HCJD/C-121
JUDGMENT SHEET

ISLAMABAD HIGH COURT
ISLAMABAD

I.C.A. No.451/2015

Federation of Pakistan through Secretary, Finance Division, Islamabad & another

VERSUS

Shahid Hussain Chowhan & 17 others

Appellants by	:	Raja Khalid Mehmood, Deputy Attorney General. Mr Nadeem Arshad, Section Officer, Finance Division.
Respondents by	:	Mr Tariq Mehmood Jahangiri, Advocate. Mr Sikander Naeem Qazi, Advocate. Barrister Qasim N. Abbasi, Advocate. Mr Abrar Bashir, Advocate.
Date of Hearing	:	12-06-2017.

ATHAR MINALLAH, J.- Through this single consolidated order, We shall decide the instant Intra Court Appeal alongwith the appeals listed in 'Annexure A' attached hereto. The appeals have been filed assailing judgment, dated 22-04-2014, passed by the learned Single Judge in Chambers in Writ Petition No.3530/2013 and other connected petitions.

2. The facts, in brief, are that the respondents are employees of the District Judiciary, Islamabad and various other Administrative Tribunals. The respondents had invoked the jurisdiction of this Court under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973 (*hereinafter referred to as the '**Constitution**'*) seeking issuance of a writ in the nature of mandamus. They had sought declaration to the effect

that they were entitled to receive "Special Judicial Allowance". Moreover, a prayer was sought for directing the Federation of Pakistan to grant them the "Special Judicial Allowance". The petitions were contested by the Federation of Pakistan. However, the learned Single Judge in Chambers vide the impugned judgment, dated 22-04-2014, allowed the 09 petitions and directed the Federation of Pakistan to grant all the respondents "Special Judicial Allowance" equal to three times of the initial substantive pay with effect from 03-01-2011 i.e. from the date from which the officers and staff of the Administrative establishment of the Islamabad High Court were extended the said allowance. Hence the instant appeals.

3. The learned Deputy Attorney General has contended that; the respondents enjoy the status of civil servants and their terms and conditions of service including privileges and allowances are determined by the Federal Government; the learned Single Judge in Chambers while exercising jurisdiction under Article 199 of the Constitution was not justified in formulating a fiscal policy nor a direction relating thereto could have been given; there is no law which entitles the respondents for grant of "Special Judicial Allowance"; "Special Judicial Allowance" has been granted to the Judicial Officers of the District Judiciary and not its administrative staff; the respondents who are employees of the Administrative Tribunals are also not entitled to claim "Special Judicial Allowance"; granting perks and privileges or an allowance is within the exclusive jurisdiction and power of the concerned executive authority; whether or not an allowance should be granted is a matter which is within the domain of the competent executive authority; the executive authorities have to take several factors into consideration while increasing

salaries or granting allowances; the establishment of a High Court is distinct and separate from the Court Staff of the District Judiciary or the Administrative Tribunals; the respondents cannot claim to be at par with the employees of the superior judiciary; the former enjoy the status of a civil servant while that is not the case of the latter; the staff employed in various Administrative Tribunals are not entitled nor can claim a right in respect of grant of "Special Judicial Allowance"; the summary wherein "Special Judicial Allowance" has been recommended in case of employees of District Judiciary, Islamabad has been forwarded for approval to the Prime Minister of Pakistan; the National Judicial (Policy Making) Committee had not recommended grant of "Special Judicial Allowance" to the employees working in various Administrative Tribunals; the competent authority i.e. the Finance Division had not been arrayed as a party in the proceedings before the Sindh High Court which had led to rendering of the judgment in the case of *'Amanullah Khan Yousufzai and others v. Federation of Pakistan through Law Secretary and others'* [PLD 2011 Karachi 451]; the said judgment has been assailed before the august Supreme Court and the appeals are pending; pursuant to various orders passed by the respective Courts, "Special Judicial Allowance" is being paid to some employees of the administrative tribunals as an interim arrangement and it has now been decided that the same shall be withdrawn.

