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

W.P.No.362 of 2017
Ghulam Nabi Bangash
Versus
Federal Directorate of Education through its Director General and others

Date of Hearing:	19.07.2017
Petitioner by:	Mr. G.M. Chaudhry, Advocate,
Respondents by:	Mr. Mr. Ahsan Mehmood Satti, learned Deputy Attorney-General. Mr. Masood-ul-Hameed, Deputy Director (Legal), Capital Administration and Development Division. Mr. S.M. Rehan Naqvi, Assistant Director (Legal), Federal Directorate of Education.

MIANGUL HASSAN AURANGZEB, J:- Through the instant writ petition, the petitioner, Ghulam Nabi Bangash, voices his grievance against the inaction on the part of the respondents in implementing the order dated 02.10.2012, passed by the Federal Service Tribunal, which was upheld by the Hon'ble Supreme Court vide order dated 13.12.2013. Furthermore, the petitioner seeks antedated up-gradation with effect from 01.07.2009, alongwith back benefits.

2. Learned counsel for the petitioner submitted that the petitioner is working as a Trained Graduate Teacher (BS-16) since several years; that on 26.07.2007, the Prime Minister of Pakistan approved the proposal for the up-gradation of posts in the Federal Directorate of Education; that the said decision was not implemented by respondents No.1 to 4; that in the education policy introduced by the Federal Government in 2009, it was clearly stated that in order to improve the social status and morale of teachers, their salaries were to be up-graded; that the erstwhile Ministry of Education requested the Establishment Division to up-grade the posts of Trained Graduate Teachers; that the Establishment Division, vide office memorandum dated 04.06.2010, up-graded the posts of Trained Under Graduate Teacher (BS-14) to Trained Graduate Teacher (BS-16); that the

Federal Directorate of Education up-graded the said posts with effect from 01.01.2011; and that the said up-gradation should have been given effect from the initial approval of the Prime Minister of Pakistan on 26.07.2007.

3. Learned counsel further submitted that the petitioner, aggrieved by his up-gradation with effect from 01.01.2011, filed an appeal before the Federal Service Tribunal, which was disposed of vide order dated 02.10.2012, with the observation that the respondents may consider the appellant's claim by putting up a summary before the Prime Minister of Pakistan for the up-gradation to be antedated; that the appeal filed by respondent No.1 against the said order dated 02.10.2012, was disposed of by the Hon'ble Supreme Court; that the Finance Division vide letter dated 12.02.2013, requested respondent No.1 to implement the said order dated 02.10.2012, passed by the Federal Service Tribunal; that respondent No.1 in its letter dated 05.06.2013, took the position that a summary for the Prime Minister has been prepared for onward submission; that on 23.01.2014, respondent No.2 sought an advice from the Law and Justice Division on whether a summary should be moved to the Prime Minister for the retrospective up-gradation of the posts in question; that on 30.01.2014, the Law and Justice Division opined that the verdict of the Federal Service Tribunal is to be honoured; that the petitioner's writ petition No.4783/2013, for the implementation of the Federal Service Tribunal's decision was disposed of by this Court on 04.12.2014, on the ground that the matter fell within the domain of the Federal Service Tribunal; that the position taken by the respondents No.1 to 3 that the directives of the Prime Minister of Pakistan to up-grade the petitioner stand implemented by the up-gradation of the posts in question with effect from 01.01.2011, was incorrect; that as the order dated 02.10.2012, had remained unimplemented, the petitioner again approached the Federal Service Tribunal by filing a petition; that vide order dated 03.03.2016, the Federal Service Tribunal, dismissed the petitioner's petition; that the petitioner's review petition was also dismissed by the Federal

Service Tribunal; that the Hon'ble Supreme Court in its order dated 30.11.2016 observed that the High Court can implement the earlier decision of the Hon'ble Supreme Court.

4. Learned counsel further submitted that the petitioner's fundamental rights had been violated by not granting him antedated up-gradation with effect from 01.07.2009. Learned counsel prayed for the writ petition to be allowed and for a direction to be issued to respondents No.1 to 3 to place a summary before the Prime Minister to consider the petitioner's up-gradation with effect from 01.07.2009.

5. On the other hand, the learned Deputy Attorney-General alongwith Mr. Masood-ul-Hameed, Deputy Director (Legal), Capital Administration and Development Division as well as Mr. S.M. Rehan Naqvi, Assistant Director (Legal), Federal Directorate of Education, submitted that on 04.06.2010, the Establishment Division agreed to the up-gradation and re-designation of posts of Trained Under Graduate Teacher (BS-14) as Trained Graduate Teacher (BS-16) with the qualification of B.A/BSc; that the said up-gradation was subject to the concurrence of the Finance Division; and that since the petitioner's petition for the implementation of Federal Services Tribunal's order dated 02.10.2012, has already been dismissed, this petition also merits dismissal.

