

12.6/2020

IN THE SUPREME COURT OF PAKISTAN
(APPELLATE JURISDICTION)

PRESENT:

MR. JUSTICE GULZAR AHMED, HCJ
MR. JUSTICE IJAZ UL AHSAN

CIVIL APPEAL NO. 357, 358 OF 2020

(Against the order dated 05.12.2018 passed by the Federal Service Tribunal, Islamabad in Review Petition No. 126 of 2018 and order dated 28.08.2018 passed by the Federal Service Tribunal, Islamabad in Service Appeal No. 1778(R)CS of 2016).

CA. 357 of 2020 Chairman Pakistan Ordinance
Factories Board, Wah Cantt Vs.
Dr. Naveeda Rauf and others.

CA. 358 of 2020 Chairman Pakistan Ordinance
Factories Board, Wah Cantt Vs.
Dr. Naveeda Rauf and others.

For the Appellant(s): Mr Haseeb Shakoor Paracha,
ASC
Syed Rifaqat Hussain Shah, AOR
Abid Masood, GM(L) POF
Asad Durrani, AM(HRM) POF

For the Respondent(s): Hafiz S.A. Rehman for
Respondent No. 1
Rizwan Ahmed, AAO, CMA POF
for Respondent No. 4

Date of Hearing: 03.12.2020

JUDGMENT

IJAZ UL AHSAN, J.- Through this single
judgment, we intend to decide Civil Appeals (hereinafter
referred to as "CA") No. 357 and 358 of 2020.

2. Through the instant Appeals, the Appellant has
challenged the Judgment of the Federal Service Tribunal
(hereinafter referred to as "The Tribunal") dated 05.12.18 in

Review Petition No. 126/2018 (hereinafter referred to as "Review Judgment") and Judgment dated 28.08.18 in Service Appeal No. 1778(R)CS/2016 (hereinafter referred to as "Appeal Judgment").

3. The necessary facts giving rise to this *lis* are that the Respondent was working in the Pakistan Ordnance Factories Hospital, Wah Cantt (hereinafter referred to as "POF Hospital") as a General Duty Medical Officer (BPS-17). Since, POF Hospital was not recognized by the Pakistan Medical and Dental Council (hereinafter referred to as "PMDC") for postgraduate training in Radiology, the Respondent, in order to make herself eligible for promotion to a higher medical cadre, requested that she may be allowed to proceed on Study Leave for the purpose of getting her postgraduate training in Radiology from CMH, Rawalpindi. Accordingly, she submitted a leave application to the Appellant, which was accepted, and she was allowed to proceed with Study Leave on certain terms and conditions. The Respondent returned on 01.09.14. The time period w.e.f 04.03.13 to 31.08.14 was treated by the Appellant as Extraordinary Leave Without Pay and Allowances. The Respondent filed a Departmental Appeal on 22.06.16 seeking the same treatment as certain other officials of POF Hospital. Such appeal was rejected. The Respondent then filed Service Appeal No. 1778(R)CS/2016 which was allowed vide order dated 28.08.18 in the following terms:

" (i) The period of training between 22.11.2010 to 31.08.2014 shall be treated as on duty with the period from 22.11.2011 to 20.11.2014 also to be counted as Study Leave on half average pay, outside the leave account.

(ii) *She would be charged normal house rent for the period from 22.11.2012 to 31.01.2014. Recovery made if any towards market rent to be adjusted/reimbursed.*

(iii) *Two annual increments disallowed on account of EOL to be released from the dates they become due, with all back benefits."*

The Respondent being dissatisfied, filed Review Petition No. 126/2018. Vide order dated 05.12.2018 of the Appeal Judgment, the Federal Service Tribunal allowed the review on, *inter alia*, the following terms:-

"The period of training between 22.11.2010 to 31.08.2014 shall be treated as on duty with all ancillary benefits."

4. Leave to Appeal was granted by this Court vide order dated 17.03.2020 which is reproduced below for ease of reference:

" Learned Counsel for the Petitioner submits that the Petitioner has no cavil with the impugned judgment so far as it directs refund of house rent that was charged on normal rate and also pay post graduate allowance, but has an objection to the direction of payment of full pay to the respondents during their leave period, as such would be in violation of FR 84. He submits that judgment to that extent is in direct conflict with the provisions thereof.

2. Contention requires consideration. Leave is accordingly granted. Since a very short point is involved, the office is directed to fix the matter for hearing six weeks after service of notice on the respondents. Till then no adverse action shall be taken."

