

IN THE SUPREME COURT OF PAKISTAN

(Appellate Jurisdiction)

Present

Mr. Justice Amin-ud-Din Khan
Mr. Justice Muhammad Ali Mazhar
Mr. Justice Syed Hasan Azhar Rizvi

Civil Petition No. 687 of 2022

On appeal from the Judgment dated
05.01.2022 passed by the Federal Service
Tribunal, Islamabad in Appeal No.
814(R)CS/2019.

Federation of Pakistan through SecretaryPetitioner
Finance, Islamabad.

Versus

Muhammad Atiq-ur-Rehman and others ...Respondent(s)

For the Petitioner(s) : Ch. Aamir Rehman, Additional
Attorney General
Aitzaz Alam, S.O.M/o Finance
Fraz Ahmad, S.O. M/o Finance
Syed B.H.Shah, AOR

Mr. M.D.Shahzad, ASC
(for FBR)

For the Respondent : Ms. Shireen Imran, ASC
No.1

Date of Hearing : 05.12.2024

Judgment

Muhammad Ali Mazhar-J: This Civil Petition for leave to appeal is directed against the Judgment dated 05.01.2022 passed by the learned Federal Service Tribunal, Islamabad (**FST**) in Appeal No. 814(R)CS/2019.

2. According to the chronicles of the lis, the respondent No. 1 was appointed as Assistant (Admin) SPS-5 in Pakistan Atomic Energy Commission (**PAEC**), Islamabad. During service, he applied through proper channel for the vacancy of Assistant Director (Admin) BS-17 in the Department of Libraries, Ministry of Education (Defunct), Islamabad. He was appointed on the recommendation of Federal Public Service Commission (**FPSC**) vide the Office Order dated 24.05.2010. Being aggrieved by disallowing the benefit of pay-protection in its latter department/employer, he approached FST,

Islamabad and filed the Appeal No. 814(R)CS/2019 for redress. The learned Tribunal vide impugned judgment, directed the petitioner to take all the necessary measures for granting the benefit of pay-protection to the respondent No.1/appellant according to Last Pay Certificate (LPC) issued by Pakistan Atomic Energy Commission.

3. The learned Additional Attorney General (**AAG**) argued that the learned FST failed to consider Finance Division's O.M. No.4(2)R-2/96 dated 12.08.2002, whereby, the benefit of pay-protection to the employees of autonomous bodies established by means of Ordinance, Statute, Acts or Executive Order is not admissible on their subsequent appointment in the Government service. He further contended that such employees cannot be treated as Civil Servants within the meanings of the Civil Servants Act, 1973 in relation to their past service. It was further averred that the PAEC was established under Pakistan Atomic Energy Commission Ordinance 1965 and regulated under the National Command Authority Act, 2010. The PAEC has its own Special Pay Scales (SPS) and the Basic Pay Scales (BPS) were never adopted which is the primary requirement for the pay-protection under the aforesaid policy guidelines issued by the Finance Division.

4. The learned counsel for the respondent No.1 argued that initially the respondent No.1 was appointed as Assistant (Admin) SPS-5 on regular basis in PAEC, Islamabad against the post of Assistant Director (Admin), BS-17 advertised by the FPSC for appointment of Department of Libraries, in the Ministry of Education, (Defunct) Islamabad. The respondent No.1 applied for that post through proper channel and he was appointed vide Office Order dated 24.05.2010. It was further argued that before joining new assignment, the respondent No.1 was drawing Basic Pay of Rs.13,550/- in previous department whereas on joining new post, his basic pay was fixed at initial stage of Rs.9,850/ which caused him loss of Rs.3,700/- per month. He filed Departmental Appeal for his pay-protection which was not responded, thereafter, he filed Service Appeal No. 814(R)CS/2019, which was allowed by the FST, vide impugned judgment. It was further averred that the competent authority granted the pay protection benefit to some other employees but the respondent No.1 was discriminated. It was further contended that though the benefit of the pay-protection to the employees of autonomous body on their subsequent appointment in

government service is not admissible as the employees of autonomous bodies are not civil servants within the meaning of Civil Servant Act, 1973 but the benefit of pay protection will be admissible to the employees of such autonomous organizations who have adopted scheme of BPS on their appointment in government offices provided they have applied for the post through proper channel.

