Form No: HCJD/C-121.
JUDGEMENT SHEET
IN THE ISLAMABADHIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

WRIT PETITION NO. 3720 OF 2017

Syed Waheed Hussain Shah, etc.

Vs

Federation of Pakistan, etc.

PETITIONERS BY:	M/s Abdul Rahim Bhatti, Qaiser Rahim Bhatti, Faisal Rahim Bhatti and Yasser Rahim Bhatti, Advocates in W.P No. 3720/2017. Syed Asad Sajjad Naqvi, Advocate in W.P No. 2168 of 2020. Ms. Chand Bibi, Advocate in W.P No. 2463 of 2020. Ch. Shahryar Tariq, Advocate in W.P No. 2002/2021 and 3275/2021.
RESPONDENTS BY:	Raja Khalid Mehmood Khan, Deputy Attorney General and Mr. Farrukh Shahzad Dall, Assistant Attorney General. Ch. Muhammad Nawaz and Mrs. Naziran Malik, Advocates W.P No. 3720/2017. M/s Muhammad Shoaib Shaheen and Mirza Waqas Qayyum, Advocates in W.P No. 2002 of 2021 and 3275 of 2021. Ms. Ayesha Bashir, J.S, Litigation, Mr. Tahir Jamil, Deputy Secretary (Regulation), Mr. Ihsan-Ud-Din, S.O (R-6) and Mr. Irfan, S.O (Litigation-V), Establishment Division. Mr. Manzar Gardezi, Deputy Director, M/o Human Rights, Directorate General of Special Education.
DATES OF HEARING:	08.12.2021 (W.P No. 3720/2017), 03.02.2022 (W.Ps No. 2168 & 2463 of 2020) and 15.02.2022 (W.Ps No. 2002 & 3257 of 2021).

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BABAR SATTAR, J.- This judgment will decide the instant petition as well as the Writ Petitions No. 2168/2020, 2463/2020, 2002/2021 and 3275/2021 as all five of them

involve a common question of law as to whether the petitioners are entitled to seek up-gradation of the posts against which they are serving.

2. Let us first summarize the prayer and arguments of the learned counsel for the parties in each petition before rendering an opinion on the questions of law raised.

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3. The petitioners are seeking up-gradation of the post of Assistant Private Secretary **("APS")** from BS-16 to BS-17 on the basis that the same has been done in the case of Preventive Officers and Superintendents within the Federal Board of Revenue and by the policy of the up-gradation adopted by the Hon'ble Lahore High Court for its Assistant Private Secretaries/Stenographers.

4. Learned counsel for the petitioners took the Court through the history of the job of stenographers from 1983 onward. His main contention was that the petitioners are presently serving in BS-16 even though other institutions at federal level such as the National Assembly as well as institutions within a province such as the Hon'ble Lahore High Court had upgraded such posts to BS-17. He contended that the petitioners were being treated in a discriminatory manner and lack of up-gradation of their posts was in breach of the guarantee of equality in Article 25 of the Constitution. He submitted that in order to avoid stagnation in the carrier of an employee time-scale promotions were granted, such time-scale

promotions were a right of an employee. He also took the Court through the decisions of the august Supreme Court stating that up-gradation was distinct from promotion and did not fall within the terms and conditions of the service and such question could be agitated before the High Court as the bar placed by Article 212 of the Constitution was not applicable. He relied on ***Muhammad Hanif, Assistant Food Controller Vs. Government of Punjab*** ***(1991 PLC (C.S) 1104),*** ***Mehboob Alam Vs. Deputy Commissioner, Okara*** ***(1991 PLC (C.S) 615),*** ***Zahoor Ahmed vs. Wapda, (2001 SCMR 1566)*** and ***Ali Azhar Khan Baloch Vs. Province of Sindh*** ***(2015 SCMR 456)***.

