

65/20

IN THE SUPREME COURT OF PAKISTAN
(APPELLATE JURISDICTION)

PRESENT:

MR. JUSTICE GULZAR AHMED, HCJ
MR. JUSTICE IJAZ UL AHSAN
MR. JUSTICE QAZI MUHAMMAD AMIN AHMED

Aff.
CIVIL APPEALS NO.429, 430 & 442 of 2020

(Against the judgment dated 12.04.2019 passed by the Balochistan Service Tribunal, Quetta in Service Appeals No.195 and 404 of 2017 and 326 of 2016).

Government of Balochistan through Chief Secretary, Quetta and others.

...Appellant(s)
(in all cases)

Versus

Dr. Muhammad Tariq Jafar and others.
(in CA.429/2020)

Dr. Syed Muhammad Saleem.
(in CA.430/2020)

Arbab Mohammad Usman Kasi.
(in CA.442/2020)

...Respondent(s)

For the Appellant(s): Mr. Ayaz Khan Swati, Addl. A. G. Balochistan.

For Respdts. No.1, 3 to 6: Mr. M. Rauf Atta, ASC.
(in CA.429/2020)

Nemo.
(in CAs.430, 442/2020)

Date of Hearing: 20.08.2020.

JUDGMENT

IJAZ UL AHSAN, J.- Through this single judgment, we propose to decide Civil Appeals No.429, 430 & 442 of 2020 as all three appeals are directed against the same judgment of the Balochistan Service Tribunal, Quetta ("the Tribunal") dated 12.04.2019.

2. At the very outset, it has been pointed out to us by learned counsel for the Respondents that leave to appeal in

this case was granted subject to the question of limitation in view of the fact that two of the appeals i.e. Civil Appeal No.429 of 2020 and Civil Appeal No.430 of 2020 were barred by time. It is submitted by the learned counsel that the reasons disclosed in the applications (*CMA No.354-Q of 2019 and CMA No.356-Q of 2019*) for condonation of delay are not such as would constitute sufficient ground for the condonation sought. He has, therefore, prayed for dismissal of the appeals on the question of limitation.

3. However, the learned Additional Advocate General, Balochistan representing the appellants in these appeals submits that the Tribunal had heard the parties on 01.04.2019 and judgment was reserved. Apparently, the judgment was announced on 12.04.2019 without notice to the office of Advocate General, Balochistan and such announcement was not in the notice or knowledge of the Government of Balochistan. It was only when the Respondents sought implementation of the impugned judgment that the appellants gained knowledge of the same and immediately thereafter the petitions were filed. As such, these appeals from the date of gaining knowledge were within time. He has further argued that one of the appeals i.e. Civil Appeal No.442 of 2020 was filed within time. He relies upon a judgment of this Court reported as PLD 1975 SC 397 to argue that where a number of appeals are filed against the same judgment, some of which are within time and the others are hit by limitation, the policy of law has been to condone

the delay in order to avoid legal complications and anomalous situations.

4. Having heard the learned counsel for the parties and going through the record, we find that admittedly one of the three appeals i.e. Civil Appeal No.442 of 2020 was filed within time. Further, important questions of law have been raised in these appeals and in order to avoid legal complications and anomalous situations arising out of the judgment of the Tribunal being left intact in appeals which are barred by time and possibly setting aside the same in the appeal which is within time, a case has been made out for condonation of delay. Accordingly, CMA No.354-Q of 2019 and CMA No.356-Q of 2019 are allowed and the delay caused in filing Civil Appeals No.429 and 430 of 2020 is condoned.

5. Briefly stated the facts necessary for disposal of the *lis* in hand are that the Respondents are Doctors by profession and were working in the teaching cadre as Professors (BS-20) in the Province of Balochistan. They felt aggrieved by denial of the financial benefit of orderly allowance and special additional pension in lieu of such orderly allowance after retirement. It was stated that orderly allowance and special additional pension in lieu of orderly allowance was given to officers in Grade-20 and above who were working in the Civil Secretariat of the Province of Balochistan. However, the same allowance was denied to the Respondents for no lawful reason or justification. It was further stated that non payment of such allowance to the

Respondents was discriminatory and violative of the rights guaranteed to them under the Constitution of the Islamic Republic of Pakistan, 1973. It was pointed out that the allowance in question had been extended to Government employees in BS-20 and above working in the Federal Government as well as the Governments of the Provinces of Punjab, Sindh and Khyber Pakhtunkhwa. However, the Respondents were singled out and discriminated against by denial of a right being lawfully asserted by them. In this regard, the Respondents filed departmental representations which were not responded to. This prompted them to file Service Appeals before the Tribunal seeking the following relief:

"Declare that denial of orderly allowance and benefits attached with the same to the appellants by the respondents is discrimination and is in violation to the constitution as well as number of judgments of Apex Court.

