

7/20

IN THE SUPREME COURT OF PAKISTAN
(APPELLATE JURISDICTION)

PRESENT:

MR. JUSTICE GULZAR AHMED, HCJ
MR. JUSTICE IJAZ UL AHSAN
MR. JUSTICE SAJJAD ALI SHAH

(D.J) AFR

Civil Appeal No.661 of 2018

*Against judgment dated 25.01.2017 of the
Punjab Service Tribunal, Lahore passed in
Appeal No.4088 of 2014.*

Chief Secretary, Government of the Punjab,
Lahore and others.

...Appellant(s)

Versus

Zia-ur-Rehman.

...Respondent(s)

For the Appellant(s):

Ch. Faisal Fareed, Addl. A.G. Pb.
Mr. Shahbaz Ahmed Sheikh, Law
Officer, Finance Deptt., Punjab.
Mr. Amanullah, Dy. Secy., Govt.
of Punjab, Finance Deptt. Punjab
Mr. Saif ur Murtaza, AIG (HCR)

For the Respondent(s):

Hafiz M. Tariq Naseem, ASC
assisted by Mr. Junaid Jabbar,
ASC.

Date of Hearing:

13.01.2020.

JUDGMENT

IJAZ UL AHSAN, J.- This appeal with leave of the Court is directed against a judgment of the Punjab Service Tribunal, Lahore dated 25.01.2017. Through the impugned judgment, Appeal No.4088 of 2014 filed by the Respondent under Section 4 of the Punjab Service Tribunals Act, 1974 was allowed and the Appellants were directed to restore and release the emoluments in terms of Clause 2 of offer of letter of appointment as Traffic Warden (BS-14) in City Traffic Police, Lahore i.e. one additional basic pay plus 20 days fixed

D.A. (Daily Allowance) with effect from the date it was frozen and also to pay the arrears thereof accordingly. A formal notification in this regard was also directed to be issued.

2. Briefly stated the facts necessary for decision of this Appeal are that the Respondent was appointed as a Traffic Warden (BS-14) in the City Traffic Police, Lahore vide order dated 28.07.2006 by the Chief Traffic Officer, City Traffic Police, Lahore. Before issuance of the appointment letter, a letter of offer of appointment as Traffic Warden (BS-14) in City Traffic Police, Lahore was issued on behalf of the DIG Traffic Punjab, Lahore on 26.07.2006. The letter of offer for appointment as a Traffic Warden inter alia contained the following terms:

"1. After joining the department, you will remain on probation for 2 years, which may be extended for one year by the competent authority for specific reasons in writing.

2. You will draw pay in BPS-14 with other emoluments at par with Punjab Highway Patrol Police i.e. one additional basic pay plus 20 days fixed D.A. and other allowances sanctioned by the Government from time to time.

3. The posts of Traffic Wardens are city-specific and non-transferable. Hence, you will only serve in the district of your appointment.

4. If you, intend to resign from the service, you will give the senior officer/competent authority a notice in writing at least two months before the date you intend to resign.

5. You will be treated as fresh entrant in the police department for all purposes.

6. Your interse seniority will be fixed on the basis of seniority in age. Where date of birth of some officers is the same, their interse seniority will be fixed on alphabetical order.

7. You will be governed under the Police Order 2002, and Special Rules/Standing Orders formed for the City Traffic Police. For disciplinary matter, RSO 2000 will be applicable.

8. Your appointment will be subject to verification of your educational testimonials, character and other antecedents."

3. It appears that the Respondent received the said emoluments namely one additional basic pay plus 20 days fixed DA and other allowances sanctioned by the Government from time to time. However, vide notification dated 11.07.2011 the said one additional basic pay plus 20 days fixed DA was frozen to the level existing on 30.06.2011. The Respondent was aggrieved of such freezing and therefore filed a departmental appeal before the Secretary, Finance Department. When such representation was not decided, a constitutional petition was filed by him before the Lahore High Court, Lahore which vide order dated 15.10.2012 directed the Secretary, Finance Department to decide his departmental representation/appeal within fifteen days. Such appeal was rejected by the Secretary, Finance Department, vide order dated 19.11.2012 declaring that the Respondent was not entitled to the pay and allowances being claimed by him. The said order was challenged by way of an Appeal which was disposed of with the observation that the Departmental Appellate Authority had not been approached. The Respondent thus approached the Chief Secretary, Punjab who affirmed the order of the Secretary, Finance Department. This led to filing of a second Appeal before the Service Tribunal which was decided through the impugned judgment, dated 25.01.2017 in the aforementioned terms.

4. Leave to appeal was granted by this Court, vide order dated 21.05.2018 in the following terms:

"Learned Additional Advocate General submits that condition-2 of the Offer of Appointment assures emoluments at par with the Punjab Patrolling Police i.e. one additional basic pay plus 20 days fixed daily allowance and other allowances sanctioned by the Government from time to time. The case of the respondent is that the additional basic pay forms part of the basic emolument of the respondent and it is subject to increase. The petitioners claim that additional basic pay has been assured as a special pay and is being granted to the respondent, but it does not accrue annual increments.

