JUDGMENT SHEET

IN THE ISLAMABAD HIGH COURT, ISLAMABAD

JUDICIAL DEPARTMENT

W.P. No. 2660 of 2020

Syed Sardar Ahmed Pirzada

Versus

Federation of Pakistan, etc.

Petitioner by	:	Ch. Muhammad Ashraf Gujjar, advocate.
Respondents by	:	Syed Nazar Hussain Shah, AAG Mr. Fahad Azhar, Advocate for respondent/department.
Date of hearing	:	24.01.2022

======

ARBAB MUHAMMAD TAHIR, J: Through the instant petition, petitioner has prayed for following relief:-

> *"i. that the Petitioner and other persons with disability (PWDs), in the employment of Government of Pakistan, are entitled to receive one 'special pay per month', equivalent to the monthly running basic pay/salary;*
> *ii. that the petitioner and other persons with disability (PWDs), be paid 'special pay' per month, equivalent to the monthly running basic pay/salary w.e.f. 01.01.2012, the date on which the clinical and non-clinical employees of Directorate General of Special Education (DGSE), Govt. of Pakistan, were allowed monthly 'Health Allowance' equal to one basic pay of running salary. The DGSE deals in training, education & rehabilitation of the persons with disability (PWDs);*
> *iii. that the petitioner and other persons with disability (PWDs), in the employment of Government of Pakistan, are entitled to receive 'special allowance per month', equivalent to the running monthly pension, on attaining the age of superannuation;*

iv. that the petitioner and other persons with disability (PWDs), in the employment of Government of Pakistan, are entitled to receive the 'special allowances per month' equivalent to the running monthly allowances;

v. that the mandatory directions be issued to the respondents to provide all facilities, benefits, assistance and reliefs to the persons with disabilities (PWDs), in letter and spirit, as provided in the 'UN' Convention on the Rights of Persons with Disabilities (UNCRPD)

2. Relevant facts are that the petitioner joined the National Language Authority "NLA", renamed as National Language Promotion Department (respondent No.4) as Public Relations Officer BS-17 in 1988, promoted as Deputy Director BS-18 in 2016. He is "*visually impaired*" on the basis of Disability Certificate dated 09.07.2005. It is his case that the Government has introduced special pay scales for the employees working in hard areas and health sector by providing them special pay per month equal to one running basic salary, therefore, under the principle of equality and to evaporate element of discrimination, he alongwith other employees having the same status is entitled to the same relief.

3. The respondent No.1 (Cabinet Division) in its comments claims its status as of a proforma respondent. The respondent No.2 (Finance Division) has taken the stance that it is upto the department concerned to determine the terms and conditions of service of the disabled persons, therefore, the Finance Division has nothing to do with the same. The respondent No.3 (Ministry of Human rights) in its comments maintained that the health allowance is being disbursed to the employees of the Directorate General of Special Education and its allied centers Islamabad on frozen level of pay of 2015 while the petitioner is an employee of another organization. The respondent No.4 (petitioner's Department) has taken the stance that the National Language Promotion Department (NLPD) is an

attached department and its employees are getting pay and allowances from the AGPR as per National Pay Scales. The disabled employees are also getting Rs.2,000/- per month in addition to conveyance allowance as per the Finance Division O.M. dated 12.07.2019.

4. Learned counsel for the petitioner argued the case mainly on the grounds that being signatory to the UN Convention on the rights of persons with disability, it is obligatory for the Government of Pakistan to promote, protect and ensure equal treatment and protection of fundamental rights to all persons having disability and that equal protection of law is a fundamental rights guaranteed under Article 25 of the Constitution.

5. On the other hand, learned AAG assisted by the learned counsel for the respondent-department argued that petitioner has since retired from service; that he alongwith other similar employees had been getting special allowance and that the ground of discrimination is not available to him.

6. Heard, record perused.

7. The petitioner claims special pay on the principle of equality. The Hon'ble Supreme Court of Pakistan in recent judgment in the case of "*Government of Khyber Pakhtunkhwa through Chief Secretary and others v. Syed Sadiq Shah and others"* (**2021 SCMR 747**) has held that principle of equality does not means that every law, policy matter, notification, administrative or executive order etc, must have universal application to all the persons who by nature, attainment or circumstances are not in the same position.

8. It has further been held that the constitutional courts being guardians of the constitution had the power to judicially review the executive actions and the conduct of the public authority but the same should be on the touchstone of fairness, reasonableness and proportionality. The Courts while exercising power of judicial review must not violate the right of any other organ of the state and should remain within the prescribed limits as enshrined in the Constitution.

9. The petitioner has since retired from the service and it is also matter of record that he had been getting Rs.2,000/- per month in addition to conveyance allowance being disabled employee as per Finance Division O.M. dated 12.07.2019, therefore, it cannot be said that no special allowance has been disbursed to the petitioner.

10. The provision of any special allowance to any particular set of employees is the prerogative of the department concerned and it being a policy matter cannot be interfered with while exercising constitutional jurisdiction in absence of any departure from the law, rule or regulation.

11. The petitioner has since retired from the service, had been receiving special disability allowance while the ground of discrimination is also not attracted in the present case. Consequently, instant petition fails and is accordingly **dismissed**.

(ARBAB MUHAMMAD TAHIR*)*
JUDGE

Kamran

Announced in open court on : .02.2022.

JUDGE.