

46/21

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

PRESENT:

MR. JUSTICE GULZAR AHMED, CJ

MR. JUSTICE IJAZ UL AHSAN

(AFK)

Civil Appeals No.1134 to 1160 of 2020

Against judgment dated 25.11.2019 of Federal Service Tribunal, Islamabad passed in Appeal No.1200(R)CS of 2018 & others.

AND

Civil Petitions No.139-L to 144-L of 2021

Against judgment dated 19.10.2020 of Federal Service Tribunal, Lahore passed in Appeal No.129(L)CS of 2019 & others.

AND

Civil Petitions No.1039-L & 1040-L of 2020

Against judgment dated 24.02.2020 of Federal Service Tribunal, Lahore passed in Appeal No.219(L) & 220(L)CS of 2018.

Abdul Hameed & others
Ghufran Ijaz & others
Munawar Ali & another

Appellants (in CA#1134 to 1160/20)
Petitioners (in CP#139-L to 144-L/21)
Petitioners (in CP#1039-L to 1040-L/20)

Versus

Water & Power Development Authority
through its Chairman, Lahore, etc

Respondents (in all cases)

For the Appellants/
Petitioners

: Mr. Khalid Ismail, ASC
(in CA#1134-1153/20 & CP#139-L-144-L/21)

Mr. M. Ikram Sheikh, ASC
(via video link from Lahore in CA#1154-1160/20 & CP#1039-L-1040-L/20)

For the Respondents

: Mr. Sajeel Sheryar Swati, ASC
Syed Rafaqat H. Shah, AOR
(in CA#1134-1160/20)

Mr. Aurangzeb Mirza, ASC
(via video link from Lahore in CP#139-L & 140-L/21)

Mr. Salman Mansoor, ASC
(via video link from Lahore in CP#1039-L to 1040-L/20)

Date of Hearing : 12.04.2021

JUDGMENT

IJAZ UL AHSAN, J.- Through this single Judgment, we intend to decide Civil Appeals No.1134 to 1160 of 2020, Civil Petitions No.139-L to 144-L of 2021 and Civil Petitions No.1039-L to 1040-L of 2020 as they involve a common question of law.

2. Through the instant Appeals, the Appellants (*in the Civil Appeals*) have challenged the consolidated Judgment dated 25.11.2019 of the Federal Service Tribunal, Islamabad passed in Service Appeals No.1200 to 1203, 1217, 1218, 1506 to 1606, 1522, 1623, 1258, 1259, 1265, 1311, 1326 to 1333, 1492, 1493, 1257 and 2043 to 2045(R) of 2018. The Petitioners (*in the Civil Petitions*) seek leave to appeal to challenge the judgments dated 19.10.2020 & 24.02.2020 of the Federal Service Tribunal, Lahore in Service Appeals No.118(L) to 121(L), 129(L), 131(L) to 133(L), 463(L) to 476(L), 709(L), 396(L) to 398(L) of 2019 and Service Appeals No.219(L)CS & 220(L)CS of 2018. The Appellants/Petitioners had, through the Service Appeals, sought that the Respondents be directed to pay arrears of "Special WAPDA Allowance" w.c.f. 20.02.2009 to 04.10.2011 to them. Their service appeals were dismissed vide the consolidated judgments noted above.

3. The brief facts giving rise to this *lis* are that the Appellants/Petitioners were appointed against different posts in WAPDA, such as, "Agricultural Assistant" and "Assistant Research Officer". On 20.02.2009, WAPDA allowed "Special WAPDA Allowance" (hereinafter referred to as "Allowance") at a uniform rate of Rs.10,000 per month for Graduate

