IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

PRESENT:

JUSTICE MUHAMMAD ALI MAZHAR
JUSTICE SYED HASAN AZHAR RIZVI

CIVIL PETITION NO.1124-K of 2023
(Against judgment dated 27.07.2023 passed by the Federal Service Tribunal, Islamabad (Karachi Bench) in Appeal No.134 (K) CS/2021.)

Federation of Pakistan through Secretary Finance Division and another **... Petitioners**

Vs.

Abdul Rasheed Memon **... Respondent**

For the Petitioners : Mr. Khalique Ahmed, DAG

Respondent : In person.

Date of Hearing : 20.12.2024

Judgment

Muhammad Ali Mazhar-J. This Civil Petition is directed against the judgment dated 27.07.2023, passed by the learned Federal Service Tribunal ("**Tribunal"**) in Appeal No.134(K)CS/2021, whereby the service appeal filed by the respondent was allowed with directions to the department to accord the respondent the benefit of the earlier judgment of the learned Tribunal dated 04.02.2019, passed in Appeal No.1815(R)CS/2017, and fix the respondent/appellant's pay at the next stage with all consequential benefits.

2. The brief facts of the case are that the respondent approached the learned Tribunal asserting that the President of Pakistan had sanctioned a 15% increase in pay effective from 01.07.2007 for civil employees of the Federal Government. The Finance Division, Government of Pakistan, accordingly devised and issued the Basic Pay Scales, 2007, which replaced the existing Basic Pay Scales,

2005. Since the point-to-point fixation of pay formula prescribed in para-3(i) of the Office Memorandum of Pay Scales 2007 failed to ensure a 15% increase in basic pay as sanctioned in para-1 of the memorandum, the respondent filed a service appeal, and prayed for directions to fix his pay in the light of earlier decisions of the Finance Division by allowing a specific increase at the correspondence stage equal to this pay, or, if no such stage existed, at the next higher stage in the relevant pay scale; and, further, that the orders of the President should be accorded a beneficial interpretation rather than causing financial loss.

3. The learned Deputy Attorney General ("DAG") argued that the learned Tribunal has wrongly held that the Office Memorandum (O.M.) was not complied with. In fact, the department has correctly increased the respondent's pay according to the O.M. applicable at the time. He further argued that the respondent's appeal was time-barred and lacked lawful justification for condonation of delay. It was further contended that the pay was fixed based on a point-to-point fixation formula uniformly applicable to all scales without any discrimination by the department. However, as per international standards and practices, the figures were rounded off to the nearest 10th or 5th value of annual increments. He further argued that the learned Tribunal has no role to play in the policy domain of the Government unless the policy is proved to be arbitrary, patently illegal, or unreasonable. The learned DAG further invited our attention to page 41 of the paper-book, which contained an undertaking tendered by the respondent to the department wherein the respondent clearly acknowledged that he would refund the amount received under the revised pay scale of 2007 in view of the earlier judgment, if the judgments rendered in Appeal No.102-(K)CS/2019, dated 21.05.2020, and Appeal No.1815(R)CS/2017, dated 04.02.2019, are set aside by this Court. The learned DAG further pointed to page 84 of the paper-book, which contained a copy of the judgment passed by this Court in CPLA No.947/2019 and CPLA No.974/2019, whereby the judgment of the Tribunal passed in Appeal No.1815(R)CS/2017 was set aside. As his closing statement, the learned DAG argued that the very judgment relied upon by the Tribunal in the impugned judgment is no more in field.

4. The respondent, present in person, argued that the petitioner had filed a review petition before the Tribunal against the same impugned judgment, which was dismissed, but the order dismissing the review petition was concealed from this Court. Hence, at this stage, this Court cannot revisit the impugned judgment of the learned Tribunal as it has attained finality. He further averred that his case was distinguishable from the earlier judgment of the learned Tribunal, therefore, he is not liable to refund the amount. However, he did not deny his undertaking highlighted by the learned DAG, which formed part of the paper-book, wherein he himself referred to the same earlier judgment of the learned Tribunal.