5. The main argument of the Learned Counsel for the Appellant is that the Federal Service Tribunal could not have granted the Respondent full pay whilst on Study Leave because, as per Rule(s) 19 and 20 of the Leave Rules under FR-84 she was only entitled to half-pay. He further submits that, the case of the Respondent is distinguishable from that of Dr. Salik Mehmood Malik and Dr. Shazia Mumtaz because they were nominated by POF Hospital for their respective trainings, whereas, the Respondent had applied for her

postgraduate training on her own and had also paid for it herself. Also, that, she had herself asked for leave without pay.

6. The main argument of the Learned Counsel for the Respondent is that the Respondent's case is identical to that of Dr. Salik Mehmood Malik and Dr. Shazia Mumaz therefore, treating her differently constitutes discrimination. Further, that, deeming the period from 04.03.13 to 31.08.14 as EOL is illegal. He further relies upon the judgment reported as 2010 SCMR 1458 (Dr. Muhammad Amin v. President Zarai Taragiatl Bank Limited).

7. Since the matters of house rent and study allowance, having not been pressed by the Learned Counsel for the Appellant have already been dealt with in our earlier order dated 17.03.2020, the only matters before us for determination are:-

- (i) Whether the Respondent was entitled to full pay whilst on Study Leave; and
- (ii) Whether the Respondent's case is similar to those of Dr. Salik and Dr. Shazia.

Whether the Respondent was entitled to full pay whilst on Study Leave?

8. The Tribunal in the Review Judgment has reviewed paragraph 13(i) of the Appeal Judgment by deeming the time from 22.10.10 to 31.08.14 as on duty with all ancillary benefits. This effectively means that the Tribunal

has held that the Respondent is entitled to full pay while on leave. We find this position to be *ex facie* erroneous. The rules governing Study Leave are contained in Appendix No. 9 to FR 84 (hereinafter referred to as "The Rules"). Rule 20 of The Rules clearly mentions that Study Leave will be on half pay. Rule 19 also provides that the Government Servant will draw half average pay during Study Leave. For ease of reference, the said rules are reproduced below:-

"19. Study Leave will count as service for promotion and pension, but not for leave. It will not affect any leave which may already be due to a Government servant; it will count as extra leave on half average pay and will be taken into account in reckoning the aggregate amount of leave on half average pay taken by the Government servant towards the maximum period admissible under the Fundamental Rules.

20. During Study Leave a Government servant will draw half pay. A Government servant may, subject to the approval of the proper authorities being obtained as required by Rule 12 or 13, undertake or commence a course of study during leave on average pay, and, subject to Rules 15 and 16, draw study allowance in respect thereof, provided that study allowance is not drawn for an aggregate period exceeding two years during the entire service of a Government servant. This rule applied to military officers in civil employment taking leave under Fundamental Rules."

The law on the subject is clear and, the Tribunal has altogether failed to notice and apply the correct rule in its Review Judgment.

Whether the Respondent's case is similar to those of Dr. Salik and Dr. Shazia?

9. The Tribunal has held in its Judgment dated 28.08.18 that the Appellant has discriminated against the Respondent as she was not treated at par with her above-mentioned colleagues. A bare perusal of the record reveals that Dr. Salik and Dr. Shazia were both nominated by the Appellant to attend different courses by POF Hospital. Whereas, the Respondent had applied for postgraduate training on her own so that she would be better qualified hence entitled to be promoted to a higher grade. She therefore applied for leave. The Respondent has herself opted for the later part of the said leave to be without pay. The cases of the afore-noted colleagues of the Respondent are therefore clearly distinguishable from the case of the Respondent. We are therefore not persuaded to hold that she was in any manner discriminated against.

10. Rule 9 of The Rules provides that Study Leave cannot exceed 48 months in combination with any other leave except extraordinary leave. The record reveals that the Respondent had herself opted for some of the time period to be treated as leave without pay. Given the situation where the Respondent has herself opted for leave without pay, she

cannot at this stage turn around and claim similar treatment in line with cases which even otherwise are dissimilar and distinguishable and relate to individuals sent by the Appellant to attend Mid-Career Courses.

11. We are of the view that the learned Tribunal has incorrectly applied the law and there are patent errors in the impugned Review Judgment which warrants interference. The Learned Counsel for the Respondent has been unable to persuade us to endorse the view taken by the Tribunal. We accordingly set aside the judgments dated 28.08.18 and 05.12.18 passed by the Federal Service Tribunal.

12. For reasons recorded above, the appeals are allowed, and it is directed that the Respondent shall be entitled to half average salary for the duration of her Study Leave as per Rules 19 and 20 noted above.

Islamabad

09th Day of December 2020

Haris LC

*Not approved for reporting/ **