

**W.P. No.57182/2017**

**Muhammad Saeed, etc.**

**Secretary Finance, etc.**

**06.02.2019** **Mr. Muhammad Ilyas Bhatti, Advocate for the petitioners.**  
**Mr. Saeed-ul-Hassan Jaffery, AAG.**

Through this constitutional petition the petitioners have sought a declaration to the effect that recovery of the extra increment from the petitioners and others is absolutely illegal and unlawful, therefore, the respondents be directed not to effect its recovery.

2. Brief facts giving rise to the filing of this petition are that the petitioners joined the police department as Foot Constables in the year 1990 and some of them have already retired from service. Since the petitioners continued to draw extra increments but the respondent authority had deducted Rs.1,44,364/- from the pension and gratuity of Muhammad Saeed/petitioner No.1 and Rs.2,25,280/- from the pension and gratuity of Muhammad Anwar/petitioner No.2 for the reasons that such extra increments received by the petitioners after 01.05.1990 were required to be recovered. In paragraph-5 of the writ petition the names of a number of constables have been mentioned from whom the recovery is being effected. This act

of the respondents is claimed as against the law declared by the superior courts.

3. In the report and parawise comments submitted by respondent No.1/Secretary Finance it was stated that the issue of increments of the posts is relating to terms and conditions of service, therefore, Article 212 of the Constitution is duly applicable. It was further stated that three advance increments were allowed to the constables who possessed matriculation qualification on 01.05.1990 and their new pay scale was to be fixed under Rule 9 of the Punjab Civil Servants Pay Revision Rules, 1977. It was stated that the constables who were recruited before 01.05.1990 without matric were not entitled to said three increments.

4. In the report and parawise comments submitted by respondents No.2 and 3 i.e. Accountant General Punjab and District Account Officer, respectively it was stated that the CCPO, Lahore/respondent No.4 had pointed out this fact, therefore, the said respondents withheld extra increments as not legally permissible. Prior to 01.05.1990 the basic qualification for appointment of the post of Foot Constable was middle and who possessed matric qualification were eligible for three increments for having higher qualification. Since on 01.05.1990 the scale of the Foot Constable was raised from BS-2 to BS-5 and so was the prescribed qualification from middle to matric,

but the petitioners were appointed before 01.05.1990 in BS-5, therefore, inadvertently awarded three advance increments by treating matriculation as higher education.

5. In the report and parawise comments submitted by CCPO, Lahore/respondent No.4 it is stated that according to Notification dated 22.05.1990 the Matriculation Allowance in respect of police constables recruited before 01.05.1990 were to be paid three advance increments, therefore, three advance increments received by Muhammad Saeed and Muhammad Anwar being non-matriculation (both retired) is illegal.

6. Arguments heard. File perused.

7. As per Notification No.FD.PC.14-3/87, dated 22.05.1990, the Governor Punjab while exercising his powers under Rule 14 of the Punjab Civil Servants Pay Revision Rules, 1977 upgraded pay scale of the post of constable from BS-2 to BS-5 by giving three advance increments to those who had acquired matriculation qualification and in paragraph-2 it was provided that pay of the constables who were already in service on 30.04.1990 were to be fixed under the new pay scale under Rule 9 of the Punjab Civil Servants Pay Revision Rules, 1977.

Rule 9 ibid is reproduced as under:-

**“Fixation of pay on transfer from a lower scale to a higher scale--. When a civil servant is allowed to draw pay in the next higher Revised National Pay Scale under rule 8 or of his post having been upgraded, his pay in the higher scale shall be fixed at a stage next above his pay in the lower scale”.**

8. In paragraph-1 of the writ petition no exact date of appointment of the petitioners was mentioned. So much so in report submitted by CCPO, Lahore/respondent No.4 the date of their appointments was not stated. Since the date of appointment of the petitioners was not conveyed to this Court either in affirmative or denial by the respondents, therefore, applicability of the said letter dated 22.05.1990 could not be withheld. Even otherwise, if the stand taken by respondent No.4 is presumed correct, the pertinent question would be as to what stopped the respondents from recalling these three increments during the entire service of the petitioners. Meaning thereby both the respondents and the petitioners acted bonafidely and without malice, by interpreting the above said Rule 9 which was correctly applied in favour of the petitioners.

9. In case titled **PRIVATE SECRETARY TO THE COMMISSIONER, PUNJAB EMPLOYEES' SOCIAL SECURITY INSTITUTION, LAHORE versus THE PUNJAB EMPLOYEES' SOCIAL SECURITY INSTITUTION** and another reported as 1989 PLC (C.S.) 332, the learned Single Bench of this Court held that under Rule 4.10 of the Civil Service Rules (Punjab), Volume-I, Part-I, if show cause notice was not given before recalling the advance increments, it could not withdraw in violation of principle of natural justice.

10. In case titled **CONTROLLING AUTHORITY, N.W.F.P. BOARD OF TECHNICAL EDUCATION, PESHAWAR and another** versus **ABDUL SALAM SECRETARY, N.W.F.P. BOARD OF TECHNICAL EDUCATION (presently Chairman of the Board)** reported as PLD 1993 Supreme Court 200 withdrawal of salary and allowances in excess by the employee was not to be legally correct as it was released on the basis of an order passed by the competent authority.

11. In case titled **Province of Punjab through the Chief Engineer, Highway Department and others** versus **PERVAIZ IQBAL** reported as 2004 SCMR 309 it was held that where the advance increment had been given on the basis of higher qualification any circular issued later could not be equated to that of a legitimate piece of legislation and therefore, cannot be extended retrospectively. Besides, principle of locus poenitentiae is duly applicable in the present case as no fraud/misrepresentation was played by the petitioners for drawing three advance increments which they continued to withdraw until retirement of petitioners No.1 and 2. Reliance is placed on PLD 1991 Supreme Court 973 **CHIEF SECRETARY, GOVERNMENT OF SINDH and another** versus **SHER MUHAMMAD MAKHDOOM and 2 others** and PLD 1992 Supreme Court 207 **THE ENGINEER-IN-**

**CHIEF BRANCH through Ministry of Defence, Rawalpindi  
and another versus JALALUDDIN.**

12. For the foregoing reasons, this petition is **allowed** and the act of respondents to withdraw already granted three increments in the year 1990 from the petitioners is hereby declared as illegal, unlawful and void ab-initio.

**(ALI BAQAR NAJAFI)  
JUDGE**