

ORDER SHEET

IN THE HIGH COURT OF SINDH AT KARACHI

C. P. No. D-4962 of 2019

[Altaf Hussain Abro & others Vs. Federation of Pakistan & others]

DATE	ORDER WITH SIGNATURE OF JUDGE(S).
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Present:

Mr. Justice Muhammad Karim Khan Agha

Mr. Justice Nisar Ahmed Bhanbhro

Priority

1. For order on office objection.
2. For hearing of main case.

Petitioners: Altaf Hussain and others
Through Syed Ahsan Imam Rizvi, Advocate

Respondents: Mr. Ali Safdar Deepar, A.A.G. Sindh.
Ms. Wajiha M. Mehdi, Assistant Attorney General.

Date of Hearing 03.06.2025

Date of Order 11.06.2025

ORDER

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Nisar Ahmed Bhanbhro, J: Through instant petition, the petitioners have claimed the following reliefs:

- i. Declare that the Respondents No. 1 to 5 have discriminated against the Petitioners and their actions / omissions are in violation of Article 25 of the Constitution, 1973.
- ii. Direct the Respondents No.1 to 5 to provide equal treatment to Petitioners and other employees performing their duties as Readers in Federally Administered Courts / Tribunals and to eradicate the disparity in pay scales of same posts / cadres in other Courts / Tribunal and Government Departments.
- iii. Direct the Respondents to pay salaries to the Petitioners equal to the salaries being paid to the readers of the Federal Service Tribunal working in BPS-16 from the date of up-gradation of their posts.

2. The facts in brief of the case of petitioners are that Petitioners are employed in Law Department Government of Pakistan and discharging duties as Readers (BPS-14) in Special Federal Courts/Tribunals established by Federal Government. The Petitioners were discriminated in their services with Readers working in Federal Service Tribunal, Regular Courts, Appellate Tribunals and Special Courts established by Provincial Governments in Provinces of Sindh, Punjab, Balochistan and Khyber Pakhtoonkhwa. Petitioners have moved representation to Respondents for up-gradation of posts of Readers of Special Federal Courts/Tribunals established by Federal Government to place in them in parity to the similarly placed Readers performing duties in Federal and Provincial set up. Representation filed by Petitioners has remained unheeded and yet to yield any fruitful results. Petitioners are deprived of up-gradation without any reasonable cause, inaction on the part of Respondents is discriminatory and offends their fundamental rights guaranteed under Article 25 of the Constitution, 1973. Hence this Petition.

3. On notices, Respondents No.4 and 5 filed their joint statement, asserted that issue agitated by Petitioners, related to policy of upgradation and pertained to Respondent No.1, 2, & 3, whereas AGPR, Islamabad and AGPR (Sub Office), Karachi were neither policy makers nor had any role in policy making, except to obey the rules framed by authority.

4. Respondent No.2 in its reply asserted that grievance of the petitioners related to other respondents and Respondent No 02 (Secretary, Establishment Division) was impleaded as a proforma party as nothing was claimed against it, as Petitioners were not aggrieved by any order issued by Respondent No 2.

5. Respondent No.3 in its reply contended that cases of Up-gradation/Re-designation of posts in Ministries/Divisions/Departments were considered in terms of policy guidelines circulated vide Establishment Division O.M.No.8/36/2000/R-1 dated 20-1-2001. Furthermore, recently Establishment Division superseded old up-gradation/re-designation policy issued vide O.M No.8/36/2000-R-1 dated 20-01-2001; O.M No.8/36/2000-R-1 dated 03-02-2001; O.M No.8/36/2000-R-1 dated 11-09-2018 and the policy of up-gradation/re-designation was revised vide O.M No.8/36/2000-R-1 dated 29-06-2022 in light of study conducted by M.S. Wing. Committee headed by Secretary, Establishment Division has been formed to decide cases related to upgradation. Establishment Division vide O.M No.8/36/2000-R-1 dated 21-07-2022 issued TOR/SOP and advised all Ministries/Divisions to submit cases for upgradation/re-designation accordingly. Each department had different types of cadres/posts, with their own nomenclature, job descriptions, work load, recruitment rules, prescribed qualifications, experience for posts and scales of pay. Moreover, it was an