2. The learned Tribunal has held that the additional basic pay forms part of the pay and it is subject to annual increments. The matter in issue is to the status of additional basic pay with reference to the relevant rules regarding pay and service conditions requiring interpretation. Leave is granted to determine the said question.

3. Till the final disposal, status quo shall be maintained."

5. Learned Additional Advocate General, Punjab appearing for the Appellants has drawn our attention to the document titled "letter of offer for appointment of Traffic Warden (BS-14) in City Traffic Police, Lahore dated 06.07.2007". Referring to paragraph 2 of the terms and conditions mentioned in the said letter, he has submitted that one additional basic pay plus 20 days fixed D.A. were essentially allowances and were not liable to be made part of the basic pay of the Respondent. He further submits that in any event the Government always has the authority to freeze and/or discontinue the allowances and/or modify the quantum of such and other allowances keeping in mind the availability of funds for the said purpose and to keep the salaries and allowances of officials of various Government Departments serving in the same basic pay scales at a reasonably equal level as far as possible. He has further pointed out that the material document in so far as the Respondent is concerned is not the document titled "letter of

offer for appointment as Traffic Warden (BS-14) in the City Traffic Police, Lahore dated 26.07.2006" because this is just a letter of offer issued on behalf of the DIG Traffic, Lahore who was not the competent authority to issue the said letter. Further, if at all this was an offer it was never accepted therefore the same did not result in formation of a binding contract between the parties. He has also drawn our attention to the appointment letter dated 28.07.2006 where an offer of appointment to the post of Traffic Warden (BS-14) in City Traffic Police, Lahore was made to the Respondent on the following terms and conditions:

"He will remain on probation for three years envisaged under Police Rule 12.8. He will draw his pay in PBS-14 with other emoluments at par with Punjab Highway Patrol Police and as enhanced/supplemented by the Government from time to time".

This appointment letter was issued by the Chief Traffic Officer, City Traffic Police, Lahore who admittedly was the competent authority in the instant case. It was pursuant to this letter that the Respondent was appointed and by such appointment, he accepted the terms and conditions contained in the appointment letter. Subsequently, the Government of Punjab issued a notification dated 11.07.2011 titled *"revision of basic pay scales, allowance and pension of civil servants of the Punjab Government"*. Through the said notification, pay scales were revised and various allowances including ad-hoc allowance were rationalized. Paragraph 9 of the said letter stated as under:

"Special Pays and Allowances:

All the Special Pays, Special Allowances or the Allowances admissible as percentage of pay (excluding those which are capped by fixing maximum limit) including House Rent

Allowance and the Allowances/Special Allowances equal to initial or basic pay granted to any employee of Punjab Government including Punjab Police, Border Military Police, D.G. Khand & Rajanpur, Baluch Levy D.G. Khan, Prisons, Directorate of Reclamation & Probation, Judiciary, MPDD, teaching/non-teaching staff of teaching institutes, including employees of Directorate of Special Education and employees of other Departments shall stand frozen at the level of its admissibility as on 30.06.2011."

6. The learned Law Officer submits that the Respondent never challenged the said notification which in any event was not struck down by the Service Tribunal on any ground. He maintains that it is the prerogative of the Government to adjust and rationalize pay scales and allowances which was done within the lawful authority of the Government and the Service Tribunal erred in law in relying upon the offer letter which was never accepted and in any event it had been issued on behalf of the DIG Traffic, City Traffic Police, Punjab, Lahore which was of no material consequence in view of the fact that appointment of Respondent was governed by the appointment letter dated 28.07.2006 issued by the Chief Traffic Officer, City Traffic Police, Lahore.

7. Learned counsel for the Respondent on the other hand has vehemently defended the impugned judgment. He maintains that the Respondent was promised grant of BS-14 with other emoluments at par with the Punjab Highway Patrol Police including one additional basic pay plus 20 days fixed D.A. The Respondent had accepted the job on the faith of that representation which the Government is now estopped from withdrawing. He further maintains that since his appointment in 2006 till the impugned change was made on

11.07.2011, the Respondent had been drawing salary in BS-14 alongwith one additional basic pay plus 20 days fixed D.A. Therefore, the Department itself had interpreted and understood the meaning and scope of Clause 2 of the letter of offer in the manner i.e. being canvassed by the Respondent. He further maintains that the Respondent works in harsher conditions compared to the officials of the Motorway Police and was therefore rightfully found entitled to a better package.

