

IN THE SUPREME COURT OF PAKISTAN

(Appellate Jurisdiction)

Present:

Mr. Justice Muhammad Ali Mazhar

Mr. Justice Syed Hasan Azhar Rizvi

Civil Petitions No.1925 to 2006 of 2024

(On appeal from the Judgment dated 12.02.2024 passed by the Khyber Pakhtunkhwa Service Tribunal, Peshawar in Service Appeals Nos.1620, 1622 to 1624, 1626 to 1628, 1001, 1022,1052, 698, 723/2022, 1529, 999/2022, 1043, 687, 1049, 1039, 970, 976, 978, 958, 1736, 1053, 1026, 971, 1000, 1032, 711, 1033, 1009, 973, 686/2022, 1525/2023, 995, 1041, 1045, 758, 968, 956, 1017/2022, 1514/2023, 957, 1003/2022, 1524, 1522, 1520/2023, 1050, 961, 977, 1047, 1036, 1048, 751, 1020/2022, 1516/2023, 689, 994/2022, 1518/2023, 974, 1515, 1013/2022, 1523/2023, 738, 1028, 757, 955, 966/2022, 1527/2023, 1008/2022, 1511/2023, 967, 1056, 986, 708, 1002, 1016, 992, 959, 1023 & 714/2022)

Gul Zarif Khan	(CP.1925/2024)
Nawaz Gul	(CP.1926/2024)
Niamat Ullah	(CP.1927/2024)
Hafeez Ullah Khan	(CP.1928/2024)
Salman Khan	(CP.1929/2024)
Waheed Nawaz	(CP.1930/2024)
Israr Ahmad	(CP.1931/2024)
Noor Quresh	(CP.1932/2024)
Hamid Hussain	(CP.1933/2024)
Saqia Hussain	(CP.1934/2024)
Rahmat Ali	(CP.1935/2024)
Rahmanullah	(CP.1936/2024)
Mumtaz Bashir	(CP.1937/2024)
Falal-e-Rabbi	(CP.1938/2024)
Azam Khan	(CP.1939/2024)
Aurang Zeb	(CP.1940/2024)
Amjid Ali	(CP.1941/2024)
Muhammad Usman	(CP.1942/2024)
Mst. Safia	(CP.1943/2024)
Zahid Nawaz	(CP.1944/2024)
Zahid Nawaz	(CP.1945/2024)
Shafiq Muhammad	(CP.1946/2024)
Fida Muhammad	(CP.1947/2024)
Raheel Abbas	(CP.1948/2024)
Muhammad Aamir (Amir Khan)	(CP.1949/2024)
Yasin Khan	(CP.1950/2024)
Mst. Aneela Haq	(CP.1951/2024)
Muhammad Qayum	(CP.1952/2024)
Muhammad Ayub	(CP.1953/2024)
Muhammad Saddique	(CP.1954/2024)
Wajid Khan	(CP.1955/2024)
Atta Ullah Khan	(CP.1956/2024)
Awais Aslam	(CP.1957/2024)
Sardar Ali	(CP.1958/2024)
Khalid Mehmood Qureshi	(CP.1959/2024)
Ikram Ullah	(CP.1960/2024)
Rafi Ullah	(CP.1961/2024)

Taj un Nisa	(CP.1962/2024)
Umar Daraz	(CP.1963/2024)
Mst. Shahida Gul	(CP.1964/2024)
Shafi Ullah	(CP.1965/2024)
Muhammad Sajid	(CP.1966/2024)
Muhammad Asif	(CP.1967/2024)
Muhammad Iqbal	(CP.1968/2024)
Javid Khan	(CP.1969/2024)
Muhammad Younas	(CP.1970/2024)
Abdul Rashid	(CP.1971/2024)
Sardar Shahid Qayyum	(CP.1972/2024)
Irfan Ahmed	(CP.1973/2024)
Zia ul Haq	(CP.1974/2024)
Saeed Sahah	(CP.1975/2024)
Ali Gohar	(CP.1976/2024)
Ghulam Khan	(CP.1977/2024)
Zulfiqar Ali	(CP.1978/2024)
Abdullah	(CP.1979/2024)
Ibrar Ahmad	(CP.1980/2024)
Ali Zaman	(CP.1981/2024)
Muhammad Shah	(CP.1982/2024)
Haider Abbas	(CP.1983/2024)
Habib Ullah	(CP.1984/2024)
Abdul Baqi	(CP.1985/2024)
Muhammad Firdous Abbasi	(CP.1986/2024)
Jehan Badshah	(CP.1987/2024)
Amir Khan	(CP.1988/2024)
Mustafa Naeem	(CP.1989/2024)
Jan Gul	(CP.1990/2024)
Mufti Habib Ullah	(CP.1991/2024)
Israr Shah	(CP.1992/2024)
Qurat-ul-Ain	(CP.1993/2024)
Muhammad Ayaz	(CP.1994/2024)
Jehanzeb	(CP.1995/2024)
Saadat Ali Khan	(CP.1996/2024)
Mst. Nooreen Gul	(CP.1997/2024)
Mst. Abida Nasrin	(CP.1998/2024)
Shaheen	(CP.1999/2024)
Abdul Kabir	(CP.2000/2024)
Zarin Khan	(CP.2001/2024)
Zain-ul-Abidin	(CP.2002/2024)
Mst. Nagina	(CP.2003/2024)
Abdul Hameed	(CP.2004/2024)
Mohammad Zayad	(CP.2005/2024)
Zafar Alam	(CP.2006/2024)
...Petitioners	