5. Heard the arguments. What we have perceived is that the learned FST mainly relied on its own judgment dated 19.07.2017, rendered in Appeal No.1730(R)CS/2015, whereby the pay-protection was allowed in the case of Muhammad Banaras. The said judgment was challenged by the Secretary Finance Division, Islamabad in this Court but their Civil Petition No. 4275 of 2017 was dismissed by this Court vide Order dated 10.10.2018. For the ease of convenience, the order passed by this Court is reproduced as under:-

"The learned FST has, by the impugned judgment dated 19.7.2017, and determined the respondent to be entitled to pay fixation upon his transfer and absorption from PAEC to the office of Auditor General of Pakistan. The Tribunal has relied on an office memorandum dated 31.5.2013 of the Ministry of Finance Regulation Wing to conclude that the pay fixation is necessarily available to a permanent employee because it is also being offered to contractual employees on their regularization. Learned Additional Attorney General has drawn our attention to an office memorandum which is not available on record nor is pleaded by the petitioner-authorities that acknowledges the right of the respondent to receive pay fixation but only if he has adopted the scheme of basic pay scale in toto. There is nothing on record to show that the petitioner has not adopted the said scheme or even that objection has been taken at any stage by the petitioner on that behalf. Accordingly, we have no reason to differ with the view taken by the Tribunal in respect of a paltry sum of Rs.48,000/- per annum to a BS-1 employee of AGP office. The petition is dismissed and leave to appeal declined. The learned Additional Attorney General shall convey our displeasure to the petitioner for taking up such a pointless litigation before the Supreme Court". [Emphasis applied]

6. The crux of the controversy highlighted in the aforesaid order demonstrates that the FST relied on an OM dated 31.05.2013 issued by the Ministry of Finance Regulation Wing in which it was decided that the pay fixation is necessarily available to a permanent employee because it is also being offered to contractual employees on their regularization. The learned Additional Attorney General in that case though relied on an OM but it was not available on record nor was it pleaded that the authorities acknowledged the right of the respondent to receive pay fixation, but only if he has adopted the

scheme of basic pay scale in toto. Since there was nothing on record to show that the petitioner has not adopted the said scheme, the petition was dismissed and leave to appeal was declined on the technical ground without touching the merits of the case or claim.

7. The Fundamental Rules and Supplementary Rules (FR&SR) define and determine the financial terms and conditions of government employees such as pay, allowances, leave and travelling allowances etc. Since in this case, Fundamental Rule (F.R) 22 is quite relevant, therefore for the ease of reference, it is reproduced as under: -

“F.R.22. The initial substantive pay of a Government servant who is appointed substantively to a post on a time-scale of pay is regulated as follows:-

(a) If he holds a lien on a permanent post, other than a tenure post, or would hold a lien on such a post had his lien not been suspended;

(i) When appointment to the new post involves the assumption of duties or responsibilities of greater importance (as interpreted for the purposes of rule 30) than those attaching to such permanent post, he will draw as initial pay the stage of the time-scale next above his substantive pay in respect of the old post;

(ii) when appointment to the new post does not involve such assumption, he will draw as initial pay the stage of the time-scale which is equal to his substantive pay in respect of the old post, or, if there is no such stage the stage next below that pay plus personal pay equal to the difference, and in either case will continue to draw that pay until such time as he would have received an increment in the time-scale of the old post or for the period after which an Increment is earned in the time-scale of the new post, whichever is less. But if the minimum pay of the time- scale of the new post is higher than his substantive pay in respect of the old post, he will draw that minimum as initial pay; [Emphasis applied]

(iii) when appointment to the new post is made on his own request under rule 15(a) and the maximum pay in the timescale of that post is less than his substantive pay in respect of the old post, he will draw that maximum as initial pay.