5. Learned counsel for the respondents submitted that up-gradation was distinct from promotion and it had been held by the august Supreme Court that no employee had a vested right to seek up-gradation of the post against which he or she was serving. He submitted that the considerations as well the procedure prescribed to seek up-gradation and re-designation of posts was detailed in Establishment Division's O.M No. F.8/36/2000-R.1, dated 20.01.2001 **("O.M of 2001")**. The said O.M prescribed the considerations the satisfaction of which was a pre-requisite for up-gradation. It further required that any Ministry or Department seeking up-gradation of posts was to route its proposals through the Establishment Division and the decision was to be reached with the agreement of Establishment Division and the Finance Division. He submitted that as up-gradation was to be undertaken on the initiative of a Division or department of Federal Government, subject to satisfaction of

conditions listed in the O.M of 2001 and with the agreement of the Establishment Division and the Finance Division, no individual employee had a right to seek such up-gradation or to serve against an upgraded post. The petitioners had no vested right to seek up-gradation and the petition was therefore not maintainable. He relied on ***Abrar Hussain Naqvi vs. Federal Government (1992 PLC (C.S) 1222), Ali Azhar Khan Baloch vs. Province of Sindh, (2015 SCMR 456), Regional Commissioner, Income Tax, Northern Region, Islamabad vs. Syed Munawar Ali (2016 SCMR 859) and Regional Commissioner, Income Tax, Northern Region, Islamabad vs. Syed Munawar Ali (2017 PLC (C.S) 1030).***

Mumtaz Begum Vs. Ministry of Communication, etc. (W.P No. 2463/2020).

6. The petitioner serving as Assistant Librarian in the Ministry of Communications has sought the up-gradation of the post against which she is serving from BS-12 to BS-16.

7. Learned counsel for the petitioner submitted that the post of Assistant Librarian in most of the ministries had been upgraded to BS-16 and by keeping the post of Assistant Librarian as a BS-12 post, the petitioner was being discriminated against. He submitted that the Federal Government was under an obligation to upgrade certain posts in order to rationalize the administrative structures of a Ministry/Division or a Department in order to bring about uniformity of pay scales across government departments, which it had failed to do. He relied on

Chief Commissioner Inland Revenue, RTO, Lahore vs. Muhammad Afzal Khan (2015 PLC (C.S) 1406 Lahore).

8. Learned Deputy Attorney General submitted that the post against which the petitioner was serving had already been upgraded from BS-09 to BS-12 in the year 2019. And that the petitioner had no vested right to seek further up-gradation of such post. He submitted that there was no discrimination in the present case as it was for the Federal Government to determine applicable grade for various posts in view of the work involved and it could undertake classification on a rational basis as absolute uniformity of pay scales across departments merely on the basis of job titles was neither desirable nor a requirement of Article 25 of the Constitution.

Fiaz Ahmad Vs. Federation of Pakistan, etc. (W.P No. 2168/2020).

9. The petitioner has sought up-gradation of the post of Chief Librarian in the Ministry of Human Rights, Directorate General of Special Education, National Library & Resource Centre from BS-19 to BS-20 in view of the fact that Chief Librarian in the National Library of Pakistan is a BS-20 grade post.

10. Learned counsel for the petitioner submitted that the post of the petitioner was created in the year 2005 and the library where he was serving was a national library for persons with disabilities and ought to be treated at par with the National Library of Pakistan. He relied on ***Muhammad Hanif vs. Government of Punjab (2004 PLC (C.S) 1089)*** and ***Muhammad Munawar Hussain vs. Federation of Pakistan***

(2012 PLC (C.S) 362 Islamabad). He also submitted detailed written arguments essentially reiterating the averments in the petition.

11. The learned Deputy Attorney General submitted that the library of the Ministry could not be compared to the National Library of Pakistan as the National Library had over 15 million books while the library being managed by the petitioner only had 15 thousand books. He submitted that the Director General, who headed the department and the reporting officer for the petitioner was serving in a BS-20 grade post and thus in view of the administrative requirements of the Ministry Chief Librarian could not be placed in the same grade as the Director General. He submitted that prior to making a recommendation for up-gradation, the Government organization had to satisfy itself that it needs restructuring and then initiate a procedure which was subject to the approval by the Establishment Division and the Finance Division. He submitted that up-gradation of the posts fell within the discretion of the Government and could not be sought as a right by the petitioner. He relied on ***Ali Azhar Khan Baloch vs. Province of Sindh, (2015 SCMR 456)*** and ***Regional Commissioner, Income Tax, Northern Region, Islamabad vs. Syed Munawar Ali (2016 SCMR 859)*.**

Mazhar Alam Kaleem and others Vs. Federation of Pakistan, etc. (W.P No. 2002/2021)* and *Mureed Mehdi Hassan and others Vs. Federation of Pakistan, etc. (W.P No. 3275/2021)

12. Learned counsel for the petitioners stated that the service of the petitioners was regulated by the Utility Stores Corporation of Pakistan (Private) Limited Service Rules of 1981

