ORDER SHEET

IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

W.P. No. 3471/2017

Shahzad Ahmed, etc.
Vs.
Federal Board of Revenue, etc.

S. No. of order/ proceedings	Date of order/ proceedings	Order with signature of Judge and that of parties or counsel where necessary.
	17.01.2022	RanaSamreenAkhtar, Advocate for petitioner. Syed NazarHussain Shah, AAG.

Through the instant writ petition, petitioners (employees of FBR, Regional Tax Office, Gujranwala)pray for a direction to the respondents/FBR to upgrade the posts of Assistant, UDC & LDC from BPS-14 to BPS-16, BPS-11 to BPS-14 & BPS-09 to BPS-11 respectively in the FBR/Inland Revenue along with the incumbents.

2. The case, set up by the petitioners, is to the effect that all the Provincial Governments besides Azad Jamu& Kashmir and GilgitBaltistan have upgraded the regular basic pay scale/grades of the subject posts while the Federal Government has not extended the same benefit to its employees.

3. The respondents in their separate comments repelled the stance taken by the petitioners by way of filing their parawise comments to the petition and have passionately contested the petition, that the benefit of upgradation has already been extended to the employees of the Federal Government and that neither the Federal Government nor the Provincial Government can impose any of the provisions of their service law upon each other and that the ground of discrimination, as contended by the petitioners, has no force.

4. Heard, record examined.

5. On the objection of maintainability of the instant writ petition, reliance is placed upon case of *"Regional Commissioner Income Tax, Northern Region, Islamabad and another v. Syed Munawar Ali and others"* **(2016 SCMR 859)** wherein while referring case law reported as 2015 SCMR 456 and unreported Judgment in Civil Appeal No. 992 of 2014, it is held that the issue relating to upgradation of civil servants can be decided by a High Court in exercise of its constitutional jurisdiction being not part of terms and conditions of service and the bar contained under Article 212 (3) of the Constitution would not be attracted. Therefore, instant writ petition is maintainable and being decided on merits.

6. Record reveals that the Establishment Division vide O.M. dated 10.08.2016, has circulated approval of the competent authority for upgradation/grant of higher scale to various cadres including Assistant Incharge, Assistant, UDC & LDC from BPS-14 to BPS-15, BPS-09 to BPS-11 and BPS-07 to BPS-09, therefore, it cannot be said that petitioners have not availed the benefit of upgradation.

7. The claim of the petitioners for 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."

8. The learned counsel for the petitioners 0further contended that as per Article 25 of the Constitution of Islamic Republic of Pakistan, all the citizens has to be treated at par and that there should be no discrimination, and the petitioners have all the rights to be dealt in accordance with law and the policy of the State. The Hon'bleApex Court has dealt with this very preposition in its latest pronouncement 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 mean 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.

9. It has further been highlighted by the Hon'ble Supreme Court of Pakistan in the case supra that *"Constitutional courts being guardians of the Constitution had the power to judicially review the executive actions and the conduct of the public authorities but the same should be on the touchstone of fairness, reasonableness and proportionality. 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 disclosed in the Constitution. Each Province had its limited quota under the National Finance Commission Award and the Provinces were supposed to run their affairs within the prescribed financial limits,*

hence, the impugned notification could be safely termed as a subject of policy to compensate the employees getting disproportionate salary as compared to other employees."

10. Another important aspect of the matter is that under Article 240 of the Constitution, appointments and the conditions of service of persons in the services of Federation and of a Province shall be determined by or under Act of Parliament or of the Provincial Assembly. There is a clear bifurcation of the authorities having the power to appoint and set the terms and conditions of service for employees of the Federation and of a Province. A Province is supposed to run its affairs within the prescribed financial limits and under the scheme of Constitution, every organ of the state functions within its limit prescribed by the Constitution. The petitioners through the instant petition are praying for implementation of the upgradationpolicy adopted by the provinces. The arguments forwarded by the learned counsel, over this aspect of the case cannot be termed as discrimination as the Federal Government has its own financial embargo's and the same would amount to negate the very spirit of Article 240 of the Constitution which bestows authority to the province and the federation in respect of determination of appointment and conditions of services of its employees, which cannot be obligatedupon the Federal Government.

11. In the light of principle laid down by the Hon'ble Apex Court, the ground of provision of the benefit of upgradation at par with the employees of Provinces cannot be pressed by the petitioners as the Provinces are supposed to run their affairs within their financial limitsso as the

Federation, any order passed by this Court in the instant petition would entail financial consequences over the State Exchequer and the same cannot be done sitting in the writ jurisdiction.The Courts while exercising constitutional jurisdiction is not bestowed with authority to violate the right of any organ of the State.

12. Another important aspect of the matter is that the respondent No. 4 (Establishment Division) vide O.M. dated 11.09.2018 requisitioned proposals for upgradation from all the Ministries/Divisions in the light of judgment of the Hon'ble Supreme Court of Pakistan passed in Civil Appeals 101 & 102-P of 2011 and the Finance Division U.O dated 19.04.2017, regarding consideration of service structure as a whole of the Federal Government keeping in view the judgment dated 17.02.2016, of the Supreme Court of Pakistan in consultation with MS Wing to remove the anomaly/distortion created due to upgradation of posts and submit recommendations for approval of the Prime Minister. It is thus clear that process to remove anomaly/distortion created due to upgradation of posts is in progress before the relevant authorities.

13. In view of above, no case for exercise of discretion in terms of Article 199 of the Constitution, as prayed for, is made out. Hence, the instant writ petition is **dismissed.**

(ARBAB MUHAMMAD TAHIR)
JUDGE

A.R. ANSARI.