

IN THE HIGH COURT OF SINDH CIRCUIT COURT HYDERABAD

C.P. No.D-1658 / 2012

PRESENT:

Mr. Justice Muhammad Shafi Siddiqui &
Mr. Justice Arshad Hussain Khan.

Mehmood Ali Qaimkhani & Others Vs. Federation of Pakistan & Ors.

Date of hearing: 16.08.2017.
Date of decision: 16.08.2017.
Petitioners: Through Syed Muhammad Saulat Rizvi advocate.
Respondent No.1. Through Mr. Zulfiqar Ali Rajput Assistant Attorney General for Pakistan.
Respondents.2to5: Through Mr. Muhammad Arshad S. Pathan advocate.

JUDGMENT

ARSHAD HUSSAIN KHAN, J. - The petitioners through the instant petition have sought following reliefs:-

- a) to hold and declare that the special allowance of MBA, MPA, MA (Economics, political Science), M.Com, M.Sx (Maths, Statistics, Physics, B.E. in its nature is a Special Qualification Allowance for all practical purposes.
- b) to hold and declare that the special allowance of MBA, MPA, MA (Economics, political Science) M.Com, M.Sc (Maths, Statistics, Physics), B.E should be given to all the employees working in BPS-17 and above without any discrimination particularly to the officers working in Commercial / Revenue cadre of HESCO under WAPDA / PEPCO / NTDCL.
- c) direct the respondents No.1, 2 & 3 to allow special allowance at Rs.10,000/- per month to the officers of Commercial cadre working in HESCO having the qualification of MBA / MPA /M.COM / MA (Economics, political Science), M.Sc (Maths, Statistics, Physics), B.E etc. with effect from 01.09.2009, when it was allowed to the officers of Finance, Accounts / Audit and cost accounting cadres so as to minimize the discrimination amongst the different cadres of officers.
- d) To grant any other relief deem fit by this Honourable Court.”

2. Brief facts leading to the filing of the present petition are that petitioners No.1 to 17 are working as regular officers in BPS-17, 18 and 19 in Commercial

/ Revenue Cadre in respondents No.3 and 4 (PEPCO/ HESCO); that as per policy introduced by WAPDA, the officers of BPS-17 and above, having MBA, MPA, M.Com/M.A (Economics) degrees working in respondents' companies particularly respondent No.4 (HESCO), Accounts, Finance, Audit and Cost Accounting cadres were allowed Special Allowance amount to Rs.10,000/- per month with effect from 01.09.2009; that this special allowance has been denied to the officers of BPS-17 and above working in commercial/revenue cadre in respondents companies who possess the same qualification of M.B.A / M.P.A / M.Com / M.A (Economics, Political Science), M.Sc. (Maths, Statistics, Physics causing unrest, resentment and frustration amongst the eligible officers which amounts to discrimination under the law; that on continuous pursuance of the officers of commercial cadre the then Chief Executive Officer HESCO recommended the case of the petitioners to respondent No.3 for grant of Special Allowance at par with officers of other cadres having the same qualification. In response thereto, the Director General (Commercial) sought details/bio-data of the officers working in commercial cadre, which was subsequently supplied, however, no fruitful result was yielded. It is also averred that 3600 Engineers and 250 officers of Accounts, Finance, Audit and Cost Accounts cadres working in WAPDA and PEPCO are already getting this Special Allowance. This discriminative action on the part of the respondents No.2 and 3 is arbitrary and unlawful for not allowing the Special Allowance to the qualified and eligible officers of commercial cadre is a clear violation of the Articles 4, 25 and 27 of the Constitution of Islamic Republic of Pakistan, 1973, which guarantees equal treatment to the citizen of Pakistan and no one should be discriminated upon in service matters. The petitioners also relied upon the decision of this court passed in C.P No.D-22 / 2012, whereby the claim of HR/ Admn cadre officers, who had prayed for grant of such Special Allowance, was allowed.

3. Initially this petition was filed by petitioners No.1 to 17, however, during pendency of the petition, one Syed Tahir Hussain, having same grievance as that of the petitioners, filed application for intervenor and was subsequently joined in the present petition as petitioner No. 18 pursuant to the order of this Court on 26.11.2014. Record reveals that the petitioner No.18 was initially appointed in WAPDA as Assistant Land Acquisition Officer on 01.02.1974, promoted as Land Acquisition Officer in BPS-17 on 19.04.1982, thereafter promoted in BPS-18 w.e.f. 02.10.2005 and on attaining the age of superannuation retired from HESCO as Director Land Acquisition (BPS-19) on 30.11.2010.

