

2019 P L C (C.S.) 797

[Balochistan High Court]

Before Mrs. Syeda Tahira Safdar CJ and Muhammad Ejaz Swati, J

SHAH BAKHSH and others

Versus

GOVERNMENT OF BALOCHISTAN through Chief Secretary and others

C.Ps. Nos. 212, 788, 620 of 2014, C.Ps. Nos. 483, 883, 912, 1115 of 2015 and C.P. No.481 of 2016, decided on 26th November, 2018.

(a) Balochistan Provincial Employees Group Insurance Act (X of 2009)---

---Ss. 3 & 14---Grant of higher grade on the basis of time scale---Scope---Group Insurance, grant of---Procedure---Employees were granted higher grade on the basis of time scale---Contention of employees was that they were entitled for Group Insurance according to the Substantive Pay Scale---Validity---Sum assured should be paid to an employee or his family at the time of retirement or death according to his Last Pay Scale/Grade---Employees had been allowed financial benefit by granting higher pay scale---Employees were not promoted to higher post nor any such order had been issued by the competent authority---Time scale grant/post could not be considered as a higher post---Petitioners had opted grant of time scale on the basis of time scale policy issued by the Government---Employees after attaining monetary benefits of time scale could not be allowed to approbate and reprobate in the same breath nor they could challenge the said notification---Petitioners were estopped by their conduct---Constitutional petition was dismissed, in circumstances.

2012 PLC (C.S.) 1450; 1996 SCMR 1185; 1980 SCMR 972; 2009 SCMR 4; 2003 SCMR 1030; 1986 SCMR 991; 2002 PLC 52; 1993 PLC (C.S.) 1261; 1987 SCMR 96; 2009 SCMR 1; PLD 1988 Quetta 70; 2004 PLC (C.S.) 586; 1995 PLC (C.S.) 586 and 2005 SCMR 590 ref.

Secretary Economic Affairs Division, Islamabad and others v. Anwarul Haq Ahmed and others 2013 SCMR 1687 rel.

(b) Civil service---

---"Promotion" and "time scale grant"---Distinction.

There is clear distinction between time scale grant and promotion. The promotion involves advancement in rank or grade or both is always step towards advancement to higher position, grade, while time scale does not involve promotion to a higher position and the pedestal of the employee remain the same and the employee is merely conferred some financial benefits by granting higher pay scale to overcome stagnation. In the present case an element of policy is involved in granting time scale because there was no automatic promotion to the time scale grade. Time scale allowed for the purpose of granting some monetary relief to those who had spent considerable length of service and have very limited avenue of granting promotion to a higher post that is why a high pay scale was granted in the same post, but its very nature, a time scale grant/post cannot be considered as a higher post. The beneficiary of a time scale does not thereby occupy a post which is higher in rank than the posts earlier occupied by him.

Manzoor Ahmed Rehmani and Surat Khan for Petitioner (in C.P. No.212 of 2014).

Muhammad Rauf Atta, Advocate General and Zahoor Ahmed Baloch, Assistant A.G. for Respondents (in C.P. No.212 of 2014).

Muhammad Riaz Ahmed and Mazhar Ilyas Nagi Amici Curiae (in C.P. No.212 of 2014).

Manzoor Ahmed Rehmani and Surat Khan for Petitioner (in C.P. No.788 of 2014).
Muhammad Rauf Atta, Advocate General and Zahoor Ahmed Baloch, Assistant A.G.
for Respondents (in C.P. No.788 of 2014).

Muhammad Riaz Ahmed and Mazhar Ilyas Nagi Amici Curiae (in C.P. No.788 of 2014).

Manzoor Ahmed Rehmani and Surat Khan for Petitioner (in C.P. No.620 of 2014).
Muhammad Rauf Atta, Advocate General and Zahoor Ahmed Baloch, Assistant A.G.
for Respondents (in C.P. No.620 of 2014).

Muhammad Riaz Ahmed and Mazhar Ilyas Nagi Amici Curiae (in C.P. No.620 of 2014).

Manzoor Ahmed Rehmani and Surat Khan for Petitioner (in C.P. No.483 of 2015).
Muhammad Rauf Atta, Advocate General and Zahoor Ahmed Baloch, Assistant A.G.
for Respondent (in C.P. No.483 of 2015).