administrative matter that needed in depth comprehensive study of organization and rationalized administrative structure of group with reference to other cadres by MS Wing of Establishment Division. In terms of policy guidelines and Judgment of Honorable Supreme Court of Pakistan dated 17-2-2016, administrative Ministry and Establishment Division were assigned main role to look into administrative service structure of the Federal Government as a whole in consultation with MS Wing to remove anomaly/distortion. The request of Petitioners for upgradation of post was examined in the light of mentioned factors and information provided by Law & Justice Division and Establishment Division against the policy and previous court judgment cited above. Proposed upgradation was found not in consonance with requirements hence Finance Division regretted proposed upgradation vide OM dated 09-07-2021 on ground that post of Reader, Nazir and Bailiff in the Law and Justice Division already availed the benefit of upgradation vide Finance Division O.M No.F1(5)R-1/2010-21/2014 dated 13-02-2014 i.e Reader (BS-11 to BS-14), Nazir (BS-08 to BS-11) and Bailiff (BS-01 to BS-03). Law and Justice Division vide its O.M NO. F.8(59)/2019 dated 24-11-2020 stated that the recruitment rules would remain the same for existing and proposed/upgraded post; hence case did not fulfill the condition laid down by Establishment Division in its O.M No.8/26/2016-R-69 dated 24-01-2020. The post of Reader had good career path and promotion channel in their service structure. The benefit of move up to employees from BPS-01 to BPS-04 vide Finance Division O.M dated 28-06-2007 and O.M dated 31-12-2012 was also extended/granted to the employees working as bailiff. Personal Pay was admissible on reaching maximum of pay scale. Hence employees were not deprived of financial benefit even after reaching maximum pay scale/grade. Due to suppression of old upgradation/re-designation policies Finance Division had no mandate/authority to upgrade/re-designate the posts. According to revised policy dated 29-06-2022 a committee headed by Secretary, Establishment Division was formed to decide the cases related to upgradation/re-designation. Petition was not maintainable and liable to be dismissed.

6. Syed Ahsan Imam Rizvi, Learned Counsel for the Petitioners contended that the Petitioners were Civil Servants working under the subordination of Ministry of Law, Justice and Parliamentary Affairs Federation of Pakistan. They were discharging duties as Readers in Special Courts/ Federal Tribunals. Petitioners were working in grade 14, whereas under the similar circumstances, readers working in Courts, Tribunals and Special Courts under provincial set up were working in grade 16 – 17, they were getting perks and privileges more than that of Petitioners in terms of pay scale, salary and other benefits. The nature of job of the Petitioners was same as that of the readers working in regular courts in Federal and Provincial set up. Petitioners filed representation with the department seeking equal treatment, which was declined, the refusal of Respondents to give equal treatment to Petitioners to those of similarly placed employees is arbitrary, discriminatory and militates the fundamental rights

guaranteed to Petitioners. He placed reliance upon the case of Regional Commissioner Income Tax Northern Region Islamabad and another Versus Syed Munawar Ali and others reported in 2016 SCMR 859, Amanullah Yousufzai and others Versus Federation of Pakistan through Law Secretary and others reported in PLD 2011 Karachi 451.

7. Ms. Wajiha M. Mehdi, Learned Assistant Attorney General for Pakistan assisted by Mr Ali Safdar Debar Learned Assistant Advocate General Sindh contended that the Petitioners seek upgradation of posts, which is a policy matter. The Petition was not maintainable as this Court cannot frame policies relating to the terms and conditions of service of employees. The Petitioners have already availed benefit of upgradation, therefore instant petition is not maintainable under the law and liable to be dismissed. They placed reliance on the case of Government of Pakistan M/O Railways through Secretary and others (2016 SCMR 442)

8. Heard arguments, perused material available on record.

9. The case of the Petitioners is that they are given a different treatment in terms of their services, which violated their fundamental rights. The claim of the petitioners seeking equal treatment and protection falls within the Constitutional Command. The Constitution of Islamic Republic of Pakistan, of 1973 (the Constitution) being the supreme law of the Country ensured a guarantee of protection the fundamental right. Petitioners being members of Civil Service enjoyed such protection. Article 3 of the Constitution obligated the state to ensure elimination of all forms of exploitation and commit to the gradual fulfillment of the fundamental principle: from each according to his ability, to each according to his work, which is further fortified under Article 38 which has been set out as a principles of policy, and casts a responsibility and duty upon the State to secure the well-being of the people by raising their standards of living and ensuring equitable adjustment of rights between employer and employees and providing for all citizens, within the available resources of the Country, facilities for work and adequate livelihood, and reducing disparity in income and earnings of individuals. and they had inalienable right to be treated in accordance with law. Article 4 of the Constitution granted the protection of law and to be treated in accordance with law as an alienable right of every citizen. Article 25 of the constitution embodied the equal protection of law and enshrined a principle of equity that all citizens are equal before law. Article 27 of the Constitution safeguarded the rights of citizens against any sort of discrimination in services. The sagacity of referred provisions of the Constitution enunciates the principle of equality and equal protection of law and no action detrimental to the life, liberty, body, reputation, or property of any person can be taken except in accordance with law. In all fairness, the public functionaries are duty-bound to perform in good faith with sheer dedication but within the peripheries of

their powers, to ensure equal treatment, being mindful to the tenets and precepts enshrined under the Constitution.

