

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

W.P.No.943 of 2019

Sher Shah Malik

**Versus**

The Pakistan Broadcasting Corporation and another

**Dates of Hearing:** 09.12.2019 and 16.04.2020

**Petitioner by:** Mr. Muhammad Wajid Hussain Mughal, Advocate

**Respondents by:** Mr. Rashid Mahmood Ansari, Advocate.

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**MIANGUL HASSAN AURANGZEB, J:-** Through this judgment, I propose to decide W.P.No.943/2019 and W.P.No.1111/2019 since they entail common questions of law and fact.

2. The petitioners in the said petitions impugn the memorandum dated 06.06.2018 issued by the Pakistan Broadcasting Corporation (“P.B.C.”) whereby their request for the grant of medical allowance was turned down.

3. The facts essential for the disposal of the petitions are that the petitioners were appointed to serve in the Department of the Government of Pakistan headed by the Director-General Radio Pakistan (“Radio Pakistan”). After the establishment of the P.B.C. under the provisions of the Pakistan Broadcasting Corporation Act, 1973 (“the 1973 Act”), the petitioners could be transferred to the P.B.C. by virtue of Section 12 of the 1973 Act which contained a *non obstante* clause and provided *inter alia* that the Federal Government may transfer persons in the service of Radio Pakistan immediately before the commencement of the said Act to the P.B.C. *“on the same terms and conditions to which they were entitled immediately before such commencement.”*

4. Vide notification (S.R.O.414(I)/74) dated 27.03.1974 issued by the Ministry of Information and Broadcasting, Auqaf and Haj (Government of Pakistan), in exercise of the powers conferred by Section 12 of the 1973 Act, the Federal Government directed that the persons mentioned in the list appended to the said notification who were serving in Radio Pakistan shall stand transferred with effect from 20.12.1972 to the P.B.C. *“on the same terms and conditions to which they were entitled before the transfer.”* It is an admitted position that the petitioners’ names were mentioned in the list appended to the said notification. By virtue of the said S.R.O., the petitioners were transferred to the P.B.C. on the same

terms and conditions which were applicable to them prior to their transfer.

5. In exercise of the powers conferred by Section 22 of the 1973 Act, the Board of Directors of the P.B.C., with the previous sanction of the Federal Government, made the Pakistan Broadcasting Corporation Employees' (Pension-*cum*-Gratuity Scheme) Regulations, 1985. These Regulations were made applicable to all employees of the P.B.C. who were in service on 23.08.1982 or who joined service after that date. Regulation 1(3)(i) of the said Regulations explicitly provided that the said Regulations did not apply to persons transferred to the P.B.C. under Section 12 of the 1973 Act.

6. Section 19 of the 1973 Act provided that all assets and liabilities of the Federal Government in relation to Radio Pakistan subsisting immediately before the commencement of the said Act shall, unless the Federal Government by notification in the official Gazette otherwise directs, vest in P.B.C. as from such commencement. In exercise of the powers conferred by Section 19 of the 1973 Act, the Federal Government issued notification dated 27.03.1974 (S.R.O.413(I)/74) which provided *inter alia* that the liability of the Federal Government in relation to Radio Pakistan shall, insofar as it relates to the pension and gratuity of the employees of Radio Pakistan that would have been payable had the employees been discharged from service and granted pension or gratuity for services rendered by them up to 19.12.1972, continue to be the liability of the Federal Government. It was also provided that the general provident fund balances of the employees of Radio Pakistan on 19.12.1972 shall continue to vest in the Federal Government.

7. In essence the petitioners' case is that since the benefit of medical allowance has been given to all civil servants, and since the petitioners' having been transferred from Radio Pakistan to the P.B.C. by operation of Section 12 of the 1973 Act read with notification (S.R.O.414(I)/74) dated 27.03.1974, they are also entitled to be paid medical allowance in the same manner as payable to civil servants under the Finance Division's Office Memorandum ("O.M.") dated 05.07.2010.

