JUDGMENTSHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

W.P. No. 57 of 2017
Ms. Shaheen Akhtar etc.
Versus
Federation of Pakistan Etc.

Petitioner by	:	M/s Dr. Babar Awan, Sr. ASC, Barrister Babar Abdullah Awan & Mr. Tajammul Hussain Advocate.
Respondents by	:	Syed Nazar Hussain Shah, AAG ICT, Mr. Kamran Murtaz, AAG KPK and Mr. Qaiser Sarwar Advocate.
Date of hearing	:	09.06.2022

ARBAB MUHAMMAD TAHIR, J: The instant writ petition emanates from letter dated 30.06.2016 issued by the respondent No.3 (*Higher Education Commission Islamabad-* ***'HEC'***).

02. The case, set up by the petitioners, is that the Standing Committee of the National Assembly on Federal Education and Professional Training in its meeting held on 26th May, 2016 in Abdul Wali Khan University, Mardan Khyber Pakhtunkhwa-**'KPK',** recommended upgradation of Administrative Officers hailing from all the Universities in KPK. The petitioners retain alike status and also highlighted the benefit of one-step upgradation extended to the faculty members of all the Universities in KPK in the past vide Circular dated 19.10.2006 with the assent of the Chief Executive of the Country. The HEC vide letter dated 16.06.2016 forwarded recommendations of the Standing Committee to the Vice-Chancellor, Abdul Wali Khan University Mardan for implementation on priority-basis but subsequently backed out vide Letter dated 30.06.2016 addressed to All Public Sector Universities KPK in terms that

upgradation as recommended by the Committee shall not be undertaken in any manner till approval of the same by the Government. Hence, instant writ petition.

03. Arguments advanced by learned counsel for the petitioners, learned AAG ICT, AAG KPK and counsel for respondent HEC have been heard and record perused with their able assistance. Learned counsel for the petitioners placed reliance upon case law reported as 2001 SCMR 1161, 1991 SCMR 1041 and 2020 SCMR 568. Learned counsel for the respondent HEC in respect of his contention that this court lacks jurisdiction in the matter placed reliance upon case law reported as 2002 SCMR 797, 2012 PTD 1869 and order dated 30.03.2012 passed by the Hon'ble Peshawar High Court in WP 3239-P/2016. Learned AAG KPK took the same stance and placed on record copy of letter dated 16.05.2022 written by Higher Education Department KPK to the Registrar Abdul Wali Khan University Mardan KPK.

04. Heard, record examined.

05. The prayer of the petitioners is twofold i.e. to declare letter dated 30.06.2016 issued by the HEC null and void and second, to direct the respondents to upgrade their present scale under the Policy and they be also granted benefits of the same policy which are already extended to other similarly placed officials.

06. With regard to objection upon maintainability of instant writ petition, it is observed that the authority who passed the impugned letter i.e. HEC is stationed at Islamabad, therefore,

the instant petition is maintainable. The main attack is upon the impugned letter. The contents of said letter are self-explanation and it would be more effective to reproduce the same:-

> "Subject: Recommendations of the National Assembly Standing Committee on Federal Education and Professional Training Made in its Meeting held on 26th May, 2016:
>
> The National Assembly Standing Committee on Federal Education and Professional Training in its meeting held on 26th May, 2016 Abdul Wali Khan University, inter alia, made the following recommendation at Serial #5 of the Minutes communicated vide HEC letter No. 2-2/HEC/A&C/2014/7104 dated June 16, 2016 (Annex-I).
>
> "The Committee recommended upgradation of the posts of Administrative Officers working in the public sector universities of Khyber Pakhtunkhwa as the other cadres have already been upgraded. The Teaching Assistants/Demonstrators in grade 16 should also be upgraded to grade 17".
>
> 02. It has been observed that a few universities in Khyber Pakhtunkhwa have initiated implementation of the recommendation referred above without realizing that such an action could not be undertaken sans explicit communication therefor by the Higher Education Commission following approval of the Government of Pakistan, Ministry of Finance to that effect. Earlier faculty positions across all HEIs were upgraded by 01 scale on October 19, 2006 upon endorsement by the Ministry of Finance and gracious approval of the then Prime Minister. As such, unilateral approval and adoption of the recommendation of the National Assembly Standing Committee on Higher Education without awaiting for completion of due process and formal Notification by the Higher Education Commission is invalid. If any such action has already been awaited or completed, it should not be implemented, and status quo must be maintained at all costs.
>
> 03. In view of the above, we would appreciate your ensuring that the upgradation of administrative/non-faculty positions is not undertaken in any manner till that the recommendation of National Assembly Standing Committee is considered and approved by the Government.
>
> Sd/-
> Deputy Director (Coordination)
>
> Distribution to:
> All Public Sector Universities of Khyber Pakhtunkhwa.

07. From the contents ibid it is clear that vide letter 16.06.2016, being pressed into service to seek upgradation, only the recommendations of the Standing Committee of National Assembly on Federal Education and Professional Training were forwarded to Abdul Wali Khan University and there was no approval of the competent authority. On considering the same as final, few universities initiated process of implementation and on having knowledge of the same, HEC through the impugned letter directed all Public Sector Universities of KPK to ensure that the upgradation of administrative/non-faculty positions shall not be undertaken in any manner till approval by the Government. There were simple **recommendations** and not the **approval.** In absence of the latter, it cannot be said that a right has been created in favour of the petitioners like the previous upgradation, being pressed into service, as in that case there was formal approval of the competent authority unlike the present case.

08. Another important aspect of the matter is that the Hon'ble Peshawar High Court vide order dated 30.03.2021 disposed of an identical petition emanating from impugned letter, by referring the matter to the provincial government in view of Article 38(e) of the Constitution to consider their grievance within three months. Letter dated 16.05.2022 of the Government of KPK tendered by the learned AA-G KKP reveals that pursuant to the direction ibid, the matter was placed before the Provincial Cabinet in its meeting dated 29.03.2022 wherein it was decided to refer the matter to the University being an autonomous body, for decision at their own level in the light of the direction of HEC and Chancellor Abdul Wali Khan University Mardan issued letters dated 30.06.2016 and 25.07.2016 respectively. It is, therefore, quite clear that the Government of KPK referred the matter to the University being

autonomous for decision in the light of impugned directions. As per the Cabinet decision, the impugned letter still holds the field and has not yet been rescinded by KPK Government, responsible for all the finances of the respective Universities in KPK.

09. On legal premise, the benefit of upgradation cannot be agitated as a matter of right as it is based on policy decision of the competent authority as laid down by the Hon'ble Supreme Court of Pakistan in the case of ***Fida Muhammad v. Government of Pakistan KPK through Secretary Education, Peshawar and others*** **(2021 SCMR 1895)** in terms that *"upgradation could not be claimed as a matter of right but was in fact based on a policy decision of the competent authority jotted down in a scheme/notification for its implementation across the board for particular categories of employees who fulfilled the required qualification which was normally a particular length of service in a particular pay scale."* Reliance is also placed upon case of ***Government of Khyber Pakhtunkhwa through Chief Secretary and others v. Syed Sadiq Shah and others*** **(2021 SCMR 747).**

10. In view of above, instant writ petition fails and is accordingly **dismissed**.

(ARBAB MUHAMMAD TAHIR)
JUDGE

Announced in Open Court on _____.09.2022

JUDGE

//Kamran//