JUDGMENT SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD

CASE NO. : W.P. NO.1486-2019
Dr. Muhammad Safdar etc.
Vs.
Federation of Pakistan etc.

Petitioners by	:	Dr. G.M. Chaudhry, Advocate Mr. Muhammad Ramzan Khan, Advocate Mr. Waqar Khalid Khawaja, Advocate Agha Muhammad Ali Khan, Advocate Mr. M. Shafiq-ur-Rehman Dab, Advocate Mr. Khurram M. Qureshi, Advocate Mr. Kamran Arshad, Advocate Mr. Abdul Ghani Channa, Advocate Petitioner in person (W.P. No.2339-2020)
Respondents by	:	Raja Khalid Mahmood Khan, Deputy Attorney General with Muhammad Azam Ghakhar, Director (Legal), FDE, Mr. SM. Rehan Naqvi, A.D. (Legal), FDE, Suhail Ejaz, Deputy Director, FE&PT and M. Abdullah, A.D. (Legal), FPSC
Date of hearing	:	29.07.2021

AAMER FAROOQ J. This consolidated judgment shall decide instant petition as well as writ petitions and criminal original petitions mentioned in Schedule-A attached herewith, as common questions of law and facts are involved.

2. The petitioners, in all the petitions, are civil servants working in Federal Directorate of Education; they have their different specific grievances as voiced in writ petitions under consideration, however, the common factor in all the writ petitions, including W.P. No.190-2020 & W.P. No.2339-2020, is the challenge to the vires of SRO 373(I)/2019, dated 15.03.2019.

3. The petitioners in W.P. No.1486-2019 were working at the post of Deputy Headmaster, which position, was re-designated as Secondary School Teachers; they are aggrieved of letter dated 22.03.2019, whereby

posts were redesignated and by virtue of SRO 373(I)/2019 dated 15.03.2019 (the impugned Notification), additional qualifications have been imposed to be eligible for promotion. In W.P. No.1980-2019, W.P. No.1663-2019, W.P. No.2267-2019, W.P. No.2508-2019, W.P. No.2238-2019, W.P. No.3139-2020, W.P. No.799-2021, W.P. No.2419-2021 & W.P. No.1718-2019, the petitioners were Trained Graduate Teachers, which position, was redesignated and under the impugned Notification, their promotion quota has been reduced from 75% to 50% and various qualifications have been imposed regarding the same. In W.P. No.190-2020 & W.P. No.2339-2020, the petitioners seek direction to respondents to consider them for promotion in accordance with rules promulgated under the impugned Notification. The contempt petitions (Crl. Org. No.250-2019 & Crl. Org. No.261-2019) have been filed alleging violation of the orders passed by this Court.

4. Dr. G.M. Chaudhry, Advocate Supreme Court, appearing on behalf of petitioners in W.P. No.1486-2019, *inter alia* contended that impugned Notification and rules have been made contrary to the prescribed law; in this behalf, it was submitted that Rules of Business, 1973 have not been followed and needful has not been done as prescribed under the law. It was further contended that post of Deputy Headmaster is different from the teaching staff and through the impugned Notification, two cadres have been merged which is in violation of section 3(2) of Civil Servants Act, 1973. He also argued that questions raised do not fall within terms and conditions of service hence bar, under Article 212 of the Constitution, is not attracted. It was submitted that in violation of section 3(2) of Civil Servants Act, 1973, terms and conditions of a civil servant are being adversely varied by way of merger of an administrative post into a post of Secondary School Teacher, which was upgraded from BS-16 to BS-17 from the post of Trained Graduate Teacher. It was contended that through the impugned Notification, yet another benefit has been granted to the Trained Graduate Teachers by way of up-

scaling their post, which initially, was in BS-14 and now in BS-17, which act is also in violation of the various circulars of Establishment Division. It was argued that merger of two cadres is in violation of law laid down by the Hon'ble Supreme Court of Pakistan in case reported as 'Rukhsana Tufail Vs. Secretary, Establishment Division, Islamabad [1994 PLC (CS) 384].

5. Advancing arguments, in other writ petitions qua challenging impugned Notification with respect to reduction in quota and imposition of qualifications for promotion or promotion to the post of Secondary School Teacher, learned counsel contended that terms and conditions of the petitioners services have been adversely affected, as previously, the promotion quota was 75%, which has been reduced to 50% and qualifications have been imposed, which are uncalled for, as petitioners can never be promoted in light of the fact that one of the requisite criteria, for promotion, is possession of BS qualification of four years, which the petitioners, do not have, as there was no such criteria/qualification at the relevant time.