Muhammad Riaz Ahmed and Mazhar Ilyas Nagi Amici Curiae (in C.P. No.483 of 2015).

Manzoor Ahmed Rehmani and Surat Khan for Petitioner (in C.P. No.883 of 2015).
Muhammad Rauf Atta, Advocate General and Zahoor Ahmed Baloch, Assistant A.G.
for Respondent (in C.P. No.883 of 2015).

Muhammad Riaz Ahmed and Mazhar Ilyas Nagi Amici Curiae (in C.P. No.883 of 2015).

Abdul Rahim Mengal for Petitioner (in C.P. No.912 of 2015).
Muhammad Rauf Atta, Advocate General and Zahoor Ahmed Baloch, Assistant A.G.
for Respondents (in C.P. No.912 of 2015).

Muhammad Riaz Ahmed and Mazhar Ilyas Nagi Amici Curiae (in C.P. No.912 of 2015).

Manzoor Ahmed Rehmani and Surat Khan for Petitioner (in C.P. No.1115 of 2015).
Muhammad Rauf Atta, Advocate General and Zahoor Ahmed Baloch, Assistant A.G.
for Respondents (in C.P. No.1115 of 2015).

Muhammad Riaz Ahmed and Mazhar Ilyas Nagi Amici Curiae (in C.P. No.1115 of 2015).

Manzoor Ahmed Rehmani and Surat Khan for Petitioner (in C.P. No.481 of 2016).
Muhammad Rauf Atta, Advocate General and Zahoor Ahmed Baloch, Assistant A.G.
for Respondents (in C.P. No.481 of 2016).

Muhammad Riaz Ahmed and Mazhar Ilyas Nagi Amici Curiae (in C.P. No.481 of 2016).

Date of hearing: 7th November, 2018.

JUDGMENT

MUHAMMAD EJAZ SWATI, J.----Since common question of law and facts are involved in all the petitions, therefore, are disposed of through this common judgment.

2. The facts relevant for disposal of the instant petitions are that the petitioners in C.Ps. Nos. 212 of 2014, 483, 883, 912, 1115 of 2015 and 481 of 2016 are teachers by profession and are serving their respective duties in different Schools/Colleges in the Province of Balochistan for the last so many years. Whereas, the petitioners in C.Ps. Nos. 788 and 620 of 2014 were also teachers by profession and have been retired on 12th December 2013 and 8th May 2014 respectively. The Government of Balochistan (Finance Department) vide Regulation No.1 dated 18th November 2007 has allowed/sanctioned incentive of grant of

higher grade on the basis of time scale to the teaching staff (school side) of Education Department Balochistan with the following terms and conditions with immediate effect:

S.No.	NOMENCLATURE OF TEACHING POST WITH GRADES	NOS. OF YEAR SERVICE REQUIRED FOR THE NEXT HIGHER GRADE
1.	JVT, M/QURAN (BPS-7) BPS-7 to PBS10 PBS-10 to BPS-11 BPS-11 to BPS-14 BPS-14 to BPS-15	After nine years. After fourteen years. After twenty one years. After twenty five years.
2.	JETs, JETs (Tech:), PTL, JDM, JAT (BPS-9) PBS-9 to BPS-12 BPS-12 to BPS-14 BPS-14 to BPS-15 BPS-15 to BPS-16	After nine years. After fourteen years. After twenty one years. After twenty five years.
3.	SST (Gen:) SST (Tech:) SST (Science), SAT and SDM (BPS-16), BPS-16 TO BPS-17	After nine years

MAFOOZ ALI KHAN
Finance Secretary

3. The Government of Balochistan Secondary Education (Section School-I) vide Notification No. 25th October 2012 made policy for grant of time scale called Senior Education Staff (B-16 to B-20) as under:

S#	Award of Time scale w.e.f. 18-11-2011.	Promotion 80%	Direct 20%
1.	B-17 to B-18	14 years (including B-16 length of service.	07 years length of service in B-17.
2.	B-18 to B-19	21 years (including B-16 length of service.	14 years of service in B-17.
3.	B-19 to B-20	24 years (including B-16 length of service.	19 years length of service in B-17.