10. Article 27 of the Constitution enunciates that no citizen shall be discriminated in any manner in matters pertaining to civil service, however this article permits the state to make classification in different cadres of civil services, but such a classification should be rational and reasonable. To substantiate their claim that the classification of service of Petitioners was not reasonable and rationale they placed on record Office Memorandum No 1/13/96-R-6 dated 10-08-2016 issued by Cabinet Secretariat, Establishment Division/ Respondent No.2 through which various ministerial posts including Assistant Incharge, Assistant, upper and lower division Clerks working in various departments of Federal Government were upgraded, and incentives of higher pay scale were awarded to the employees. The Petitioners placed on record Notification No. SOII (SGA&CD) 11-10-2012 dated 26-02-2015 issued by the Law Department Government of Sindh wherein Provincial Government up-graded the post of Readers from BPS-11 to BPS-17 working in Sindh Service Tribunal Karachi. Petitioners also placed on record Notification No. 630/2011 dated 07-07-2011 issued by the Ministry of Law and Justice, Islamabad/ Respondent No 1 whereby the post of Steno-typist was upgraded from BS-12 to BS-14, post of Stenographer BS-15 to BS-16 and Private Secretaries from BS-17 to BS-18. Notification/ Order No. 908/128-Estt, dated 26-03-2009 issued by the High Court of Balochistan wherein post of Superintendent was upgraded from BPS-16 to BPS-17 with effect from 01-04-2009. The Office Order dated 04-01-2017 whereby the Hon'ble Islamabad High Court up-graded the post of Assistant-Readers from BPS 14 to BPS 16.

11. The Respondents in their written reply have not denied the notifications of upgradations issued by the High Courts of province and Islamabad and Law Department Government of Sindh granting benefit of upgradation to the similarly placed employees but denied the relief of upgradation to Petitioners under the score that they already availed such upgradation benefit in the past and had a clear pathway to go forward by way of promotion. This stance of the Respondents was not acceptable, as the Petitioners was not claiming any right of promotion but they sought equal treatment and equal protection of law. The Respondents were required to demonstrate that the job description and work of Petitioners were different from the readers of Courts and Tribunal who were working in grade 17 and above, so that they could be classified and placed at different pedestal.

12. The record reflected that post of Reader on the sanctioned strength of various Federal, Provincial Administrative Courts/Tribunals is not in consonance with the post held by the Petitioners, the classification of the readers has been made in various administrative courts and tribunals by the departments which places the position of Petitioners to a lower footing.

The Law Department has not given any reason for keeping the petitioners at a different footing. The comparative table below will demonstrate the position of Readers in other courts:

S. No.	Courts/Tribunals	Reader	Grade	Relevant Notification
1.	Appellate Tribunal Local Councils Sindh (Judicial Forum)	Provincial	BPS-18	Notification No.SOA/LG/A TCL/1 (1)/88 (Pt-II) dated 09th October, 2012 of Local Government Department, Government of Sindh, Karachi
2.	Sindh Service Tribunal at Karachi	Provincial	BPS-17	Notification No. SOII (SGA & CD) 11-10-2012 dated 26 February, 2015 of Services & General Administrative Department Government of Sindh, Karachi
3.	Federal Services Tribunal	Federal	BPS-17	Sanction strength
4.	Appellate Tribunal Local Councils (Judicial Forum)	Provincial	BPS-18	Notification No SOA/LG/ATCL /1 (1)/88 (Pt-II) dated 13th November, 2012 of Local Government Department, Government of Sindh, Karachi