8. Learned counsel for the petitioners, after narrating the facts leading to the filing of the instant petition, submitted that the petitioners joined government service prior to 19.12.1972 and had been serving in Radio Pakistan under the Ministry of Information and Broadcasting; that

prior to their transfer to Radio Pakistan, the petitioners' status was that of civil servants; that even though the petitioners were no longer civil servants after their transfer to the P.B.C., they were entitled to the same service benefits as civil servants; that no option was given to the petitioners prior to their transfer to the P.B.C.; that the petitioners' services had been transferred to the P.B.C. on the same terms and conditions to which they were entitled before their transfer; and that the petitioners' terms and conditions of service were protected under Section 12 of the 1973 Act read with the notification (S.R.O.414(I)/74) dated 27.03.1974.

9. Learned counsel for the petitioners further submitted that vide the Finance Division's O.M. dated 07.07.2015, pensioners of the Federal Government were entitled to the benefit of restoration of the commuted portion of their pension; that the petitioner in writ petition No.943/2019 had filed a complaint before the *Wafaqi Mohtasib* seeking the benefit of restoration of the commuted portion of the pension; that vide order dated 03.07.2015, the *Wafaqi Mohtasib* advised the P.B.C. to restore the commuted portion of the petitioner's pension; that vide order dated 26.10.2015, the Board of the P.B.C. authorized the Director General, P.B.C., to allow an increase in pension to the P.B.C. pensioners at the same rate, scale and conditions as announced by the Federal Government from time to time; and that the respondents could not deny the benefit of medical allowance to be granted to the petitioners whose status is the same as that of the pensioners of the Federal Government. Learned counsel for the petitioner prayed for the writ petitions to be allowed in terms of the relief sought therein.

10. On the other hand, learned counsel for the respondents submitted that Radio Pakistan was an attached department of the Ministry of Information and Broadcasting; that by operation of Section 3 of the 1973 Act, Radio Pakistan was converted into the P.B.C. with effect from 20.12.1972; that during their service in the P.B.C., the petitioners had been drawing salaries higher than the Federal Government's Basic Pay Scales; that the petitioners also enjoyed the perks and privileges admissible to employees of the P.B.C.; that by receiving the benefits payable to the employees of the P.B.C., the petitioners gave their implied consent not to be given the same benefits payable to civil servants; that during their service, the petitioners availed the health care facilities

admissible to all employees of the P.B.C. (including the petitioners) under the P.B.C. Medical Assistance Rules, 1992; that for several years after their retirement, the petitioners did not agitate the issue regarding payment of medical allowance under O.M. dated 05.07.2010; that the facility of medical allowance was admissible only to retired civil servants; and that since the petitioners are not retired civil servants, they are not entitled to payment of medical allowance.

11. Learned counsel for the respondents further submitted that the impugned Memorandum dated 06.06.2018 had been challenged by the petitioners in appeals before the Federal Service Tribunal; that vide order dated 18.02.2019, the said appeals were returned for want of jurisdiction; that the petitioners' request for the payment of medical allowance had been turned down by the P.B.C. Board on 17.10.2016; that the restoration of the commuted portion of the pension has been allowed to all employees of the P.B.C. including the petitioners; that the periodic increases in pension announced by the Federal Government do not apply to employees of the P.B.C. unless adopted by the P.B.C. Board; and that since medical allowance is admissible only to the civil pensioners of the Federal Government, i.e. retired civil servants and civilians paid from Defence Estimates and Civil Armed Forces, the petitioners have no legal basis for claiming the payment of medical allowance. Learned counsel for the respondents prayed for the writ petitions to be dismissed.

12. I have heard the contentions of the learned counsel for the contesting parties and have perused the record with their able assistance.

13. The facts leading to the filing of the instant petition have been set out in sufficient detail in paragraphs 3 to 7 above, and need not be recapitulated.