Exception.—Telegraph Masters and Telegraphists of the Pakistan Posts and Telegraphs Department who are at their own request transferred from "General Service" to "Station Service" and whose substantive pay in the General Service Scale is higher than the maximum pay of the time scale of the Station Service sanctioned for the Station to which they are transferred will, in addition to the maximum pay in the time-scale of such Station Service, draw personal pay equal to the difference between the two.

(b) If the conditions prescribed in clause (a) are not fulfilled he will draw as initial pay the minimum of the time-scale. Provided, both in cases covered by clause (a) and in cases, other than cases of re-employment after resignation from the public service 29(or after removal from the public service for inefficiency, misconduct or as a disciplinary measure,) covered by clause (b), that if he either—

(1) has previously held substantively or officiated in—

- (i) the same post, or
- (ii) a permanent or temporary post on the same time-scale, or
- (iii) a permanent post other than a tenure post, on an identical time - scale, or a temporary post on an identical time-scale, such post being on the same time-scale as a permanent post, or

(2) is appointed substantively to a tenure post on a time-scale identical with that of another tenure post which he has previously held substantively or in which he has previously officiated, then the initial pay shall not be less than the pay, other than special pay, personal pay or emoluments classed as pay by the President under rule 9(21) (a) (iii), which he drew on the last such occasion, and he shall count for increments the period during which he drew that pay on such last and any previous occasions. If, however, the pay last drawn by the Government servant in a temporary post has been inflated by the grant of premature increments the pay which he would have drawn but for the grant of those increments shall, unless otherwise ordered by the authority competent to create the new post, be taken for the purposes of this proviso to be the pay which he last drew in the temporary post.

Exception.—The condition in paragraph (iii) of the first proviso that the temporary post should be on the same time-scale as a permanent post shall not be enforced when a temporary post is (i) created by one Government or Department for the purpose of work of the same nature as the ordinary work for which permanent posts exist in a cadre under a different Government or Department and (ii) sanctioned on a time-scale identical with the time-scale applicable to the permanent posts in the cadre under the different Government or Department".

Ref: https://www.finance.gov.pk/publications/compilation_of_fundamental_rules_2018_vol_I.pdf

8. We have also adverted to the relevant Notifications/Office Memorandum for our clarity and to examine the legitimacy of claim lodged by the respondent No.1 for the benefit of pay-protection on his fresh appointment with a new assignment. The gist of certain relevant OM(s) are as under: -

i) The O.M No. 4 (2) R-2/1996-235/2010, dated 08.06.2010, issued by Finance Division (Regulations Wing), Government of Pakistan with the subject, "Fixation/Protection of Pay on Appointment from One Post to Another", refers to Finance Division's O.M. No. 4 (2) R-2/96 dated 12th August, 2002, which accentuated in paragraph 02 that "The benefit of protection of pay to the employees of autonomous bodies on their subsequent appointment in government service is not admissible as the employees of autonomous bodies are not civil servant within the meaning of Civil Servant Act, 1973. However, the benefit of pay protection will be admissible to employees of such autonomous organizations who have adopted Scheme of Basic Pay Scales in toto on their appointment in Government offices provided they have applied for the post through proper channel." In view of the aforesaid position, para-2 of the Finance Division's O.M. No. F.4(1)R-2/96 dated 12.08.2002 was substituted accordingly.

ii) The OM No. 7(9)R-1/2012, dated 31.05 2013, issued by Finance Division, (Regulations Wing), Government of Pakistan, with regard to the "Protection of Pay of Contract Employees on Regularization/Appointment on Regular Basis". By means of this O.M, the pay-protection was allowed

to the contract employees on their regularization/appointment on the conditions "i) That the contract appointment has been made on standard terms and conditions circulated by Establishment Division as amended for time to time; ii) That the contract employee has applied through proper channel and has been properly relieved by the appointing authority. This condition shall not apply in case of regularization on the same post; iii) That regularization/regular appointment has been made with the approval of competent authority; iv) That there is no break or interruption between contract service and regular service; v) That the service rendered on contract basis shall not qualify for pension/gratuity; vi) That in case of regular appointment in lower grade pay shall not be protected" In paragraph 02 of this OM, the Ministries/Divisions/Departments were authorized to protect/fix pay in terms of above guidelines with the rider that only those cases may be referred to Finance Division where some clarification or advice of Finance Division is required.