Versus

Government of Khyber Pakhtunkhwa through Chief Secretary, Peshawar and others	...Respondents
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For the Petitioners:	Mr. Noor Muhammad Khattak, ASC Mr. Anis Muhammad Shahzad, AOR
For the Respondents:	Mr. Muzammil Khan, Addl. AG KPK a/w Mr. Qayum Khan, Dy. Dir. Mr. Abdur Rasheed, Dy. Secy. Finance
Date of Hearing:	05.11.2024

Judgment

Muhammad Ali Mazhar, J.- The aforesaid Civil Petitions are directed against a consolidated Judgment dated 12.02.2024 passed by the learned Khyber Pakhtunkhwa Service Tribunal, Peshawar ("Tribunal"), in the compendium of Service Appeals.

2. According to the narrative of the petitioners, they are performing their duties in Special Education Centers under the administrative control of the Social Welfare, Special Education and Women Empowerment Department, Government of Khyber Pakhtunkhwa ("KPK Department"). Their contemporaries were working in the Federal Government under the administrative control of the Directorate General of Special Education, Government of Pakistan, Islamabad ("DGSE"), but after 18th Constitutional Amendment ("18th Amendment"), their services were devolved to the province of Khyber Pakhtunkhwa ("KPK"), and presently such persons are working under the administrative control of the KPK Department, and in view of the Notification dated 01.04.2011, issued by the Ministry of Social Welfare and Special Education, the Prime Minister of Pakistan had approved the payment of Health Allowance to the institutions providing Health Services equal to one basic pay of salary. However, when this payment was stopped for certain reasons, litigation ensued, which was ultimately resolved *vide* judgment dated 17.01.2018 passed by the Supreme Court of Pakistan in the case of Federation of Pakistan through Secretary Capital Administration and Development Division, Islamabad and others Vs. Nusrat Tahir and others (2018 PLC (CS) 669). In compliance of the judgment, the Health Allowance was also allowed to the devolved employees *vide* Notification dated 25.11.2019. The present petitioners considered themselves to be at par with the devolved employees and filed departmental appeals for the same allowance but their departmental appeals remained unresponded. Hence, they approached the learned Tribunal for redressal of their grievance, but the Service Appeals were dismissed by means of the impugned judgment on 12.02.2024.

3. The learned counsel for the petitioners argued that the learned Tribunal failed to consider the statutory provision of law as well as the documentary evidence. It was further contended that the petitioners were discriminated against and it is a settled law that once a relief is

granted to a set of employees, other employees being on a similar footing will also be entitled for the same relief. By not granting a similar relief, the vested right of the petitioners was infringed in violation of Articles 4 and 25 of the Constitution of the Islamic Republic of Pakistan, 1973 ("Constitution"). It was further contended that the Regulation Wing of the Finance Department, Government of KPK, issued a Notification on 25.11.2019, whereby the competent authority approved the Health Allowance to the devolved employees working in the Special Education Institutions from the date of their devolution to KPK, but the present petitioners, who claimed discrimination and disparity in the wage structure, were ignored and deprived of this benefit without any intelligible differentia between their services and those of the devolved employees.

4. The learned Additional Advocate General, KPK, argued that the benefit of the Notification dated 25.11.2019, issued by the Government of KPK, cannot be extended to the petitioners as this benefit was only applicable to the devolved employees who were getting this allowance prior to their devolution to the province and had it discontinued, the terms and conditions of service would have been affected. He further argued that this allowance was extended in view of the judgment of this Court reported as **2018 PLC (CS) 669** (*supra*) and in compliance, the Provincial Cabinet approved the Health Allowance to the devolved employees working in the Special Education Institutions from the date of their devolution which has been made admissible only to the employees of the Special Education Institutions of KPK.