Provided further that if the members of cadre are appointed by initial recruitment in B-18 and above all be required to have completed the period of service as under:

S#	Scale in which appointed by initial recruitment Award of Time	Award of Time scale w.e.f. 18-11-2011.	Length of service in B-16 and above.
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	scale w.e.f. 18-11-2011.		
1.	B-18	B-19	7-years
2.	B-19	B-20	5-years

4. The Balochistan Provincial Employees' Group Insurance (Amendment) Act, 2011, whereby the Schedule to the Balochistan Act-X of 2009 was amended to the effect:

"The rate of contribution to the Provincial Employees Group Insurance Fund and the amount of sum assured to be paid to the employees or to the family of an employee, shall be as under:-

GRADE OF GOVT: SERVANT	ASSURED SUM ON RETIREMENT	ASSURED SUM ON DEATH	MONTHLY DEDUCTION OF PREMIUM (In Rupees)
(1)	(2)	(3)	(4)
BPS 01-04	120,000	150,000	135
BPS 05-10	150,000	187,500	170
BPS 11-15	250,000	312,500	280
BPS 16	400,000	500,000	450
BPS 17	500,000	625,000	560
BPS 18	700,000	875,000	780
BPS 19	850,000	1,062,500	890
BPS 20 and above	1,000,000	1,250,000	1,100

Provided that the sum assured will be paid to employee or his family at the time of retirement or death according to his last Pay Scale/Grade.

Provided further that in case an employee has been promoted after his retirement/death the differential amount shall be paid according to the revised grade/pay subject to payment of difference in premium."

5. The above Schedule (the Schedule) of the Balochistan Provincial Employees Group Insurance (Amended) Act, 2009 (the Act) provides the rate of contribution and the amount sum assured to be paid to the employees or in case of death of the employees to the Family of the employees as the case may be. The Schedule further provides that the sum assured will be paid to employees or his family at the time of retirement or death according to his "Last Pay Scale/Grade".

6. The Government of Balochistan (Finance Department) vide instruction dated 9th September 2013 issued to all concerned, reference to Notification No. FD(W.O)X-9/2007/377-676 dated 19th September, 2007. Notification No.FD(W.)X-9/2007/26-325 dated 2nd January, 2008, Notification No.FD(W.O)X-9/2011/1778-2077 dated 15th February, 2011 and Notification No.FD(W.O)X-9/2012/9542-9841 dated 26th June, 2012 (the impugned Notification) clarified as under:

"In this regard, it is clarified that higher Basic Pay Scales under Time Scale Policy are meant for financial benefits and can not be treated as promotion in higher grade/position. The employees of Government of Balochistan and beneficiaries are entitled for the grant of sum assured under Group Insurance Policy in accordance to

the Substantive Pay Scale of their original designation/status at the time of retirement/death.

The Administrative Departments may refund the excess/difference amount and on the basis of Basic Pay Scales under Time Scale Policy instead of Substantive Pay Scale to the employees. The DDOs may also be directed to indicate substantive pay scale and Time Scale in retirement order/notification or in condolence order/notification.

Accountant General Balochistan and all District Accounts Officers are advised to make deduction of Group Insurance from the salaries of regular employees of Government of Balochistan on the basis of substantive pay scale of employee in accordance with their designation/status and mention substantive pay scale and Time Scale separately in the Pension Books."

7. The impugned notification provides that higher basic pay scale under time scales are meant for financial benefits and cannot be treated promotion in higher grade/position. The employees of the Government of Balochistan, and beneficiaries are entitled for the grant of sum assured under Group Insurance Policy in accordance to the Substantive Pay Scale of their original designation/status at the time of retirement or death as the case may be. It is the grievance of the petitioners that the Schedule of the Act provides that the Sum assured will be paid to employees or his family at the time of retirement or death according to his last pay scale/grade, while the impugned Notification provides grant of Sum Assured under the Group Insurance Policy in accordance to the substantive pay scale of their original designation/status at the, time of retirement/death, which is contrary to the Act and the principle of natural justice.

