

ORDER SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

W.P.No.238/2015
Habib-ur-Rehman

Versus

Federation of Pakistan through Secretary, Ministry of Interior 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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21.10.2019	Ms. Shafaq Abid, Advocate for the petitioner Mr. Arshid Mehmood Kiani, learned Deputy Attorney-General Ms. Tosif Zia, Assistant Director (Human Resource) for respondent No.3 Mr. Tariq Masood, Accountant for respondent No.3
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Through the instant writ petition, the petitioner, Habib-ur-Rehman, prays for the issuance of a writ directing the respondents to pay him the outstanding amount on account of project allowance for the period he served as a deputationist with respondent No.3 (Project Director, Immigration and Passports, Machine Readable Passport Project, Islamabad).

2. Learned counsel for the petitioner submitted that vide office order dated 08.09.2011, the petitioner was sent on deputation to the Machine Readable Passport Project for a period of three years; that it is not disputed that on 17.06.2013, the petitioner was repatriated to his parent department, i.e. Office of the Auditor General of Pakistan; that although the petitioner was paid deputation allowance, he was not paid project allowance at the rate of Rs.4,000/- per month for which he was entitled to under the Finance Division's office memorandum ("O.M.") dated 12.08.2008; that vide judgment dated 17.02.2011 passed by this Court in writ petition No.1350/2010, it was held that the petitioners employed on contract basis in the Machine Readable Passport Project were entitled to the

pay package under the Finance Division's O.M. dated 12.08.2008 as amended by O.M. dated 18.08.2019; and that the said judgment of this Court was upheld by the Hon'ble Supreme Court vide order dated 07.10.2011 passed in civil petitions No.739 and 811 of 2011. Learned counsel for the petitioner prayed for the writ petition to be allowed in terms of the relief sought therein.

3. On the other hand, learned Deputy Attorney-General assisted by Ms. Tosif Zia Assistant Director (Human Resource), submitted that the judgment dated 07.02.2011 passed by this Court and the judgment dated 07.10.2011 passed by the Hon'ble Supreme Court are distinguishable inasmuch as the said judgments are with respect to the petitioners directly employed on contract basis in the Machine Readable Passport Project; that even otherwise, vide Finance Division's O.M. dated 18.04.2012, project allowance was discontinued for all types of projects with immediate effect to remove distortion in the system; that the petitioner received deputation allowance while he served as a deputationist; that the petitioner could not be paid project allowance until 18.04.2012 since the payment of project allowance was subject to a provision in the PC-I for the said project and approval of the competent forum; and that there was no provision for project allowance made in the PC-I for the Machine Readable Passport Project. Learned Deputy 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

Deputy Attorney-General and have perused the record with their able assistance.

5. It is not disputed that vide office order dated 08.09.2011, the petitioner was appointed as Driver (BPS-5) on deputation basis in the Machine Readable Passport Project for a period of three years. It is also not disputed that on 17.06.2013 the petitioner was repatriated to his parent department, i.e. Office of the Auditor General of Pakistan.

6. The petitioner is seeking the payment of project allowance for the period he served as a deputationist in the Machine Readable Passport Project on the strength of Finance Division's O.M. No.F.4(9)R-3/2008-499, dated 12.08.2008. Under the said O.M., officers/staff recruited for the execution of development projects are entitled to the payment of project allowance. The said O.M. is not just applicable to the officers/staff directly recruited for the execution of development projects funded from Public Sector Development Program but also to deputationist appointed to serve in development projects. This is apparent from paragraph 2(iv) of the said O.M. dated 12.08.2008 which is reproduced herein below:-

"The project employees appointed through transfer (deputation) on full time basis will get pay in their own pay scales and allowances plus deputation allowance as admissible under the deputation policy contained in Establishment Division's O.M. No.1/13/87/R-I, dated 03.12.1990 as amended from time to time, at the rate of 20% of the basic pay subject to maximum Rs.6,000/- per month, in addition to project allowance."

7. Under the Finance Division's O.M. No.F.16(1)R-14/2008, dated 12.08.2008, the employees appointed through transfer (deputation) on full time basis were entitled to get their own pay scales and allowances plus

deputation allowance along with project allowance. Staff in BPS-5 to BPS-10 were entitled to project allowance at the rate of Rs.4,000/- per month.

8. Now, vide Finance Division's O.M. dated 08.04.2012, project allowance was discontinued in all types of projects with immediate effect to remove distortion in the system. Since the petitioner served as a deputationist from 08.09.2011 to 17.06.2013 in the Machine Readable Passport Project, he is entitled to the payment of project allowance from 08.09.2011 up to 08.04.2012 (when project allowance was discontinued through Finance Division's O.M. dated 08.04.2012) at the rate of Rs.4,000/- per month.

9. As regards the contention of the learned Deputy Attorney-General that there was no provision for project allowance in the PC-I for the Machine Readable Passport Project, suffice it to say that such a contention was spurned by this Court, in its judgment dated 17.02.2011, passed in writ petition No.1350/2010. In the said judgment, it was held *inter alia* that if such a contention was accepted, the purpose and object of the O.M. in question would be frustrated. Furthermore, it was held that if no provision is made in the PC-I for an advantage to the employees, then the employees would never get the benefit of the O.M. dated 12.08.2008. The said judgment was upheld by the Hon'ble Supreme Court, vide order dated 07.11.2011 passed in civil petitions No.739 and 811/2011.

10. In view of the above, the instant petition is allowed and the petitioner is declared entitled to project allowance at the rate of Rs.4,000/- per

month from 08.09.2011 to 18.04.2012 in terms of Finance Division's O.M. dated 12.08.2008. There shall be no order as to costs.

(MIANGUL HASSAN AURANGZEB)
JUDGE

*Ahtesham**