5. Heard the arguments. In order to resolve this controversy, it is expedient to examine the Career Structure for Health Personnel Scheme Ordinance, 2011 ("Ordinance"), which was enacted to regulate the appointment to and the terms and conditions of the services of health personnel and was made applicable to all health personnel, serving in the Federal health institutions and related organizations under the Federal Government of Pakistan [emphasis supplied]. According to Section 2 (Definitions Clause) (b) of the Ordinance, "health personnel" means a person who holds a post in any institute or organization delivering services in the health sector and is included in Schedule-I, but does not include (i) a person who is on deputation to the Federal Government from any Province or other authority; (ii) a person who is employed on contract, or on work-charged basis or who is paid from contingencies. Section 4 of the Ordinance delineates the

objective of the Scheme according to which career growth of health professionals has been linked with enhancement in professional education and skills through trainings, continuing education, higher qualifications, professional experience, research papers and performance, as per prescribed criteria, laid down by the relevant regulatory bodies from time to time, where applicable. Under the command of Section 6 of the Ordinance, the terms and conditions of the service of health personnel as were prevailing from the Basic Pay Scales Scheme (BPS 1 to 22) were replaced by the Health Personnel Pay Scales (HPS 1 to 13), as specified in Schedule-II for all health personnel including doctors (medical and dental), allied specialists, pharmacists, nurses, paramedics, and support services personnel, serving in the Federal health institutions and related organizations under the Federal Government. However, Section 8 of the Ordinance is somewhat significant in which it has been clarified that the health personnel under the Scheme shall be entitled to such perks and privileges as may be prescribed by the Federal Government and the monetary benefits of all health personnel under the Scheme, including pay, pension, perks and privileges, shall not be less favorable than those admissible to them before the commencement of the Scheme and the health personnel opting to remain in the existing structure (BPS) shall continue to remain entitled to all the facilities, perks, and privileges currently admissible under the existing laws, orders and instructions, as on the 30th of June, 2011.

6. First and foremost, let us allude to the dictum laid down in the case of Federation of Pakistan through Secretary Capital Administration and Development Division, Islamabad and others Vs. Nusrat Tahir and others (2018 PLC (CS) 669). Indeed, the Federal Government challenged the judgments of the learned Federal Service Tribunal whereby it was declared that the employees of different institutions functioning under the DGSE are entitled to the payment of Health Allowance granted by the Federal Government *vide* its Office Memoranda dated 04.02.2012 and 06.02.2012. Whereas, the learned Deputy Attorney General contended in the aforesaid case that after the lapse of Ordinance on 26.01.2011, the Health Allowance was granted by the Federal Government as compensation to the said health personnel. However, this Court concluded that the allowance was paid to the health personnel of the DGSE and its allied institutions until 27.10.2014 when the Finance Division instructed the AGPR to confine the grant of the allowance to employees of the Federal Government

hospitals and clinics. Therefore, the Memoranda dated 04.02.2012, 06.02.2012, and 27.03.2012 issued by the Finance Division, Government of Pakistan, still hold the field in their original terms; and finally, judgments of the learned Federal Service Tribunal dated 05.10.2015, 11.01.2016 and 18.07.2017 were affirmed by this Court.

7. The petitioners in the instant civil petitions before us have entreated the benefit of the Notification dated 25.11.2019, issued by the Government of KPK, pursuant to the directions issued by this Court whereby the benefit of the Health Allowance was extended to the devolved employees, and in the same notification it was further clarified that the Health Allowance will be admissible only to the employees of Special Education Institutions of KPK who were devolved under the 18th Amendment. It is an admitted position that the present petitioners are not in the category of devolved employees who became employees of the province by virtue of the 18th Amendment. They are the employees of the province since the beginning, whereas the benefit of the allowance was only extended to the devolved employees who were covered under Section 2 (b) of the Ordinance. No such law or rule was ever promulgated by the Government of KPK for extending the same benefits to the originally employed persons to be treated alike.

8. As far as the plea of discrimination or lack of intelligible differentia is concerned, we would like to articulate that persons may be classified into groups and such groups may be treated differently if there is a reasonable basis for such difference. At the same time, the principle of equality does not imply or connote that every law must have universal application to all class of persons. In fact, the oscillating or wavering needs of dissimilar sets of persons, which may have little in common, can be treated differently on logical perspicacity. However, for such classification to meet the standards of fairness, the self-actualization of two vital constituents must be fulfilled. First, the classification must be founded on an *intelligible differentia* which may judiciously distinguish persons or things that are grouped together from others left out of the group, and second, the *differentia* must have a logical and sensible nexus with the object sought to be achieved. Thus, in our view, the expression "*intelligible differentia*" insinuates an act of exodus capable of making sense.