Declare that appellants are entitled for orderly allowance and pension benefits, which are being received by other officers of BPS-20 in Federal Government, sister provinces and administrative secretaries of Government of Balochistan.

Any other relief which this Hon'ble Court deems fit and proper may also be awarded in favour of the appellants, in the interest of justice."

The Tribunal allowed their appeals vide the impugned judgment dated 12.04.2019 which has been challenged before this Court through the instant Civil Appeals.

6. Leave to appeal was granted by this Court on 26.03.2020 in the following terms:

"We have heard the learned Additional Advocate General, Balochistan.

2. Subject to the limitation, leave to appeal is granted to consider whether the learned Balochistan Service Tribunal, Quetta (the Tribunal) was at all competent to grant the benefit of two Notifications dated 02.08.2016 and 22.09.2016 to the respondent and the said Notifications were not applicable to him; whether reasonable classification was made in the two Notifications and the Tribunal was not justified to impose its own will and grant the benefit from the public exchequer to the respondent, without such being available to him; whether the policy of other provinces or even that of the Federation could be applied to the province of Balochistan. The appeal stage paper books be prepared from the available record with permission to the parties to file additional documents, if any, within a period of one month. As the matter relates to service, office is directed to fix the same expeditiously preferably after three months."

7. The learned Additional Advocate General, Balochistan submits that the Tribunal has failed to take into consideration that orderly allowance and special additional pension in lieu thereof is paid under a policy of the Government of Balochistan incorporated in Balochistan Finance Manual, 2008 Volume-I. It is specially meant for those officers of Grade-20 and above who are serving at the Balochistan Civil Secretariat and have opted for orderly allowance in lieu of residence orderly. For officers of Grade-20 and above who do not work in the Balochistan Civil Secretariat and render services in the field, orderly allowance is neither provided under the rules nor the policy. As such, the findings of the Tribunal to the effect that all officers serving in Grade-20 and above are paid the said allowance are *ex facie* and patently incorrect. He further maintains that

the appeals filed by the Respondents were patently barred by time in so far as the allowance in question has been paid since 1986 to civil servants in Grade 20 and above working in the Balochistan Civil Secretariat and throughout the duration of their service, the Respondents never claimed or challenged the same to eligible officers working in the Civil Secretariat of Balochistan. It was only at the end of their careers that they raised this issue by way of departmental appeals which were clearly and obviously barred by time. He further submits that the Respondents being medical professionals are paid a number of allowances including Health Professional Allowance, Non Practicing Allowance, Rural Incentive Allowance and Basic Medical Science Allowance, etc. None of these allowances are paid to other employees of the Provincial Government notwithstanding their grades. He further maintains that the said allowances are most certainly not paid or payable to the officers in Grade-20 and above working in the Balochistan Civil Secretariat. The learned Law Officer further maintains that the Tribunal has exceeded its jurisdiction by incorrectly interpreting the provisions of Article 25 of the Constitution of Pakistan and such interpretation is clearly against the interpretation of said Article given by this Court in various pronouncements on the subject. He finally submits that reliance by the Tribunal on Mehar Muhammad Nawaz v. Managing Director, Small Business Finance Corporation and 2 others (2009 SCMR 187) is misplaced and totally out of context.

8. Learned counsel for the Respondents on the other hand has defended the impugned judgment. He maintains that the Respondents have clearly been discriminated against in so far as similarly placed civil servants working in the Federal as well as the Provincial Governments of Punjab, Sindh and Khyber Pakhtunkhwa have been granted similar allowance but the Respondents have been denied the said benefit. He further submits that the Respondents as well as the Secretaries working in the Balochistan Civil Secretariat are placed in Grade-20 and above. Consequently, they constitute one class and should enjoy equal pay and allowances. He has however candidly admitted that the Secretaries and other officers placed in Grade-20 and above in Balochistan Civil Secretariat cannot claim the additional allowances which are received by the Respondents by virtue of the posts held by them as doctors working in the teaching cadre.