iii) The OM. F.No. 7(9) R-1/2012-1388, dated 06.03.2014, issued by Finance Division, (Regulations Wing), Government of Pakistan, germane to the "Clarification Regarding Protection of Pay of Contract Employees on Regularization/Appointment on Regular Basis". In fact, this OM reflects that certain queries raised for clarification by AGPR, Islamabad and certain Ministries/Divisions/Departments which were answered in the following terms:

S.No.	<u>Queries raised</u>	<u>Clarification</u>
i.	Finance Division's O.M. dated 31st May, 2013 does not contain effective date of implementation. From which date will it take effect.	The said OM. will take effect from the date of its issue i.e 31-05-2013.
ii.	Whether the pay of employees working on daily wages, short-term vacancies and on contract basis, regularized by the Cabinet Sub-Committee is protectable.	The pay of only those contract employees (Non-gazetted), whose appointments have been made on standard terms and conditions in BPS by the competent authority, is protectable.
iii.	Whether employees whose services were transferred from development to non-development side are entitled to pay protection.	Pay is protectable of those employees only whose contract appointment in development side was made in BPS-1 to 15 on standard terms and conditions.
iv.	Whether the pay of contract employees on their regularization in lower grade is protectable or otherwise.	Finance Division's OM. clearly states that in case of regular appointment in lower grade pay shall not be protected.
v.	Whether the contract employees of BPS-1 to 4 who were moved one scale up w.e.f. 01-07-2007 are entitled to protection of pay on regularization.	Yes.
vi.	In case the pay protection is allowed w.e.f 31-05-2013 to all back date cases, please clarify about the date of pay fixation regarding date of regularization or implementation of this policy and whether payment of arrear after 31-05-2013 payable or not.	As stated against (i) above.
vii.	Whether an employee working in a Development Project on his appointment on regular basis in	As stated against (iii) above.

the Ministry, Division and Department is protectable.

- viii. Whether the pay of an employee working on contract basis in the Provincial Government who later on joins a regular post in a Federal Government is also protectable. Yes, subject to conditions, as stated against (ii) above.

(iv) The letter dated No.9(2)R-1/2016-493/2018, communicated by (Zia-ur-Rehman), Section Officer (R-1), Finance Division, Regulations Wing, Government of Pakistan dated 22.11.2018 to Director (Legal), Auditor General of Pakistan, Islamabad on the subject of Misc. Petition No.3283/17 in Appeal No.1730 (R) CS-2015 filed by Mr. Muhammad Banaras Vs. Finance Division etc. was also focused on fixation of pay on regular appointment of employees of autonomous bodies against civil posts under government which is to be regulated by the government policy contained in Finance Division's O.M.No.4(2)R-2/96 dated 12.08.2002 and O.M.No.4(2)R-2/1996-235/2010 dated 08-06-2010. The letter further emphasised that policy affords protection of pay of the employees of those autonomous bodies who have adopted government basic pay scale scheme in totality. The employees of Atomic Energy Commission of Pakistan since have Special Pay Scales, therefore, they are not entitled for protection of pay rendered in the Commission in terms of policy guidelines issued vide Finance Division's O.M.No.4(2)R-2/96 dated 12-08-2002. The same letter further put emphasis on due deference to the Federal Service Tribunal's Judgment dated 19-07-2017 and order of this Court passed in Civil Petition No. 4275/2017, whereby the Finance Division conveyed its NOC for protection of pay to Mr. Muhammad Banaras, Naib Qasid (BS-01) Auditor General of Pakistan (in personam) with the condition that this case cannot be quoted as precedent in future cases.

