

**SUPREME COURT OF PAKISTAN**  
(Appellate Jurisdiction)

**PRESENT:**

Mr. Justice Gulzar Ahmed, CJ  
Mr. Justice Ijaz ul Ahsan  
Mr. Justice Sayyed Mazahar Ali Akbar Naqvi

**CIVIL APPEAL NO.550 OF 2020**

[Against the judgment dated 17.12.2018, passed by the Federal Service Tribunal, Islamabad in Appeal No.1571(R)CS/2016]

***Secretary Finance, Finance Division, Pak.  
Secretariat Islamabad.***

*...Appellant*

***Versus***

***Muhammad Farooq Khan son of Adil  
Khan, Secondary School Teacher (BPS-18)  
Islamabad Model School for Boys, G-6/4,  
Islamabad and others.***

*...Respondents*

For the Appellant (s) : Mr. Sajid Ilyas Bhatti, Additional  
Attorney General for Pakistan  
Mr. Khan Hafeez, Joint  
Secretary, Finance Division  
Mr. Sajid Javed, Legal Assistant,  
Finance Division

On Court's Notice

For Finance Division : Mr. Kamran Afzal, Secretary

For Ministry of Federal : Ms. Farah Hamid Khan,  
Education and Secretary  
Professional Training

For Establishment : Dr. Ijaz Munir, Secretary  
Division

For the Respondent(s) : Ms. Shireen Imran, ASC  
Syed Rifaqat Hussain Shah,  
AOR

Date of Hearing : 10.03.2021

**ORDER**

**GULZAR AHMED, CJ.-** Respondent No.1 (*the  
respondent*) was working as Secondary School Teacher (**SST**)  
(BPS-17) in the Islamabad Model School for Boyes, G-6/4,

Islamabad, under the Federal Directorate of Education. Vide Notification dated 11.04.2013, the respondent was promoted through time-scale from BPS-17 to BPS-18. On grant of such time-scale promotion, the respondent was not granted one premature increment, as such, he filed a departmental representation on 27.05.2015. The same having not been responded by the department, the respondent filed Service Appeal No.1269(R)(CS)/2015 before the Federal Service Tribunal, Islamabad (**the Tribunal**) on 11.08.2016. The said appeal was disposed of vide order dated 14.01.2016, with the direction to the department to decide the representation of the respondent within 3 months. Vide order dated 19.07.2016, the departmental representation of the respondent was rejected, against which the respondent filed a service appeal, which was allowed by the Tribunal vide impugned judgment dated 17.12.2018, directing the appellant to grant pre-mature increment to the respondent. Being aggrieved, the appellant challenged the same before this Court through a civil petition for leave to appeal, wherein leave was granted vide order dated 02.06.2020.

2. We have heard the arguments of the learned Additional Attorney General for Pakistan so also the learned counsel appearing for the respondents. We have also heard the Secretary Finance Division, Secretary Establishment Division so also the Secretary, Ministry of Federal Education and Professional Training and perused the record of the case.

3. The learned Additional Attorney General for Pakistan has contended that grant of time scale from BPS-17 to BPS-18 to the respondent was not a promotion as neither the post of the

respondent on which he was working in BPS-17 on grant of time scale in BPS-18 was changed nor was he granted any higher responsibility and for grant of promotion, criteria is fixed and only after meeting the criteria, the Departmental Promotion Committee (DPC) recommends granting of promotion. He contends that no DPC was held for considering the grant of time scale promotion to the respondent from BPS-17 to BPS-18. He further contends that the Establishment Division through its Office Memorandum (O.M.) dated 19.09.2011 has opined that grant of time scale formula without change in designation of posts does not involve up-gradation. He also relied upon the Finance Division's letter dated 23.05.2001, where it has been opined that grant of time scale is a special dispensation and is totally different from promotion and up-gradation. He has further contended that the respondent has not challenged the Notification dated 14.04.2013, which was issued pursuant to Establishment Division's Office Memorandum dated 19.09.2011 and thus, no relief could be granted to the respondent.

