JUDGMENT SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

W.P. No. 2076 of 2015

Malik Dad, Superintendent, etc.

Versus

Ministry of Information, Broadcasting & National Heritage, etc.

Date of Hearing	:	11.03.2022
Appellant by	:	Mian Saif Ullah, Adv.
Respondent by	:	Syed Nazar Hussain Shah, AAG.

ARBAB MUHAMMAD TAHIR, J. Through the instant writ petition, petitioners have prayed for a direction to be passed to the respondents to grant them 20% Secretariat Allowance ("**Allowance**"), admissible to them from the date when others were paid the same benefit.

2. The case of the petitioners is that they being Federal Government Employees are working in the Central Board of Film Censors, Islamabad ("**CBFC**"), which is at par with the attached departments of the Secretariat Group performing duties like other Federal Government Departments, who are enjoying the benefits of the Allowance pursuant to judgments passed in favour of the employees of different departments in ***W.P. No. 362/1992, CPLA No. 525/2007, W.P. No. 201/1994 and 375/376/1994, W.P. No. 2231/2016, W.P. No. 223/2006, W.P. No. 1574/2007, and W.P. No. 2837/2011***. It is further averred that the judgments rendered in W.P. No. 1574/2007, W.P. No. 2231/2006 and W.P. No.2837 of 2011, have attained finality, and the Finance Division/respondent No. 2 had already issued instructions vide U.O. dated 23.06.2010 followed by letter dated 12.10.2010 for the implementation of the said judgments; that by following the judgments and the instructions issued by the respondent No. 2, the employees of CBFC were also granted the benefit of the Allowance vide Office Order

dated 08.02.2012 and the expenses had to be met with from within the allocated budget in accordance with O.M. dated 13.09.2006.

3. According to the petitioners, arrears of the Allowance had not been paid to them on one pretext or the other and the matter was lingering on and ultimately in order to make good the deficiency, a Reference was sent to respondent No.1 (M/o IB&NH) but no action had been initiated so far despite submission of appeal on 20.03.2015.

4. The grievance of the petitioners is that in identical circumstances, the other Federal Government employees were allowed arrears of the Allowance w.e.f. 01.07.1988 in the light of judgments reported as 1996 SCMR 115, 2005 SCMR 199 and 2009 SCMR 01, therefore, they deserve the same treatment as the impugned action is in violation of Article 25 of the Constitution of Islamic Republic of Pakistan, 1973.

5. The respondents 1 & 3 (Ministry of IB&NH and CBFC) in their joint written comments maintained that the status of the CBFC is of an attached department under the administrative control of respondent No.1 (Ministry of IB&NH) in terms of Rules of Business, 1973, while petitioners retain status of Civil Servants in terms of Section 2(b) of the Civil Servants Act, 1973. In the matter of provision of the Allowance, CBFC took the initiative at its own, without the approval of the respondent No.1 (Ministry of IB&NH) and without concurrence of respondent No.2 (Finance Division).

6. It was further stated that identical reference from one of the attached department of Archaeology and Museum was received, which was forwarded to the respondent No.2/Finance Division for approval but as per response dated 25.06.2013, the request was not consented, due to the non-applicability of the judgment dated 06.10.2009 passed in W.P. No. 2231 of 2006. The case of the employees from CBFC was at par with the referred one as being an attached department. Therefore, the said department was accordingly informed vide letter dated 28.10.2015.

7. The respondent No.2/Finance Division in its separate written comments besides objecting upon maintainability of the instant writ petition in terms of Article 212 of the Constitution, the matter being relating to terms and conditions of service, on merits, maintained that the employees of the attached departments are not eligible to get the allowance being not performing the Secretarial functions and did not come within the ambit of "**the Division of the Ministry**", as the Allowance was admissible only to the employees of Federal Secretariat as defined in the Rules of Business in terms of Finance Division O.M. dated 01.07.1988 read with O.M. dated 18.9.1993.

8. In addition, it was further argued that the Allowance had been rescinded by the Secretariat Allowance (Recession Orders etc.) Ordinance XII of 2000, this ordinance states as under:-

> ***"The orders, office memorandums, Instructions and other instruments amending the aforesaid orders office memorandums, instructions and other instruments, hereinafter referred to as the orders, converting the secretariat allowance into personal allowance are hereby rescinded and shall be deemed always to have been so rescinded on the 1st July, 1988 and no financial benefit whatsoever, save and except as provided in sub-section (2) shall accrued or thereunder, to the persons employed in the aforesaid secretariats and other organizations of the Federal Government notwithstanding any decision of any court including a High Court and the Supreme Court."***

9. It is added that the employees of the CBFC were never allowed the Allowance either by the Finance Division or by any Court and, after the promulgation of the Ordinance, 2000, no request of the allowance was ever entertained by the Finance Division.

