

**THE SUPREME COURT OF PAKISTAN**

(Appellate Jurisdiction)

**Present:**

**Justice Sardar Tariq Masood, ACJ**

**Justice Syed Mansoor Ali Shah**

**Justice Athar Minallah**

**Civil Petitions No.928-L to 930-L of 2021**

*(Against the judgment dated 12.02.2021 of the Punjab Service Tribunal, Lahore passed in Appeals No.1137, 1138 and 1139 of 2020)*

*The Secretary School Education,  
Government of the Punjab,  
Lahore etc.*

*...Petitioners in all cases*

*Versus*

*Riaz Ahmed*

*...Respondent in CP-928-L/2021*

*Muhammad Iqbal Khan*

*...Respondent in CP-929-L/2021*

*Abdul Salam*

*...Respondent in CP-930-L/2021*

For the petitioners:

Barrister Mumtaz Ali, Additional Advocate  
General,  
Punjab a/w Akram, Litigation Officer  
M. Zahid Aslam, DEO (SE), Khanewal  
(in all cases)

For the respondents:

In person. (in all cases)

Date of hearing:

19 December 2023

**ORDER**

**Athar Minallah, J.** The Secretary Schools Education, Government of Punjab ('**petitioner**'), has sought leave against the judgment dated 12.02.2021 of the Punjab Service Tribunal, Lahore ('**Tribunal**') whereby appeals filed by the respondents were allowed.

2. The respondents were appointed on contract basis in the year 1995 against the post of 'Graduate Primary Teacher' in BS-14. The appointments were temporary and the terms and conditions were expressly stated in the appointment orders. The extension of the contractual terms was subject to satisfactory performance of the appointees and regularization of services was dependent on the success of the 'overall scheme'. It was further provided that necessary rules will be framed to regularize the services. It is evident from the record placed

before us that the respondents continued to serve on contract basis till 2004, when they were regularized along with more than two hundred other similarly placed appointees vide order, dated 23.12.2004, issued by the Education Department, Government of Punjab. It was expressly stated in the order that the services were being regularized with effect from the date when the appointees had joined the service. It was further stated that upon regularization the 'Graduate Primary Teachers' would attain the status of civil servants for the purposes of the Punjab Civil Servants (Appointment & Conditions of Service) Rules, 1974 (**'Rules of 1974'**) read with the Punjab Education Department (School Education) Recruitment Rules, 1987 (**'Rules of 1987'**). It was also provided that they shall become eligible to the service benefits, including financial benefits, which are admissible to a civil servant. The decision of the Government of Punjab was followed by the issuance of a notification addressed to the respective District Education Officers (DEOs). As already noted, more than two hundred 'Graduate Primary Teachers' had benefited from the regularization policy. However, not more than a few filed representations after having been regularized for grant of 'selection grade'. Their representations were considered but the claim was turned down because the 'Graduate Primary Teachers' had not been declared eligible for the grant of selection grade under any policy formulated by the Government. The respondents preferred appeals before the Service Tribunal, which were allowed vide the impugned judgment dated 12.02.2021, on the basis of Rule 8(3) of the Punjab Civil Servants Pay Revision Rules, 1977 (**'Rules of 1977'**) read with the notification dated 25.08.1983 (**'Notification dated 1983'**).

3. We have heard some of the respondents who have appeared in person. They could not show any policy of the Government which entitled the 'Graduate Primary Teachers' for the grant of 'selection grade'. They

have solely relied on Rule 8(3) of the Rules of 1977 and the notification dated 1983. We have examined Rule 8 (3) of the Rules of 1977 which provides that where, for a class of posts, apart from the ordinary pay scale, a higher pay scale has been sanctioned for a percentage of the number of said posts, then, in such an eventuality, the higher pay scale shall be admissible to the holders of the post in BS-1 to BS-16, subject to a minimum length of two years service in the ordinary pay scale of the said posts. A higher pay scale was never sanctioned for the post of 'Graduate Primary Teacher' and, therefore, the aforementioned rule was not attracted in the case of the respondents. We have also perused the notification dated 1983 and it does not include the post of 'Graduate Primary Teacher' for the purposes of grant of selection grade. In response to our query, the respondents have candidly conceded that the Government had not formulated any policy regarding the grant of selection grade for the post of 'Graduate Primary Teacher'.

4. The grant of selection grade is not one of the modes of appointment described under the Punjab Civil Servants Act, 1974 (**Act of 1974**) nor the Rules of 1974 or the Rules of 1977. The grant of selection grade is not an appointment against a post in the mode of promotion. The expression 'promotion' is defined in the Act of 1974 as meaning appointment of a civil servant to a higher post in the service or cadre to which the latter belongs. Selection grade is thus not an appointment against a higher post but is meant to extend financial benefits of a higher grade. The selection grade is meant to financially compensate a civil servant who, despite serving against a particular post for a considerably long period, does not have the prospect of being promoted to a higher post. It is within the exclusive domain of the Government to consider and decide whether a civil servant is to be compensated for serving on a post without having the prospects of being promoted to a higher post. It is an executive

function performed through formulating a policy in the case of each post. The grant of selection grade and its eligibility criterion is thus necessarily governed under a policy which has to be formulated by the Government. It is not one of the terms and conditions of the civil servant under the Act of 1974 nor the Rules of 1974 or the Rules of 1977. A right, therefore, does not accrue in favour of a civil servant to claim selection grade in the absence of a specific policy that has been competently formulated by the Government. No court or tribunal has the power and jurisdiction to compel the Government to make a policy, or to interfere with a policy which has been competently made in relation to a specified post. As a corollary, the tribunal is bereft of jurisdiction to assume that a right exists in favor of a civil servant for the grant of selection grade unless the Government has formulated a policy. In the present case, the learned tribunal has not appreciated that no policy was formulated by the Government in the case of the post of 'Graduate Primary Teacher' nor was the said post covered under any policy relating to other specified posts.

5. The learned tribunal has held that the withdrawal of the policy by the Government in 2001, regarding the grant of selection grade relating to posts other than the post of 'Graduate Primary Teacher', did not affect the right of the respondents since they were regularized from the date of joining their service. As already discussed, the policy did not cover the post of 'Graduate Primary Teacher' for the grant of selection grade. The policy was withdrawn when the services of the respondents were not regularized and their contractual terms and conditions did not entitle them to claim selection grade. Even if it is assumed that the policy withdrawn by the Government in 2001 had explicitly applied to the post of 'Graduate Primary Teacher' even then the respondents would not have been eligible because a right had not accrued during the subsistence of the policy. The retrospective regularization, after withdrawal of the policy,

could not create a right to claim a financial benefit which otherwise did not exist at the relevant time i.e when the policy remained enforced. Nonetheless, the policy withdrawn in 2001 did not include the post of 'Graduate Primary Teacher' for the grant of selection grade and, therefore, no right had accrued in favour of the respondents. The Tribunal, in the absence of a policy specifically covering the grant of selection grade for the post of 'Graduate Primary Teacher' was not competent to purportedly create a right in favour of the respondents.

6. For the foregoing reasons, these petitions are converted into appeals and allowed by setting aside the impugned judgment.

ACJ.

J.

J.

Islamabad  
19.12.2023  
M. Azhar Malik+Rameen Moin/\*

Approved for reporting.