4. The learned Additional Attorney General has further contended that the Tribunal in the impugned judgment has omitted to consider overall formula of granting of time scale and erroneously held that time scale promotion was a promotion in service. He contended that the judgment of this Court in the case of Government of the Punjab through Secretary Services, Punjab, Lahore and 4 others v. Muhammad Awais Shahid and 4 others (1991 SCMR 696), was not applicable to the facts and circumstances of the present case and was distinguishable. He further contended that the judgment of this Court dated

04.04.2017, passed in the case of Ministry of Finance through its Secretary, Islamabad v. Muhammad Israil, Superintendent and another (Civil Appeals No.2290 to 2298/2016), was also not applicable to the facts and circumstances of the present case.

5. The learned Additional Attorney General ultimately requested for setting aside of the impugned judgment and allowing the appeal.

6. The learned counsel for the respondent on the other hand has contended that through grant of time scale, the respondent was promoted from the post of BPS-17 to BPS-18 and therefore, on grant of this promotion, the respondent was entitled to premature increment. He has supported the impugned judgment.

7. The background of the controversy arose from the Summary dated 03.02.2011, moved to the then Prime Minister by the Ministry of Education, Government of Pakistan on the subject of Implementation Plan For Uniformity Of Education System In ICT, as directed by the then Prime Minister of Pakistan. It referred to a meeting dated 01.02.2010, under the Chairmanship of the then Prime Minister in which it was decided to make ICT Education System as a role model for the whole country through:

- d. Up-gradation of teachers working in ICT.
- e. Capacity building of the teachers working in ICT.
- f. Up-gradation of physical infrastructure of F.G. Educational Institutions for merger with IMCs.

8. The Federal Directorate of Education under the Ministry of Education proposed implementation plan with the following recommendations:-

- g. Up-gradation of all Matric Trained Teachers BPS-09 to BS-14 and Trained Undergraduate Teachers (TUGT) BS-14 to BS-16 being in line with National Education Policy, 2009.
- h. up-gradation of teachers BS-16 and above through time scale promotion formula.
- i. Provision of charge allowance, hard area allowance and transport facility to the teachers.
- j. Capacity building of all teachers through well planned training courses.
- k. Up-gradation of Physical Infrastructure of F.G. Schools and Colleges at par with IMCs.
- l. All Schools and Colleges be named as Islamabad Model Colleges.

9. On these recommendations, the Minister of Education on 08.11.2010 in his speech announced as follows:-

- All Educational Institutions of Islamabad Capital Territory shall be named and administered as Islamabad Model Schools and Colleges thus eliminating evening shift from all Islamabad Model Colleges with effect from Jan, 01, 2011.
- Agreed in principal with the proposal of up-gradation all Matric Trained Teachers BPS-09 to BS-14 and Trained Undergraduate Teachers (TUGT) BS-14 to BS-16 and up gradation of all teachers of BS-16 and above through a Time-Scale Formula which should be finalized in consultation with Ministry of Finance and Establishment Division for implementation from January, 01.2011.
- Agreed to the enhancement of charge allowance of the principals/heads of the institutions as proposed. Date of implementation to be decided in consultation with Ministry of Finance.
- Transport facility for the students and teachers especially in the rural areas should be arranged by the Ministry of Education in collaboration with CENICP.
- Agreed to the establishment of Federation Public School and also consider the establishment of a Model University in Islamabad to cater for the affiliation needs of ICT graduates & Post Graduate Colleges, which are presently affiliated to University of Punjab Lahore.

4. It is stated that more than 13000 teachers are anxiously waiting for implementations of the HISTORIC ANNOUNCEMENT OF THE HONORABLE

PRIME MINISTER OF ISLAMIC REPUBLIC OF  
PAKISTAN.

5. The Prime Minister Secretariat is, therefore, requested to kindly direct Ministry of Finance and Establishment Division for their further necessary action to ensure implementation of the Directives.