4. The learned counsels appearing on behalf of the respondents on the other hand have argued that; a vested right has accrued in favour of the latter since the petitions were not opposed by the learned Deputy Attorney General who had appeared on behalf of the

Federation of Pakistan before the learned Single Judge in Chambers; the respondents are entitled to "Special Judicial Allowance" since other similarly placed employees in other provinces are enjoying the benefit thereof; the respondents cannot be treated differently; the Federation of Pakistan has acknowledged in the summary sent for approval to the Prime Minister that the respondents are entitled to the grant of "Special Judicial Allowance"; the employees of the High Court have been granted "Special Judicial Allowance" while the same cannot be denied to the staff or employees of District Judiciary; the Finance Division has granted "Special Judicial Allowance" to numerous employees working in different Administrative Tribunals and, therefore, the same cannot be denied to the respondents; reliance has been placed on the cases of *'Amanullah Khan Yousufzai and others v. Federation of Pakistan through Law Secretary and others'* [PLD 2011 Karachi 451], order dated 31-10-2012 passed by the Lahore High Court, Lahore in the case of *'Muhammad Akram PS, etc v. Governmetn of Pakistan, etc.'* [W.P. No.20968/2009] and order dated 07-01-2013, passed by this Court in the case of *'Amjad Ali v. Government of Pakistan through Secretary, Ministry of Finance, etc.'* [W.P. No.719/2012].

5. The learned Deputy Attorney General and the learned counsels for the respondents have been heard and the record perused.

6. The respondents had invoked the jurisdiction of this Court under Article 199 of the Constitution seeking a writ in the nature of mandamus. The respondents assert that they are entitled to the grant of "Special Judicial Allowance" and that they cannot be treated differently. It is not disputed that the status of the respondents is that of civil servants

and that their terms and conditions of service are determined by the Federal Government. It is also an admitted position that the "Special Judicial Allowance" is paid to the Judicial Officers of the District Judiciary. The respondents claim their entitlement in respect of grant of "Special Judicial Allowance" on two grounds firstly, that the National Judicial (Policy Making) Committee in exercise of its functions had made certain recommendations regarding removal of disparity in payment of "Special Judicial Allowance" and secondly, that in compliance with the judgment of the Sindh High Court rendered in the case of *Amanullah Khan Yousufzai and others* supra, employees of the District Judiciary in the Provinces of Sindh and Punjab are enjoying the grant of "Special Judicial Allowance".

7. The respondents assert a right in the context of grant of "Special Judicial Allowance" on the basis of recommendations made by the National Judicial (Policy Making) Committee. The said recommendations are part of the National Judicial Policy, 2009. The relevant recommendations made by the National Judicial (Policy Making) Committee are as follows.-

> *"13) In the province of Punjab, the judicial officers of the subordinate Judiciary are drawing additional judicial allowance equal to three times of their salaries, therefore, it is desirable that the judicial officers of all the provinces be treated alike and disparity in their salaries and allowance be removed.*
>
> *14) The salary/allowances of court staff should also be suitably increased."*

8. The National Judicial (Policy Making) Committee has been established under section 3 of the National Judicial (Policy Making) Committee Ordinance, 2002 (*hereinafter referred to as the* ***'Ordinance of 2002'***). The functions of the National Judicial (Policy Making) Committee are described in section 4 and it, inter alia, includes 'improvement in the terms and conditions of service of judicial officers and court staff, to ensure skilled and efficient judiciary'. Pursuant to the said statutory function, the National Judicial (Policy Making) Committee, from time to time, makes recommendations, *inter alia*, to improve the terms and conditions of service of the court staff. The two relevant recommendations have been reproduced above. It is obvious that the National Judicial (Policy Making) Committee had recommended grant of Judicial Allowance equal to three times of the salaries in respect of the Judicial Officers of the subordinate judiciary and to treat them at par with the judicial officers appointed in the Province of Punjab. The recommendation relating to the Court Staff was to the effect that their salaries/allowances may be suitably increased. It is, therefore, obvious that the National Judicial (Policy Making) Committee had not made recommendations of grant of Judicial Allowance in respect of the Court Staff let alone the staff employed in various Administrative Tribunals.

9. There is force in the argument advanced by the learned Deputy Attorney General that increasing salaries and grant of allowances in favour of civil servants and other employees inevitably has financial implications and that a decision relating thereto falls within the exclusive domain of the authorities who are competent in this regard. It has been

rightly argued that no employee has a vested right to claim increase of his or her salary nor entitlement to a specific allowance other than what has been approved by the authorities competent in this regard. The learned counsel for the respondents have not been able to make out a case that a right exits in favour of the respondents to claim "Special Judicial Allowance". There is no document placed on record to show that a right in relation to grant of "Special Judicial Allowance" vests in the respondents.