5. Heard the arguments. It is evident that the impugned judgment of the learned Tribunal is wholly based on its earlier judgment dated 04.02.2019, rendered in Appeal No.1815(R)CS/2017. In allowing the service appeal, the Tribunal issued same directions to the department to fix the appellant's pay before the Tribunal at the next stage in compliance with the President's order, along with all consequential benefits. The impugned judgment further reflects that one Abdul Shakil Khan also raised the same issue in Appeal No.102(K)CS/2019, which was disposed of by the learned Tribunal with the observation that while the judgment was passed in Appeal No.1815(R)CS/2017 on 04.02.2019, no proper steps have been taken for its implementation. Since there was no stay order passed by this Court against the said judgment therefore, the department was directed to implement the judgment in its letter and spirit without fail.

6. Though it is reflected from the impugned judgment that the Finance Division had categorically articulated that the judgment of the learned Tribunal passed in Appeal No.1815(R)CS/2017 is under challenge before the Supreme Court by means of CPLA No.947/2019 and CPLA No.974/2019 but the learned Tribunal simply observed that the judgment of the Tribunal continued to hold the field until it is set aside. The learned Tribunal held that the department cannot increase the pay by less than 15%, therefore, it has not only violated the orders of the President but has also acted in contravention of Section 21 of the General

Clauses Act, 1897, by reducing the increase in basic pay from 15% to a lower stage. When all was said and done, the learned Tribunal allowed the appeal on the sole footing and strength of its earlier judgment in Appeal No.1815(R)CS/2017.

7. The comments filed by the Secretary Finance Division before the learned Tribunal reveal that the respondent was drawing Rs. 17,455/- (under the 2005 Scales) and his pay was revised/fixed at Rs. 20,060/- (under the 2007 Scales), reflecting an increase of 14.92%. He claimed that his pay had not been increased by 15% and requested a re-fixation in accordance with the Finance Division's O.M. No.F.1(1)/Imp/2007 dated 13.07.2007, which has already been addressed in the judgment of the Tribunal in Appeal No. 1815(R)CS/2017 dated 04.02.2019. The comments further clarified that, as per the aforesaid O.M., the basic pay of an employee as of 30.06.2007 was to be fixed in the Revised Basic Pay Scale on a point-to-point basis, corresponding to the stage occupied above the minimum of the 2005 Basic Pay Scales. According to them, on the basis of the point-to-point fixation formula, the pay of the respondent was fixed at the 12th stage in accordance with the uniformly applicable formula, but as per international standards and practices, the figures were rounded off to the nearest 10th or 5th value for annual increments, as can be seen in Basic Pay Scales 2007. Another crucial aspect that cannot be ignored is that the respondent himself submitted an undertaking to the department that he will refund the amount, which he secured in view of the earlier judgment, in case the judgment of the Tribunal in Appeal No. 1815(R)CS/2017 is set aside by this Court.

8. It is quite discernable that, while setting aside the judgment of the learned Tribunal in Appeal No.1815(R)CS/2017, this Court duly considered and resolved the fundamental issue of rounding off. According to the learned Tribunal, the department had wrongly calculated figures under international standards and practices at the time of fixing pay as per revised pay scales and while granting increments to civil servants in 2007. After due consideration, this Court held that the figures were rounded off to the nearest 5th or

10th value as stated in the memorandum by the Federal Board of Revenue dated 27.01.2017, which is an accounting practice adopted by the Finance Ministry under international standards, and the Court found no illegality in it, as such rounding off is a universal practice. Consequently, the judgment of the learned Tribunal was set aside by this Court.

9. What, in fact, is the point-to-point pay fixation formula? For all intents and purposes, it commands the fixation of pay in the revised pay scale, if any, at the stage in the relevant revised basic pay scale that corresponds to as many stages above the stage occupied by a civil servant/employee above the minimum of the modified/revised basic scale. The department's stance was that the point-to-point fixation formula was strictly adhered to in the case of the respondent, albeit with slight rounding off of figures as per international accounting practices. According to the accounting/mercantile system or practice, a number is simplified by keeping its value intact but rounding it to the nearest whole number. This process, termed as "rounding off", may be applied to whole numerals or decimals at several places; to hundreds, tens or tenths, in order to maintain the value.