14. It is an admitted position that all the petitioners were employed in Radio Pakistan prior to the enactment of the 1973 Act, and were transferred to the P.B.C. by operation of Section 12 of the 1973 Act read with the notification (S.R.O.414(I)/74) dated 27.03.1974. It is also admitted that the names of all the petitioners are mentioned in the list of the Radio Pakistan's employees appended to the said notification dated 27.03.1974. Section 12 of the 1973 Act, pursuant to which the petitioners

were transferred to and became employees of the P.B.C., is reproduced herein below:-

***“12. Transfer of Radio Pakistan servants to the Corporation.—(1) Notwithstanding anything to the contrary in any contract or agreement or in the conditions of service, the Federal Government may, subject to the provisions of sub-section (2) and (3), transfer persons in the service of Pakistan and serving in connection with the affairs of the department of the Government of Pakistan headed by the Director-General, Radio Pakistan, hereinafter referred to as Radio Pakistan, immediately before the commencement of this Act, including persons on deputation to other organisations in Pakistan or abroad, to the Corporation on the same terms and conditions to which they were entitled immediately before such commencement.***

***[(1A) The persons transferred to the Corporation under subsection (1) shall cease to be civil servants in the service of Pakistan and become employees of the corporation from the date of its establishment under section 3, on the same terms and conditions to which they were entitled immediately before such transfer.***

***(1B) Notwithstanding any judgment of any Court or tribunal, including the Supreme Court, any law, contract, agreement or the conditions of service, all actions taken, powers exercised, orders or instructions issued, by the Corporation in respect of terms and conditions of employees referred to in sub-section (1A) after their transfer to the Corporation till the coming into force of the Pakistan Broadcasting Corporation (Amendment) Act, 1996 (IV of 1996), shall be deemed to have been validly taken, exercised or issued by the Corporation.]***

***(2) Notwithstanding anything in sub-section (1), only such members of the Information Service of Pakistan serving Radio Pakistan immediately before the commencement of this Act shall be transferred to the Corporation as opt for service in the Corporation.***

***(3) The persons transferred to the Corporation under subsection (2) shall, on such transfer, cease to be members of the Information Service of Pakistan.***

***(4) The terms and conditions of service of the members of the Information Service of Pakistan transferred to the Corporation under sub-section (2) shall not be altered by the Corporation to their disadvantage.***

***(5) No person in the service of Pakistan who is transferred to the Corporation under sub-section (1) shall, notwithstanding anything contained in any law for the time being in force, be entitled to any compensation because of such transfer.”***

***(Emphasis added)***

15. A conjoint reading of Section 12(1) and (1A) of the 1973 Act shows that the petitioners were civil servants prior to their transfer to the P.B.C., and that after their transfer to the P.B.C. they ceased to be civil servants. It ought to be borne in mind that the petitioners do not seek the grant of medical allowance by claiming to be civil servants, but on the basis of a statutory assurance that upon their transfer to the P.B.C. they would become employees of the P.B.C.

*“on the same terms and conditions to which they were entitled immediately before such transfer.”* Their precise stance is that since they were civil servants before their transfer to the P.B.C., and since a civil servant has been given the benefit of medical allowance, they are also entitled to be given the same benefit.

16. It is my view that the import of Section 12(1) and (1A) of the 1973 Act is that upon the transfer of the Radio Pakistan’s employees to the P.B.C., the terms and conditions of their service could not be altered to their detriment. Their terms and conditions of service would be those of a civil servant even though upon their transfer to the P.B.C., they ceased to be civil servants. To hold otherwise would be tantamount to simply attributing redundancy to the term, *“on the same terms and conditions to which they were entitled immediately before such transfer”* in Section 12 of the 1973 Act. Had the petitioners not been civil servants prior to their transfer to the P.B.C. by operation of Section 12(1A) of the said Act, there would have been no need for a statutory declaration that *“[t]he persons transferred to the Corporation under subsection (1) shall cease to be civil servants in the service of Pakistan.”*