9. In the case of Pakcom Limited Vs. Federation of Pakistan (PLD 2011 SC 44), this Court held that it would not be enough to say that a

piece of legislation or a policy formulated thereunder is discriminatory, but it is to be substantiated by applying certain well entrenched principles on the subject of discriminatory legislation such as (i) the expression 'equality before law' or the 'equal protection of law' does not mean that it secures for all persons the benefit of the same laws and the same remedies. It only requires that all persons similarly situated or circumstanced shall be treated alike; (ii) the guarantee of equal protection of law does not mean that all laws must be general in character and universal in application and the State has no power to distinguish and classify persons or things for the purpose of legislation; (iii) the guarantee of equal protection of laws forbids class legislation but does not forbid reasonable classification for the purpose of legislation. The guarantee does not prohibit discrimination with respect to things that are different. The State has the power to classify persons or things and to make laws applicable only to the persons or things within the class; (iv) the classification, if it is not offending a constitutional guarantee, must be based upon some intelligible differentia bearing a reasonable and just relation to the object sought to be achieved by the legislation; (v) reasonableness of classification is a matter for the courts to determine and when determining this question, the courts may take into consideration matters of common knowledge, matters of common report, the history of the times, and to sustain the classification, they must assume the existence of any state of facts which can reasonably be conceived to exist at the time of the legislation; (vi) the classification will not be held to be invalid merely because the law might have been extended to other persons who in some respect might resemble the class for which the law is made because the legislature is the best judge of the needs of particular classes and the degree of harm so as to adjust its legislation according to the exigencies found to exist; (vii) one who assails the classification must show that it does not rest on any reasonable basis; (viii) where the legislature lays down the law and indicates the persons or things to whom its provisions are intended to apply and leaves the application of law to an administrative authority while indicating the policy and purpose of law and laying down the standards or norms for the guidance of the designated authority in exercise of its powers, no question of violation of Article 25 of the Constitution arises; (ix) where the State itself does not make any classification of persons or things and leaves it in the discretion of the Government to select and classify persons or things, without laying down any principle or policy to guide

the Government in the exercise of discretion, the statute will be struck down on the ground of making excessive delegation of power to the Government so as to enable it to discriminate between the persons or the things similarly situated.

10. In the case at hand, we do not find any case of discrimination between the two different categories of employees; those devolved and absorbed by the province under the command of 18th Amendment and those who were provincial employees from the very first day of their employment and were never extended any such allowance provincially that had been extended to the federal government employees under the Ordinance. This allowance subsequently extended by the Government of KPK pursuant to the judgment of this Court, with the rider that the same shall apply only to the employees of the Special Education Institutions of KPK devolved under the 18th Constitutional Amendment. Under the sphere of judicial review, the Court may review the lawfulness of a decision or action made by a public body. The Court may invalidate laws, acts, and governmental actions that are incompatible with a higher authority. Though the power of judicial review of a governmental policy is now well-settled, in which neither the court can act or represent as an appellate authority with the aim of scrutinizing the rightness or aptness of a policy nor may it act as an advisor to the executives on matters of policy which they are entitled to formulate, but this can be sought when a decision-maker fails to observe statutory procedures, misdirects itself in law, exercises a power wrongly, improperly purports to exercise a power that it does not have, or the policy decision was so unreasonable that no reasonable authority could ever have come to it [Ref: Judgments authored by one of us in the cases of Federation of Pakistan Vs. Shuja Sharif (2023 SCMR 129) & Syed Azam Shah Vs. Federation of Pakistan (2022 SCMR 201)].

11. In wake of the above discussion, we do not find any illegality or perversity in the judgment of the learned Tribunal which may warrant any interference on granting leave to appeal. However, after arguing the matter in extenso, the learned counsel for the petitioners, on instructions, submits that though at departmental level, their challenge has failed, but the petitioners look forward to making a joint representation to the Government of KPK for consideration of the alleged disparity in the pay structure on which the learned Additional Advocate General submits that if any such representation is filed at

the governmental level, the same will be considered and decided within a period of three months from the date of its filing. The aforementioned civil petitions are disposed of accordingly.

Judge

Judge

Islamabad
5th November, 2024
Mudassar
Approved for reporting