

**2012 P L C (C.S.) 87**

**[Lahore High Court]**

**Before Muhammad Ameer Bhatti, J**

**AFZAL KHAN and others**

**Versus**

**CHIEF COMMISSIONER and others**

Writ Petition No.21651 of 2010, decided on 24th May, 2011.

**Constitution of Pakistan---**

---Art. 199---Constitutional petition---Civil service---Upgradation of post---Petitioners who were appointed as Senior Auditors (BPS-16) approached the competent Authority for grant of upgradation to BPS-18, but Authority refused to grant upgradation---Validity---Some Auditors of the department, in another case, had invoked jurisdiction of High Court through constitutional petition for redressal of their same grievances and High Court accepted their petition, issued the directions for the upgradation as prayed for---Where a question of law and facts had been decided by Service Tribunal or by the apex court, same would cover not only the case of the civil servants who litigated, but also of other civil servants who could have not taken legal proceedings---Dictates and rule of good governance, in such case, demanded that the benefit of such judgment by Service Tribunal/ Supreme Court be extended to other civil servants, who were not parties to the litigation instead of compelling them to approach the Service Tribunal or any other forum---High Court had already allowed constitutional petition, and the petitioners in the present case had also sought the same relief, keeping in view the principle of consistency, constitutional petition was accepted.

Hameed Akhtar Niazi v. Secretary Establishment Division Government of Pakistan 1996 SCMR 1185; Dr. Zahoor Mehdi v. Chief Election Commissioner of Pakistan/Returning Officer for Presidential Elections PLD 2009 SC 1; Secretary Revenue v. Muhammad Saleem 2008 SCMR 948 and Abdul Hameed Anjum v. Federation of Pakistan and others PLD 2010 SC 857 **rel.**

Hafiz Tariq Naseem for Petitioners.

## ORDER

**MUHAMMAD AMEER BHATTI, J.---** Through this petition, the petitioners seek a direction to the respondents for the upgradation of their posts of Inland Revenue Audit Officer (BPS-16 to 18) in line with upgradation of other posts w.e.f. the date of the notification issued regarding upgradation of the said posts in various departments on 1-7-2010.

2. The brief facts of the case are that the petitioners after passing the examination held by the Public Service Commission, were appointed as Senior Auditors (BPS-16) by the said Tax Department Government of Pakistan in the years, 1996, 1998 and 2001. All the three departments (Income Tax, Sales Tax) were merged on 1-2-2003 and a new department in the name of Inland Revenue Department was created and accordingly the posts of the petitioners were redesignated as Inland Revenue Audit Officers. The Establishment Division vide its Letter No.F-8/36/2010-R/1, dated 20-1-2001 issued a policy of upgradation/redesignation of posts. In pursuance thereof, which different posts in various departments of Federal and Provincial Governments were upgraded while the posts of the petitioners were not up-graded.

3. It will not be out of place to mention here that petitioners (following under both the categories), filed their representations but failed to get their due right. The learned counsel for the petitioners states that the Auditors of the Inland Revenue Department invoked the jurisdiction of this Court through Writ Petition No.10926 of 2010 for redressal of their grievances which was heard and decided by my learned brother Iqbal Hameed-ur-Rehman J, vide judgment dated 15-9-2010, while accepting the same, issued the direction for the upgradation as prayed for. It is also informed by the learned counsel that the writ petitioners of the said writ petition are now enjoying the fruit of acceptance of the said writ petition.

4. It is contended by the learned counsel for the petitioners that keeping in view the acceptance of the writ petition and another judgment of the Hon'ble Supreme Court of Pakistan passed in C.Ps.Nos 325 and 429 of 2010 (which also pertained to up-gradation). The petitioners approached the competent authorities for grant of up-gradation of their posts but the respondents refused the same which amounted to denial of their lawful claim and discriminatory treatment is being meted out to the petitioners. Further contends that petitioners are also entitled to the same relief through this writ petition on the strength of law laid down by the Hon'ble Supreme Court of Pakistan in (**1996 SCMR 1185**), Hameed Akhtar Niazi v. Secretary Establishment Division Government of Pakistan, (**PLD 2009 SC 1**) Dr. Zahoor Mehdi v. Chief Election Commissioner of Pakistan/Returning Officer for Presidential Elections, wherein the Hon'ble Supreme Court of Pakistan held that where a question of law and facts has been decided by a Tribunal or by the apex court, it covers not only the case of

the Civil Servants who litigated but also of other Civil Servants, who may have not taken legal proceedings, in such a case, the dictates and rule of good governance demand that the benefit of such judgment by Service Tribunal/Supreme Court be extended to other Civil Servants, who may not be parties to the litigation instead of compelling them to approach the Service Tribunal or any other forum.

5. Learned counsel for the petitioner further submits that the posts of Inland Revenue Audit Officers are similar to the Audit Officers in other Departments like Auditor General of Pakistan, Accountant General of Pakistan and Controller General of Pakistan and this very fact is endorsed by Inland Revenue/Federal Board of Revenue through its letter dated 2-9-2010, which was conveyed to the Establishment Division and in view of the judgment of the Supreme Court in C.Ps. Nos.325 to 397 and 429 of 2010, the petitioners being similarly placed cannot be discriminated, because in all these departments, the posts of Audit Officers were up-graded to BPS-18, but the petitioners are being deprived of their legitimate rights and wrongfully kept in BPS-16, which is against all canons of justice and the provisions of Articles 4 and 25 of the Constitution of Pakistan, 1973.

6. The learned counsel for the respondents raised one objection regarding maintainability of the writ petition that jurisdiction under Article 199 of the Constitution of the Islamic Republic of Pakistan, cannot be exercised. The answer to the objection has already very carefully explained. However, learned Court while deciding Writ Petition No.10926 of 2010 had further relied on (**2008 SCMR 948**), Secretary Revenue v. Muhammad Saleem (**PLD 2010 SC 857**) Abdul Hameed Anjum v. Federation of Pakistan and others.

7. Since this Court while relying on the judgment of the apex court has already allowed Writ Petition No.10926 of 2010, and the petitioners also seek the same relief. Keeping in view the principle of consistency, I have no option but to accept this writ petition, accordingly.

8. For what has been discussed above, this petition is accepted.

H.B.T./A-126/L

Petition allowed.