

**IN THE SUPREME COURT OF PAKISTAN**  
(APPELLATE JURISDICTION)

**PRESENT:**

MR. JUSTICE GULZAR AHMED, HCJ

MR. JUSTICE IJAZ UL AHSAN

MR. JUSTICE MAZHAR ALAM KHAN MIANKHEL

**CIVIL APPEALS NO.188 TO 193 OF 2020.**

*(Against the judgments dated 07.02.2018, 20.06.2019, 19.09.2019, 21.11.2019, 30.10.2019 and 24.10.2019 passed by the Peshawar High Court, Peshawar and Peshawar High Court, Abbottabad Bench in Writ Petitions No.2243-P/17, 4328-P/18, 1472-A/18, 4595-P/17, 3952-P/18 and 4397-P/2019).*

Province of K.P. through Chief Secretary,  
Peshawar and others.

*(in CAs.188, 189, 192 & 193 of 2020)*

Government of K.P., Ministry of Finance through Secretary  
Finance Department, Peshawar and others.

*(in CA.190/2020)*

Government of K.P., through Secretary Culture and Museum  
Department, Peshawar and others.

*(in CA.191/2020)*

...Appellant(s)

**Versus**

Farasatullah.

*(in CA.188/2020)*

Muhammad Adeel Qureshi and others.

*(in CA.189/2020)*

Waqif Khan.

*(in CA.190/2020)*

Mst. Samina Behram and others.

*(in CA.191/2020)*

Sajid Khan and others.

*(in CA.192/2020)*

Raheel Ahmad and others.

*(in CA.193/2020)*

...Respondent(s)

For the Appellant(s):

Mr. Zahid Yousaf Qureshi,

Addl. A. G. KP.

Mian Saadullah Jandoli, AOR  
(absent)

Mr. Shafiullah, Deputy Director  
(Legal).

Mr. M. Imran, Deputy Director,  
Agriculture  
Mr. M. Arif, L.O., Archaeology.  
Tauheed Iqbal, A.D. and  
M. Ilyas Khan (Sr. Statistician)

For the Respondent(s): Mr. Khalid Rehman, ASC.  
(in CA.189/20)

Mir Afzal Malik, ASC  
(in CA.193/20)

M.Adeel Qureshi, Sajid Khan,  
and Ehtasham (all in person)

Nemo (in other cases).

Date of Hearing: 15.07.2020.

## **JUDGMENT**

**IJAZ UL AHSAN, J.-** Through this single judgment, we propose to decide Civil Appeals No.188, 189, 190, 191, 192 and 193 of 2020 as common questions of law are involved in this matter.

2. Leave to appeal was granted by this Court vide its order dated 02.03.2020 which for ease of reference is reproduced below:

*“Learned Additional Advocate General, KP contends that the respondents, who were holding the LLM Degree have claimed M.Phil allowance by filing of a writ petition on the basis of equivalence. He contends that such being the matter relating to the terms and conditions of service, the writ petition filed by the respondents in the Peshawar High Court was patently barred in terms of Article 212 of the Constitution and the High Court was not competent to entertain the writ petition. He further contends that the M.Phil allowance was given specifically to the employees*

*who possessed M.Phil Degree and such allowance could not have been extended to the holders of the LLM Degree for the reason that the concerned Notification did not provide for the same and neither did the University Grants Commission nor the Higher Education Commission have any jurisdiction to grant the benefit to the government employees, for that, their jurisdiction is only to the extent of granting equivalence, and even after granting the equivalence, whether the allowance is to be paid or not to be paid to certain employees, only the Government is competent to make policy on that, which policy could not be interfered with by High Court while exercising its writ jurisdiction.*

*2. The contentions raised by the learned AAG require consideration. Leave to appeal is granted to consider, inter alia, the same. The appeal shall be heard on the available record but the parties are allowed to file additional documents within a period of one month. As the matter relates to service, the office is directed to fix the same expeditiously, preferably, after three months.”*

3. The main controversy involved in these appeals relates to notification dated 14.07.2016 issued by the Secretary, Government of Khyber Pakhtunkhwa Finance Department through which an allowance @ Rs.2500/- per month was granted to the employees who held M.Phil degrees. The said notification was challenged by the Respondents before the Peshawar High Court praying that the Respondents may also be granted the M.Phil allowance because they held qualification which were equivalent to M.Phil, these included employees having LLM degrees and MS degrees in Agriculture etc. The High Court allowed the petitions and directed the

Appellants to grant M.Phil allowance to all employees who held any degree equivalent to M.Phil i.e. LLM and MS in Agriculture from the date of acquiring such degree. The High Court based its judgment on a letter of the University Grants Commission (UGC) dated 23.08.2000 stating that Master of Law degree was equivalent to M.Phil.