8. We have heard the learned counsel for the parties and examined the record. There is no cavil with the proposition and has not been denied by any side that the letter of offer of appointment dated 06.07.2006 was never accepted by the Respondent and it was in the nature of an intimation. Had the Respondent accepted the said letter, he may have had an arguable case. The fact remains that he did not. The appointment of the Respondent was made through a letter of appointment as Traffic Warden (BS-14) in the City Traffic Police, Lahore vide letter dated 28.07.2006. It was pursuant to and in acceptance of the terms and conditions of the said letter that the Respondent joined the Department. The said letter stated that the Respondent was being appointed as a Traffic Warden (BS-14) in City Traffic Police, Lahore *inter alia* on the following terms and conditions:

"He will remain on probation for three years envisaged under Police Rule 12.8. He will draw his pay in PBS-14 with other emoluments at par with Punjab Highway Patrol Police and as enhanced/supplemented by the Government from time to time".

The aforementioned terms and conditions are the only terms which would govern the appointment and conditions of service of the Respondent. The letter of appointment undertook a promise of grant of BS-14 with other emoluments at par with the Punjab Highway Patrol Police and as enhanced/supplemented by the Government from time to time.

9. We have specifically asked the learned ASC for the Respondent if the Respondent is being paid the same salary and allowances as the Punjab Highway Patrol Police. He has candidly admitted the said position to be true. The said letter was also admittedly issued by the competent authority.

10. Notwithstanding what has been stated above, a closer look at paragraph 2 of the letter of offer dated 06.07.2006 and paragraphs 1 and 2 of letter of appointment dated 28.07.2006 shows that the earlier letter may not have been happily worded but the intent is quite clear that the Respondent would be entitled to draw pay in BS-14 with other emoluments at par with the Punjab Highway Patrol Police. The words "i.e." created the confusion that the pay and allowances of Punjab Highway Patrol Police included one additional basic pay plus 20 days fixed D.A. and other emoluments as sanctioned by the Government from time to time. The key term in both provisions which reflects the intent of the employer is that the Respondent would be entitled to pay and other allowances at par with those of the Punjab Highway Patrol Police. If that is the case which indeed

appears to be, the argument of the Respondent collapses and the rationale and reasoning adopted by the Service Tribunal clearly looks flawed and based upon erroneous assumptions. We are in no manner of doubt that the correct meaning and interpretation of the letter of offer as well as the letter of appointment in essence mean the same things namely that the Respondent would be entitled to draw his pay in BS-14 with other emoluments at par with the Punjab Highway Patrol Police (underlining is for emphasis).

11. We have carefully gone through the judgments cited at the bar by learned ASC for the Respondent including Government of NWFP v. I. A. Sherwani (PLD 1994 SC 72), Secretary, Railways Board v. Muhammad Zubair Rana (PLD 2000 SC 61) and Abdul Hameed v. Special Secretary, Education (2016 SCMR 1611). The two earlier judgments are distinguishable on facts as well as the law, while the judgment reported in the case of Abdul Hameed (*supra*) defines the term "pay" which has also been defined in Rule 2.44 of the CSR, Volume I. For ease of reference, Rule 2.44 is reproduced below:

"2.44 (a). Pay means the amount drawn monthly by a Government servant as:

- i) the pay, other than special pay or pay granted in view of this personal qualifications, which has been sanctioned for a post held by him, substantively or in an officiating capacity or to which he is entitled by reason of his position in a cadre, and
- ii) overseas pay, technical pay, special pay and personal pay and
- iii) any other emoluments which may be specially classed as pay by the competent authority."

A perusal of the aforementioned definition also shows that special pays granted in lieu of personal qualification are excluded from the general definition of "pay" and the reasoning adopted by the Service Tribunal to include it in the pay of Respondent is incorrect and based upon wrong interpretation and comprehension of the said Rule. There is no denial of the fact that the Respondent is entitled to be treated in accordance with law, and protection from discrimination is a fundamental right enshrined in the Constitution. However, the learned ASC for the Respondent has not been able to persuade us to believe that the Respondent has either been discriminated against or has in any manner not been treated in accordance with law.

12. We further notice that the Respondent never challenged the notification (FD.PC-2-1/2011) of the Government of Punjab dated 11.07.2011, by virtue of which special pay and allowances were frozen at the level of their admissibility as on 30.06.2011. The said freezing was applicable to all employees of the Punjab Government including the Punjab Police and in our opinion granting special treatment to the Respondent would constitute reverse discrimination which is not the intent of the law.

13. Having thus considered the arguments of learned counsel for the parties in light of the relevant documents and the law on the subject, we find that the impugned judgment of the Service Tribunal dated 25.01.2017 is unsustainable.

14. Above are the reasons for our short order dated 13.01.2020. The same for ease of reference is reproduced below:

"We have heard the learned counsel for the parties and have also perused the record of the case so also the case law cited at the bar. For the reasons to be recorded, this appeal is allowed and the judgment dated 25.1.2017 passed by the Punjab Service Tribunal, Lahore in Service Appeal No.4088 of 2016 is set aside. All the related CMAs are also disposed of."

ISLAMABAD.

13.01.2020

ZR/*

~~Not Approved For Reporting~~



DM
23/1/20