10. As per the report of the Finance Division, the Allowance was allowed only to the staff of various Audit and Accounts Offices who approached the Hon'ble Peshawar High Court through W.P. No. 362 of 1992 vide judgment dated 02.10.1997 and also to the employees of said department who subsequently approached the Hon'ble Peshawar High Court through Writ Petition No. 2231 of 2006, which was allowed vide

judgment dated 06.10.2009. According to the Finance Division, none of the employees/departments have been allowed the Allowance after the promulgation of the Ordinance, 2000.

11. Heard, record examined.

12. The admitted facts of the case are that the petitioners retain status of civil servants working in CBFC which is an attached department of respondent No.1/ (Ministry of IB&NH).

13. The petitioners intended to make out a case that various other Federal Government Employees from Federal Government departments having identical nature of job were allowed, the benefit the Allowance, but the petitioners have been treated indifferently despite recommendations by their parent department/CBFC, which is discrimination in terms of Article 25 of the Constitution of Islamic Republic of Pakistan, 1973. Thus, the case of the petitioners solely rests upon the point of '***discrimination***'.

14. To appreciate this stance of the petitioner, the record has carefully been perused, whereby it transpires that the petitioners have not annexed any document, OM, instructions issued by the respondent No.2 Finance Division or judgment to explore that any of their counterparts from their departments was extended the benefit of the Allowance while they have been discriminated.

15. The petitioners have laid their emphasis mainly on the orders of the Hon'ble Peshawar High Court, whereby certain employees of the office of AGPR were allowed the benefit of the Allowance vide judgment dated 02.10.1997 passed in W.P. No.362 of 1992, upheld by the Hon'ble Supreme Court in C.P. Nos.44, 45, 20 & 394 to 417 of 1998, decided on 07.10.1998, followed by another judgment dated 06.10.2009 passed in W.P. No.223 of 2006. The petitioners have not placed on record any judgment of the High Court or of the Hon'ble Apex Court to explore that any set of employees, who are employed in their departments, performing the same nature of duties was extended the benefit of the Allowance.

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***."

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.

18. In the present case, petitioners have not tendered any document to show that their job status on all scores including their nature of duties had been equal with the ones who were extended the benefit by the orders of the Hon'ble Peshawar High Court.

19. Furthermore, as per stance of the petitioners parent department, they are employees of an attached department and not that of a Division, therefore, in terms of Finance Division O.M. dated 01.07.1988 read with O.M. dated 18.09.1993, they are ineligible for provision of the Allowance which is admissible to the employees of Federal Secretariat as defined in the Rules of Business as Divisions, of the Ministries and not the attached departments, subordinate offices which do not perform the Secretariat

function like that of a Division are not eligible for the allowance as claimed by the petitioners.

20. It is also significant to note that at no point of time, the Allowance, as pleaded by the petitioners were disbursed to the employees of CBFC. Rather there was a simple approval of the latter and that too without the concurrence of the Finance Division and when an identical matter of the other attached department was referred to the Finance Division for opinion, the same was answered in negative. The petitioners were also replied in the same terms.

21. Above all, on 30th March, 2000, the President of the Islamic Republic of Pakistan had been pleased to promulgate the *"Secretariat Allowance (Recession of Orders, etc) Ordinance 2000*" ('**Ordinance 2000**") whereby 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.

22. Pursuant to 18th Constitutional Amendment, under Article 270-AA of the Constitution, *all laws including President's Orders, Acts, Ordinances, Chief Executive's Orders, regulations, enactments, notifications, rules, orders or bylaws made between the twelfth day of October, one thousand nine hundred and ninety-nine and first Day of December, two thousand and three (both days inclusive) and still in force, shall, continue to be in force until altered, repealed or amended by the Competent Authority*. The validity and Constitutionality of the 18th Amendment has been upheld by the Hon'ble Apex Court in the judgment reported as ***District Bar Association Rawalpindi and others v. Federation of Pakistan and others*** (**PLD 2015 SC 401**).

23. In view of the above, the Ordinance 2000 holds the field where under the provision of Allowance had been rescinded with effect from 1st July 1988. No judgment of the High Court or the Hon'ble apex Court exists in favour of the petitioners for the provision of the Allowance, therefore, by operation of law the claim of the petitioners have become redundant.

24. Lastly, it is significant to note that Civil Petition Nos. 3303, 3349, 3488, 3543 and 3588 of 2018, filed against the judgment of the Hon'ble Division Bench, referred in Paragraph-14 above is sub judice before the Hon'ble Apex Court *in order to examine as whether in case where the sole ground is of discrimination and not any breach of any terms and conditions of service has been alleged, the forum of the Service Tribunal would be available or not.*

25. In view of above discussion, the case of the petitioners lacks merits and is also not maintainable in terms of Ordinance, 2000, consequently, the instant writ petition fails and is accordingly **dismissed**.

(ARBAB MUHAMMAD TAHIR)
JUDGE

Announced in open Court on 06.06.2022

JUDGE

ISLAMABAD │06.06.2022
APPROVED FOR REPORTING.

//*Kamran***//****