-sd-

(M. Athar Tahir)  
Secretary

P.S. to Prime Minister PM Secretariat Islamabad.  
U.O. No.F 1/1/DG-FDE Dated 03.02.2011"

10. Pursuant to the above Summary, the Finance Division through its Office Memorandum dated 18.02.2011 approved the up-gradation of posts and also up-gradation of teachers of BPS-16 and above through time scale. On this approval by the Finance Division, the Capital Administration and Development Division (the CADD) through Notification dated 14.05.2011 made amendments in the recruitment rules of Federal Schools. The Establishment Division through its Office Memorandum dated 19.09.2011 gave its opinion that time scale formula is simply grant of higher scale without change in designation of posts and does not involve up-gradation of posts and amendment in recruitment rules and therefore, exclusively concerns Finance Division and advised the CADD to take up the matter with the Finance Division to work out details of the formula in continuation of its O.M. dated 18.2.2011. On 05.10.2011, the Prime Minister was pleased to approve para-5 of the summary.

11. The CADD issued Notification dated 14.10.2011 for adopting time scale formula for implementation of the Prime Minister directives such Notification is as follows:-

"Government of Pakistan  
Cabinet secretariat  
CAPITAL ADMINISTRATION & DEVELOPMENT DIVISION

Islamabad the October 14, 2011

**NOTIFICATION**

No.F.1-1/2011-EDU. Following time scale formula shall be adopted for implementation of Prime Minister's Directive No.2605 dated 17.02.2011 (also concurred to by Finance Division OM No.F.1(13)/R-1/2010-203 dated 18<sup>th</sup> February, 2011) for teachers in BS-16 & above under the Federal Directorate of Education w.e.f. 01.01.2011: -

S #	BPS of Teaching Staff	Years of service required for next higher scale
1.	BS-17	Five years in BS-16.
2.	BS-18	Five years in BS-17 or 10 years in BS-16 and BS-17.
3.	BS-19	Seven years in BS-18 or 12 years in BS-17 and BS-18.
4.	BS-20	Seven years in BS-19 or 19 years in BS-17 and above.
5.	BS-21	Five years in BS-20 or 24 years in BS-17 and above.

2. The promotion through above formula will be subject to the following terms and conditions.

- i. The service rules, nomenclature/tiers of the posts and seniority of the teachers shall remain intact.
- ii. The promotion through time scale will be subject to fitness of candidate and recommendations of relevant DPCs and Selection Boards.
- iii. There would be no consecutive time scale promotions.

-sd-

(MUHAMMAD RAFIQUE TAHIR)  
Joint Educational Advisor"

12. On 09.02.2012, the Federal Directorate of Education issued a Notification by which it promoted Trained Graduate Teacher (TGT) (BPS-16) to the post of Senior School Teacher (SST) (BPS-17) with effect from 01.01.2011 and in such Notification the name of the respondent was mentioned at Serial No.308, which is as follows:-

**"TO BE PUBLISHED IN PART-III OF GAZETTEE OF  
PAKISTAN**

GOVERNMENT OF PAKISTAN  
Federal Directorate of Education

Islamabad the February, 09, 2012

**NOTIFICATION**

No.F.16-17/2012 (ii) (SST) FDE.....In pursuance of Capital Administration & Development Division's (CA & DD) Notification No.F.2-1/2011 (ii) – (Education), dated January 24, 2012, the following Trained Graduate Teachers (TGT) (BPS-16) are hereby promoted to the post of Secondary School Teachers (SST) BS-17 (Ex. Deputy Headmaster) with effect from 01-01-2011 and placed in the institutions as mentioned against each:

Sr. No.	Name	Date of Birth	Institution
1.	Mr. Jalil Ahmed	05-07-1951	IMCB Rawat, Islamabad
...	...	...	...
308.	Mr. Farooq Khan	06.01.1963	IMSB, G-6/4, Islamabad
...	...	...	...

2. The incumbents are eligible to draw the financial benefits w.e.f. 01.01.2011 and their seniority will be determined as per Civil Servants (Seniority) Rules, 1993.