9. In fact, as per policy, the employees of such autonomous organizations, established through a resolution are extended the benefit of fixation of pay in the manner set out in FR 22 on their subsequent appointment in the government service if they have adopted government pay scale scheme in totality. Furthermore, the employees of Atomic Energy Commission of Pakistan have SPS, therefore, they were not entitled for protection of pay in terms of policy guidelines issued vide Finance Division's O.M.No.4(2)R-2/96 dated 12-08-2002. Neither any such critical aspect was discussed by the FST in the impugned judgment nor was any such assistance provided by the learned counsel for the respondent No.1 to advert to this essential facet of the case.

10. If we look into the niceties of F.R.22, it depicts the criteria of regulating initial substantive pay of a government servant who is appointed substantively to a post on a time-scale of pay and explains that when appointment to the new post involves the assumption of duties or responsibilities of greater importance (as interpreted for the purposes of rule 30) than those attaching to such permanent post, will draw as initial pay the stage of the time-scale next above his

substantive pay in respect of the old post and when appointment to the new post does not involve such assumption, he will draw as initial pay the stage of the timescale which is equal to his substantive pay in respect of the old post, or, if there is no such stage the stage next below that pay plus personal pay equal to the difference, and in either case will continue to draw that pay until such time as he would have received an increment in the timescale of the old post or for the period after which an increment is earned in the timescale of the new post, whichever is less. But if the minimum pay of the time-scale of the new post is higher than his substantive pay in respect of the old post, he will draw that minimum as initial pay.

11. This Court in the case of "Muhammad Azam Chaudhry Vs. Federation of Pakistan", **(Civil Appeal No.1158 of 2009)** in an identical controversy granted the leave to appeal on 03.08.2009 in the following terms:

"The petitioner was employed as Assistant Librarian (B-17) in Barani Agriculture College Rawalpindi, Government of Punjab on 05.01.1987. The College was converted to University of Arid Agriculture by Act V of 1995. Later the petitioner was appointed in the Ministry of Education as Director (B-19) on 12.07.2004 through the Federal Public Service Commission. Before joining the Ministry of Education, his salary was Rs.14,570/- whereas upon joining, his pay was fixed as Rs.12,400/-. He filed departmental appeal for protection of his pay drawn by him in B-18 before joining Ministry of Education. After his appeal was rejected he appealed to the Federal Service Tribunal. By the impugned judgment, the Tribunal referring FR 22, held that the protection of pay would not be granted to a civil servant relating to his previous service in an autonomous body and that protection of pay was restricted to earlier service as civil servant.

2. Learned counsel for the petitioner has cited the judgment of this Court in the case of Syed Abdus Samad Pirzada V. Government of Punjab (2008 PLC (C.S) 264) to contend that the protection of pay is equally applicable regarding the salary drawn by a civil servant previously in an autonomous body.

3. In the light of the said pronouncement, we grant leave to appeal to consider as to whether the Federal Service Tribunal had not erred in not granting relief prayed for to the petitioner."

12. After granting leave to appeal in the aforesaid terms, the Civil Appeal was heard by five members Bench and vide judgment dated 17.02.2016, it was held that the appellant was an employee of the statutory autonomous body having switched over to Government Service is a different creed of employees and cannot claim the benefit of F.R.22 and F.R.22 (a)(i) or (ii) of 1992 which is applicable to Civil Servants on their appointment subsequently to another post as a Civil Servant. The appellant thus failed to make out a case for interference, hence the appeal was dismissed.

13. Yet again in the case of "The Ministry of Finance through Secretary Government of Pakistan, Islamabad Vs. Atiq-ur-Rehman and another" (C.P. No.5046 of 2017), while deciding the similar controversy, this Court relied on the judgment rendered by a five-member bench of this Court in C.A.No.1158 of 2009, and found it squarely applicable to the case, therefore, the respondent (in that case) was not allowed the benefit of pay protection being an employee of autonomous body and since the impugned judgment of FST dated 12.10.2017 was not found in line with the five members bench judgment, it was set aside by this Court.