8. Learned counsel for the petitioners contended that till date, the premier towards group insurance had been deducted according to grade Basic Pay Scale (BPS) 16, 17 and 20 (Last Pay Scale), but through the impugned Notification, the petitioners had been deprived from their assured amount, which is highly exploitive, in violation of Article 3 and also of the fundamental rights as guaranteed by Articles 2-A, 9, 18, 23 and 25 of the Constitution of Islamic Republic of Pakistan, 1973 (the Constitution); that Article 8 of the Constitution was also violated by issuance of the Notification. Learned counsel for the petitioners placed reliance on the following judgments:

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|--------------------------|---------------------------|
| (i) 2012 PLC (C.S.) 1450 | (ii) 1993 PLC (C.S.) 1261 |
| (iii) 1996 SCMR 1185 | (iv) 1987 SCMR 96 |
| (v) 1980 SCMR 972 | (vi) 2009 SCMR 1 |
| (vii) 2009 SCMR 4 | (viii) PLD 1988 Quetta 70 |
| (ix) 2003 SCMR 1030 | (x) 2004 PLC (C.S.) 586 |
| (xi) 1986 SCMR 991 | (xii) 1995 PLC (C.S.) 586 |
| (xiii) 2002 PLC 52 | (xiv) 2005 SCMR 590 |

He also relied upon un-reported order of the Hon'ble Supreme Court dated 18th August 2016 passed in Civil Review Petition No. 170 of 2016 in Civil Petition No. 237 of 2016 and judgment of Hon'ble High Court of Islamabad dated 27th October 2015 passed in Intra Court Appeal No. 620 of 2014.

The learned Advocate General Balochistan contended that section 14 read with the Schedule of the Act of 2009 provides that Sum Assured shall be paid to the employee or his family at the time of his retirement according to his Last Pay Scale/Grade; that the petitioners were neither promoted nor holding the post on regular basis, rather were granted higher basic Pay Scale under Time Scale Policy only meant for financial benefits, thus

cannot be treated as promotion; that they (petitioners) hold their substantive posts despite availing the time scale grant; that some of the petitioners have been granted BPS-19 in just two years and after their retirement on the basis of Time Scale Policy, but their pay scale was of their substantive posts, except the monthly benefits.

The learned Amici Curiae Messrs Muhammad Riaz Ahmed and Mazhar Ilyas Nagi, Advocates while assisting the Court referred to the Fundamental Rule 22 and contended that the petitioners are to be dealt with accordingly.

9. We have heard the learned counsel for the parties and perused the record. Section 3 of the Group Insurance Act provides that every employee during continuance of his service shall pay a monthly payment towards the Provincial Group Insurance Fund at the rate specified in Column 3 of the Schedule.

Section 14 of the Act provides that entitlement of the employees to receive the sum assured at the time of his retirement or in case of death of the employee, the sum shall be paid to the nominee member at the rate specified in Column-2 of the Schedule.

Section 18 of the Act contemplates that if any difficulty arises in giving effect to any of the provisions of the Act, the Government may make such order not inconsistent with the provision of this Act. The Schedule of the Amended Act deals with fund and amount of the Sum assured to be paid to the employees or to the family of retired employee. According to the Schedule of the Act, the sum assured will be paid to an employee or his family at the time of retirement or death according to his Last Pay Scale/Grade. The monthly salary of statement of some of the petitioners provides their designation, pay scale and deduction of group insurance as under:

	Name	Designation/ Actual Grade	Pay Scale Type after time	Premium of Group Insurance	Serving / retired
1.	Shah Bakhsh (C.P.No.212/14)	JV-Teacher B-9.	BPS-16	525	In service
2.	Gulshan Ara (C.P.No.788/14)	JV-Teacher B-9.	BPS-16		Retired on 21- 12-2012
3.	Abid Hussain (C.P.No.620/14)	Subject Specialist B-18	BPS-20	1400/-	In service
4.	Muhammad Bakhsh (C.P.No.483/15)	JET B-14	BPS-16	525	In service
5.	Kareem Bakhsh (C.P.No.883/15)	JVT B-9	BPS-16	525	In service
6.	Abdul Hameed (C.P.No.912/15)	No detail provided only alleged Senior Science Teacher and working in			

		BPS-20			
7.	Abdul Aziz (C.P.No.1115/15)	JET-14	BPS-17	400	Retired on 13-12-2011
8.	Ghulam Rasool (C.P.No.481/16)	PTI (Physical Training Instructor) B-14	BPS-17	660	In service

10. From the above, it reveals that the petitioners had been granted time scale in BPS-16, 17 and 18 to 20 through Policy issued by the Government of Balochistan Secondary Education Department vide Notification dated 25th October 2012. The time scale pay as per Fundamental Rules (FR) rises by periodical increment from minimum to maximum.