13. The description of basic pay scales mentioned in the tabular form helps in understating that Readers performing duties in Federal Services Tribunal, Sindh Service Tribunal, Board of Revenue and Labour Appellate Tribunal were enjoying the perks and privileges of Grades BPS-16, 17 and 18, respectively despite the fact that they were discharging the same duties and functions as performed by the Petitioners who were serving as Readers of the Special Courts/Federal Courts/ Tribunals however their posts have not been up-graded to bring in equity with the Readers working in other Courts as they were still working in BPS-14 despite of grant of an upgradation from grade 11 to grade 14. This act on the part of Respondent constitutes sheer discrimination which offends the fundamental rights of Petitioners guaranteed under Articles 25 and 27 of the Constitution. The Respondents have failed to demonstrate the reason of disparity in between two similar positions. Admittedly Petitioners were performing a job similar in nature to those readers who were enjoying benefits available under grade 17. The Federal Government has created two categories of readers one category working under the Federal Administrative Courts/Tribunals with basic pay scale (BPS)-14 and other category of readers working in Federal Services Tribunal with BPS-17. This classification did not appear to be reasonable and rational as the Federal Service Tribunal is also a Court of Law dealing with service issues of employees of Federal Government and other Administrative Tribunals were also the courts of law dealing with different matters. There appeared to be no significant difference in the functions, duties, status and qualification of both the cadres as such both the class of employees enjoin equal treatment and equal protection of law under the Constitution, which cannot wither away on account of any phenomenal logic tendered by the Respondents.

14. The Petitioners and other employees/ judicial staff attached to the Federal Administrative Courts/ Tribunals worked under the subordination of Ministry of Law, Justice and Parliamentary Affairs, it was the responsibility and obligation of the concerned department to treat all the employees placed in similar situation at par, any discrimination in terms of pay, package, grade beyond the protection of law is not sustainable. No doubt the upgradation of a particular post falls within the policy domain of the executive and this Court under its writ jurisdiction cannot interfere into the policy matters, needless to say that policy making bodies / entities do not enjoy unfettered powers to grab the fundamental rights of the citizens guaranteed under the constitution. This Court is vested with abridged powers to check the actions of executive relating to the fundamental rights of citizens and actions on the part of executive if found in violation of the rights guaranteed under the Constitution, the Court by exercising its powers conferred under article 199 of the Constitution would interfere to correct the wrong even in the matters related to the terms and conditions of the service which offended the fundamental rights safeguarded under article 27 of the Constitution.

15. Fair and expedient justice cannot be provided to the citizens if ministerial staff of judiciary is not given equal treatment and equal protection of law. If the employees of one tribunal or court are paid better emoluments, it would attract more qualified, efficient and competent officers to join service and their efficiency and performance would be better, in case the employees of other tribunal are deprived of such benefits and fixed at low perks and privileges in pay scale and other benefits, it would amount to disparity and the quality of good service performance and work would be seriously compromised. This will be demoralizing for employees and might corrupt the system affecting litigant badly. Articles 25, 27, Articles 37 and 38 of the Constitution, cast duty on State to provide equal treatment to all citizens and promote social justice and eradicate the social evils, and shun parochial treatment. In matters of civil service the equality can only be observed by making uniform terms and conditions of all the categories of the persons working in similar position, otherwise the disparity would erode the transparency and fairness of work.

16. Learned Assistant Attorney General when confronted to this Legal Position that what reasons weighed before the Federal Government to place petitioners at a different and lower footing from the employees discharging duties in Federal Services Tribunal, failed to satisfy this Court for the rationale behind this scheme. Review of the Federal and Provincial Civil Service Laws regulating appointment, promotion, transfer and other retirement of civil and government servants revealed that the provincial governments have adopted the Federal Service Laws through enactment from respective provincial legislation in a pari materia manner, this inferred that the Governments have kept the standard of civil service in all the provincial governments in compliance to the provisions of the constitution obligating the state to shun discrimination in services. There appeared no reasonable rationale to place Petitioners at different footing, particularly when the nature of the job of petitioner was similar to other readers working in other courts of law. Without any doubt better emoluments and remuneration would attract persons of integrity and high qualification to join judicial service in its administrative and clerical positions and it is the right of all citizens to be dealt equally.

17. The issue involved in the present petition has already been dealt with elaborately by a Learned Division Bench of this Court in the case of Amanullah Yousuzai and others Versus Federation of Pakistan(Supra), Paragraph 63 and 64 of the judgment being relevant is reproduced below for the sake of reference:

63. In view of the foregoing discussion Constitution Petitions No.D-2318/2009 is granted in following terms:

Respondents Nos. 1 to 3 in the said petition' are directed to extend benefits to the employees in the office of Advocate-General of Sindh in similar terms as granted to the office of Attorney-General of Pakistan, but with effect from 1-

3-2010 when such benefits was not extended to the employees and servants of Sindh High Court Establishment by the honourable Chief of Sindh through Notification dated 2-4-2010, such increase to be paid with effect from 1st July, 2011 and arrears with effect from 1-3-2010 be paid in monthly instalments along with monthly salary with effect from 1st January, 2012 till entire arrears are paid along with monthly salary for the month it is due.