3. This issues with the approval of Director General (Education).

-sd-

(IFTIKHAR HUSSAIN)  
Director School (Male)

13. The Federal Directorate of Education vide its Notification dated 11.04.2013, granted time scale promotion to the SST from BPS-17 to BPS-18 with effect from the date mentioned against their names in the Notification. The name of the respondent appears at Serial No.308 and he was granted such time scale promotion with effect from 02.01.2011. The Notification dated 11.04.2013 is as follows:-

**"TO BE PUBLISHED IN PART-III OF GAZETTEE OF PAKISTAN"**

GOVERNMENT OF PAKISTAN  
Federal Directorate of Education

Islamabad the April 11<sup>th</sup>, 2013

**NOTIFICATION**

No.F.1-04/2013 (Time Scale) FDE: In pursuance of Finance Division's O.M. No.F.1(13)/R-1/2010-2013 dated February 18<sup>th</sup>, 2011 and the Establishment Division's O.M. No.



8/53/2009-R-I dated September 19<sup>th</sup> 2011 and on the recommendations of time scale promotion committee in its meeting held on 25.02.2013 and with the approval of competent authority, the following Secondary School Teachers (BPS-17) working in Islamabad Model Schools/Colleges under Federal Directorate's of Education Islamabad are promoted through time scale promotion from BS-17 to BS-18 with effect from the date mentioned against each:

Sr. No.	Name	Date of Birth	Institution	Date of eligibility
1.	Mr. Jahangir Khan	11.11.1965	IMSB I-9/4, Islamabad	02.01.2011
...	...	...	...	...
325.	Mr. Farooq Khan	06.01.1963	IMSB, G-6/4, Islamabad	02.01.2011
...	...	...	...	...

14. The respondent before the Tribunal has not taken up any issue on granting him promotion from TGT (BPS-16) to that of SST (BPS-17), which was with effect from 01.01.2011. He was then given time scale promotion through Notification dated 11.04.2013 from BPS-17 to BPS-18 with effect from 02.01.2011, which is the very next day from the effective date of his promotion from TGT (BPS-16) to SST (BPS-17). The respondent's claim was that he should have been granted one premature increment on the grant of time scale promotion from BPS-17 to BPS-18.

15. The perusal of the Notification dated 11.04.2013 shows that it was issued in pursuance of Finance Division's Office Memorandum dated 18.02.2011 and Establishment Division's Office Memorandum dated 19.09.2011. The Establishment Division specifically noted in the said O.M. that time scale formula is simply grant of higher grade without any change in designation of posts and does not involve up-gradation of posts and amendment in recruit rules. This very wording of the O.M. dated

19.09.2011 was incorporated in the Notification dated 11.04.2013, for that, the word "in pursuance" as noted in this notification, has been defined in various dictionaries as follows:-

- Black's Law Dictionary, Tenth Edition:  
"Pursuant to": 1. in compliance with; in accordance with; under. 2. As authorized by; under. 3. In carrying out.

- Collins English Dictionary:  
"Pursuant": the carrying out or pursuing of an action, plan, etc.

- Words And Phrases (Permanent Edition) Vol. 35-A p.337

The expression "pursuant to" or "in pursuance of" have a restrictive interpretation and have been regarded as equivalent to "in conformity with", and imply that what is done in accordance with an instruction or direction.

- Corpus Juris Secundum Vol. 73B p.567

"Pursuance": A carrying out or with effect; the act of executing; that which is pursuant; consequence; a following after, or following out.

"Pursuant": As an adjective "Pursuant" is defined as meaning acting or done in consequence or in prosecution (of anything); done in accordance with, or by reason of, something, hence agreeable to, conformable to, according to, following, in accordance with, in conformity with, in a similar manner or by like method."

16. In the case of Aircraft Employees' Housing Cooperative Society Limited v. Secretary, Rural Development and Panchayat Raj, Government of Karnataka, Bangalore and Ors [(1996) 11 SCC 475], though in the context of the pre-amended Land Acquisition Act, Supreme Court of India has dealt with the meaning of the expression "in pursuance of" as under:-

"In pursuance of" would mean under the authority of or by virtue of or in the course of carrying out in accordance with the scheme or plan or direction or order or anything in consequence or

conformable to or according to; act of pursuing, carrying out and performance, prosecution."