Engineers (BPS-17) and above. The Allowance was not given to the Appellants and the Petitioners, therefore, they filed different Writ Petitions which were allowed vide judgment dated 16.02.2012. This Court, vide order dated 01.01.2013, set aside the judgment dated 16.02.2012. The matter was then remanded to the Federal Service Tribunal for decision afresh. The Federal Service Tribunal vide judgment dated 15.04.2013 allowed the Service Appeal. The said judgment was then assailed before this Court. During pendency of the challenge before this Court, WAPDA vide letter dated 26.11.2013, granted the Allowance *with immediate effect* to Scientific Cadre Officers (*including the Appellants and the Petitioners*). Considering the letter dated 26.11.2013, the Civil Petitions and Civil Appeals pending before this Court were dismissed. Subsequently, another employee of WAPDA filed a separate Service Appeal which was allowed, however, he was given the Allowance *with effect from 20.02.2009*. The Appellants/Petitioners filed representations for the Allowance to be given to them with effect from 20.02.2009 to 04.10.2011 instead of "*with immediate effect*". The learned Federal Service Tribunal dismissed the Service Appeals of the Appellants and the Petitioners vide judgments dated 25.11.2019, 19.10.2020 and 24.02.2020. Aggrieved, the Appellants filed Civil Appeals there against, and the Petitioners preferred Civil Petitions to seek leave to appeal against the impugned judgments of the Tribunal.

4. Leave to appeal (in the Civil Appeals) was granted by this Court vide order dated 27.11.2020 in the following terms:-

"The learned ASC for the petitioners contends that the issue of granting WAPDA Special Allowance notified on 20.02.2009 has already been dealt with by this Court vide order dated 20.11.2017 passed in Civil Appeals No. 788 to 290 of 2017 titled "Water and Power Development Authority through its Chairman, Lahore & Others v. Iqbal Waheed and others". He further contends that the instant matter being that of payment of allowance and the petitioners all being retired employees of WAPDA, they cannot be non-suited on the ground of limitation as the claim for monetary benefits is a recurring cause of action and the Service Tribunal was not justified in dismissing the Service Appeals of the petitioners merely on the ground of limitation.

2. Submissions made by the learned counsel for the petitioners need consideration. Leave to appeal is therefore granted, subject to limitation, to consider inter alia the same. Appeal stage paper books be prepared on the available record. However, the parties are at liberty to file additional documents, if any, within a period of one month. As the matter relates to service, the Office is directed to fix the same for hearing in Court expeditiously, preferably after three months."

5. The learned ASC appearing for the Appellants/Petitioners has argued that the Allowance was granted to other employees of WAPDA from an earlier date. Therefore, denial of the Allowance to the Appellants/Petitioners with effect from 20.02.2009 constitutes discrimination. He adds that the Impugned Judgment is contrary to the decision of this Court dated 20.11.2017 wherein it has been held that Research Officers/Scientific Officers could not be discriminated against by not granting them the Allowance w.e.f. 20.02.2009. He further submits that the Service Appeals could not have been dismissed only on the score of limitation, because, payment of dues or financial matters constitute a recurring cause of action. Further, the learned ASC for the

Appellants/Petitioners has placed reliance on the judgments of Government of Punjab through Secretary Education, Civil Secretariat, Lahore Vs. Sameena Parveen (2009 SCMR 1) and Hameed Akhtar Niazi Vs. Secretary, Establishment Division, Government of Pakistan (1996 SCMR 1185).

6. The learned ASC appearing for the Respondent-Authority has argued that WAPDA granted the Allowance w.e.f. 20.02.2009 to attract and retain qualified and experienced engineers in WAPDA. Since the remuneration package of engineers was less than that offered by private sector companies, therefore, this Allowance was introduced to incentivize engineers to remain and work for WAPDA. Subsequently, the Allowance was extended to other posts in WAPDA w.e.f. the dates when the same was allowed by the Respondent-Authority. As such, no category of employees has been given the Allowance from a back date, as prayed for by the Appellants/Petitioners. Further, that WAPDA is an autonomous body that pays its employees allowance and pays by itself, rather than the treasury of the Government of Pakistan. WAPDA is fully empowered to allow or introduce any allowance for its employees depending upon the nature of their duties performed. As such, considering the nature of duties being carried out by the Appellants and the Petitioners, they cannot claim the Allowance from the date on which it was allowed to any other class of employee because the nature of their job is completely different than those to whom

the Allowance was granted at an earlier date as a policy matter. It has further been submitted that the Allowance being claimed was granted to Scientific Officers as a result of a Court order which was based on the minutes of Standing Committee which are not binding on the Competent Authority. The Standing Committee, being a recommending body, cannot dictate to whom the Allowance should be given and from which date. He has vehemently denied that there has been any discrimination in the matter.

