JUDGMENT SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

W.P. No. 1871 of 2017

Gulzar Begum Butt

Versus

Federation of Pakistan, etc.

Date of Hearing	:	01.06.2022.
Petitioner by	:	Abdul Rahim Bhatti, Advocates
Respondent by	:	Syed Nazar Hussain Shah, AAG.

ARBAB MUHAMMAD TAHIR, J. The instant writ petition has been filed with the following prayer:-

> "i. Declare the impugned order dated 02.12.2016 communicated vide letter dated 08.12.2016 to the petitioner whereby her request for grant of Special Judicial Allowance, Judicial and Utility Allowance has been declined by the respondent No. 1, illegally, malafidely, arbitrarily, whimsically, capriciously, without any lawful authority or in colourable exercise of powers and the same be set aside.
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> ii. Direct the respondents to pay Special Judicial Allowance, Judicial Allowance Not sanctioned as per rules) and Utility Allowance etc to the petitioner from the date it was sanctioned to other corresponding incumbents of the judicial posts with all consequential back benefits.
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> iii. Any other relief, which this Hon'ble Court deems just and appropriate in the given circumstances, may also very graciously be granted along with costs to the petitioner.

2. The case, set up by the petitioner, is to the effect that vide letter dated 19.08.2009, she was offered employment on contract basis as Member Legal (BS-20) in the Environmental Protection Tribunal, Lahore and after acceptance vide letter dated 14.09.2009, she was appointed on contract basis vide Notification dated 10.07.2009; that she joined the post on 16.07.2009 and Notification was issued on 19.08.2009; that the post of Member Environmental Protection Tribunal is a judicial post requiring law degree for appointment for performance of judicial functions and as a consequence whereof, she is entitled to all judicial allowances admissible to other corresponding posts and their incumbents; that as per terms and conditions offered by the respondent No. 1, the allowances sanctioned were the same as admissible to BS-20 officer; that the petitioner requested the Accountant General Pakistan Revenue for allowing the said Allowance but the same has been denied; that the Chairman, Drug Court, Lahore, Bahawalpur and Multan are drawing the Allowance as admissible under the rules; that the respondents No. 1 has submitted a letter to the AGPR (Sub-Office) Lahore dated 31.03.2011 for the grant of Special Judicial Allowance, Judicial Allowance (*not sanctioned as per rules)* and Utility Allowance to the Chairman, Drug Court, Gujranwala which has been allowed; that the petitioner filed Writ Petition No. 2518/2013 before this Court for the same relief which was disposed of vide order dated 08.06.2016 *with direction to the respondent No. 1 to afford opportunity of hearing to her and thereafter pass a speaking order preferably within 60 days*; that pursuant to direction, the respondent No. 1 after affording opportunity of hearing to the petitioner turned down her request vide impugned order, hence instant writ petition.

3. Learned counsel while reiterating the stance contained in the memo of the petition argued that in the Province of Punjab, Sindh and Balochistan, the incumbents of the post working in the Banking, Environmental and Drug Courts are getting the Special Judicial Allowance, Judicial Allowance and Utility Allowance. Further argued that the petitioner is admittedly placed in the

similar category in which the employees of District Judiciary and the Establishment of the High Courts of the Provinces are working and as such is entitled for the same treatment and denial to this effect has caused discrimination against in contravention of the fundamental right of equal treatment and equal protection of law. Learned counsel fortified his submissions by placing reliance upon case law reported as 1995 SCMR 650, C.P. No. 1032 to 1036 of 2019, C.P. No. 40/1999, 2018 SCMR 380, judgment of the Hon'ble Lahore High Court in W.P. No. 20968/2009 and the judgment of the **Hon'ble Balochistan High Court in C.P. No. 523/2021.**

4. On the other hand, learned AAG while referring parawise comments submitted by respondents repelled the above submissions by contending that the petitioner was appointed as Member Legal (BS-20) in the Environmental Tribunal, Lahore (Defunct) on pay and allowances of BS-20 Officer, she accepted the terms and conditions offered to her and completed two years of her contractual appointment, therefore she cannot claim any allowance, not mentioned in her contractual terms and conditions. Further argued that Chairmen of the Drug Courts were the employees of Provincial Judiciary, worked on deputation basis in the Federal Government, therefore, allowed to draw such allowances as there terms of deputation cannot be varied to their disadvantage while the petitioner was not the employee of judiciary. Learned AAG further argued that the petitioner is an Advocate, appointed on contract basis for a period of three years on standard terms and conditions which she accepted as such not entitled to Special Judicial allowance/Judicial allowance and utility allowance.

5. Heard, record perused.

6. The facts of the case have been mentioned in-detail ibid, therefore, need not be reproduced. The claim of the petitioner mainly rests on the point of discrimination as according to her

similarly placed Presiding Officers were granted the same benefits but she had been denied.

7. The reasons for disallowing the request of the petitioner were to the effect that as her appointment had been on contract on certain terms and conditions which do not include any allowance therefore, she cannot claim the same being out of the ambit of her terms and conditions of service. The second reason put-forth had been with regard to classification inter-se the petitioner and the other Presiding Officers of the Tribunals as the latter appointed on deputation and were getting the said allowance in their parent departments and under the deputation rules their terms and conditions cannot be varied to their disadvantage. It was concluded that the petitioner, who was an Advocate, appointed in BS-20 and therefore, entitled to pay and allowance admissible to a BS-20 Civil Servant as per his terms and conditions.

8. In order to make out the case of discrimination, learned counsel for the petitioner placed reliance upon the Judgment dated 21.09.2021 passed by the **Hon'ble Balochistan High Court in C.P. No. 523/2021** in the case of ***"Muhammad Wassay Tareen v. Ex-Provincial Ombudsman Quetta***".

9. Perusal of the judgment *ibid* shows that **C.P. No. 973 of 2015** filed by the said petitioner for the provision of the benefits, as claimed by the present petitioner, was dismissed by observing that petitioner has failed to point out violation of any provision of the Ordinance or any other law by the Governor Balochistan, by not allowing the superior judicial allowance. It was further observed that the discretion of the appointing authority is not unfettered; therefore, the Governor did not grant the superior Judicial Allowance to a non-judicial officer**.**

10. The petitioner of that petition assailed the order *ibid* before the Hon'ble Apex Court which was disposed of vide order dated 24.05.2021 as by that time the Governor of Balochistan vide order

dated 16.09.2020, allowed the Allowance to that petitioner, who then filed C.P No. 523/2021 (being relied by the petitioner) for implementation of the recommendation of the Governor, which was accepted vide judgment dated 21.09.2021.

11. As mentioned above, in the referred case there were recommendations of the then incumbent Governor Balochistan and the petitioner knocked the door of the Court for implementation of the said recommendations while in the instant case, neither there are any such recommendations nor the competent authority/respondent No. 1 has recognized the claim of petitioner, rather turned down her request being not based on any rational ground and distinct with that of the referred cases.

12. It is an admitted position that the Notification containing terms and conditions of service of the petiotner was issued on **10.07.2009**, she continued her office and completed her tenure on the same terms and conditions which amounts to her acquiesce, therefore, her claim is also hit by the principle of estoppel.

13. The petitioner claims special judicial Allowance 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.

14. 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.

15. 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.

16. For the forgoing reasons, the instant petition fails and is accordingly **dismissed**.

(ARBAB MUHAMMAD TAHIR)
JUDGE

Announced in an open Court on _____06.2022.

JUDGE

//Kamran//*