("USC Service Rules"), Rule 5 of which stated that the matters not provided for in the rules were to be decided by the Board of Directors in light of corresponding provisions in rules framed by the Federal Government. He stated that the USC Service Rules do not provide for upgradation and are silent in this regard. However, the Government of Pakistan has issued an office memorandum dated 03.04.2010 pursuant to which up-gradation of various posts had been ordered and includes BS-17 posts which were to be upgraded to BS-18. He contended that on the basis of the said memorandum, respondent No.2 upgraded posts in all other categories except BS-17 posts against which the petitioners had been serving for a number of years. His basic contention was that that an office memorandum issued by the Ministry of Finance dated 03.04.2010 had directed that the posts of Junior Auditors were to be upgraded from BS-7 to BS-11, post of Senior Auditors were to be upgraded from BS-14/15 to BS-16, post of Assistant Account Officers were to be upgraded from BS-16 to BS-17 and post of District Account Officers were to be upgraded from BS-17 to BS-18. That while the Utility Stores Corporation **("USC")** had upgraded the posts of Junior Auditors and Senior Auditors in accordance with the O.M dated 03.04.2010, the posts of Assistant Account Officers and District Account Officers had not been upgraded to BS-17 and BS-18, respectively. And consequently the petitioners were being meted out discriminatory treatment. He further contended that a co-worker, Mr. Muhammad Ashfaq, from the same cadre had filed a petition before the learned Lahore High Court (W.P No.6931/2020) which was disposed of with a direction that an

opportunity of hearing be provided to him, in compliance of such order an office order dated 30.06.2021 had been issued by the USC stating that the post of Mr. Muhammad Ashfaq had been upgraded from BS-17 to BS-18 after seeking legal opinion from the Ministry of Industries. That as case of the petitioners was identical to the case of Mr. Muhammad Ashfaq, the refusal to upgrade the post of the petitioners was discriminatory.

13. The learned counsel for the respondents submitted that the USC was not bound by the O.M dated 03.04.2010 which had been issued by Ministry of Finance and was applicable the Office of Controller General of Accounts and not USC. That USC was a company managed by its board of directors, which was empowered and responsible for making organizational and HR decisions for USC. He further submitted that it has been held by the august Supreme Court that discrimination was not a ground on the basis of which an employee could seek the upgradation of his post as no employee had vested right in seeking such upgradation.

14. Before addressing the questions of law, let us reproduce three Office Memoranda issued by the Establishment Division that are relevant to the controversy before us:

GOVERNMENT OF PAKISTAN
CABINET SECRETARIAT
ESTABLISHMENT DIVISION

No.F.8/36/2000-R.1 *Islamabad, the 20th January, 2001*

OFFICE MEMORANDUM

Subject: ***UP-GRADATION/RE-DESIGNATION OF POSTS***

The undersigned is directed to say that, on a Summary submitted recently to the Chief Executive, he has pleased to

approve the policy for up-gradation/re-designation of posts as indicated in the succeeding paragraphs.

2. Henceforth, the up-gradation of posts shall be considered in the following cases only:-

(a) When it is considered necessary to up-grade certain posts in order to rationalize the administrative structure of a Ministry/Division or a Department to make it more effective or to bring about uniformity of pay scales or similar posts in different organizations.

(b) Where the duties and responsibilities attached to a post have considerably increased.

(c) Where pay scale of a post is considered grossly incommensurate with the qualifications and experience prescribed for appointment to that post.

(d) Up-gradation of a post on personal basis may not be allowed except if any officer, already holding on regular basis a higher grade post, is posted against a post, carrying lower grade, due to exigencies of service.

3. Subject to the observance of the parameters referred to in sub-paras (a) (d) above , the future proposals for the up-gradation/re-designation of posts shall be processed as under:-

(i) The cases for up-gradation/re-designation of the posts in BS-1 to 19 will be decided by the Finance Division in consultation with the Establishment Division. However, the decision about the proposed up-gradation/re-designation of posts in BPS-1 to 19 will be taken at the level of Secretary, Finance Division and the Secretary, Establishment Division.

(ii) Cases of up-gradation/re-designation of posts in BPS-20 and above will be submitted to the Chief Executive for approval but after seeking the concurrence of the Finance Division and the Establishment Division.