7. We have heard the learned ASCs appearing for the parties. The questions which are before this Court for determination are as follows: -

- i. *Could the Appellants/Petitioners be given the Allowance w.e.f. 20.02.2009 instead of from immediate effect?*
- ii. *Were the minutes of the Meeting of the Standing Committee binding on the Respondent-Authority?*
- iii. *Was the order of this Court dated 20.11.2017 applicable to the cases of the Appellants and the Petitioners?*

COULD THE APPELLANTS/PETITIONERS BE GIVEN THE ALLOWANCE W.E.F. 20.02.2009 INSTEAD OF FROM IMMEDIATE EFFECT?

8. The learned Counsel for the Appellants has placed reliance upon the minutes of the meeting of the Standing Committee on Pay and Allowance held on 31.10.08 (hereinafter referred to as "Meeting"). In the Meeting, it was recommended that the Allowance be extended to "Research Officers/Scientists". This class of officers/employees comprised of Geologists, Agronomist, Seismologists,

Environmentalists and Research Officers of Economics, Mathematics and Statistics etc.

9. The recommendations of the Standing Committee were then sent to the Respondent-Authority, which, being the competent authority, vide office order dated 20.02.2009, accorded approval for the Allowance to be paid to Graduate Engineers in BPS-17 and above, with immediate effect. The words "Immediate Effect" in this case means with effect from 20.02.2009. It is clear and obvious that it was only meant for graduate engineers, as specified in the office order dated 20.02.2009. As such, the claim of the Appellants and the Petitioners that they should have been granted the Allowance from the said date is untenable because none of the Appellants/Petitioners were graduate engineers. As such, giving the Appellants/Petitioners Allowance from 20.02.2009 is not only misplaced but, also goes against the clear and unambiguous intent of the competent authority which as a matter of policy decided to incentivise the posts of Graduate Engineers after due application of mind and considering the available financial situation, decided to grant the allowance in question to Graduate Engineers only from the office order dated 20.02.2009. For ease of reference, the office order dated 20.02.2009 is reproduced as:-

"In supersession of this Division's O.M. No. FO(B&F)/10-66(b)/Vol-22/824-923 dated 30.08.2008, the Authority has been pleased to accord approval of the restoration of "Special Engineering Allowance" as "Special WAPDA Allowance" at a uniform rate of Rs.10,000/- (Rs.Ten Thousand Only) per month, with immediate effect, for Graduate Engineers in BPS-17 & above, working in all engineering cadres of WAPDA" [Underlining is ours]

10. A bare perusal of the aforementioned office order shows that the Respondent-Authority had specified the class of its employees to whom the Allowance was to be paid and with effect from which date. Allowing the Appellants and the Petitioners the same relief when they admittedly do not fall within the said category of employees, would amount to assuming the role of the competent authority exercising executive authority which is contrary to the concept of trichotomy of powers. Neither the Appellants nor the Petitioners challenged the office order dated 20.02.2009. They have merely sought the Allowance w.e.f. 20.02.2009, when it was granted to graduate engineers and, to one of their colleagues, as a result of a court order. As such, we find that the contention of the learned ASC to the effect that, they ought to have been given the Allowance w.e.f. 20.02.2009 is untenable because, as noted above, they do not fall within the cadre of graduate engineers who were the only cadre given the Allowance in question.

11. The roles of each organ of the State are defined within the Constitution of the Islamic Republic of Pakistan, so also in different laws. The learned Tribunal has elaborately dealt with this issue, and, has relied on a judgment of this Court reported as Muhammad Shabbir Ahmad Nasir Vs. Secretary, Finance Division Islamabad (1997 SCMR 1026) and Muhammad Farid Khattak Vs. Chief Secretary, Government of N.W.F.P (2009 SCMR 980). A transgression of those roles by one organ would amount to the usurpation

of the power of another, which would be against the spirit of Article 7 of the Constitution of the Islamic Republic of Pakistan. It is not the role of the Courts to interfere in policy decisions, unless it is manifest that, such a policy decisions are the outcome of arbitrary exercise of power, *mala fides*, patently illegal or manifestly unreasonable. Reliance in this regard is placed on the case of Asaf Fasihuddin Khan Vs. Government of Pakistan (2014 SCMR 676) of which, the relevant part is reproduced as: -

"It is to be noted that the duty of the Court is to confine itself to the question of legality. Its concern should be whether a decision-making authority exceeded its powers; committed an error of law; committed a breach of the rules of natural justice; reached a decision which no reasonable tribunal would have reached; or abused its powers".

