

JUDGMENT SHEET
PESHAWAR HIGH COURT, PESHAWAR
JUDICIAL DEPARTMENT

W.P. No.4749-P/2020

Waheed Ullah and others

Vs.

**The Government of Khyber Pakhtunkhwa through Secretary,
Home & Tribal Affairs Department, Peshawar and others**

Date of hearing **31.03.2022**

Petitioner(s) by: **Mr. Khushdil Khan, Advocate.**

Respondent(s) by: **Malik Akhtar Hussain Awan, AAG.**

JUDGMENT

IJAZ ANWAR, J. Through this single judgment, we intend to decide the instant writ petition and Writ Petitions, listed below, since in all these cases, petitioners have questioned the rejection of their cases pertaining to upgradation and re-designation of their posts of Constables/ Computer Operators to BPS-16 by respondent No.3 i.e. The Departmental Committee through its Chairman.

- i. *W.P. No.4782-P/2020 titled, Abid Ur Rehman and others Vs. The Government of Khyber Pakhtunkhwa through Chief Secretary, Peshawar and others.*
- ii. *W.P. No.5222-P/2020 titled, Syed Nasir Ali Shah and others Vs. The Government of Khyber Pakhtunkhwa through Secretary, Home & Tribal Affairs Department, Peshawar and others.*
- iii. *W.P. No.587-P/2021 titled, Zakir Ullah and others Vs. The Government of Khyber Pakhtunkhwa through Secretary, Home & Tribal Affairs Department, Peshawar and others.*

2. The petitioners have prayed for the following relief:-

"It is, therefore, humbly prayed that on acceptance of this petition, this Hon'ble Court may graciously be pleased to:-

- (i) Declare the acts and omissions of respondents and the impugned decisions/recommendations of respondent No.3 (Departmental Committee) and instructions contained in Para 3(a) & (b) of the letter dated 31.08.2020 of respondent No.1 as unlawful, without lawful authority, of no legal effect, inoperative against the rights of petitioners, unfair, unjust, malafide, discriminatory and violative of the fundamentals rights of petitioners.*
- (ii) Direct the respondents to act in the matter in accordance with law and treat the petitioners equally and at par with the other similar placed employees and re-designate their posts as Computer Operator with upgradation to BPS-16 as done in the case of other similar placed employees under similar circumstances vide Notification dated 11.10.2018.*
- (iii) Restrain the respondents No.2 from acting upon the instructions of respondent No.1 contained in Para 3(a) & (b) of letter dated 31.08.2020 and the subsequent recommendations of the Departmental Committee (respondent No.3) in the interest of justice.*
- (iv) Any other relief as deemed appropriate in the circumstances of the case not specifically asked for may also be granted to the petitioners".*

3. In essence, petitioners are serving as Constables/Computer Operators (BPS-05) and Head Constables (BPS-07) in the respondent-Department, who have earlier approached this Court by filing writ petition

seeking therein upgradation of their posts to BPS-16 on the analogy that other similar placed employees of the same Department were allowed BPS-16. The said writ petition was disposed of by this Court and direction was issued to the respondents to decide their pending appeal/representation within reasonable time. In compliance of the order of this Court, a Departmental Committee was constituted by the respondents and the Committee, in its meeting held on 22.09.2020, regretted the case of the petitioners. Being aggrieved, they filed the instant and connected petitions.

4. Comments were called from the respondents who furnished the same, wherein, they opposed the issuance of desired writ asked for by the petitioners.

5. Arguments heard and record perused.

6. Perusal of the record reveals that petitioners were initially appointed against the posts of Constables/Computer Operators. In terms of the record provided, they are holding either Master or Bachelor Degrees alongwith Diploma in Computer. They were, however, placed in BPS-05/07. The event, which necessitated them to request for their upgradation, happens when vide Notification dated 29.07.2016, all the Computer Operators serving in the Provincial Government Departments in BPS-12 were allowed upgradation to BPS-16. Moreover, similar placed Constables/Computer Operators were also recommended by

the respondents/Departments which were placed before the Upgradation Committee and the said Committee, in its meeting held on 06.08.2018, recommended them for their upgradation to BPS-16. The recommendations were duly forwarded vide letter dated 04.09.2018 by the Government of Khyber Pakhtunkhwa Finance Department (Regulation Wing). Relevant para of the minutes of the Upgradation Committee is reproduced as under:-

“After threadbare discussion and deliberation, the Committee agreed with consensus to recommend that the post of Constable, Computer Operators, Head Constable, Computer Operator, ASI Computer Operator, SI Computer Operator and Inspector Computer Operator in Police Department may be re-designated as Computer Operator against the sanctioned posts and upgrade to BPS-16 at par with the others of the same cadre. However, it was added that no back benefits or arrear would be claimed in this regard”.