4. It may also be pointed out that the up-gradation of posts does not mean automatic up-gradation of the incumbents of these posts as well. In fact, the appointment against the up-graded post is required to be made in the manner prescribed in the Recruitment Rules for that particular post and with the approval of the competent authority therefor.

5. The above instructions may please be noted by the Ministries/Divisions for strict compliance.

6. This supersedes Establishment Division's O.M No.8/130/91-R.I, dated 12th May, 1992 on the subject of 'up-gradation of posts'.

Sd.
NASEER UDDIN
Joint Secretary

GOVERNMENT OF PAKISTAN
CABINET SECRETARIAT
ESTABLISHMENT DIVISION

No.8/36/2000-R.1 Islamabad, the 3rd February, 2001

OFFICE MEMORANDUM

Subject: ***UP-GRADATION/RE-DESIGNATION OF POSTS.***

The undersigned is directed to refer to this Division's O.M. of even number, dated 20th January, 2001, on the above subject and to state that para 4 of the said O.M. is substituted as under:-

> *"When the competent authority approves the up-gradation of a post in the situations mentioned in sub-paras (a), (b) and (c) of para 2, appointment to the up-graded post should be made in accordance with the provisions of the Civil Servants (Appointments, Promotion and Transfer) Rules, 1973, and the specific rules which regulate appointment to the post."*

2. So far as para 6 of the O.M. dated 20-1-2001 (referred to above) is concerned, it may kindly be treated as deleted.

Sd.
NASEER UDDIN
Joint Secretary

GOVERNMENT OF PAKISTAN
CABINET SECRETARIAT
ESTABLISHMENT DIVISION

No.8/36/2000-R.I Islamabad, the 11th September, 2018

OFFICE MEMORANDUM

Subject: ***UP-GRADATION/RE-DESIGNATION OF POSTS***

The undersigned is directed to refer to this Division's 0.M of even number dated 20-01-2001 and 03-02-2001 on the above subject and D.O. of even number dated 31-12-2008 regarding policy of upgradation/redesignation of posts and to state that this Division examines/considers the proposals concerning upgradation/redesignation of the posts in the Federal Ministries/Divisions/attached Departments received from respective Ministries/Divisions in the light of aforementioned policy.

2. The Honourable Supreme Court of Pakistan in Civil Appeals No. 101 & 102-P of 2011 (Annex-I) has ordered as under:-

> *"The upgradation cannot be made to benefit a particular individual in term of promoting him to a higher post and further providing him with the avenues of lateral appointment or transfer or posting. In order to justify the upgradation, the Government is required to establish that the department needs re-structuring, reform or to meet the exigency of service in the public interest. In the absence of these pre-conditions, upgradation is not permissible".*

3. Subsequent to Apex Court's judgment, Finance Division vide their U.O.No.9 (121) R-I/2016-236, dated 19-04-2017 (Annex-II) stated that:-

> *"Establishment Division is requested to look in to the service structure as a whole of Federal Government keeping in view of 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 up-gradation of posts and submit recommendations for approval of the Prime Minister".*

4. In view of the above, all Ministries/Divisions are advised to refer the proposals for upgradation/ redesignation of post(s) to Establishment Division in the light of paras 1-2 above along with specific recommendations of Management Services Wing of the Establishment Division/administrative Ministry/Division on upgradation/redesignation of post(s) for consideration under policy of upgradation/redesignation of posts.

Sd.
Tahir Jamil Ahmed
Deputy Secretary (R-II)

15. The question of right of a petitioner to seek up-gradation of a post in view of O.M of 2001 came before this Court in ***Chairman, Federal Board of Revenue, Islamabad Vs. Atta Muhammad Mahsud*** ***(2017 PLC (C.S)N 58)***, wherein a Division Bench of this Court in relying on the law laid down by the august Supreme Court summarized the principles relevant for adjudication of the question of up-gradation as follows:-

(i) A post can be upgraded pursuant to a policy formulated by the Government since it is not contemplated under the Civil Servants Act, 1973 and the rules made there under or under any other law.

(ii) The details of the existing policy are contained in the Office Memorandum dated 20.01.2001.

(iii) It falls within the exclusive domain of a Ministry, Division or Department to initiate a proposal, having regard to the conditions mentioned in the Policy.

(iv) The proposal initiated for upgrading a post essentially has to be processed and approved in accordance with and in the manner prescribed in the Policy.

(v) Upgradation is distinct from promotion and, therefore, no right accrues in favour of the holder of the post except when it is sought on a personal basis under clause (d) of paragraph 2 of the Policy.

