ORDER SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD.
JUDICIAL DEPARTMENT

Writ Petition No. 1865 of 2013
Dr. Muhammad Abdullah & 10 others
Versus
Federation of Pakistan through its Secretary and 2 others.

S. No. of order/ proceedings	Date of order/ Proceedings	Order with signature of Judge and that of parties or counsel where necessary.
	25.10.2022	Mr. Abdur Rehman Sheikh, Advocate for petitioners. Mr. Khalid Mehmood Dhoon A.A.G. Raja Jawad Arsalan, A.A.G.

ARBAB MUHAMMAD TAHIR, J. Through the instant writ petition, petitioners have prayed for a direction to the respondents to allow them 20% Secretariat Allowance ("**Allowance**"), for the period i.e. 01.07.1988 to 30.06.1994 at par with other employees, who have been granted the Allowance pursuant to the judgments of the Hon'ble Apex courts and the Peshawar High Court.

2. Tersely, the case set-up by the petitioners in the memo of the petition is to the effect that they retain status of "Civil Servants" working in the Pakistan Council for Research in Water Recourses (**"PCRWR"**), a component of Scientific and Technological Research Division, working under the administrative control of the Ministry of Science and Technology and have since retired; that the Finance Division vide O.M. dated 01.07.1988, had allowed 20% Allowance w.e.f. 01.07.1988; that as per Rules of Business 1973, PCRWR is component of the Scientific and Technological Research Division of the Ministry of Science & Technology and is a "Division", thus the petitioners had been performing their duties in the Federal Secretariat in terms of Rules of Business, 1973 in a Division; that various employees hailing from other departments filed writ petitions for the provisions of the Secretariat Allowance, the Hon'ble Apex Court in

reported judgment PLD 1993 SC 375 allowed the Allowance while the Hon'ble Peshawar High Court also granted the relief to various employees of the different department; that the petitioners being eligible for the provision of the Allowance filed the Departmental Representation to the respondent No.1 (M/o Science & Technology) Islamabad but their request was turned down on the ground that the employees of PCRWR are not entitled to the Allowance as they are not component of the office forming part of a Division in terms of Rules of Business 1973, hence instant writ petition.

3. The petitioners in support of their case, refer judgment of the Hon'ble Apex Court reported as PLD 1993 SC 375, judgment dated 02.07.1997 and 06.10.2009 passed by the Hon'ble Peshawar High Court in W.P. No.362 of 1992 and W.P. No.223 of 2006 and order dated 13.04.1998 passed by the Hon'ble Apex Court reported as 1998 SCMR 1100.

4. The respondents 1 to 3*(M/o Science & Technology, Finance Division and PCRWR*) filed their separate written comments. It is significant to note that the instant writ petition was filed in the year 2013 and the issue "provision of the Allowance" had been the subject of multiple litigations, this Court of vide order dated 01.03.2022 directed the respondents to file fresh response. Pursuant to the direction, the respondent No.1 (M/o Science & Technology) in its fresh response asserted that the employees of PCRWR are not entitled to the Allowance in terms of O.M. dated 1.07.1988 read with O.M. dated 18.09.1993 as the PCRWR is not enjoying the status of a Division. The respondent No.3 (PCRWR) in its separate response maintained that the employees of the PCRWR are Civil Servants in terms of notification dated 15.02.1999 and the PCRWR is an attached department of the Ministry of Science & Technology, Government of Pakistan, Islamabad w.e.f. 28.07.1964 to 14.04.2007 vide notification dated 22.10.2013.

5. The Finance Division in its fresh response has exhaustively responded to the claim of the petitioners, inter alia, in terms that as per Finance Division O.M. dated 01.07.1988 read with O.M. dated 18.09.1993,

the Allowance is limited to the employees of the Federal Secretariat defined in the Rules of Business as Divisions of the Ministries; that as per Rules of Business, 1973, the department PCRWR does not fall within the ambit of "Division"; that the provision of the Allowance has already be rescinded pursuant to the Secretariat Allowance (Recession orders etc.) Ordinance, 2000 and the Hon'ble Apex Court vide its order dated 23.01.2001 passed in C.A. 1582/1998, 1584/1998 graciously directed that in case the Allowance under the impugned judgment has not been paid, the private respondents will not be entitled to receive the same in view of the Ordinance 2000; that subsequently, the Allowance was discontinued vide O.M. dated 04.09.2001. On the status of the petitioners, the Division maintained that they are Civil Servants and the provision of Allowance, being related to terms and conditions of service, ousts the jurisdiction of this Court in terms of Article 199 of the Constitution.

6. Heard the learned counsel for the petitioners, learned AAG and have gone through the record with their able assistance.