6. I have heard the contentions of the learned counsel for the petitioner as well as the learned Deputy Attorney-General and the departmental representatives, and have perused the record with their able assistance.

7. The record shows that on 26.07.2007, the erstwhile Ministry of Education made a presentation to the Prime Minister of Pakistan. The minutes of this meeting show that the Prime Minister, in principal approved *inter-alia* the following:-

> *"The minimum qualification of primary teachers will be B.A/B.Sc with preference for B.Ed. They may be placed in BS-16 and re-designated as Junior Lady Teachers. Similarly, minimum qualification for teachers at secondary level will be M.A/M.Sc. They may be re-designated as Lecturer and placed in BS-17".*

8. In May, 2009, the Ministry of Education submitted a proposal for the up-gradation of various posts of teaching staff along with their revised grades and nomenclature to the Establishment Division. Concurrence of the Establishment Division was sought for the up-gradation of the posts of teaching staff in the educational institutions alongwith the incumbents under the Federal Directorate of Education with effect from 01.07.2009. Vide office memorandum dated 04.06.2010, the Establishment Division conveyed its approval to the Ministry of Education with respect to the up-gradation/re-designation of posts in Federal Government Schools under the Federal Directorate of Education. The up-gradation of the said posts was in the following terms:-

> *"(i) The posts of Trained Under Graduate Teacher and Drawing Master (BS-14) upgraded as Trained Graduate Teacher and Drawing Master (BS-16) respectively.*
> *(ii) The posts of Physical Training Instructor (Junior) (BS-14) upgraded as Physical Training Instructor (Senior) (BS-16).*
> *(iii) The posts of Matric Trained Teacher (BS-09) upgraded as Elementary School Teacher (BS-14)."*

9. It is not disputed that the posts of Matric Trained Teacher (BS-09) and Trained Under Graduate Teacher (BS-14) were up-graded as Elementary School Teacher (BS-14) and Trained Graduate Teacher (BS-16), respectively, with effect from 01.01.2011. The petitioner was not satisfied with this and wanted the up-gradation to be antedated with effect from 26.07.2007.

10. The petitioner, aggrieved by his up-gradation with effect from 01.01.2011, filed an appeal before the Federal Services Tribunal seeking his up-gradation to be given effect from 26.07.2007 instead of 01.01.2011. The petitioner's appeal before the Federal Services Tribunal was disposed of, vide order dated 02.10.2012, in the following terms:-

> *"Counsel for the appellants states that the appellants being in the Education Department are entitled to up-gradation from the date announcement to that effect was made by the Prime Minister of Pakistan. The respondents may consider the claim of the appellants by putting up a summary to the Prime Minister of Pakistan for ante-dating up-gradation.*
> *With the above observation, the appeals are disposed of."*

11. The Federal Directorate of Education, filed a petition against the said order dated 02.10.2012, before the Hon'ble Supreme Court. Vide order dated 13.02.2013, the said petition was disposed of in the following terms:-

> ***"2. We have heard learned Deputy Attorney General at some length and have gone through the impugned order. In terms of the impugned order, the only relief granted by the learned Federal Service Tribunal is that the case of the respondent-teachers for ante-dating up-gradation should be considered by the Prime Minister of Pakistan. Learned Deputy Attorney General submits that the impugned order has been passed on account of lack of proper assistance as the respondent – teachers' case for ante-dating up-gradation had already been considered by the competent authority.***
>
> ***3. We would not like to comment on the veracity of the afore-referred stance taken by learned Law Officer. However, it would be open for the competent authority to examine the issue and if respondents' case had already been considered, it should pass an appropriate order accordingly. Otherwise, they have a right to be considered in terms of the impugned order. With this observation, all these petitions are disposed of."***

12. Vide letter dated 05.06.2013, the Federal Directorate of Education requested the Ministry of Capital Administration and Development to process the case regarding the antedation of the up-gradation in the light of the orders of the Federal Service Tribunal and the Hon'ble Supreme Court. According to the said letter, a summary for the Prime Minister had been prepared for onward submission.