7. Pursuant to the recommendations of the Upgradation Committee and Finance Department's letter above referred, 83 posts of Executive Computer Staff were re-designated as Computer Operators and upgraded to BPS-16 vide Notification dated 11.10.2018.

8. Petitioners though similarly placed; albeit, neither their case was forwarded for upgradation/re-designation nor they were allowed the upgraded pay scale. Accordingly, they agitated departmental and thereafter, filed Writ Petition bearing No.2697-P/2019 before this Court, which was disposed of vide order dated 19.11.2019 with

direction to the respondent-Department to decide their application/representation within a reasonable time. Interestingly, instead of forwarding the case of the petitioners for similar treatment to the Upgradation Committee of the Provincial Government, their case was placed before a Committee consisting of senior Officers of the Police Department. The Committee has completely discarded their request on flimsy grounds and has failed to distinguish cases of those officials who were allowed upgradation. Para 3(iv) of the minutes of the meeting held on 22.09.2020, being relevant, is reproduced as under:-

“iv. 83-Officials of Police Department already absorbed in IT Cadre have been done under compulsory circumstances, which was not an ideal keeping in view the zonal allocation given and relevant experience. They are also simply matriculate and graduate etc”.

9. Similarly, in order to get rid of the petitioners that they may not claim upgradation in future, further direction was issued. Para 4 of the minutes of the meeting, being relevant, is reproduced as under:-

“4. Letter received from the Section Officer (Budget), Home & Tribal Affairs Department vide No.SO(Budget)/HE/5-20/2014 dated 31.08.2020 has also been discussed, instructions contained in Para-3 (a) & (b) of the said letter are reproduced:

a) First repatriate all the police constables who are working as Computer Operator in Police Department to their executive field duties so as to avoid further litigation. Or

b) Take an affidavit from those police constables who are working on computers that they will not claim the post of Computer Operators as well as other benefits of the post of Computer Operator”.

10. In terms of the Upgradation Policy of the Provincial Government notified vide Notification bearing No.SO(FR)/I-D/7-2/2008 dated 11.10.2010, every effort is to be made to bring at par identical post in same pay scale in juxtaposition with other Departments/Autonomous Bodies.

Para-III, being relevant, is reproduced as under:-

"Upgradation to Posts proposed on grounds of Principle of Parity:-

While processing the cases where the proponent department seeks upgradation of certain posts to a higher pay scale on the analogy of similar posts in some other department in this province created with same nomenclature, the Committee shall take into account following parameters:

- (i) Ascertainment of full details about all such posts created with same nomenclature by any department in addition to those Departments whose analogy has been quoted by proponent department.*
- (ii) Nomenclature shall not be sole criterion for determining parity/comparability of post(s). Other details i.e. the job description and prescribed qualification would necessarily be examined.*
- (iii) In case of difference of prescribed qualification or the job description (or both) as the case may be, the committee may direct the change of nomenclature of post(s) in any departments to avoid confusion on this ground.*
- (iv) The committee may associate with all such departments having same nomenclature of certain post(s) with same responsibilities and same qualifications to ascertain as to what were reasons for creation of same posts in different departments with different pay scales and thus made recommendations in respect of all such posts in all concerned departments, whether*

they took up the case or otherwise, to bring uniformity in pay scales in all departments to avoid future references.


Provided that the committee shall not recommend such proposals for uniformity where prescribed qualifications as well as the qualifications possessed by existing incumbents is not at par with the posts(s)/incumbents cited as precedence.

Provided further that in such cases the committee may recommend change of nomenclature of either those post(s) having higher prescribed qualifications or those having lesser prescribed qualifications as may be deemed appropriate by the committee”.