12. The Respondent-Authority has to evaluate its fiscal capacity and cannot simply dole out allowances at any date and time, and, at the whims of anyone who may feel aggrieved of an order which is otherwise properly passed by an authority competent to do so. It is the prerogative of the authority to ascertain which class of employees should receive additional allowances and from which date. Such decision would obviously depend on various factors including available financial resources, nature of job of the employees and reasons to allow additional incentives to a certain class of employees. The argument of the learned ASC for the Appellants and the Petitioners that others were granted the Allowance from an earlier date with arrears, whereas, they were left out, is untenable. Each case must be examined in the light of its peculiar facts and circumstances and not on the basis of a generalized allegation of discrimination. Nothing

has been placed on record that may constitute convincing evidence of discrimination. Further, there is a clear and understandable differentia between different classes of employees who have been given the allowance from different date for valid reasons. We are therefore not convinced that a case for discrimination is made out. The learned Counsel for the Appellants/Petitioners has repeatedly been asked to point out any illegality in the order of the Respondent-Authority so also the F.S.T. He has been unable to do so.

WERE THE MINUTES OF MEETING OF THE STANDING COMMITTEE BINDING ON THE RESPONDENT-AUTHORITY?

13. The learned ASC appearing on behalf of the Respondents has submitted that the minutes of the Meeting are not binding on the competent authority. Further, that the Standing Committee was merely a recommendatory body, which could not, of its own volition, grant any additional Allowance to the Appellants. To address this issue, the relevant part of the minutes is reproduced as: -

"The Committee, after detailed discussion, recommended that the proposed Special Judicial Allowance may be allowed only to those Scientists/Research Officers who are performing the specific job of research or scientific nature in their respective offices"[Underlining is ours]

It is nowhere stated in the minutes of the Meeting that the *recommendations* being made should take effect from an earlier date. Even if the Committee made such a recommendation, the same by its very nature would not be binding on the competent authority. As noted above, these recommendations were to be assessed against the fiscal space and capacity of the Respondent-Authority and then, finalized

in terms of an order/notification based on policy consideration.

14. A bare perusal of the record reveals that the Appellants/Petitioners were satisfied with the grant of the Allowance w.e.f. 26.11.2013. It was only after another employee (*Mr Khalid*) approached the F.S.T by way of an appeal, that the Appellants so also the Petitioners realized that they may get the same relief which was granted to him, which too, was as a result of a court order dated 04.10.2016 of the Federal Service Tribunal passed in Mist. Petition No. 1143/2016 in Appeal No. 116(R)CS/2013. Even otherwise, each case must be considered on its own merits, facts and circumstances. The competent authority cannot be compelled to run its affairs in a particular manner, in absence of a patent illegality. The internal working of the WAPDA is an administrative and executive function in the domain of policy and unless an illegality or violation of rules and regulations can be shown, non interference by the Courts is the norm. The grant of Allowance being a policy matter cannot be interfered with as has repeatedly been held by this Court. No valid reason has been shown to us that may persuade us to hold that it is not a policy matter or that any illegality or violation of rules and regulations has been committed that may furnish valid basis for interference.