(vi) Upgradation is can only be proposed on the basis of circumstances mentioned in clauses (a) to (d) of paragraph 2 of the Policy.

(vii) Up gradation of a post is not a right vested in the person appointed against it.

(viii) Even if a post is upgraded the person holding such a post is not entitled to claim higher pay, allowances, perks, privileges or pensionary benefits of the grade to which the post has been up graded.

(ix) After the competent authority grants approval and pursuant thereto a post has been upgraded, appointment against such a post cannot be made except in accordance with the Rules of 1973 or the rules which regulate appointment to such post.

(x) Discrimination i.e. violation of Article 25 of the Constitution cannot be pleaded as a ground for upgradation of a post.

(xi) If up gradation is claimed on a personal basis under clause (d) of paragraph 2 of the Policy, a constitutional petition seeking a writ of mandamus will not be competent unless the principles enunciated by the august Supreme Court in the case of District Magistrate, Lahore versus Syed Reza Kazim supra have been complied with.

(xii) Since a post can only be upgraded pursuant to a policy, therefore, restraint will be exercised by a High Court while exercising powers under Article 199 of the Constitution.

16. In laying down the aforementioned principles the Court relied on guidance provided by the august Supreme Court in the following judgments:

(i) Lt. Col. (R) Abdul Wajid Malik Vs. Government of the Punjab and another (2007 PLC (C.S) 617).

5. The petitioner was at the outset asked as to whether he was ever promoted in grade-21, the answer was in negative. How the petitioner could have claimed the benefits of upgradation of the post of DG O&M from BS-20 to BS-21 merely on the ground that the post was upgraded because upgradation of the post simpliciter does not confer any right on the petitioner qua benefit of upgradation because he was never promoted against the upgraded post. In such view of the matter the petitioner has absolutely no right to claim for the benefits such as pay, allowances, perks and privileges and pensionary benefits due to the upgradation of the post of DG O&M which could

only have been conferred in case of promotion of the petitioner from BS-20 to BS-21 and admittedly the petitioner was not promoted in BS-21.

(ii) Ali Azhar Khan Baloch Vs. Province of Sindh (2015 SCMR 456).

138. …The expression 'upgradation' is distinct from the expression 'promotion' which has not been defined either in the Act or the Rules framed thereunder, and is restricted to the post and not with the person occupying it.The upgradation cannot be made to benefit a particular individual in terms of promoting him to a higher post or further providing him with the avenues of lateral appointment or transfer or posting. In order to justify the upgradation, the Government is required to establish that the department needs restructuring, reform or to meet the exigency of service in public interest.

(iii) Regional Commissioner Income Tax, Northern Region, Islamabad vs. Syed Munawar Ali (2016 SCMR 859).

6. …The expression "upgradation" is distinct, from the expression "Promotion", which is not defined either in the Civil Servants Act or the Rules framed thereunder, and is restricted to the post (office) and not with the person occupying it. The upgradation cannot be made to benefit a particular individual in term of promoting him to a higher post and further providing him with the avenues of lateral appointment or transfer or posting. In order to justify the upgradation, the Government is required to establish that the department needs re-structuring, reform or to meet the exigency of service in the public interest. In the absence of these pre-conditions, upgradation is not permissible.

7. The aforesaid definition of the expression "upgradation" clearly manifests that it cannot be construed as promotion, but can be granted through a policy…

(iv) Government of Pakistan M/o Railways and others vs. Jamshed Hussain Cheema (2016 SCMR 442).

8. ...A policy decision has been taken by the competent

authority with the approval of Federal Government for upgradation of pay scales of different categories of its employees in a conscious manner, looking to the nature of their jobs etc., therefore, such decision cannot be challenged in writ jurisdiction on the purported plea of discrimination. More so, when Article 25 of the Constitution itself provides a provision for such discrimination on the principle of reasonable classification. In the present case, respondents have also been granted upgradation by one step from BS-12 to BS-13 along with many others, who have been also given only one step upgradation in the scales and in many other cases upgradation is allowed by two steps. Thus, such classification/categorization by the competent authority cannot be struck down on the plea of discrimination, at the whims of respondents, who had approached the Islamabad High Court in this regard".