64. And in view of the discussion made above, Constitution Petitions No. D-1930/09, C.P No. D-1465/09 and C.P D-2433/09 are disposed of in following terms:

1. The Government of Sindh is directed to pay Special Judicial Allowance equal to three times of the initial of their substantive pay scale (as allowed in Province of Punjab through notification dated 12-8-2008) with effect from 1-3-2010 when such allowances were extended to Servants and Employees of the High Court Establishment, (through Notification dated 2-4-2010 by the then honourable Chief Justice of High Court of Sindh) .to all the Judicial Officers of the District Judiciary including those working on ex-cadre posts, which shall include the District and Sessions Judges, Additional District and Sessions Judges, Senior Civil Judges, all Civil Judges and Judicial Magistrates working under the control, superintendence, and within the territorial jurisdiction of the High Court of Sindh per Article 203 of the Constitution, 1973.

2. Similarly, the employees and servants of establishment of Subordinate Judiciary/District Judiciary (Sindh Judicial Service) and that of Courts and Tribunal established under Federal or Provincial law, which are under the control, superintendence, of High Court of Sindh and functioning and discharging duties within the territorial jurisdiction of the High Court of Sindh per Article 203 of the Constitution, 1973 are also granted the same relief as is allowed through this order to the Judicial Officers referred to in para 1 above and in the same manner.

3. In view of financial constraints of the Provincial Government of Sindh, we would direct that the arrears to the Judicial officers of District Judiciary including Judicial Officers discharging judicial function/duty in Courts/Tribunal established under either Federal or Provincial law with effect from 1st March, 2010 to 30th June, 2011 shall be paid in monthly instalment together with and in addition with the monthly salary with effect from 1st January, 2012 till such time entire arrears with effect from 1-3-2010 are totally set off.

4. Government of Sindh and Government of Pakistan are also directed to take steps and initiate such legislative measures as may be necessary to empower High Court of Sindh and or the Chief Justice of High Court of Sindh to fix and determine the pay scale of members of Sindh Judicial Service including judicial officers and servants and employees of Sindh Judicial Service in consonance with Article 203 and other enabling Articles of the Constitution of Pakistan and as per direction given in the case of Government of Balochistan v. Azizullah Memon, PLD 1993 SC 341 to fully secure financial independence and separation of judiciary from executive

18. This Court is saddled with a responsibility to safeguard the fundamental rights of the citizens granted to them under the Constitution. The powers conferred to this Court under its writ jurisdiction in ordinary cases are limited and restricted to its territorial jurisdiction, but in matters warranting the enforcement of fundamental rights, the constitution under article 199 itself grants unbridged powers to this Court. The Petitioners have placed on record sufficient material to demonstrate that the Respondents have failed to give them equal treatment, such an act is a violation of article 25 and 27 of the Constitution. Though this court while dealing with the case of Amanullah Yousufzai (Supra) had granted allowances enjoyed by the judicial staff in other provinces to the judicial staff of province of Sindh, the case of the Petitioners squarely fell in the same category. As a result of the discussion made herein above, the Petitioner have made a case for indulgence of this Court under its writ jurisdiction, consequently this Petition is allowed. Since the Petitioners are working under the set up of Federal Government and under the Federal Set up Federal Service Tribunal is established to deal with the matters relating to services. It would be appropriate and consistent to the canons of law that the Petitioners be dealt with and given similar treatment as is being enjoyed by the Readers of Federal Service Tribunal Respondents are directed to upgrade the posts of Petitioners in grade equal to the grade, perk and privileges enjoyed by the Reader of Federal Service Tribunal. Since the post of Petitioners was upgraded in year 2014 and at that time they did not agitate grievance for disparity and equal treatment, therefore the upgradation and other benefits shall be granted to the Petitioners from the date of this order.

19. A copy of this order shall be sent to the Secretary Ministry of Law, Secretary Finance Division, Secretary Establishment and AGPR Islamabad for compliance within a period of 3 months of this order.

JUDGE

HEAD OF THE CONSTITUTION JUDGE