**WAS THE ORDER OF THIS COURT DATED 20.11.2017
APPLICABLE TO THE CASES OF THE APPELLANTS AND
THE PETITIONERS?**

15. The learned Counsel for the Appellants/Petitioners has argued that the impugned judgments of the lower *fora* are a violation of the order of this Court dated 20.11.2017. Further, in reliance of his argument, the learned ASC has referred to the cases of Government of Punjab through Secretary Education, Civil Secretariat, Lahore Vs. Sameena Parveen (2009 SCMR 1) and Hameed Akhtar Niazi Vs. Secretary, Establishment Division, Government of Pakistan (1996 SCMR 1185). For ease of reference, the relevant part of the order of this Court dated 20.11.2017 heavily relied upon by the learned ASC is reproduced below:-

“Once it has been accepted in the minutes of the meeting held on 31.10.08 that Engineers are to be treated at par with Geologists, they cannot be treated with a different yardstick.” [Underlining is ours]

16. A plain reading of the aforementioned part of this Court's order makes it absolutely clear that the said order mentions the words “Geologists” and “Engineers”. The order does not mention any of the classes to which the Appellants/Petitioners belong. The said order mentions that the minutes of meeting of the Standing Committee held on 31.10.2008 puts engineers and geologists at par with each other and they could not be treated with a different yardstick. Admittedly, neither the Appellants, nor the Petitioners are engineers or geologists. The reliance of the learned ASC for the Appellants/Petitioners on the cases of Government of Punjab and Hameed AhktarNiazi *supra* is found to be misplaced.

17. As far as concerns the assertion of the learned ASC that the Appellant and Petitioners have been discriminated against, suffice it is to say that the same has been seen on the touchstone of the rule of *intelligible differentia* and, distinguishing between the different classes of civil servants, given that the civil servants in question must also be on a similar footing in respect of the jobs they perform and the terms and conditions of service. Clearly, where one set of jobs and related terms and conditions are different from those of another set of civil servants whose nature of job and the services they render are different, there can be no question of discrimination. In the present controversy, the Appellants/Petitioners were neither engineers, nor geologists. Their nature of duties was different from engineers and geologists, and, so were their terms and conditions of service. There is a clear *intelligible differentia* between the two classes. Therefore, the plea of discrimination must fail.

18. Even otherwise, nowhere does the order of this Court dated 20.11.2017, relied upon by the learned ASC for the Appellants/Petitioners, provide relief to, or even mention the class of employees to which the Appellants/Petitioners belong. When there is a categorical pronouncement of this Court, which is specific in nature, the same cannot be expanded and extended to change its meaning, scope and applicability. The Appellants are admittedly neither Engineers, nor Geologists. As such, the order of this Court

dated 20.11.2017 is neither applicable nor of any help to their cases.

19. The Appellants had admittedly retired between 2009 to 2018. Since they claim that the Allowance ought to have been granted to them w.e.f. 20.02.2009, the cause of action (if any) accrued on or about 20.02.2009. Reckoned from the said date, the Service Appeals of the Appellants/petitioners were barred by time. When confronted with this finding, the learned ASC for the Appellants stated that the Appellants were involved in litigation throughout. Further, this being a financial claim, the impediment of limitation cannot be allowed to come in their way. Nothing has been placed on record to show that the Appellants were *bona fide* pursuing their remedies before different *fora*. In addition, this was not their stance before the Tribunal. As far as the claim of the Appellants/Petitioners being financial in nature and beyond the pail of the law of limitation is concerned, this principle applies only where the claim is found to be valid and entitlement of the litigant has been established in judicial proceedings before a court of law of competent jurisdiction. Only in such circumstances, courts have in appropriate cases, condoned delay. In the present cases, we have already held that the Appellants/Petitioners were not entitled to receive the Allowance w.e.f. 20.02.2009. Consequently, condonation of delay cannot be granted merely on the ground that a financial claim has been raised, irrespective of its merit,

legality and validity. Both assertions have been found by us to be without force and misconceived.

20. The Impugned Judgments of the learned Federal Service Tribunal proceed on a correct factual and legal premises and have correctly applied the relevant law, rules and regulations to the facts and circumstances of the cases before it. The learned ASC for the Appellants/Petitioners has been unable to show any error legal or jurisdictional in the impugned judgments that may furnish basis for interference by this Court.

21. For reasons recorded above, these appeals are dismissed. As for the Petitions, in addition to the reasons recorded above, we further note that no point of public importance in terms of Article 212(3) of the Constitution of Islamic Republic of Pakistan has been raised. As such, the Petitions are also dismissed and leave to appeal is refused.

sd/- HCU
sd/- J

ISLAMABAD, THE
12th Day of April 2021
Haris LC/*
Not Approved For Reporting