6. Mr. Shafiq-ur-Rehman Dab, Advocate, appearing in connected writ petitions, argued that through the impugned Notification, amendments have been made, which have made the promotions to higher scales impossible in light of the fact that condition imposed, with respect to BS Graduation of four years, the petitioners do not possess.

7. Similar arguments were raised by other learned counsel for the petitioners including Mr. Khurram M. Qureshi, Advocate Supreme Court.

8. Learned counsel for the petitioners in W.P. No.190-2020 & W.P. No.2339-2020 *inter alia* contended that petitioners are eligible for promotion but the respondents are not doing the needful by considering them for promotion hence appropriate direction be issued.

9. During course of pendency of petitions, applications were filed by employees of Federal Directorate of Education to be impleaded as respondents (CM No.2960-2019 and others).

10. Learned counsel for the applicants *inter alia* contended that issue of upgradation already stands decided by various decisions of this Court hence, under the garb of attack to the impugned Notification, the same question is sought to be reopened which cannot be done. It was further contended that instant petitions are not maintainable in their present form.

11. Learned Deputy Attorney General, appearing for the respondents and also pursuant to notice under Order XXVII-A CPC, *inter alia* argued that instant petitions are not maintainable. It was contended that challenge has been made to the impugned Notification on the basis that same is discriminatory, as it reduces quota for promotion and also imposes restrictions for promotion and the referred matters pertain to the terms and conditions of service viz the eligibility for promotion. It was contended that where the question is regarding eligibility for promotion, Federal Service Tribunal, under the Federal Service Tribunal Act, 1973, has the jurisdiction in the matter, while jurisdiction of other courts including this Court, is barred under Article 199 of the Constitution. It was also submitted that question of discrimination or even vires of any law can be examined by Federal Service Tribunal in light of decision of Hon'ble Supreme Court of Pakistan reported as 'I.A. Sharwani and others Vs. Government of Pakistan through Secretary, Finance Divisional, Islamabad and others' (1991SCMR 1041). It was contended that even on merits, impugned Notification does not suffer from any illegality or discrimination, as no person has vested right for promotion, as it falls within terms and conditions of service and eligibility criteria for promotion can be changed at any time, as it is the prerogative of the employer.

12. Arguments advanced by learned counsel for the parties have been heard and the documents, placed on record, examined with their able assistance.

13. The controversy, raised in the instant petitions, is spelt out in the preceding paragraphs hence need not be reproduced.

14. The petitioners, in W.P. No.1663-2019, have made the following prayers:-

a) *That the respondent No.1 has violated the existing policy regarding upgradation and redesignation and the upgradation and redesignation allowed to the Trained Graduate Teachers (TGT) as Secondary School Teacher (SST) having less education qualification with their substantive basic pay scale 16 than the petitioners is illegal and in violation of all existing policies and instructions as well as without consultation of Management Services Wing and having impact of changing the terms and conditions of service of the petitioners in their disadvantage and being as such is liable to be set aside and be set aside ab initio.*

b) *That letter No.F.14-10/2011(SA)FDE, dated 22.03.2019 and Notification No.SRO 373(I)/2019 dated 15.03.2019, being in vilation of section 3(2) of the Civil Servants Act, 1973 (Act No.LXX of 1973) as well as Office Memorandum No.8/36/2000-R-1, dated 11.09.2018 be declared as illegal, arbitrary, malafide, exploitative and be set aside ab initio up to the extent of the post of Senior Teacher (BPS-17) as contained in Notification No.SRO 53(KE)/93, dated 04.01.1993.*

c) *That the merger of the post of the Senior Teacher (BPS-17), a HSS level post, with the post of Secondary School Teacher (BPS-17), a School level post which is an upgraded and re-designated post, be declared as illegal and be set aside ab initio.*

d) *That the post of the Senior Teacher (ST)(BPS-17) being a substantive teaching post be directed to kept separate as contained in Notification No.SRO 53(KE)/93, dated 04.01.1993.*

e) *That the respondent No.7 i.e. the AGPR, may graciously be restrained from acting upon the provisions of the letter No.F.14-10/2011(SA)FDE, dated 22.03.2019 and Notification No.SRO 373(I)/2019 dated 15.03.2019, upto the extent of the post of the Senior Teacher (ST) during the pendency and till the final decision of the instant petition in the interest of justice, equity and fairplay.*

f) *That the respondents be also restrained from making promotions against the post of Vice Principles (BPS-18) from the incumbents of the upgraded and redesignated post of Secondary School Teacher (BPS-17) during the pendency*

and till the final decision of the instant petition in the interest of justice.

g) That cost of this constrained litigation through this writ petition for protection of constitutional rights of the petitioners may also be awarded.