17. Subsequent to the decision of this Court in ***Atta Muhammad Mahsud*** question of up-gradation came before the august Supreme Court in ***Government of Kyber Pakhtunkhwa through Chief Secretary and others Vs. Syed Sadiq Shah and others (2021 SCMR 747)*** where while reiterating the law laid down in ***I.A Sharwani Vs. Government of Pakistan (1991 SCMR 1041)*** and ***Dr. Mobashir Hassan Vs. Federation of Pakistan (2010 PLD SC 265),*** further guidance was provided on the question of equality and discrimination in terms of Article 25 of the Constitution as follows:

8. … As a matter of fact all persons are not alike or equal in all respects. Application of the same laws or yardstick uniformly to all of them will, therefore, be inconsistent with the principal of equality. To avoid that situation laws must distinguish between those who are equals and to whom they must apply and those who are different and to whom they should not apply. In fact identical treatment in unequal circumstances would amount to inequality. So a

> *reasonable classification or sub-classification is not only permitted but is necessary if society is to progress. It must always rest upon some real and substantial distinction bearing a just and reasonable relation to the object sought to be achieved by the authority. It is now well established law that persons may be classified or further sub-classified into entities and such entities may be treated differently if there is a reasonable basis for such difference.*

18. The august Supreme Court in **Syed *Sadiq Shah*** also re-emphasized the need for constitutional courts to exercise restraint in policy matters in view of the principle of trichotomy of powers as follows:-

> *11. …This Court in a number of cases has held that the Constitutional courts being guardian of the Constitution have 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. It is a matter of fact that our Constitution is based upon principle of trichotomy of powers. However, the power of judicial review is an added attribute of the judiciary. The Courts while exercising power of judicial review must not violate the right of any other organ of the state and remain within the prescribed limits as disclosed in the Constitution of Islamic Republic of Pakistan, 1973.*

19. The principles as summarized by this Court in ***Atta Muhammad Mahsud*** comprehensively address the issue of up-gradation by explaining that the question of up-gradation is distinct from promotion. While no employee has a vested right to be promoted and can only seek to be considered for promotion, an employee has no vested right whatsoever to even seek the up-gradation of a post against which he or she serving as he has no vested fundamental right linked to such post. The question of

up-gradation falls squarely within the domain of policy of the employer i.e. how the employer wishes to structure the organization, assign responsibilities to employees, and create incentivize structures for such employees in view of their expertise, qualifications and responsibilities.

20. In view of guidance provided by the august Supreme Court, up-gradation of a post cannot be sought by asserting Article 25 rights as executive authorities are vested with discretion to make rational classifications, and have more latitude to do so within realm of policy, and such classifications for purposes of creating an organization structure and forging human resource policy cannot be challenged on the basis of Article 25 rights guaranteed by the Constitution.

21. In ***Atta Muhammad Mahsud***, this Court held that an individual employee had no vested right to seek the up-gradation of a post against which he or she was serving. Further, the up-gradation of a post did not automatically result in promotion of the employee serving against it to a higher grade or his or her automatic appointment to such upgraded post. Thus, an individual employee had no fundamental right linked to the question of up-gradation for enforcement of which he or she could seek the issuance of a writ under Article 199 of the Constitution. Consequently, in seeking the up-gradation of a post against which a person is serving, he or she cannot be deemed to be an aggrieved person within the meaning of Article 199 of the Constitution. The question of maintainability due to lack of standing of a person under Article 199 of the Constitution is a

question different from that of whether a petition was not maintainable due to the bar placed by Article 212 of the Constitution. The second question has already been settled by the august Supreme Court by holding that the question of up-gradation of a post is distinct from the promotion of an employee and consequently does not fall within the terms and conditions of the service of an employee and therefore the bar of Article 212 is not attracted. However, the bar of Article 212 not being applicable does not automatically mean that such petition is otherwise maintainable under Article 199 of the Constitution.

22. What emerges from the above is that an individual employee cannot seek the up-gradation of a post that he or she is serving against because he or she has no vested right to seeking such up-gradation. The only challenge on the question of up-gradation can be brought on the basis that the up-gradation policy of the Government suffers from illegality, irrationality or procedural impropriety requiring judicial review of such policy. In doing so the petitioner is still required to qualify the test of an aggrieved person as well as the strict test for seeking judicial review of executive policies. The law laid down by the august Supreme Court, which has also reproduced above, clarifies that a constitutional court is loath to interfere with policies framed by the executive to regulate the organizational structure or human resources policy of a government department or organization.