11. Similarly, Article 38(e) of the Constitution of Islamic Republic of Pakistan, 1973 provides “*the State shall reduce disparity in the income and earnings of individuals, including persons in the various classes of the service of Pakistan*”.

12. The Hon’ble Supreme Court of Pakistan in the case titled “I.A. Sharwani and others Vs. Government of Pakistan through Secretary, Finance Division, Islamabad and others (1991 SCMR 1041)”, while commenting upon the cases where discrimination can be ascertained, has observed, as under:-

“Following are the principles with regard to equal protection of law and reasonableness of classification:-

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- (i) that equal protection of law does not envisage that every citizen is to be treated alike in all circumstances, but it contemplates that persons similarly situated or similarly placed are to be treated alike;*
 - (ii) that reasonable classification is permissible but it must be founded on reasonable distinction or reasonable basis;*

- (iii) *that different laws can validly be enacted for different sexes, persons in different age groups, persons having different financial standings, and persons accused of heinous crimes;*
- (iv) *that no standard of universal application to test reasonableness of a classification can be laid down as what may be reasonable classification in a particular set of circumstances may be unreasonable in the other set of circumstances;*
- (v) *that a law applying to one person or one class of persons may be constitutionally valid if there is sufficient basis or reason for it, but a classification which is arbitrary and is not founded on any rational basis is no classification as to warrant its exclusion from the mischief of Article 25;*
- (vi) *that equal protection of law means that all persons equally placed be treated alike both in privileges conferred and liabilities imposed;*
- (vii) *that in order to make a classification reasonable, it should be based-*
 - (a) *on an intelligible differentia which distinguishes persons or things that are grouped together from those who have been left out;*
 - (b) *that the differentia must have rational nexus to the object sought to be achieved by such classification".*

13. Admittedly, petitioners are discriminated in the matter of grant of upgradation, because, their counterparts/colleagues, performing same duties with the same designations, were allowed upgradation to BPS-16. Even minutes of the Upgradation Committee do not speak or refer to their respective computer related qualifications and merely relied upon their designation as Computer Operators/Constables while the petitioners are holding the prescribed qualifications ever since their appointments. As referred to above in the judgment of the Hon'ble Supreme Court of Pakistan in the case of I.A. Sharwani, we find that the principle of equal protection of law is applicable to the

case of petitioners. It is the fundamental right of the petitioners that they being equally placed, treated alike and that no intelligible differentia can distinguish the petitioners from those who are allowed upgradation.

14. This case was first heard on 29.03.2022 and the learned AAG, representing the respondents, was allowed time to confirm and provide any record, whereby, it can be ascertained that there was any difference in their appointments and nature of jobs in juxtaposition to those who were upgraded to BPS-16. Today, again when this case was taken up for hearing, the learned AAG frankly conceded that on factual plain, the case of the petitioners is fit on all fours to those Computer Operators/Constables who are allowed upgradation. He, however, stated that the said upgradation was not proper and that those officials should not have been upgraded.

15. Such plea of the learned AAG cannot be accepted at this stage as it was heartburning amongst the similar placed Computer Operators/Constables who are left out while their colleagues, having similar posts, were allowed upgradation. During the course of hearing, reference was made to the judgment of this Court passed in W.P. No.1007-M/2018 decided on 17.09.2019, whereby, identical matter has been decided. The case of the petitioners is also on the same footing. We, thus, find that the rejection of the case of the petitioners by the Inter-

Departmental Committee is not according to the upgradation policy of the Provincial Government notified vide Notification dated 11.10.2010, the main aim of which is to make every effort to bring at par identical posts in same pay scale in juxtaposition with other Departments/ Autonomous Bodies, while in the instant case, the discrimination is meted out to the similar placed employees in the same Department.

16. In view of the above and while relying upon the judgment of this Court passed in W.P. No.1007-M/2018 decided on 17.09.2019, we direct the respondents to place the case of the petitioners before the Upgradation Committee of the Provincial Government in terms of the Upgradation Policy and to consider their cases for re-designation and upgradation to BPS-16 in juxtaposition with their earlier decision unanimously passed in its meeting held on 06.08.2018.

17. This and the connected writ petitions are allowed in the above terms.

Announced
Dt:31.03.2022


JUDGE


JUDGE

(DB) Hon'ble Justice Musarrat Hilali and Hon'ble Mr. Justice Ijaz Anwar