

Judgment Sheet
IN THE LAHORE HIGH COURT,
MULTAN BENCH MULTAN
JUDICIAL DEPARTMENT

WRIT PETITION NO.2171 OF 2010

MUHAMMAD IQBAL, ETC. Vs. GOVT. OF PUNJAB ETC.

JUDGMENT

Date of hearing	16.09.2014
Petitioners by:	Mr. Taj Muhammad Pirzada, Advocate.
Respondents by:	Mr. Muhammad Aurangzeb Khan, Assistant Advocate General.

Shah Khawar, J. The instant writ petition has been filed by the petitioners on the touchstone of the judgment passed by the Hon'ble Supreme Court of Pakistan in case titled "**The District Accounts Officer, Khushab & 2 others Vs. Bilal Ahmad Sami**" in Civil Appeal No.677 of 2006 decide on 12.10.2006.

2. The said civil appeal was filed against the judgment dated 21.12.2005 passed by the learned Punjab Service Tribunal, Lahore in Appeal No.1829 of 2005. The Hon'ble Supreme Court of Pakistan while relying upon its own earlier judgments in case of "**Zaka Ullah Khan Vs. The Director Public Instruction School (SE), Punjab & others**" decided on 04.06.2001 had declared that the respondent in the case was promoted from the post of SV to SST and his appointment was squarely covered by the promotion quota and consequently, it was held that no exception to the earlier judgment of Hon'ble Supreme Court referred above could be taken on the same subject and that the learned Service Tribunal rightly followed dictum laid down therein. It was held that in view of earlier judgment of the

Hon'ble Supreme Court, the department should not have filed this petition against the judgment of Service Tribunal on the settled question. The appeal was dismissed with compensatory costs of Rs.10,000/-.

3. The necessary facts giving rise to the filing of instant writ petition are that petitioners No.1 to 7 were appointed/promoted in the year 1986 from lower grade of EST, SV to higher grade of SST posts. Similarly, petitioner No.8 to 12 were appointed/promoted in the year 1987 from lower grade of EST, SV to higher grade of SST post while petitioners No.13 to 18 were appointed/promoted in the year 1989 whereas petitioners No. 19 to 25 were appointed/promoted in the year 1990 on the same conditions. After their appointments/promotions, the petitioners assumed their duties against vacant posts. The case of the petitioners is that after the promotion from EST, SV (BS-14) to SST (BS-16), they were entitled to the grant of one advance/pre-mature increment in accordance with rule 10(1) of Punjab Civil Servant Pay & Revisions Rules, 1977. It is further averred that declaration given by the respondents in promotion of the petitioners is with a wrong stand that petitioners were not promoted as SSTs but were appointed afresh. A reference has been made to one Mr. Zaka Ullah serving teacher who was also granted SST grade in the same manner but on refusal of respondents due to aforesaid stand regarding premature increment, he approached learned Punjab Service Tribunal, Lahore by way of filing an appeal which was allowed in his favour and same was endorsed by the Hon'ble Supreme Court of Pakistan in its judgment dated 22.05.2004. Hence, this controversy was resolved and the said Mr. Zaka Ullah was granted one advance/premature increment in accordance with the rule 10(1) of Punjab Civil Servant Pay & Revisions Rules, 1977. It is further contended that on the same subject District Accounts

Officer, Khushab filed a Service Appeal No.1829-2005 decided by learned Punjab Service Tribunal, Lahore on 21.12.2005. The said Service Appeal was dismissed by the learned Punjab Service Tribunal, Lahore and same was challenged before the Hon'ble Supreme Court of Pakistan in civil Appeal No.677-2006. The said appeal was declined by the Hon'ble Supreme Court with the observations as mentioned in Para-1 of the writ petition. It is contended that the petitioners have been collectively persuading the respondents for the grant of one premature increment as required under the rules but the requests of the petitioners remained unanswered hence, the instant writ petition.

4. Report and parawise comments were filed by respondents No.2,3,4 & 5. In parawise comments filed by respondent No.2, it was mentioned that the petitioners were appointed before 27.07.1991, when the method of recruitment was available in the Punjab Education Department (School Education), Recruitment Rules, 1987, according to which the posts of SST(s) were required to be filled up 100% by initial recruitment. Moreover, the appointments of petitioner as SST(s) were made in accordance with the Rule, 1987 and same were treated as fresh. In the same manner, report and parawise comments were filed by respondent No.4 wherein it is mentioned that in the light of the Govt. of Punjab, Finance Department letter dated 25.04.2009, the benefit of one premature increment may be extended only to those serving Secondary School Teachers appointed against 50% in-service quota from the date of appointment as SST whose cases are at par with Mr. Zaka Ullah and those who were appointed on or after 27.07.1991, the date when service rules were amended. It is also mentioned in parawise comments that Mr. Zaka Ullah, SST approached the Hon'ble Supreme Court of Pakistan for grant of one premature increment being promotee from 50% in-service quota and the Finance Department, Punjab

granted one premature increment/re-fixation of pay to him. Further that Zakaullah's case is not applicable to the petitioners.