9. We have heard the learned counsel for the parties and have gone through the record with their assistance. The basic and fundamental question raised by the Respondents before the Tribunal was that they were being discriminated against in so far as despite being in Grade-20 and at par as far as their grades and basic emoluments were concerned with Secretaries working in the Balochistan Civil Secretariat, they were being deprived of orderly allowance and special additional pension in lieu of the orderly allowance after retirement. This, according to the Respondents was

discriminatory treatment, violative of the fundamental rights guaranteed to them under the Constitution of Pakistan. The Tribunal agreed with the stance taken by the Respondents and in this respect cited a number of judgments of this Court including Dr. Mobashir Hassan and others v. Federation of Pakistan and others (PLD 2010 SC 265), Alleged Corruption in Rental Power Plants etc in the matter of Human Rights Cases Nos.7734-G/2009, 1003-G/2010 and 56712 of 2010, decided on 30th March, 2012 (2012 SCMR 773) and Mehar Muhammad Nawaz v. Managing Director, Small Business Finance Corporation and 2 others (2009 SCMR 187).

10. The second foundational argument on which the Tribunal based its judgment was a finding that officers in Grade-20 and above working in the Federal as well as the Provincial Governments of Punjab, Sindh and Khyber Pakhtunkhwa were receiving financial benefits of orderly allowance and special additional pension in lieu of the orderly allowance after retirement and therefore the Respondents were being discriminated against by reason of non payment of the same allowance to them which was being paid to similarly placed officers in the Federal and other Provincial Governments. The Tribunal also came to the erroneous conclusion that the Respondents were similarly placed and in the same category as Secretaries and other employees of the Provincial Government placed in Grade-20 and above working in the Balochistan Civil Secretariat.

11. As far as the question of discrimination is concerned, the findings of the Tribunal are erroneous and incorrect for the following reasons:

- a) The Respondents on the one hand and the civil servants including Secretaries and others placed in Grade-20 and above working in Balochistan Civil Secretariat on the other hand can neither be placed in the same category nor are in the same classification in so far as they belong to two totally different cadres, perform totally different functions, have different job descriptions and career progression channels. Such differences and classification based on these aspects can clearly and unambiguously be understood on the basis of an intelligible differentia.
- b) There is no denial of the fact and has candidly been admitted even by the learned counsel for the Respondents before us that by reason of different classifications and job descriptions, the Respondents are receiving a number of additional allowances which are not paid to the Secretaries and other employees working in Grade-20 and above in Balochistan Civil Secretariat. There is also no denial of the fact that such Secretaries and others placed in Grade-20 and above

working in Balochistan Civil Secretariat have not and cannot claim the same additional allowances as are being paid to the Respondents.

- c) On the basis of different classifications, job descriptions, salary and allowances structure, a considered policy has been formulated by the Government of Balochistan on the basis of its own ground realities by incentivising various cadres with different allowances. Such policy decisions unless they are arbitrary, capricious and ex facie discriminatory or violative of constitutional guarantees and norms of justice cannot be interfered with in exercise of powers of judicial review.
- d) The facts and circumstances of the instant matter did not admit of interference in policy matters and the Tribunal has not recorded any reasons or furnished any justification other than a perceived and an overly simplistic view and interpretation of the concept of discrimination to support its judgment.
- e) The finding of the Tribunal that since the allowance in question is being paid to all civil servants working in Grade-20 and above in the Federal as well as other Provincial

Governments, the Respondents are also entitled to the same is clearly and patently in ignorance of the law laid down by this Court in its order dated 10.03.2015 passed in Civil Appeals No.46 and 47 of 2013 titled Government of Balochistan through Secretary Public Health Engineering Department, Quetta and others v. Muhammad Daud and others, wherein it was held as follows:

"The learned Service Tribunal has proceeded on a premise that in other Provinces, Planning Officers have been upgraded to BS-17. This, however, is not a valid reason for holding that the respondents are being discriminated against. We may note that under the Constitution, Pakistan is a Federation and each Federating Unit, within its own domain, is entitled to make rules and regulations for its employees as well as their terms and conditions of service. This is the natural underpinning of a federal system because each Province is aware of its own circumstances and budgetary constraints etcetera. Therefore, the employees of one Province cannot claim terms and conditions which have been granted to the employees of other Provinces on the plea that they are being discriminated against."

- f) The finding of the Tribunal that there is no intelligible differentia is also *ex facie* erroneous and incorrect in so far as the job descriptions, nature of job and qualifications, career structures and progression scheme of civil servants,

Secretaries etc working in Balochistan Civil Secretariat is diametrically different from that of the Respondents who are medical doctors and working in the teaching cadres as Professors. One cannot be equated with the other, both constitute a different class and the concept of intelligible differentia between the two is clearly and patently discernable can be easily understood being logical and lucid and it is neither artificial nor contrived. Although the Tribunal has referred to the judgment of this Court reported as Dr. Mobashir Hassan and others v. Federation of Pakistan and others (PLD 2010 SC 265) unfortunately it has neither understood the ratio of the said judgment nor applied it correctly to the facts and circumstances of the present case.