15. The prayers made in similar writ petitions are somewhat same hence do not need reproduction.

16. The basic grievance of the petitioners is three-fold. As noted above, in W.P. No.1486-2019, the petitioners are aggrieved of re-designation of the post of Deputy Headmaster as Secondary School Teacher and also the position of Trained Graduate Teacher, which also has been redesignated as Secondary School Teacher. The question of upgradation of the post of Trained Graduate Teacher as well as redesignation of the post of Deputy Headmaster as Secondary School Teacher through Office Memorandum dated 21.09.2017 was the subject matter of litigation in W.P. No.3684-2017 & W.P. No.1182-2018; the referred writ petitions were decided by this Court vide judgment dated 03.05.2018. Likewise, another challenge was made to re-designation through W.P. No.2149-2018 titled 'Intikhab Hussain Vs. The Federation of Pakistan, etc.' (W.P. No.2149-2018), which also was dismissed by this Court vide decision dated 01.06.2018. The re-designation and up-gradation of Trained Graduate Teachers came up for consideration before the Hon'ble Supreme Court of Pakistan and was upheld vide judgment dated 22.05.2017 passed in Civil Petitions Nos.3430 to 3444 of 2016. The judgment handed down by this Court in W.P. No.3684-2017 & W.P. No.1182-2018 was challenged through appeal (ICA No.265-2018), which was dismissed in limine vide order dated 31.05.2018. The Deputy Headmasters also sought their up-gradation in BS-18 and challenged Office Memorandum dated 21.09.2017 through W.P. No.3601-2017, which again, was dismissed vide order dated 12.12.2017. Yet, another writ petition (W.P. No.2227-2016) was filed for upgradation of the post, which was dismissed as well vide order dated 17.05.2018 and the

referred judgment was upheld by the Hon'ble Supreme Court of Pakistan vide order dated 26.06.2020 in case titled 'Intikhab Hussain and others Vs. Federation of Pakistan through Secretary Establishment Division and others' (Civil Petition No.3084 of 2018).

17. In view of above mentioned cases, challenge to the upgradation of the post of Trained Graduate Teacher as Secondary School Teacher, which originally, was done in 2011 and again reiterated through Office Memorandum dated 21.09.2017 and now through the impugned Notification, stands settled by virtue of above referred decisions of this Court as well as Hon'ble Supreme Court of Pakistan.

18. The other set of grievance, raised by the petitioners, is challenge to the impugned Notification on the basis that petitioners, being Trained Graduate Teaches, which post stands re-designated as Senior Elementary Teacher in BS-16 and promotion to the same under the impugned Notification, is 50% by quota and for the remaining by fresh appointment; conditions of eligibility for promotion in various positions have been made under Rule 3 of the impugned Notification, which again, has been challenged on the basis that qualification imposed by way of 4-years Bachelor Degree which is virtually impossible. The question of reduction in promotion quota and/or variation of the qualification for promotion pertain to the eligibility of a candidate for promotion or the number of seats for the same and the said matter pertains to terms and conditions of service, which question, falls within the domain of Federal Service Tribunal for adjudication. The only exception, provided under the law, is question of fitness as well as one of upgradation, to which, this Court has the jurisdiction. In case reported as 'I.A. Sharwani and others Vs. Government of Pakistan through Secretary, Finance Divisional, Islamabad and others' (1991SCMR 1041), it was held that jurisdiction of Federal Service Tribunal cannot be bye-passed by adding a ground of violation of fundamental right and the Federal Service Tribunal has the jurisdiction, even to examine such issue,

if the matter pertains to terms and conditions of service. It was also added that even as to the vires of a notification or/and order, the Federal Service Tribunal has the jurisdiction.