17. Vide O.M. dated 05.07.2010, the Finance Division conveyed to all Ministries/Divisions the sanction of the President of Pakistan for the introduction of medical allowance with effect from 01.07.2010 to all civil pensioners of the Federal Government including civilians paid from Defence Estimates and Civil Armed Forces at the following rates:-

- “(i) Pensioners who retired in BPS 1 - 15 @ 25% of pension drawn.*
- (ii) Pensioners who retired/will retire in BPS 16 - 22 @ 20 % of pension drawn.”*

18. Vide O.M. dated 07.07.2015, the Finance Division conveyed the sanction of the President of Pakistan with effect from 01.07.2015 for 25% increase in the amount of medical allowance being drawn by civil pensioners of the Federal Government, including civilians paid from Defence Estimates and Civil Armed Forces and to future retirees on the medical allowance admissible to them at the time of retirement.

19. Had the petitioners retired prior to the enactment of the 1973 Act, their status as a civil servant at that stage would have entitled them to the payment of medical allowance on the basis of the above-

referred office memoranda. Since the petitioners, upon their transfer to the P.B.C., by operation of Section 12 of the 1973 Act, did not lose their entitlement to be given all service benefits as are entitled to civil servants by virtue of the protection afforded to them by Section 12(1) and (1A) of the 1973 Act read with the above-referred notification (S.R.O.414(I)/74) dated 27.03.1974 issued by the Ministry of Information and Broadcasting, Auqaf and Haj (Government of Pakistan), in exercise of the powers conferred by Section 12 of the 1973 Act, they are held to be entitled to the payment of medical allowance with effect from 01.07.2010 at the same rates as mentioned in the Office Memoranda dated 05.07.2010 and 07.07.2015. In holding so, reliance is placed on the judgment in the case of Syed Abdus Samad Pirzada Vs. Government of Punjab (2008 SCMR 14), wherein it was held as follows:-

*“The Corporation where the appellant has previously served, was a creation of Pakistan Broadcasting Corporation Act, 1973, with effect from 20-12-1972. The Broadcasting concern, prior to that, was known as Radio Pakistan, a department of the Government of Pakistan, headed by the Director-General Radio Pakistan. All the employees thereof were in the service of Pakistan and serving in connection with the affairs of Federal Government. When such organization was turned into a Corporation, the services of civil servants stood transferred to the Corporation on the same terms and conditions to which they were entitled immediately before such commencement, under section 12 of the Act.”*

**(Emphasis added)**

20. I do not find merit in the contention of the learned counsel for the P.B.C. that since, during their service, the petitioners availed the health care facilities admissible to all employees of the P.B.C. or received benefits payable to other employees of the P.B.C., the petitioners gave their implied consent not to be given the benefits payable to civil servants. For this argument to be accepted, redundancy will have to be attributed to statutory assurance that upon their transfer to the P.B.C. by operation of Section 12 of the 1973 Act, the petitioners' terms and conditions of service would be the same as the ones prior to their transfer. There is no denying the fact that prior to their transfer to the P.B.C., the petitioners were civil servants. Therefore, upon their transfer to the P.B.C., their terms and conditions of service would also be those of civil servants. Since after their transfer to the P.B.C. the petitioners ceased to be civil servants, they cannot invoke the jurisdiction of the Service Tribunal

to agitate a dispute regarding the terms and conditions of their service.

21. Learned counsel for the P.B.C. did not deny that the Pakistan Broadcasting Corporation Employees' (Pension-*cum*-Gratuity Scheme) Regulations, 1985 did not apply to the petitioners. Indeed, since the petitioners were transferred to the P.B.C. from Radio Pakistan under Section 12 of the 1973 Act, the said Regulations did not apply to them. The rationale behind excluding the petitioners from the applicability of the said Regulations was that the terms and conditions which governed their employment with Radio Pakistan (i.e. those of civil servants) were to continue to be applicable on them after their transfer to the P.B.C.

