

IN THE SUPREME COURT OF PAKISTAN  
(APPELLATE JURISDICTION)

PRESENT:

MR. JUSTICE GULZAR AHMED, HCJ  
MR. JUSTICE IJAZ UL AHSAN

CIVIL APPEAL NO. 754 AND 755 OF 2020.

*(Against the order dated 27.11.2018 passed by the Lahore High Court, Lahore in Writ Petitions No. 206815 and 180175 of 2018).*

Shakeel Ahmad Zaidi and others.

*(in CA. 754 of 2020)*

Ghulam Abbas and others.

*(in CA. 755 of 2020)*

...Appellant(s)

Versus

Secretary, Higher Education, Government  
of Punjab, Lahore and others.

...Respondent(s)  
*(in both cases)*

For the Appellant(s):

Malik Saleem Iqbal Awan, ASC

*(via video-link from Lahore)*

Syed Rifaqat H. Shah, AOR.

*(in both cases)*

For the Respondent(s):

Syed Wajid Ali Shah Gillani,

Addl. A. G. Punjab.

Mr. M. Sajid Bashir, Deputy  
Secretary, Finance Department,  
Punjab.

Mr. Nasir Mehmood Ehatti, Law  
Officer, Finance Department,  
Punjab.

Mr. Qamar Javaid, Assistant  
Professor (on behalf of  
Respdt.No.4). *(in both cases)*

Date of Hearing:

13.01.2021.

ORDER

GULZAR AHMED, CJ.- The Appellants were employed as Instructors in Technical Education and Vocational Training Authority ("TEVTA") and were absorbed in the Higher Education Department ("HED") vide notification

dated 28.07.2015. The HED through notification dated 07.06.2008 allowed a special allowance of Rs.4000/- per month to contract Lecturers appointed in the years 2002 and 2005 and posted at Tehsil Headquarters or below. On being absorbed in the HED, the Appellants started receiving the said Special Allowance. Subsequently, through letter dated 13.06.2017 the Finance Department, Government of the Punjab disallowed the Special Allowance to the Appellants and also started recovering the same from them out of their salaries. The Appellants challenged this action of the Respondents by way of filing Writ Petitions before the Lahore High Court, Lahore. In the High Court, the Appellants gave up their claim of Special Allowance however they took the plea that the said Allowance was received by them *bona fide* thus the department had no justification to recover the same from them. The High Court vide impugned order dated 27.11.2018 dismissed the writ petitions and observed that as the Special Allowance was paid to the Appellants under a mistake, the same was liable to be recovered from them out of their salaries in easy instalments.

2. Leave to appeal was granted by this Court vide order dated 01.09.2020 to consider as to whether the recovery of the special allowance could be made from the salaries of the Appellants.

3. Learned counsel for the Appellants has contended that the Appellants have received the special allowance *bona*

*fide* and that once the special allowance was paid to them, the same could not be recovered from them. He has placed reliance on a judgment of this Court reported as "Engineer in Chief Branch through Ministry of Defence, Rawalpindi and other v. Jallal ud Din" (PLD 1992 SC 207) wherein the application of the principle of locus poenitentiae was considered and it was held that once the Government employee has received payment *bona fide* such payment is not recoverable from him even if it has been paid by the Government on account of some mistake.

4. The learned Additional Advocate General, Punjab, on the other hand, has argued that the Special Allowance was specifically meant for General Cadre Lecturers who were recruited through the Punjab Public Service Commission. He maintains that the Appellants were not Lecturers and were therefore not entitled to receive the allowance in question. The orders passed in this regard were patently illegal and the exception to the principle of locus-poenitentiae was not attracted to their case. He further submits that the Appellants had submitted their affidavit to the effect that if at any stage any over payment was discovered, they would refund the said amount. He further maintains that in terms of notification dated 07.06.2008 it was clear that the Special Allowance was available only to the Lecturers. The Appellants do not deny that they are not Lecturers and are in fact Instructors and therefore could not claim that they *bona fide* received the amount in question.



5. We have heard the learned counsel for the Appellants as well as the learned Additional Advocate General, Punjab and gone through the record.