4. Upon notice of the present petition, respondents No.1, 3 and 4 filed their para-wise comments. Respondent No.1 adopted the para-wise of

respondent No.3. wherein it is stated that the Special Allowance of Rs.10,000/- per month was allowed in the year 2009 by WAPDA to the Graduate Engineers in BPS-17 and above working in all Engineering cadres in order to attract and retain the Engineering Professional working in all Engineers cadres in companies and adopted as such for uniform application. The scope of this Special Allowance was later on stretched for the professionals belonging to the Finance, Accounts, Costing and Audit Cadres (Admin cadre officer) in BPS-17 and above w.e.f. 01.09.2009. However, this was subject to the condition that the officer must possess any of the qualification required for initial appointment in BPS-17 i.e. MBA / MPA /M.Com / MA (Economics) / CA (Inter) / ICMA (Inter) / MAS. This change was also adopted by PEPCO Board of Directors for uniform application, since employees in WPDA and PEPCO are governed by the same Service Rules. It is also stated that the Special Allowance is not a qualified allowance rather specific to certain functions and cadres in view of their higher comparative contribution and for the relative scarcity of quality professionals from the market. It is also stated that qualification element was added simply to regulate the allowance amongst the officers of entitled categories. It is also stated that this special allowance has not been further allowed by WAPDA to any of the remaining cadres including cadres of the petitioners, so did the PEPCO. It is also stated that nothing discriminatory has been meted out to any of the cadres. The officers falling in professional cadres of engineering and accounts, finance, audit and cost accounts were allowed Special Allowance as these categories have been allowed without going to the calculation of numbers. It is further stated that this special allowance has been allowed in the core cadres to attract and retain the incumbents those do not readily available in the market primarily to strengthen the competitiveness of the salary structure.

5. Whereas, respondent No.4 in his para-wise comments while reiterating the facts mentioned in the parawise comments of respondent No.3 has stated that the officers of commercial cadre are at par with their counterpart officers working in LESCO as allowed by M.D. PEPCO vide its letter No.GM(HR)/HRD/A/587/2286-90 dated 17.06.2013, Special Allowance has already been granted to commercial cadre vide office order No.64421-31 dated 13.09.2012 w.e.f. 17.04.2013.

6. During the course of arguments, it has been pointed out that the petitioners have been allowed the Special allowance since 17.04.2013 which fact has not been disputed by the learned counsel for the petitioners. The only point remains in the present petition is with respect to the entitlement of the petitioners to receive Special Allowance with effect from 01.09.2009. Learned counsel for the petitioners has mainly relied upon the judgment of this Court

passed in the case of **‘Tarique Majeed and 11 others v. Federation of Pakistan and others in Constitutional Petition No.D-22 / 2012**, whereby this Court allowed the petition and directed the respondents that the officers in BPS-17 of administrative and human resources cadres holding requisite educational qualification be paid special allowance at the rate of Rs.10,000/- per month with effect from the date when the special allowance was admissible to the other cadres i.e. from 01.09.2009. Learned counsel argued that the petitioners have been discriminated upon by the respondents as the officers of the commercial cadre having the same qualification had been denied special allowance whereas, the officers of Accounts, Finance, Audits and Cost accounting cadres had been allowed the same. It is also argued that such discriminative action of the respondents is unconstitutional, illegal and violative of the rights guaranteed under the Constitution.

7. Learned counsel for the respondents during course of his arguments has referred the office letter dated 13.09.2012 issued by HESCO whereby approval of the Chief Executive Officer HESCO was conveyed for grant of the Special Allowance to the commercial cadre officers BPS-17 and above of HESCO with effect from 17.04.2013 to bring them at par with their counterpart officers working in LESCO as allowed by M.D PEPCO Lahore vide letter dated 17.06.2013. Learned counsel argued that since the petitioners after accepting the said office order are regularly receiving the special allowance and did not challenge the said order, therefore, the petitioners cannot ask for the special allowance since 01.09.2009. Upon query of the Court, learned counsel for the respondents has categorically admitted that certain officers are getting the Special Allowance since 01.09.2009, in pursuance of the direction of this Court passed in C.P No.D-22 of 2012. Learned counsel in this regard has also placed on record the minutes of meeting whereby approval for grant of special allowance at the rate of Rs.10,000/- per month to all remaining categories of officers of BPS-17 and above including Commercial Material Management, computer was accorded by the Board of Directors of HESCO in its 98th meeting held on 02.09.2014.

8. Admittedly, the employees in WAPDA and PEPCO are governed by same service rules; and per policy of the WAPDA, the officers of BPS-17 and above, having MBA, MPA, M.Com/M.A (Economics) degrees working in respondents' companies particularly respondent No.4 i.e. Hesco, Accounts, Finance, Audit and Cost Accounting cadres were allowed special allowance amount to Rs.10,000/- per month with effect from 01.09.2009 whereas, the petitioners allowed such allowance w.e.f. 17.04.2013. It is also an admitted position that the other employees working in Administration and Human Resource cadres of WAPDA, who were denied the benefit of special

allowance of Rs.10,000/-, filed a Constitutional Petition bearing No.D-22 of 2012 before this Court and were allowed such fruit with effect from 01.09.2009 as was admissible to the other cadres. Therefore, denial of such benefit with effect from 01.09.2009, would tantamount to discrimination and it can be said that a classification that proceeds on irrelevant considerations, such as differences in the allowances to the employees working in the same department, is not sustainable in law as the Constitution stipulates equality to the citizens and particularly prohibits discrimination specially when the qualification of the cadres is the same and the officials are performing under the same department, the petitioners could not be treated differently.

9. Consequently, we are of the view that the petitioners are entitled to get special allowance of Rs.10,000/- w.e.f 01.09.2009 instead of 17.04.2013 as is being given to other cadres without any discrimination. Accordingly, instant petition is allowed, with direction to the respondents to pay the said Special Allowance to the petitioners with effect from 01.09.20109 whereas petitioner No.18 will get the said allowance since 01.09.2009 till his retirement.

The above are the reasons of our short order passed on 16.08.2017.

JUDGE

JUDGE

Abdullah Channa/PS