23. There are a number of reasons why the Court exhibits deference when it comes to employment matters. One, the organizational structure and the manner in which an organization

must be resourced by employees falls within the domain of policy, and it is the executive that is responsible for structuring and running the government and government-controlled organizations effectively and efficiently. A Court can only interfere with policy when it breaches the fundamental rights of citizens, but cannot otherwise second guess policy and assume the burden of determining what policy would ensure the most efficient management of government organizations as such responsibility vests in the executive and not the judiciary. Two, no judicially manageable standard can be laid down to determine the similarities and differences of various posts and positions in an organization, the needs of such posts and positions and the manner in which employees serving against such posts and positions can be best incentivized. In the absence of a judicially manageable standard, interference with the policy framed by the executive would tantamount to second-guessing the wisdom of the policy requiring the Court to step into the shoes of the decision-maker and determine how it would have exercised such discretion on a subjective basis. It is settled law that while exercising judicial review it is not for the Court to rule on how the discretion vested in an executive authority ought to have been exercised so long as the exercise of discretion is not illegal or irrational or suffering from procedural impropriety. Three, as reiterated by the august Supreme Court in ***Syed Sadiq Shah***, separation of powers is a fundamental feature of the Constitution and the Court only undertakes judicial review of executive action when such action is illegal, irrational or procedurally improper or impinges on the fundamental rights of citizens.

24. In matters related to the employment and human recourse policy of the executive, the standard of judicial review is deferential as opposed to involving strict scrutiny where a government policy is challenged for granting up-gradation, such challenge can be based on illegality, irrationality or procedural impropriety. However, when the challenge is to the policy of the government for not upgrading posts, the grounds of illegality or procedural impropriety are unavailable as there is no act, rules or regulations in place that require the Federal Government to upgrade posts or consider posts for up-gradation at certain prescribed times. It is for the Federal Government to determine whether there is need to incentivize employees for more efficient management of various departments, by upgrading posts and creating opportunities for professional advancement while providing financial incentives. Just because the needs of a particular department require such incentivization does not mean that the same policy would be desirable or needed to be implemented across all departments. In a challenge to a policy of the government in not upgrading posts, the only ground available for judicial review would thus be that of irrationality. And in making out such ground the onus would be extremely high as the person aggrieved by such policy would need to establish that the government policy is so irrational that no rational person could conceive of such employment policy. As mentioned above, the standard of judicial review would be extremely deferential as ultimately the question involved in deciding whether or not to upgrade posts and incentivize employees is that of financial resources available to the

government and how such resources are to be utilized most efficiently. The burden of managing the finances of the state vests with the executive and consequently when it comes to the financial matters the exercise of judicial review is undertaken on deferential basis.

25. With regard to the contention of the learned counsel for the petitioners in W.P Nos. 2002/2021 and 3275/2021 that the post of a co-worker had been upgraded and such upgradation provided a legal basis for the petitioners to seek the upgradation of their posts as well, it has already been held above that no employee has a right to seek the upgradation of a post or to be appointed against an upgraded post. The question of determining the organizational structure of USC also falls within the domain of policy in which this Court cannot interfere for reasons that have been explained above. As the question of upgradation of the post of Mr. Muhammad Ashfaq, who is an employee of USC, is not impugned before this Court neither is Mr. Muhammad Ashfaq a petitioner or respondent before this Court, this Court would like to make no observations regarding the legality of actions of USC in such regard. It has already been held that the court would interfere with the HR policy of the government only in very limited circumstances. It would be even more reluctant in reviewing the organizational structure and HR policy of a corporate body such as USC.

26. In view of the law laid down by the august supreme Court as well as by this Court in ***Atta Muhammad Mahsud*** the petitioners in all petitions have failed to satisfy this Court that

they are aggrieved persons within the meaning of Article 199 of the Constitution having a vested right in the up-gradation of posts against which they are serving, or otherwise that the policy of the Federal Government or USC, as the case may be, in not proposing or considering the posts in question for an upgrade suffers from irrationality. The petitions are therefore **dismissed** for not being maintainable with a cost of Rs.5000/- payable by each petitioner to the Federal Government through Secretary Ministry of Finance, other than W.P Nos. 2002/2021 and 3275/2021, wherein such cost shall be paid by the petitioners to USC.

(BABAR SATTAR)
JUDGE

Announced in open Court on 22.02.2022

JUDGE

Approved for Reporting.

Shakeel Afzal/-