4. The learned Additional Advocate General, Khyber Pakhtunkhwa submits that in the first place University Grants Commission and Higher Education Commission do not have the mandate either to interpret notifications issued by the various Governments nor to direct or advise the Government to give financial benefits on the basis of equivalence certificates as has been done by it vide its letter dated 23.05.2017. He maintains that the mandate of Higher Education Commission in terms of Section 10 of the Higher Education Commission Ordinance, 2002 is to grant equivalence certificates only for the purposes of determining academic equivalence with reference to time spent in pursuing a degree or for getting admission for further education. Further, he maintains that even according to its own position as reflected in its letter dated 28.11.2016 an equivalence certificate issued by the Higher Education Commission does not guarantee admission in a University for further education and determination of suitability in relation to job requirements which decision rests with the concerned University and employing agency and that Commission has no role in such matters. He further maintains that the law

does not confer any power in the Higher Education Commission to recommend payment of allowances or other financial benefits. He argues that the learned High Court misdirected itself and misinterpreted not only the law but also its purpose, scope and intent and its reliance on different certificates/letters issued by the Higher Education Commission in granting relief was clearly misplaced.

5. The learned counsel for the Respondents, on the other hands, submits that once the Higher Education Commission grants an equivalence certificate to any qualification/degree, the holder of such qualification/degree automatically becomes entitled to grant of allowances/benefits which have been granted to holders of equivalent degrees/qualifications. It is further argued that the Governments of the Provinces of Punjab, Sindh and Balochistan have issued similar circulars and provided similar allowances and it is only the Government of Khyber Pakhtunkhwa which is refusing to do so. This constitutes discrimination and the High Court is justified in bringing the situation at par with other Provinces.

6. We have heard the learned Additional Advocate General, Khyber Pakhtunkhwa as well as the learned counsel for the Respondents.

7. It is clear and obvious to us that the language of impugned notification dated 14.07.2016 is clear and unambiguous and does not admit of any other interpretation.

For ease of reference, the relevant portion of the notification in question is reproduced below:

*“Subject: GRANT OF M.PHIL ALLOWANCE @ 2,500/- PER MONTH.*

*Dear Sir,*

*The Competent Authority, is pleased to decided that, all those who acquires / possesses the degree of M.Phil recognized by the H.E.C. shall be allowed M.Phil allowance @ 25% of the existing amount of Ph.d allowance (@Rs.2,500/- per month) with effect from 01.07.2016 subject to the following conditions:*

- a) M.Phil allowance will not be admissible to those who are getting Ph.D allowance @ Rs.10,000/- per month.*
- b) M.Phil allowance will not be admissible to those who have already got the benefit of advance increments possessing on / acquiring M.Phil degree prior to 01.12.2001 under Finance Department circular letter No.FD(SR-I)/1-67/82 dated 24.08.1983”.*

8. A plain reading of the notification makes its abundantly clear:

- 1) The intent of the Competent Authority is to grant M.Phil allowance @ of existing amount of Ph.D allowance @ Rs.2500/- per month;
- 2) The allowance in question is not admissible to those who are already getting Ph.D. allowance @ Rs.10,000/- per month;

3) The M.Phil allowance is specifically meant for persons who hold M.Phil degrees which are recognized by the Higher Education Commission;

4) It is not expressly or by implication mentioned in the notification in question that the allowance will be payable to all who hold an “M.Phil or equivalent degree”.

9. The intent and purpose of the Competent Authority in granting the incentive is clear and unambiguous and there is no room to read something into the notification which is not there. The learned counsel for the Respondents has not been able to convince us that holders of equivalent degrees should also be held entitled to the M.Phil allowance which was clearly not the intention of the notification. We notice that the High Court was called upon to interpret the meaning and scope of the notification however it exceeded its jurisdiction by reading additional words into the notification which under the facts and circumstances of the present case was neither necessary nor required.

10. The learned counsel for the Respondents has heavily relied on a letter dated 23.05.2017 issued by the Higher Education Commission, the relevant portion of the letter is reproduced below:

*“4. According to above referred Office Memorandum of Govt. of Pakistan, Finance*

*Division, the M.Phil allowance is granted to those only who acquire/possess the degree of M.Phil recognized by the HEC. However, in view of the above mentioned clarification, all those who have M.Phil or MS degrees (18 years schooling) should be eligible to draw the allowance @ Rs.2500/- per month”.*

11. We are at a loss to understand how and under what authority of law has the Higher Education Commission advised that all those who hold M.Phil or MS degrees should be eligible to draw Higher Education Commission allowance @ Rs.2500/- per month. There is neither power nor authority under the Higher Education Ordinance to issue any such letter or clarification as the mandate of Higher Education Commission is limited only to academic matters and determining equivalence for academic reasons.