11. The petitioners had been allowed as one time dispensation for financial benefit. The petitioners were never promoted to higher post nor any such order issued by the competent authority was produced by the petitioners except the Time Scale Policy issued vide notification dated 25th October 2012. There is clear distinction between time scale grant and promotion. The promotion involves advancement in rank or grade or both is always step towards advancement to higher position, grade, while time scale does not involve promotion to a higher position and the pedestal of the employee remain the same and the employee is merely conferred some financial benefits by granting higher pay scale to overcome stagnation. In the instant case an element of policy is involved in granting time scale because there was no automatic promotion to the time scale grade. Time scale allowed for the purpose of granting some monetary relief to those who had spent considerable length of service and have very limited avenue of granting promotion to a higher post that is why a high pay scale was granted in the same post, but its very nature, a time scale grant/post cannot be considered as a higher post. The beneficiary of a time scale does not thereby occupy a post which is higher in rank then the posts earlier occupied by him. It is necessary to mention here that petitioners were granted time scale through a notification dated 25th October, 2012, which defines TIME SCALE as under:

"Time scale means financial benefit of higher scale granted to any official/member of service by the Government of Balochistan, Finance Department on completion of specified period of service in the relevant grade".

12. In respect of Group insurance and Benevolent Fund the referred to Notification provides as under:

"Every member of service attaining the retirement on superannuation/qualify service/compulsory retirement basis shall be entitled for group insurance and benevolent fund on the basis of their substantive pay scale and monthly deduction be carried out accordingly".

13. In the instant case, the petitioners opted grant of time scale on the basis of time scale policy issued by the Government of Balochistan through Notification dated 25th October 2012, containing above clauses, therefore, after attaining monitory benefits of time scale, they neither could be allowed to approbate and reprobate in the same breath, nor could challenge the impugned Notification, which in fact was issued for implementation of the above clauses of the Time Scale Policy. The petitioners pressed protection of Article 25 of the Constitution of the Islamic Republic of Pakistan, 1973 (the Constitution), but they are estopped of their conduct. Reference in this respect is to be made to case titled Secretary

Economic Affairs Division, Islamabad and others v. Anwarul Haq Ahmed and others, 2013 SCMR 1687 wherein the Honourable Supreme Court observed as under:

"It is to be noted that the doctrine of 'estoppel' means a disability whereby a party is precluded from alleging or proving in legal proceedings that a fact is otherwise than it has been made to appear by the matter giving rise, to that disability. Even as a rule of evidence or pleading a party should not be allowed to approbate and reprobate. Reference in this behalf may be made to the case of Haji Ghulam Rasool v. The Chief Administrator of Auqaf (PLD 1971 SC 376) wherein it was held as under:--

"The doctrine of estoppel is not confined to the matters deal with under section 115 of the Evidence Act, for, as pointed out by Garth. C.J. in the case of Ganges Manufacturing Co. v. Sourajmull (ILR 5 Cal. 669) "estoppels in the sense in which the term is used in the English legal phraseology are matters of infinite variety and are by no means confined to the subjects dealt within Chapter VIII of the Evidence Act". It has been defined in Salsbury's Laws of England (2nd Edn.), Vol. 13, "as a disability whereby a party is precluded from alleging or proving in legal proceedings that a fact is otherwise than it has been made to appear by the matter giving rise to that disability". It is in this sense that it has often been held that even as a rule of evidence or pleading a party should not be allowed to approbate and reprobate."

14. In addition, two of the petitioners Gulshan Ara Begum (C.P.No.788/2014) and Abdul Aziz (C.P. No. 1115/2015) were already retired from services on attaining age of superannuation, but the fact has not been disclosed in their petitions. By time, they might have received the benefits including Group Insurance, if any of grievances left, they might have approached the departmental authority at first instance then the relevant forum for redressal of their grievances.

In view of the above, Constitutional Petitions Nos. 212, 788, 620 of 2014, 483, 883, 912, 1115 of 2015 and 481 of 2016 are dismissed accordingly. The parties are left to bear their own costs.

ZC/5/Bal

Petitions dismissed.