13. Vide office memorandum dated 17.12.2013, the Establishment Division requested the Capital Administration and Development Division to examine the case regarding antedated up-gradation and then forward the same to the Establishment Division for comments. On 23.01.2014, the Capital Administration and Development Division sought an advice from the Law and Justice Division on whether a fresh summary was to be moved to the Prime Minister of Pakistan for retrospective up-gradation of posts in the light of the orders passed by the Federal Service Tribunal and the Hon'ble Supreme Court. On 30.01.2014, the Ministry of Law, Justice and Human Rights, opined that since according to the said orders, the department is to consider the case by putting up a summary to the Prime Minister of Pakistan for antedated up-gradation, the order of the Federal Service

Tribunal should be honoured. Since no relief was given to the petitioner, he filed writ petition No.4783/2013, before this Court, which was dismissed on the ground that the matter lay within the jurisdictional domain of the Federal Service Tribunal. Thereafter, the petitioner filed a petition (Miscellaneous Petition No.1445/2015) before the Federal Service Tribunal, seeking the implementation of the order dated 02.10.2012. Vide order dated 03.03.2016, the learned Federal Service Tribunal dismissed the said petition. The said petition was primarily dismissed on the ground that the Federal Service Tribunal had no jurisdiction to entertain an appeal relating to up-gradation, which does not form part of the terms and conditions of service of a civil servant. Reliance had been placed on the judgment dated 11.01.2016, passed by the Hon'ble Supreme Court in Civil Appeal No.992/2014. The petitioner's review petition against the said order dated 03.03.2016, was dismissed by the Federal Service Tribunal, on 08.06.2016. A petition against the said order dated 08.06.2016, was filed by the petitioner before the Hon'ble Supreme Court. Vide order dated 30.11.2016, the said petition was disposed of by the Hon'ble Supreme Court in the following terms:-

> *"2. Petitioners through another CMA approached the Tribunal and when did not get the desired order appreciated this Court. The record reveals that the post held by the petitioners was upgraded but somehow or the other it was not given effect. If the ultimate order passed in this case is considered to be the one reproduced above, it could better be implemented, if not already implemented, by the High Court in terms of Article 187 of the Constitution. The petitioners in this view of the matter may, if so advised, approach the High Court for redressal of their grievance. These petitions, thus, stand disposed of."*

14. In the writ petition instituted by the petitioner, he is seeking the up-gradation of his post to be antedated with effect from 01.07.2009. Earlier the petitioner was seeking the up-gradation of his post to be antedated with effect from 26.07.2007. Learned counsel for the petitioner submitted that the petitioner would be satisfied if a direction is issued to respondents No.1 to 4, to put up a summary to the Prime Minister for consideration of the petitioner's case for antedated up-gradation. The contesting

respondents were adamant not to put up such a summary before the Prime Minister.

15. In the order dated 13.02.2013, it was observed by the Hon'ble Supreme Court that it would be open for the competent authority to examine the issue and if the respondents' case had already been considered, it should pass an appropriate order accordingly. No order has been brought on record by any of the respondents (after the said order dated 13.02.2013), showing that the competent authority had examined the issue. The letters dated 31.03.2014, 16.03.2015, and 22.09.2015, cannot be termed as an order passed on the petitioner's request for antedating the up-gradation of his post. These letters show that the up-gradation of the petitioner's post was given effect from 01.01.2011. The petitioner's case from the very inception was that the up-gradation of his post should be antedated with effect from 26.07.2007, or 01.07.2009.

16. The order dated 02.10.2012, passed by the Federal Service Tribunal shows that the respondents were to consider the petitioner's claim by putting up a summary to the Prime Minister for antedating the up-gradation of his post. Had the respondents being absolved from the responsibility of putting up a summary to the Prime Minister, the Hon'ble Supreme Court in its order dated 13.02.2013, would have specifically held so. All that the respondents are supposed to do is to consider the petitioner's case by putting up a summary before the Prime Minister. It is quite possible that the competent authority may not approve the petitioner's case of antedated up-gradation. The learned counsel for the petitioner could not come up with any judicial precedent in which the High Court exercising constitutional jurisdiction had given directions to antedate the up-gradation of a post. This Court can certainly not give directions to the respondents to antedate the up-gradation of the petitioner's post.

17. Be that as it may, respondents No.1 to 4 are bound in terms of Articles 189 and 190 of the Constitution to implement the judgment of the Hon'ble Supreme Court. In this regard, it may be mentioned that since the Hon'ble Supreme Court did not set

aside the order dated 02.10.2012, passed by the Federal Service Tribunal, both the orders have to be read together. Therefore, this petition is allowed with the direction to respondents No.1 to 4, to put up a summary before the competent authority to consider the petitioner's claim for antedating his promotion with effect from 01.07.2009, strictly in accordance with the law and the policy, if any. There shall be no order as to costs.

(MIANGUL HASSAN AURANGZEB)
JUDGE

ANNOUNCED IN AN OPEN COURT ON _____/2017

(JUDGE)

Ahtesham

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