10. The arithmetic rounding off method is the most common rounding algorithm and is based on the "round to nearest" rule. It rounds a number to the nearest whole number, with numbers exactly halfway between two whole numbers rounded to the nearest even number. The International Financial Reporting Standards (IFRS), developed by the International Accounting Standards Board (IASB), is a set of accounting standards which includes guidelines on rounding financial numbers in financial statements, such as the requirement of rounding amounts to the nearest whole number or the nearest multiple of 10. Similarly, the Generally Accepted Accounting Principles (GAAP) in the United States includes similar guidelines on rounding financial numbers as IFRS [Ref: https://www.foundingminds.com/rounding-numbers-in-the-financial-domain].

11. Last but not least, the most crucial aspect of this case is that the learned Tribunal passed the impugned judgment on

27.07.2023, at a time when this Court had already set aside the judgment of the learned Tribunal on 28.04.2022. According to the learned DAG, this crucial aspect was brought into the notice of the learned Tribunal, but it failed to consider it adequately, and only cursorily mentioned it in the impugned judgment, as if leave was granted by this Court, which assumption was totally incorrect.

12. It is common protocol that, in cases of affirming, setting aside, or even modifying any order or judgment of any court, tribunal, or quasi-judicial authority, a copy of the judgment is transmitted by this Court for information, future guidance, or implementation. However, it is rather far-fetched and inconceivable that the judgment of this Court dated 28.04.2022 was not brought to the attention of the learned Tribunal, which passed the impugned judgment on 27.07.2023, when the reliance of the learned Tribunal on its earlier judgment was absolutely unserviceable and was no longer in the field.

13. In the case of Justice Khurshid Anwar Bhinder v. Federation of Pakistan **(PLD 2010 SC 483)**, it was held 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 of the Islamic Republic of Pakistan and is binding on all of the courts of Pakistan. It was further held that even *obiter dicta* enjoy a highly respected position as if they contain a definite expression of the Court's view on a legal principle or the meaning of a law.

14. The verdict of a court is considered *per incuriam* when it is rendered in ignorance of a statute or rule having the force of statute [Ref: Rupert Cross & J.W. Harris, *Precedent in English Law*, 149 (4th ed., 1991); *Black's Law Dictionary* (9th Edition)]. According to C.C.K. Allen in *Law in the Making* (Page 246), *per incuriam* means "*per ignorantiam*", that is, ignorance of a statute or of a rule having statutory effect which would have affected the decision if the Court had been aware of it. In the case of Huddersfield Police Authority v. Watson [**(1947) 2 All E.R.193**], it was held that where a case or statute had not been brought to the Court's attention and the Court gave the decision in ignorance or forgetfulness of the

existence of the case or statute, it would be a decision rendered in *per incuriam* (Also see: Morelle Ltd. v Wakeling [**(1955) 2 QB 379**] & Young v. Bristol Aeroplane Co. Ltd. (**1944 KB 718 at 729 = (1944) 2 All E.R. 293 at 300**).

15. The doctrine of *Stare Decisis* is a Latin term that connotes "let the decision stand" or "to stand by things decided". No doubt, according to the hierarchical façade and veneer of our judicial system, the dominant consideration is that the law declared by this Court should be certain, translucent, and rational, as most decisions not only constitute a determination of rights of parties, but also set down a declaration of law that serve as binding principles in future cases, thereby contributing to the development of jurisprudence. The doctrine of precedents, *vis-à-vis stare decisis*, has fundamental value in ensuring an objective of certitude and firmness in the legal system. The rule of adherence to judicial precedents finds it expression in the doctrine of *stare decisis*. This doctrine posits that, when a point or principle of law has officially been decided or settled by the ruling of a competent court in a case where it was directly and necessarily involved, it will no longer be considered as open to re-examination or to a new ruling. This policy of the courts is conveniently termed as the doctrine of *stare decisis*. The rationale behind this policy is the need to promote certainty, stability, and predictability in the law.

16. In the wake of above discussion, this Civil Petition is converted into an appeal and allowed. As a consequence, thereof, the impugned judgment of the learned Tribunal is set aside and Service Appeal No.134(K)CS/2021, filed by the respondent before the learned Tribunal, is dismissed.

Judge

Judge

Karachi
20th December, 2024
Khalid
Approved for reporting.