12. We have also carefully examined two other judgments relied upon by the Tribunal in the impugned judgment namely Alleged Corruption in Rental Power Plants etc in the matter of Human Rights Cases Nos.7734-G/2009, 1003-G/2010 and 56712 of 2010, decided on 30th March, 2012 (2012 SCMR 773) and Mehar Muhammad Nawaz v. Managing Director, Small Business Finance Corporation and 2 others (2009 SCMR 187). The first judgment relates to interpretation of the Constitution and the word "life"

occurring in Article 9 of the Constitution. We have not been able to understand or appreciate the relevance of the excerpt from the judgment reproduced by the Tribunal in its judgment to the facts and circumstances of the present case.

13. Likewise, we have carefully gone through the judgment of this Court reported as Mehar Muhammad Nawaz v. Managing Director, Small Business Finance Corporation and 2 others (2009 SCMR 187). This judgment relates to conversion of penalty of dismissal from service into compulsory retirement of a civil servant who had died during pendency of his appeal and entitlement to pensionary benefits of the legal heirs. Although there is reference to the principle of non discrimination and the constitutional safeguard of equality before law, the same is in a totally different context. How the said judgment is relevant and advances the case of the Respondents is a question we have not been able to answer from the impugned judgment nor the learned counsel for the Respondents has been able to shed light on the relevance of the *ratio* of the said judgment in the present case.

14. On the basis of material examined by us and the arguments advanced by learned counsel for the parties before us, we find that the Respondents by reason of their job descriptions, service structure, emoluments and allowances constitute a distinct and separate group of officers compared to the Secretaries and other officials placed in Grade-20 and above in Balochistan Civil Secretariat. There is an intelligible differentia between the two sets of officers which can easily be differentiated and such differentiation is clearly understood

as logical and lucid and it is neither artificial nor contrived. We therefore find that there has been no discrimination against the Respondents as alleged by them and held in the impugned judgment of the Tribunal and none of the rights guaranteed by the Constitution to the citizens of Pakistan have been violated by reason of denial of the allowance in question to the Respondents for the reasons enumerated above.

15. We also find that the mainstay of the impugned judgment namely payment of similar allowance to all officers working in Grade-20 and above in other Provinces is neither supported by the record nor does it constitute discrimination on account of the fact that this Court has already settled the question by observing that each Province has its own ground realities, policies and priorities and freedom to formulate such policies as are permissible within the framework of the Constitution while maintaining provincial autonomy provided under the law and the Constitution. The policy subject matter of these appeals which has been framed by the Government of Balochistan has not been found by us to be in conflict with any provision of the Constitution or the law. We also find that the Respondents have and continue to be adequately and sufficiently compensated by reason of special allowances mentioned above which are specific and germane to their cadre and are not available to other civil servants despite the fact that such civil servants are working in BS-20 and above.

16. It would be an absurd argument if it is stated that although the Respondents can claim all allowances irrespective of their nature or tenor which are received by the Secretaries and other civil servants in Grade-20 and above who are working in Balochistan Civil Secretariat but such officers cannot reciprocatively claim the said allowances that are received by the Respondents. This absurdity can easily and logically be resolved by the principle of classification of the two groups and treating them as distinct and separate parts of one whole service but at the same time, structuring their allowances in a manner which would commensurate with the actual work performed by such set of civil servants. Even otherwise, as noted above, the Provincial Government is within its legal and constitutional power to formulate its employment policies and the argument of discrimination raised by the learned counsel for the Respondents on the ground that other Provinces had different terms and conditions, pay and allowances structure is not available to the civil servants of a particular Province.

17. Finally, the learned counsel for the Respondents has not been able to explain the issue of limitation despite being confronted with the proposition that the allowance in question has been paid since 1986, the Respondents have been aware of such allowance for a long period of time despite being in Grade-20 but have challenged the same when they had retired or were nearing retirement by way of service appeals filed in the year 2016. Perusal of the impugned

judgment of the Tribunal shows that it is not well reasoned and some reasons which have been given have neither been found by us to be persuasive nor do they meet the standards of logical legal reasoning appropriate for interpretation of the constitutional provisions. We are therefore in no manner of doubt that the impugned judgment passed by the Tribunal is not sustainable.

18. For reasons recorded above, we allow these appeals and set aside the impugned judgment of the Tribunal dated 12.04.2019.

ISLAMABAD, THE
20.08.2020:
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'Not Approved For Reporting'