6. It is clear and obvious to us that by its very terms, the notification dated 07.06.2008 on the basis of which Special Allowance was paid to Lecturers who had been recruited through the Punjab Public Service Commission in the years 2002 to 2005 was not applicable to the Appellants. There is no denial of the fact and has in fact been admitted by the learned counsel for the Appellants that they were not Lecturers but in fact they were Instructors employed by Technical Education and Vocational Training Authority (TEVTA). That being so, the claim of the Appellants that they had *bona fide* received the amount does not ring true. It appears that they started receiving the amount, knowing that it was not payable to them they kept silent. Any man of ordinary prudence who was aware of the notification should have known that the amount being paid to him was in excess of what was lawfully due to him. Therefore, the main argument of the learned counsel for the Appellants that they received the excess amount *bona fide* has not appealed to us. We have carefully gone through the judgment of this Court relied upon the learned counsel for the Appellants i.e. Jallal-ud-Din's case (*ibid*). However, the case of Jallal-ud-Din turns on its own facts and in our opinion does not apply to the facts and circumstances of the present case, having distinguishing features on facts as well as law. In the said case, an order had

lawfully been passed by the Competent Authority which was later withdrawn and it was held by this Court that the benefit that had already been received by virtue of a lawful order which was subsequently withdrawn and such benefit had *bona fide* been received could not be recovered. In the present case, it is clear that the order to pay Special Allowance to the Appellants was not a lawful order nor was it passed by a Competent Authority. Therefore, whether or not the Appellants had received the same *bona fide* is not of much consequence in view of the fact that the order in question had not lawfully been passed by a Competent Authority, which is necessary to seek the benefit of the exception to the rule of *locus-poenitentiae*.

7. Notwithstanding the above even in Jallal-ud-Din's case, the relief was granted in a very structured manner and it was clearly and categorically held that:

*"locus poenitentiae is the power of receding till a decisive step is taken. But it is not a principle of law that order once passed becomes irrevocable and it is past and closed transaction. If the order is illegal then perpetual rights cannot be gained on the basis of an illegal order. The appellants when came to know that on the basis of incorrect letter, the respondent was granted Grade-II, they withdrew the said letter. The principle of locus poenitentiae would not apply in this case."*

Similarly in Muhammad Feroz v. Deputy Director Officer (Education) etc. (2005 SCMR 1490) involving a case where a

person was mistakenly appointed as PTC Teacher against a post for which he lacked the requisite qualification this Court held as follows:-

*"We are not persuaded to agree with learned Advocate Supreme Court on behalf of the petitioner that after having appointed the service of the petitioner could not have been terminated on the principle of locus Poenitentiae because the said principle can only be pressed into service to protect the legal rights based on lawful orders."*

Likewise, in the case regarding Pensionary Benefits of the Judges of Superior Courts (PLD 2013 SC 829) it was held as follows:

*"It is held that locus poenitentiae conceptually connotes, that authority which has the jurisdiction to pass an order and take an action, has the due authority to set aside, modify and vary such order/action, however there is an exception to this rule i.e. if such order/action has been acted upon, it creates a right in favour of the beneficiary of that order etc. and the order/action cannot thereafter be set aside/modified etc. so as to deprive the person of the said right and to his disadvantage. However, it may be pertinent to mention here, that as pointed out in the preceding part, no valid and vested right can be founded upon an order, which by itself is against the law."*

8. We are therefore clear in our minds that only where lawful orders have been passed by an authority having the power to do so under the relevant law and a person *bona fide* receives a benefit under the said law without any positive



action on his part, such beneficiary can claim a right under the exception to the principle of locus-poenitentiae and claim that the benefit *bona fide* received by him by virtue of an a lawful order passed by the competent authority (which at the relevant time and for its duration till its withdrawal was lawfully passed by an authority competent to pass such order) cannot subsequently be recovered by virtue of the protection available under the exception to the aforesaid rule.

9. In the instant case, the basic requirements which are *sine qua non* for the exception to the principle of locus-poenitentiae being attracted namely issuance of a lawful order by the competent authority is missing. Further, we are not convinced that despite clear and unambiguous language of the notification, the Appellants were unaware that they were being paid an allowance to which they were not lawfully entitled and was being paid on the basis of a notification which was not applicable to them. We are therefore of the view that the High Court had valid reasons and lawful justification to hold that the Appellants had a right not only to stop further payment of the allowance but also recover the same in easy instalments from the Appellants so as not to overly burden them financially.

10. The learned counsel for the Appellants has not been able to demonstrate that the impugned judgment of the High Court suffers from any legal or jurisdictional error or defect which may have led to denial of relief to the Appellants.

Perusal of the impugned judgment shows that it elaborately discusses the principles of law involved and correctly applies the same to the facts of the instant case. The learned counsel for the Appellants has not been able to persuade us to take a view different from the one adopted by the High Court.

11. For reasons recorded above, we do not find any merit in these appeals. Both are accordingly dismissed.

ISLAMABAD.

13.01.2021.

ZR/

*'Not Approved For Reporting'*