5. I have given conscious consideration to the contentions raised by the petitioners as well as report and parawise comments filed by the respondents.

6. The perusal of the judgment passed by Hon'ble Supreme Court of Pakistan in Civil Appeal No.677/06 reflects that the leave was refused on the touchstone of the case of Zakaullah, the operative part of the judgment is reproduced herein under:-

“Admittedly the respondent was promoted from the post of SV to SST and his appointment would be squarely covered by the promotion quota and consequently, we would take no exception to the earlier judgment of this Court referred above on the same subject and the Service Tribunal rightly following the dictum laid down therein, gave verdict in favour of the respondent. In view of earlier judgment of this Court, the department should not have filed this petition against the judgment of Service Tribunal on the settled question. This appeal is therefore dismissed with compensatory costs of Rs.10,000/- which shall be paid to the respondent by petitioner-department within a period of two weeks.”

7. Now the question arises whether benefit of the judgment of Hon'ble Supreme Court of Pakistan passed in Civil Appeal No.677-06 decided on 12.10.2006 is applicable to the cases of the petitioners?

8. Perusal of the record reveals that the petitioners were appointed as SST(s) in the years 1986, 1987, 1989 & 1990, in accordance with the Rules 1985 with 100% quota as fresh appointments as a result of approval by the Department

Selection/Recruitment Committee, Multan Division, Multan with usual allowances and advance increments in BS-15 purely on temporary capacity prior to 27.07.1991 when the rules were amended. Learned Assistant Advocate General has placed copy of judgment of the Hon'ble Supreme Court of Pakistan in case titled as "Mubarak Ali Vs. Secretary Finance, Govt. of the Punjab etc" in Civil Petition No.915-L-2011 decided on 06.04.2012. The said order is reproduced herein as under: -

"Petitioner's claim for premature increment in the salary was turned down by the competent authority in the department and his appeal also failed before the learned Punjab Service Tribunal vide the impugned judgment dated 24.02.2011.

2. Having heard petitioner's learned counsel at some length, we specifically confronted him with the query as to whether the rules which provided for premature increment were still in vogue when petitioner was appointed as Secondary School Teacher i.e. on 2.9.1990, to which his answer was in negative. That being so, no case for interference is made out. The petition lacking in merit is accordingly dismissed and leave refused."

9. Perusal of the said judgment also indicates that the benefit of one premature increment was only available to the SST(s) who were appointed on or after 27.07.1991, when the rules were amended and that too, promotion from 50% in-service quota.

10. In the same manner, a copy of letter dated 25.04.2009 has been placed which is addressed to the Secretary, Govt. of the Punjab, School Education Department by Finance Secretary, Punjab. In the said letter, it is mentioned that the benefit of premature increment/re-fixation of pay may be

extended only to those serving Secondary School Teachers appointed against 50% in-service quota from the date of appointment as Secondary School Teachers whose cases are at par with Mr. Zaka Ullah's case and they were appointed on or after 27.07.1991, the date when service rules were amended.

10. The copy of judgment dated 06.04.2012 passed by the Hon'ble Supreme Court of Pakistan and Civil Petition No.915-L-2011 decided on 06.04.2012 have been perused carefully. The perusal of the judgment passed by the Hon'ble Supreme Court of Pakistan in Civil Appeal No.677-06 decided on 12.10.2006 on the basis of which the instant writ petition has been filed indicates that the grant of one advance increment to the SSTs having promoted against 50% quota of promotees was under consideration. Further that the SSTs whose cases were at par with the case of Zaka Ullah *ibid* were held entitled to the benefit of one premature increment.

11. Admittedly, the petitioners were appointed in the years 1986, 1987, 1989 & 1990 respectively from lower grade of PST, SV to higher grade of SST prior to the date i.e. 27.07.1991 when the service rules were amended. Perusal of judgment dated 06.04.2012 passed by Hon'ble Supreme Court of Pakistan in Civil Petition No.915-L-2011 decided on 06.04.2012 also indicates that appeal of one Mubarak Ali was dismissed on the ground that the said petitioner was appointed as Secondary School Teacher on 02.09.1990. During the proceedings, the Hon'ble Supreme Court specifically confronted the learned counsel with a query as to whether rules providing premature increment were still in vogue when petitioner was appointed as Secondary School Teacher i.e. 02.09.1990 to which the answer was in negative. In such situation, the Hon'ble Supreme Court did not interfere in the

judgment passed by the learned Punjab Service Tribunal, Lahore in Appeal No.1625-09 and leave was refused.

12. I am afraid that the judgments relied upon by the petitioners i.e. Civil Appeal No.677-06 decided on 12.11.2006 is not applicable to the case of the petitioners as admittedly they were appointed prior to 27.07.1991. The petitioners are not entitled to claim of one premature increment which is only provided to the SSTs appointed against 50% in-service quota, on or after 27.07.1991.

13. For what has been discussed above, the instant writ petition is **dismissed** in the above terms.

SAJJAD

(SHAH KHAWAR)
Judge

Approved For Reporting

(SHAH KHAWAR)
Judge

Announced in open Court on 24-12-2014

Judge