12. We are therefore of the view that the Peshawar High Court erred in law in relying upon letters issued by the Higher Education Commission/University Grants Commission (defunct) which was clearly beyond its mandate in granting relief to the Respondents.

13. We are also not impressed by the argument advanced by the learned counsel for the Respondents that the notification in question is discriminatory in nature in so far as it does not grant equal financial benefits to holders of equivalent degrees. Further, it is discriminatory because similar allowances have been granted by different Provinces which have been denied to the Respondents. As far as the



first argument is concerned, the same is misconceived. There is intelligible differentia between holders of M.Phil degrees and those who do not hold such degrees. Holders of M.Phil degrees in different disciplines constitute a class by themselves and can be granted incentives without offering similar incentives to holders of equivalence certificates from HEC. To hold otherwise would in effect negate and nullify the very concept of the rule of “intelligible differentia”. A class of employees who hold M.Phil degrees have been earmarked for grant of an allowance which has specifically been called and termed as “M.Phil allowance”. All those who fulfil the requirement of the notification have been granted the allowance and are entitle for the same. It is not the case of the Respondents that some of them have M.Phil degrees and have been refused or that the employees holding degrees other than M.Phil have been allowed the such allowance. In the absence of the aforementioned situations the argument of discrimination must fail.

14. As far as the second argument in support of discrimination that similar allowances are being offered in other Provinces is concerned, the Respondents have produced some notifications issued by the Governments of Punjab and Government of Sindh to support their contention. However, perusal of the notifications produced before us shows that the language and terminology used in the said notifications is materially and substantially different from the one used in the notification issued by the Government of Khyber

Pakhtunkhwa which is under challenge before us. There being no similarity between the two sets of notifications, the question of discrimination and the arguments in support thereof is misconceived. Even otherwise, if certain actions have been done in a certain Province(s) within the powers available to them under the Constitution, it is not necessary that the same be replicated in all other Provinces. Reference in this regard may usefully be made to S.M.C. No.15 of 2010 and C.M.As. Nos.2689, 3244 of 2010 and CMAs. Nos.5383, 3068 of 2011 (Suo Motu action regarding Regularization of the Contract Employees of Zakat Department as well as appointment of Chairman of Central Zakat Council (2013 SCMR 304) wherein it was held as follows:

*“17. As regards the question of discrimination, it may be pointed out that each Province is empowered and entitled to make its own decision regarding the subjects that fall within their respective domain in accordance with their own circumstances. A decision by one Province another regarding the matter cannot be cited as ground for discrimination if another Province does not take the same decision. To hold otherwise would be an intrusion into the provincial economy of the Provinces. Now that the subject of Zakat and Ushr is within the domain of the Provinces, it is up to each Provincial Government to decide the terms and conditions of the petitioner’s services”.*

15. We are therefore in no manner of doubt that the Peshawar High Court incorrectly dealt with the question of treating letters issued by the Higher Education Commission as the very basis for its direction for payment of M.Phil

allowance to other employees whose degrees had been declared equivalent in academic terms to an M.Phil degree. Such interpretation is clearly against the intent, purpose and plain language of the notification which could not have been done and the High Court clearly exceeded its jurisdiction in doing so. Further, having not found any discrimination on any of the grounds asserted by the learned counsel for the Respondents, we are of the view that the judgment of the High Court is not sustainable on that ground either.

16. For the reasons recorded above, these appeals are allowed and the judgments dated 07.02.2018, 20.06.2019, 19.09.2019, 30.10.2019, 24.10.2019 and 21.11.2019 of the Peshawar High Court are accordingly set aside.

17. Above are the reasons of our short order dated 15.07.2020. For ease of reference, the short order is reproduced below:

*“We have heard the learned counsel for the parties so also the respondents who have appeared in person. We are informed by Court Associate that all respondents are served. The respondents who have not appeared are proceeded ex-parte. For reasons to be recorded, these appeals are allowed and the impugned judgments passed by the High Court are set aside.”*

**Chief Justice**

**Judge**

**Judge**

**ISLAMABAD.**

15.07.2020.

Zubair/\*

*‘Not Approved For Reporting’*