10. It is settled law that in order to seek a writ of mandamus certain pre-requisites are to be complied with before invoking the jurisdiction of a High Court under Article 199 of the Constitution. Reference in this regard may be made to the principles and law laid down by the august Supreme Court in *"District Magistrate, Lahore and another vs. Syed Raza Kazim"* [PLD 1961 Supreme Court 178], wherein it has been held as follows:-

> *"Now, having regard to the limited scope of the powers vested in the High Courts and this Court by the Laws (continuance in Force) Order to issue writs only of habeas corpus mandamus, prohibition, quo warranto and certiorari, we have to point out that the foundation for an application for a writ of mandamus (which alone is applicable in the present case as the function of the licensing authority is purely administrative) is that there must exist a legal right in the person seeking the writ to insist upon a clear duty being performed by some public officer or authority in respect of that right.*
>
> *There are other good reasons, too, upon which this application for a writ of mandamus must fail. The accepted conditions for the grant of a writ of this nature are that it must be preceded by a demand of justice and the refusal thereof and that there should be no other equally expeditious, in expensive and efficacious remedy available to the person seeking this extraordinary remedy."*

11. In the light of the above, it is essential for a person who invokes the jurisdiction under Article 199 of the Constitution seeking a writ in the nature of mandamus to explicitly show that there exists a legal right in such a person to insist upon a clear duty being performed by some public officer in respect of that right. Moreover, that a demand for performance of such duty ought to have been made and the same had been met with refusal by the public officer or authority in relation to the right being asserted. A person seeking a writ of mandamus is further required to satisfy the Court that no other equally expeditious, in expensive and efficacious remedy is available to him or her.

12. The respondents definitely have not been able to show that a legal right exists in their favour for issuance of a writ in the nature of mandamus. In the facts and circumstances of this case, the constitutional petitions filed by the respondents were neither competent nor could have been allowed while exercising jurisdiction under Article 199 of the Constitution. Moreover, there is no cavil to the proposition that any decision relating to increase of salary or grant of allowance falls within the ambit of policy of the Government. It is settled law that courts exercise restraint in matters of Government Policies except when it can be shown that fundament rights have been violated. Policy making is within the exclusive domain of the executive and interference in such domain is not the function of this Court. Reliance is placed on the cases of *`Engineer Iqbal Zafar Jhagra and Senator Rukhsana Zubair v. FOP and others'* [2014 SCMR 220], *'OGRA through Secretary v. Messrs Midway II, CNG Station and others'* [2014 PTD 243], *'Secretary Economic Affairs Division, Islamabad and others v. Anwar ul Haq Ahmad and other'* [2013 SCMR

1687], *'Dossani Travels Pvt. Ltd. and four others v. Messrs Travels Shop Pvt. Ltd and others'* [2013 SCMR 1749], *'Punjab Public Service Commission and another v. Mst. Ayesha Nawaz and others'* [2011 SCMR 1602] *and 'Wattan Party through President v. FOP through Cabinet Committee of Privatization, Islamabad and others'* [PLD 2006 S.C. 697].

13. It is noted that though a direction cannot be given to the competent authority regarding policy matters, nevertheless the executive authorities are under an obligation to consider the recommendations made by the National Judicial (Policy Making) Committee. We have been informed that to the extent of the Court Staff of the District Judiciary, Islamabad, the Finance Division has forwarded a summary for approval of the Prime Minister. We expect that the competent authority shall consider the recommendations and decide the matter in accordance with law. We are, however, of the opinion that a writ could not have been issued in the facts and circumstances of the instant appeals by directing the Federation of Pakistan to grant "Special Judicial Allowance" to the respondents. With utmost humility and deference to the judgment rendered by the Sindh High Court, we are afraid that we have not been able to concur with the reasoning and conclusions eloquently discussed in the case of *Amanullah Khan Yousufzai and others,* supra.

14. In the light of the above, the instant appeals are allowed and the impugned judgment, dated 22-04-2014, passed by learned Single Judge in Chambers is hereby set aside. However, it is noted that this order shall not in any manner prejudice the decision making process of the competent authority i.e. the Prime Minister, relating to the

recommendations of the Finance Division regarding increase of salary and/or grant of allowance in respect of the Court Staff of District Judiciary, Islamabad.

(ATHAR MINALLAH)
JUDGE

(MOHSIN AKHTAR KAYANI)
JUDGE

Luqman Khan/*

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ANNEXURE – A

S. NO.	ICA No. & title
1	ICA No.450/2015 Federation of Pakistan v. Muhammad Akram, etc.
2	ICA No.343/2014 Federation of Pakistan v. M. Iftikhar-ul-Hassan
3	ICA No.107/2015 Federation of Pakistan v. Zubair Aslam, etc.
4	ICA No.118/2015 Federation of Pakistan v. Fayyaz Khan, etc.
5	ICA No.186/2015, Federation of Pakistan v. Mazhar Haneef, etc.
6	ICA No.452/2015 Federation of Pakistan v. Zulfiqar Ali Naqvi, etc.
7	ICA No.453/2015 Federation of Pakistan v. Ghulam Nabi Deeshak, etc.