17. Thus, the Notification dated 11.04.2013 was issued in execution and in compliance with the O.M. dated 19.09.2011 and such O.M. being part of the Notification dated 11.04.2013, the respondent in order to succeed in his claim that while granting him time scale promotion, the same was a promotion and he was entitled to grant of one premature increment, the very Notification dated 11.04.2013 was required to be challenged by the respondent, for that, the Notification as read, specifically noted the office memorandum of the Establishment Division that time scale promotion was neither a promotion nor up-gradation. Until and unless the vires and legality of such notification is challenged and he succeeds in having the said notification set aside to the extent that the grant of time scale promotion does not allow him promotion, the relief of grant of premature increment being subjected to the condition of promotion, and such prayer having not been made by the respondent in his memo of appeal before the Tribunal and the Tribunal also having not considered this very aspect of the matter that the respondent has not challenged the Notification dated 11.04.2013, the Tribunal could not in the presence of the Notification dated 11.04.2013 allow the claim of the respondent for grant of premature increment.

18. Having thus, noted that the very Notification dated 11.04.2013 on which the respondent has based his claim for granting him premature increment was the very document which was the hurdle in his way of claiming it to be a promotion or up-gradation, unless such document is removed from the scene, the

relief claimed by the respondent ought not to have been granted by the Tribunal. Reference in this regard is made to the case of PESCO, WAPDA House through Chief Executive vs. Ishfaq Khan and others (2021 SCMR 637).

19. The learned Tribunal in the impugned judgment has referred to the judgment of this Court in the case of Government of the Punjab through Secretary Services, Punjab, Lahore and 4 others v. Muhammad Awais Shahid and 4 others (1991 SCMR 696). It may be noted that this very judgment of this Court came into consideration before a 3-Member Bench of this Court in the case of Muhammad Ashraf and others Vs. Federation of Pakistan through Secretary, Ministry of Railways, Islamabad and others (2000 SCMR 477), where it was distinguished on the point that it was based upon the interpretation of sub-rule (3) of Rule 8 of the Punjab Civil Servants Pay Revision Rules, 1977, which provided that in case where for same or similar post apart from the ordinary pay scale, a higher pay scale has been provided for a percentage of the said post, the grant of the said higher scale shall be deemed to be a promotion in the Punjab Civil Servants (Appointment and Conditions of Service) Rules, 1974. The case of the respondent before the Tribunal was not that a certain percentage of posts of BPS-17 have been given higher pay scale of BPS-18, rather the very Notification dated 11.04.2013, shows that all incumbents of BPS-17, who have completed five years' service were granted time scale promotion. The very name of the respondent at Serial No.308 shows that it was granted across the board. No element of even selection was involved.

20. The Tribunal in the impugned judgment has also referred to the order of this Court dated 04.04.2017, passed in the case of Ministry of Finance through its Secretary, Islamabad vs. Muhammad Israil, Superintendent and another (Civil Appeals No.2290-2298 of 2016 and CMAs No.4077-4085 of 2016). The said order of this Court is distinguishable on facts for the reason that the O.M. dated 04.07.2012, which was floated by the Establishment Division for the approval of the competent authority i.e. Prime Minister, contained, *inter alia*, one time grant of BPS-17 to all Superintendents working in (BPS-16) irrespective of their length of service and such O.M. having been approved by the Prime Minister, the further O.M. dated 10.09.2014 issued by the Finance Division limiting its application, providing for fitness of a candidate and recommendation of relevant DPC, and disallowing grant of premature increment and not allowing change in the entitlement/admissibility of rental ceiling/house rent allowance/medical allowance, the inroad made by the Finance Division, in the approval given by the Prime Minister by the O.M. dated 04.07.2012 and thus, it was found that the O.M. dated 10.09.2014, could not have altered or impeded the application of the approval of the Prime Minister and benefit flowing from it. The relevant para of the order of this Court is as follows: -