7. The claim of the petitioners, primarily, rests upon their status as being "Civil Servants", and employees of the department (PCRWR) that retains status of "Division", therefore, do fall within the ambit of the O.Ms dated 01.07.1988 and 18.09.1993.

8. The status of the petitioners as civil servants is undisputed as reveals through Para 2(x) of the written response tendered by the Finance Division which is supported by the notification dated 15.02.1999. However, their claims to have worked in the department that do form part of a "Division" was repelled by their parent ministry i.e. Ministry of Science & Technology, Islamabad in its fresh response in terms that the employees of PCRWR are not entitled to the provision of the Allowance in terms of O.Ms dated 01.07.1988 and 18.09.1993 as the PCRWR is not enjoying the status of Division. Therefore, in presence of explicit refusal of the respondent No.1 to accede to the claim of the petitioners as being employees of a Division, there left no need to adjudge their claim being pressed as it was not only refuted

but also does not form part of the prayer clause, where under the petitioners only pray for provision of the Allowance.

9. Another important aspect of the matter is that the petitioners have not furnished any judgment of the Hon'ble Apex Court and that of the High Court to explore that any set of employees, who are employees in their department performing the same nature of duties were extended the benefit of Allowance.

10. On the subject, provision of the Allowance, this Court already rendered a decision in the case of "Malik Dad Superintendent etc v. Ministry of Information, Broadcasting and National Heritage" (2022 PLJ 109). On the ground of discrimination, it was observed that:-

> *16. It is significant to note that earlier this Court dealt with the issue of provision of the Allowance, which was the subject matter of various Writ Petitions. The matter ultimately was decided by the Hon'ble Division Bench through a consolidated judgment dated 13.06.2018 passed in I.C.A. No.1102 of 2013. The Hon'ble Division Bench after surveying the case law on the point of "**discrimination**" have graciously held that "**it is abundantly clear that Article 25 of the Constitution does not envisage identical treatment in all circumstances. It provides that people, who are similarly placed, shall be treated alike**." It was further held that "**from the above quoted cases, it can be deduced that discrimination cannot be made amongst employees in one department, who perform same duty, however, if duty performed are different then there exists reasonable distinction/difference between two sets of employees**."*
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> *17. The wisdom laid down by the decision ibid guides to hold that the right bestowed under Article 25 of the Constitution can only be pressed into service when not only the designation of the employees should be identical but their nature of job should also be alike. In absence of the latter pre-requisite, the ground of discrimination cannot be pressed into service being hit by the principle of reasonable differentia.*

11. The petitioners have not tendered any document to show that their job status on all the scores including their nature of duties had been equal with the once, extended the benefits of the Allowance under the directions of the Hon'ble Peshawar High Court.

12. Furthermore, after the promulgation of the *"Secretariat Allowance (Recession of Orders, etc) Ordinance 2000*" ('**Ordinance 2000**"), the admissibility of the Allowance had been rescinded with effect from 1st July, 1988. In addition, any order made, instruction issued, decision of any Courts, including a High Court or the Supreme Court implemented immediately before the commencement of the Ordinance, had been declared to have been validly made, issued and implemented and the amount of the Allowance including the personal allowance already paid thereunder had been deemed to have been validly paid and shall not be recovered from the recipient of the said Allowance.

13. The Hon'ble Apex Court in the judgment dated 23.01.2001 passed in C.A. No.1575/1998 graciously held that after "that in case the Secretariat Allowance under the impugned judgment has not been paid, the private respondents will not be entitled to receive the same in view of the Ordinance. The provision of the Allowance had since been rescinded while it is not the case of the petitioners that the Allowance was ever disbursed or recommended to be disbursed to them, therefore, by operation of law the claim of the petitioners has become redundant as the provision of Allowance has since been rescinded w.e.f. 01.07.1988, the date from which the petitioners claim the Allowance till 30.06.1994.

14. To sum-up, it is concluded that the case of the petitioners for the provision of the Allowance is not made out, inter alia, for the reasons that the pre-requisite for becoming eligible is to be an employee of the Division which is not the case of the petitioners, no judgment or order of the Hon'ble

apex Court and the High Court exists in favour of the petitioners or any of their counter-parts hailing from the same department and doing the same nature of duties, the ground of discrimination is also not available to the petitioners while the provision of the Allowance has since been rescinded pursuant to Ordinance 2000 and thus claim of the petitioners has become redundant by operation of law.

15. Consequently, instant writ petition lacks merits and is also not maintainable in terms of Ordinance, 2000. It is accordingly **dismissed**.

(ARBAB MUHAMMAD TAHIR)
JUDGE

AR Ansari