19. In case reported as 'Tasleem Jan and others Vs. Muhammad Zaman and others' (2005 SCMR 695), the Hon'ble Supreme Court observed that jurisdiction of Federal Service Tribunal would be barred only, where mater is one of fitness of a civil servant to hold an office. It was observed that where fitness of an officer to hold a higher post was a matter of comparative suitability in light of quantification of performance as a result of subjective decision of competent authority based on objective principles, then same would relate only to personal competence and performance on the job. It was added that eligibility would relate purely to terms and conditions of service and any right, denied on the basis of eligibility or otherwise, can be challenged before Federal Service Tribunal. Similar views were expressed in case reported as 'Fazali Rehmani Vs. Chief Minister, NWFP, Peshawar and others' (PLD 2008 Supreme Court 769).

20. On the touchstone of above mentioned judgments, the grievance raised and challenge made to the impugned Notification, falls within the jurisdiction of Federal Service Tribunal and the jurisdiction of this Court is ousted under Article 212 of the Constitution. Reliance is placed on case reported as 'Ali Azhar Khan Baloch and others Vs. Province of Sindh and others' (2015 SCMR 456).

21. In so far as request of consideration for promotion by the petitioners in W.P. No.190-2020 & W.P. No.2339-2020 is concerned, perhaps the matter of promotion of referred petitioners lingered because of other above mentioned petitions in above titled writ petitions, and after the decision in the same, the petitioners shall be considered for promotion.

22. Some of the petitioners also filed contempt petitions bearing Crl. Org. No.250-2019 & Crl. Org. No.261-2019, wherein it was alleged that

order dated 21.05.2019 passed in CM No.02-2019 in W.P. No.1980-2019 has been flouted. Likewise, in Crl. Org. No.261-2019, it was alleged that order dated 17.09.2019 passed in W.P. No.1718-2019, has been allegedly violated. Since the main petitions are being decided, hence criminal original petitions have become infructuous.

23. In view of above, all the writ petitions are dismissed in light of above observations, while W.P. No.190-2020 & W.P. No.2339-2020 are disposed of and contempt petitions are also disposed of as having become infructuous, as the main petitions have been decided. All pending applications are accordingly disposed of as well.

(AAMER FAROOQ)
JUDGE

Announced in Open Court on 28.10.2021

JUDGE

Zawar

Serial No.	CASE NO./YEAR	TITLE
1.	W.P. No.1663-2019	Fakhar Abbas & Another Vs. Prime Minister of Pakistan, Prime Minister's Office, Islamabad etc.
2.	W.P. No.1718-2019	Abdul Qadoos etc. Vs. Prime Minister of Pakistan, Prime Minister's Office, Islamabad etc.
3.	W.P. No.1980-2019	Fida Ur Rehman Khattak etc. Vs. Prime Minister of Pakistan, Prime Minister's Office, Islamabad etc.
4.	W.P. No.2238-2019	Mrs. Najma Tariq Vs. Federation of Pakistan etc.
5.	W.P. No.2267-2019	Rafique Ahmad etc. Vs. Federation of Pakistan etc.
6.	W.P. No.2508-2019	Munir Hussain Anjum etc. Vs. Prime Minister of Pakistan, Prime Minister's Office, Islamabad etc.
7.	W.P. No.3139-2020	Muhammad Ashraf Vs. Prime Minister of Pakistan, Prime Minister's Office, Islamabad etc.
8.	W.P. No.799-2021	Tabassum Javed Vs. Federation of Pakistan etc.
9.	W.P. No.2419-2021	Muhammad Iqbal Vs. Prime Minister of Pakistan, Prime Minister's Office, Islamabad etc.
10.	W.P. No.190-2020	Muhammad Zaman etc. Vs. The Secretary, Ministry of Federal Education and Professional Training, Islamabad etc.
11.	W.P. No.2339-2020	Abdul Waheed Vs. The Secretary, Ministry of Federal Education and Professional Training, Islamabad & Another
12.	Crl. Org. No.250-2019	Fida ur Rehman Khattak Vs. Arshad Mirza, Secretary, Ministry of Federal Education and Professional Training, Government of Pakistan etc.
13.	Crl. Org. No.261-2019	Abdul Qadoos etc Vs. Arshad Mirza, Secretary, Ministry of Federal Education and Professional Training, Government of Pakistan etc.