3. We have considered the submission of the learned DAG and have posed him a question to show us from the approved summary of the Prime Minister the conditions which are mentioned in paragraph-2 of the Office Memorandum dated 10.09.2014. The learned DAG was unable to give any satisfactory answer and could not assign any reason as to from where and on what basis the conditions mentioned in paragraph-2 of Office

Memorandum dated 10.09.2014 were introduced. He agreed that in the summary approved by the Prime Minister no such conditions are mentioned. On the basis of such assertion of the learned DAG and the Office Memorandum dated 04.07.2012, the approved summary of the Prime Minister it can justly and fairly be stated that the conditions introduced and mentioned in paragraph-2 of Office Memorandum dated 10.09.2014 were not a part of approval granted by the Prime Minister and that this has subsequently been added by the Finance Division (Regulation Wing) on its own and to us such addition of conditions to the approval of the Prime Minister reflects that some higher authority above the Prime Minister has imposed these conditions, which otherwise were not so mentioned in the approval of the Prime Minister. This seems to be not only contemptuous to the order of the Prime Minister but is a case of grave and serious insubordination in that the Office Memorandum dated 10.09.2014 on its face does not in real terms and in real spirit make compliance of the order of the Prime Minister rather deviate from it altogether.

21. We may also note that this Court in its judgment dated 12.09.2018 in the case of Khushdil Khan Malik vs. Secretary, Establishment Division Cabinet Block, Islamabad and others (2021 SCMR 1496) has specifically considered the very O.M. dated 19.09.2011 of the Establishment Division and has observed as follows:-

“Now adverting to another contention of the petitioner that benefits under Time Scale Formula may be granted to him, it is essential to consider the ‘terms and conditions of service of the petitioner under the Act of 1973 read with the Civil Servants (Appointment, Promotion and Transfer) Rules, 1973 hereinafter referred to as Rules 1973. The petitioner being a civil servant was appointed under the Act of 1973 and transferred and promoted under the procedure and

conditions prescribed under the same Act and Rules 1973. The Act of 1973 doesn't define the term 'Time Scale Promotion'; therefore it cannot be considered as a term and condition of service. Promotion on the basis of Time Scale is not a regular promotion but a matter of policy granted to specific categories of professions by the relevant competent authority with the concurrence of the Finance Division. Such a policy is meant to grant benefits of higher pay scales to those cadres of civil servants which do not ordinarily get promotions to higher grades under the Rules, 1973 on a regular basis. The monetary benefits under the Time Scale Formula cannot be extended generally to all civil servants but to class of civil servants as mentioned in the approved policy. The Establishment Division, expressly mentioned in Office Memorandum dated 19.09.2011, that Time Scale Formula is simply the grant of financial benefits of a higher pay scale without change in designation of the post and does not tantamount to up-gradation of the said post nor requires amendment in the recruitment rules. It was further clarified by the Finance Division, vide letter dated 10.09.2013, that even after the grant of higher time scale the incumbent continues to hold the same post without there being any change in its status. The explicit conditions of the Time Scale Formula as mentioned in the relevant policy make it crystal clear that it does not tantamount to regular promotion under the Rules, 1973."

Thus, this Court has held in the above judgment that grant of time scale promotion is not a promotion in terms of Rules of 1973.

22. For all the above reasons, we are of the considered view that the impugned judgment of the Tribunal suffers from grave illegality, for that, it did not apply mind to the relevant facts and circumstances of the matter, rather deviated itself in relying upon the O.M. dated 29.06.1991 of the Finance Division and also

the letter dated 30.11.2016 of the Finance Division, which were not germane to the case, and termed the grant of time scale promotion as a promotion in service, thus, the same cannot be sustained and is liable to be set aside.

23. The impugned judgment of the Tribunal is, therefore, set aside and the appeal is allowed.

Bench-I

Islamabad

10.03.2021

'APPROVED FOR REPORTING'

Rabbani/\*

Announced in open Court on 14 / 12 / 2021.