22. Just like the petitioners were civil servants prior to their transfer to the P.B.C. by operation of Section 12 of the 1973 Act, the employees of the Pakistan Telegraph and Telephone Department ("T&T Department") were also civil servants prior to their transfer to the Pakistan Telecommunication Corporation ("P.T.C.") by operation of the provisions of the Pakistan Telecommunication Corporation Act, 1991 ("the 1991 Act"). The provisions of the 1991 Act also contained an assurance regarding protection of the terms and conditions of service for the employees of the T&T Department who, upon their transfer, had become employees of the P.T.C. By operation of Section 9(1) of the said Act, the employees of the T&T Department were transferred to the P.T.C. on the same terms and conditions to which they were entitled immediately before such transfer. Section 9(2) of the 1991 Act provided that the terms and conditions of service of the departmental employees transferred to the P.T.C. shall not be varied to their disadvantage. The terms and conditions of service to which such employees were entitled before their transfer were to continue to be applicable to them notwithstanding their transfer to the P.T.C. Subsequently, the Pakistan Telecommunication (Re-organization) Act, 1996 ("the 1996 Act") was enacted. Section 35(2) of the 1996 Act provided *inter alia* that the employees of the P.T.C. specified in an order issued by the Federal Government shall be transferred to and become the employees of either Pakistan Telecommunication Company Limited ("P.T.C.L."), etc. Under the *proviso* to Section 36(1) of the said Act,



the Federal Government was under an obligation to guarantee the existing terms and conditions of service and rights including pensionary benefits of the employees transferred to P.T.C.L. Under Section 36(2) of the said Act, the terms and conditions of service of any such transferred employees could not be altered adversely by P.T.C.L. except in accordance with the laws of Pakistan or with the consent of such transferred employees and the award of appropriate compensation. For more than a decade after the incorporation of P.T.C.L., the retired employees who had been transferred from the T&T Department were paid pension at the same rate as that determined by the Government for retired civil servants. However, subsequently, a disparity in the rate of the increase in pension was created which caused such retired employees to invoke the Constitutional jurisdiction of the High Court under Article 199 of the Constitution by filing writ petitions which were allowed, and the judgment of the High Court was upheld by the Hon'ble Supreme Court. In the case of Pakistan Telecommunication Employees Trust (PTET) Vs. Muhammad Arif (2015 SCMR 1472), the Hon'ble Supreme Court, after observing that the employees of the T&T Department having retired after their transfer to P.T.C. and P.T.C.L., by operation of Section 9 of the 1991 Act, and Sections 35 and 36 of the 1996 Act, were entitled to the same pension as announced by the Government of Pakistan for civil servants, held that the Board of Trustees of Pakistan Telecommunication Employees Trust *"is bound to follow such announcements of the Government in respect of such employees."* Bearing in mind the law laid down by the Hon'ble Supreme Court, and the fact that like the former employees of the T&T Department, the terms and conditions of service of the petitioners (former employees of Radio Pakistan) were to be the same as the ones prior to their transfer to the P.B.C., the Board of the P.B.C. is bound to grant medical allowance to the petitioners in the same manner and rate as payable by the Government to retired civil servants.

23. In view of the above, the instant writ petitions are allowed; the impugned memorandum dated 06.06.2018 is set aside and declared to be of no legal consequence on account of being in violation of the statutory assurance enshrined in Section 12(1) and (1A) of the 1973

Act; and the petitioners are held to be entitled to the payment of medical allowance with effect from 01.07.2010 at the same rates as mentioned in the Finance Division's office memoranda dated 05.07.2010 and 07.07.2015. There shall be no order as to costs.

**(MIANGUL HASSAN AURANGZEB)**  
**JUDGE**

**APPROVED FOR REPORTING**

*Qamar Khan\**

*Uploaded By : Engr. Umer Rasheed Dar*