunals performed judicial functions, in order to manage, control, and regulate proceedings in accordance with the law relating to Courts in Pakistan; that as the members of the subordinate judiciary and the superior judiciary are given special judicial allowance in addition to their

salaries, the same privilege should also be extended to the members of the Federal Service Tribunal; that the members of the Service Tribunal performed crucial judicial functions and their orders are appealable before the Hon'ble Supreme Court of Pakistan; that the petitioner was a practicing advocate for a period of more than ten years and was, therefore, qualified to be appointed as a Judge of the High Court; that another member of the Service Tribunal is being paid judicial allowance, whereas the petitioner has been denied this privilege; that on 21.05.2014, the Registrar of the Federal Service Tribunal also requested respondent No.3 to allow the payment of judicial allowance and other perquisites to the members of Service Tribunal.

3. Learned counsel for the petitioner further submitted that Mr. Mahmood ul Haq Thanvi who was appointed, vide notification dated 06.10.1999, as a member of the Federal Service Tribunal was given the pay scale of BS-22, whereas the petitioner has been discriminated against by being given BS-21; that Syed Rafique Hussain Shah, member Federal Service Tribunal was being paid judicial allowance, whereas the petitioner had been denied the payment of such allowance; and that the denial of the payment of judicial allowance is a transgression of the petitioner's fundamental rights guaranteed under Articles 4, 9 and 25 of the Constitution. Learned counsel for the petitioner prayed for the writ petition to be allowed with the direction to the respondents to pay judicial allowance to the petitioner.

4. I have heard the contentions of the learned counsel for the petitioner.

5. There is no doubt that the members of the Service Tribunal perform judicial functions, and

that the orders passed by the Federal Service Tribunal are appealable before the Hon'ble Supreme Court. However, the petitioner was appointed for fixed term of three years as a member of the Federal Service Tribunal. He is not a Judge of the subordinate or the superior judiciary. As per notification dated 06.11.2014, the petitioner is entitled to such pay, allowances and perquisites as may be prescribed from time to time. It is the prerogative of the competent authority to determine the allowances which are to be paid to the members of the Federal Service Tribunal. The petitioner's representation to respondent No.3 for the payment of judicial allowance has been pending since 21.05.2015, and it is expected that the same will be decided expeditiously and strictly in accordance with the law.

6. As regards the contention of the learned counsel for the petitioner that another member of the Federal Service Tribunal, namely, Syed Rafique Hussain Shah was receiving judicial allowance, the same, in my view is of no assistance to the petitioner. Learned counsel for the petitioner admitted that Syed Rafique Hussain Shah was a member of the subordinate judiciary and was being paid judicial allowance in his capacity as a member of the subordinate judiciary, and not as a member of the Federal Service Tribunal. Learned counsel for the petitioner could not come up with any other instance where judicial allowance had been paid to any other member of the Federal Service Tribunal. As regards the contention of the learned counsel for the petitioner that Mr. Mahmood ul Haq Thanvi, Advocate, who was appointed as a member of the Federal Service Tribunal on contract basis for a period of two years on 06.10.1999 had been given the scale of BS-22, whereas, the petitioner has

been given the scale of BS-21, it is my view that a solitary example of such a scale being given to a member eighteen years ago would not make out a case of discrimination in the petitioner's favour.

7. The grant or the withdrawal of an allowance is the prerogative of the authority that determines the terms and conditions of the appointment of an incumbent. An employee does not have a vested right for the payment of allowances. Even if an allowance is granted, the same can be withdrawn by the competent authority.

8. In the case of Mohammad Shabbir Ahmad Nasir Vs. Secretary, Finance Division (1997 SCMR 1026), Federal Government employees serving in the Ministry of Local Government and Rural Development had filed a petition under Article 184 (3) of the Constitution praying for a declaration that the reduction of the personnel allowance payable to the petitioners was without lawful authority. The petitions were dismissed by the Hon'ble Supreme Court of Pakistan. In the said report, it was *inter alia* held that allowances paid to a Government employee were not protected under any statutory provision, therefore, their withdrawal by the government could not be challenged on any legal plane.

9. Furthermore, in the case of Employees Welfare Association, B.I.S.E., Daira Ghazi Khan Vs. Government of the Punjab (2002 PLC (C.S.) 163), the Hon'ble Lahore High Court, Lahore, dismissed writ petitions challenging the withdrawal of Secretariat Allowance given to the petitioners by the provincial government. In Paragraph 08 of the said report, it was held as follows:-

"It has already been mentioned above that the Hon'ble Supreme Court of Pakistan had held in the case of Mohammad Shabbir Ahmed Nasir (supra) that withdrawal of an Allowance by a

Government cannot be challenged by an employee of such a Government on any legal plane. Thus, this Court is not in any position to allow these petitions and to direct the Provincial Government to keep on extending the benefit of the Secretariat Allowance to the petitioners. This result may appear to the petitioners to be oppressive and the petitioners may be hit hard by the same financially in these trying times but the hands of this Court are tied in this respect and apart from extending sympathy to the petitioners this Court is in no position to lend them a helping hand in this regard.”

10. In view of the above, I do not find any merit in this petition, which is accordingly dismissed in limine.

**(MIANGUL HASSAN AURANGZEB)
JUDGE**

APPROVED FOR REPORTING

Ahtesham*