14. Neither the FST considered the relevant Fundamental Rules nor the pith and substance of relevant Office Memorandums issued from time to time on the subject. Even it failed to consider the five member judgment of this Court but only relied on its earlier judgment passed in Appeal No.1730(R)CS/2015, which was challenged in this Court but the civil petition was dismissed on technical grounds and no question of law was decided, rather this Court merely dismissed the petition due to non-availability of certain papers/notifications on record, which order in our view cannot be treated an order or judgment in rem but on the face of it an order in personam. According to Wharton's Law Lexicon (Fifteenth Edition), a "judgment in rem" is one which declares, defines or otherwise determines the jural relation of a person or thing to the world generally. Ref: Satrucharla v. Vijayarama (2006) 1 SCC 212. A judgment "in rem" amounts to a decision on the status of a specific matter or an individual's rights in respect of a certain matter, which is not only conclusive between the contesting parties but also as against the world. Whereas the expression "in personam", is also a Latin phrase which means "against or affecting a specific person

only; imposing a personal liability, rights and duties". The lawsuit or legal proceedings against a particular person and order or judgment falling within this classification can be enforced against that particular person but not in rem. A judgment "in personam" can be described as a judgment that defines, the rights against contesting persons in relation to a particular subject, or to compel the performance of a particular act or breach of some contractual obligations.

15. In fact, this Court nip it in the bud while dealing the case of Muhammad Azam Chaudhry (supra), wherein it decided the question of law while interpreting the nitty-gritties of F.R-22 vide its judgment dated 17.02.2016. According to the exactitudes of Article 189 of the Constitution of Islamic Republic of Pakistan 1973, any decision of the Supreme Court shall, to the extent that it decides a question of law or is based upon or enunciates a principle of law, is binding on all other courts in Pakistan. The rule of conclusiveness is one of the most inflexible principles of the law. A solemn decision upon a point of law arising in any given case becomes an authority. The Courts and Tribunal are bound to follow that decision so long as it stands unreversed. The doctrine of precedents *vis-à-vis stare decisis*, since both have fundamental values engrained in our judicial system to ensure an objective of certitude and firmness.

16. The impugned judgment was passed by the FST on 05.01.2022 on the foothold that when contract employees who are also non-civil servants, can get their pay-protection vide Finance Division's O.M dated 31.05.2013, then it would be discriminatory not to allow the benefit of pay-protection to other non-civil servants. In our view, there was no rationale to compare or equate two different creed of employees within the one and the same employment status/pattern to invoke or bring up the equality clause or treating it discriminatory rather than considering the grant of pay-protection strictly in accordance with the applicable rules and policy. The FST overlooked and disregarded the judgment rendered by this Court in the case of Muhammad Azam Chaudhry (supra) wherein it was categorically held the employee of statutory autonomous body having switched over to Government Service is a different creed of employees and cannot claim benefit of F.R.22 and F.R.22 (a)(i) or (ii) of 1992 applicable to Civil Servants on their appointment subsequently to another post as a Civil Servant. In the case of Justice Khurshid

Anwar Bhinder and others v. Federation of Pakistan and another (PLD 2010 SC 483), it was held by this Court that where the Supreme Court deliberately, and with the intention of settling the law, pronounces upon a question of law, such pronouncement is the law declared by the Supreme Court within the meaning of Article 189 of the Constitution is binding on all the Courts of Pakistan. It was further held that even *obiter dictum* enjoys a highly respected position as if "it contains a definite expression of the court's view on a legal principle or the meaning of law".

17. It is well-settled exposition of law that when any decision of Court or Tribunal is found in ignorance or lack of knowledge of a relevant statutory provision or a binding decision of court of earlier provisions or decisions, it is called a decision per incuriam when it vividly put on show that the decision was made in unfamiliarity/ignorance or obliviousness of pertinent statutes or precedents as done in this case by the FST.

18. In wake of the above discussion, the aforementioned civil petition is converted into an appeal and allowed. As a consequence, thereof, the impugned judgment passed by the FST is set aside and Service Appeal filed by the respondent No.1 before FST is also dismissed.

Judge

Judge

Judge

Islamabad
05.12.2024
Khalid
Approved for reporting.