

IN THE HIGH COURT OF SINDH KARACHI

Before:

Mr. Justice Naimatullah Phulpoto
Mr. Justice Adnan-ul-Karim Memon

C.P. No. D-1364 of 2020

Yasmin & 327
Petitioners through : Mr. Abdul Nabi Joyo, advocate

Respondent No.1
Through : Mr. Muhammad Nishat Warsi, DAG

Respondent No.2
Through : Pir Riaz Muhammad Shah, advocate

Date of hearing
& order : **17.05.2022**

ORDER

Adnan-ul-Karim Memon, J. Through this petition, the petitioners are seeking payment of the medical allowance, incentive allowance, utility allowance, employees education allowance, and other ancillary allowances as admissible to regular employees of Pakistan Bait-ul-Mal as their contractual service in Pakistan Bait-ul-Mal has been brought on the regular budget in terms of the notification dated 26.8.2010 issued by the respondents. They further seek similar relief in terms of the ratio of the order dated 24.03.2022 passed by the learned Division Bench of Peshawar High Court of Peshawar.

2. The petitioners have averred that they were appointed in the year 1996 on a contract / ad-hoc basis and were regularized vide notification dated 26.8.2010, is aggrieved by the refusal of the respondents in allowing them the benefits to which they are entitled viz. House Rent, Medical Allowance, and Conveyance Allowance. It is, *inter-alia*, contended on behalf of the petitioners that similar treatment is not being meted out to them as is being given to other regular employees of the respondents to whom all the above allowances are being paid on regular basis, therefore, this is a case of discrimination against them.

3. Learned DAG assisted by learned counsel for the respondent Pakistan Bait-ul-Mal has raised the question of maintainability of the instant petition on the ground that the decision of the learned Peshawar High Court in Writ Petition No.2204-P/2015 titled as *Ghul Man Shah and 109 others v. Managing Director Pakistan Bait-ul-Mal and others* pending before the Hon'ble Supreme Court of Pakistan in **CPLA No.876-P/2018** filed by Pakistan Bait-ul-Mal, as such the petitioner either approach to the Hon'ble Supreme Court of Pakistan or to wait for the decision of the Hon'ble Supreme Court on the subject issue. For convenience sake, an excerpt whereof is as under:

"14. In the light of the dicta laid down by the Apex Court in the aforesaid case of I.A. sherwani, we are unable to find out any reasonable classification between the petitioners and other regular employees of Pakistan Bait-ul-Mal for different

treatment for the purpose of payment of aforesaid allowances. This Court, being the protector of the fundamental rights of citizens of Pakistan, cannot appreciate the discriminatory treatment with the petitioners any longer by the respondents. Hence, by accepting of this petition, we direct the respondents to grant the same allowances to the petitioners which are being paid to the other regular employees since they attained the status of regular employees of Pakistan Bait-ul-Mal.”

4. We have heard learned counsel for the parties, and perused the material available on record and case law cited at the bar.

5. Primarily, this disparity in payment of subject allowances is discriminatory, amounting to a violation of fundamental rights guaranteed under the Constitution of 1973. The learned DAG has urged that if such allowances are extended to the petitioners, then the respondent- Pakistan Bait-ul-Mal will face many such other claims from other employees. He also submitted that if the aforesaid allowances are allowed to the petitioners and in case the Hon'ble Supreme Court turns down the judgment of the learned Division Bench of the Peshawar High Court, the respondent will be in a difficult position to recover the said allowances from the salary of the petitioners. Prima facie, this apprehension is ill-founded for the reasons that the learned Division Bench of Peshawar High Court has already granted the relief to the colleagues of the petitioners with effect from the date of regular employment and the petitioners cannot be left in the lurch. Primarily, the petitioners are performing the same functions as regular employees since 2010 and the respondent- Pakistan Bait-ul-Mal is one class in its sphere and the petitioners must be treated alike, in terms of Articles 3, 37(d), and 38(e) read with Article 25 of the Constitution 1973. On the aforesaid proposition, we are guided by the decisions of the Honorable Supreme Court rendered in the cases of Government of Balochistan v. Azizuallah Memon, **PLD 1993 SC 341** and Attiyya Bibi v. Federation of Pakistan, **2001 SCMR 1161**.

6. To elaborate further on the subject point of law, Article 25 of the Constitution of the Islamic Republic of Pakistan, 1973, guarantees equal treatment to all persons similarly placed. In terms of Article 27 of the Constitution, no citizen in the service of Pakistan or other persons shall be discriminated against in any manner. Article 27 of the Constitution does not only safeguard against discrimination at the time of appointment of service but after the appointment as well. The disparity in the pay scale allowances of petitioners in the Pakistan Bait-ul-Mal is in the clear negation of law laid down by the Honorable Supreme Court in its various pronouncements.

7. The Honorable Supreme Court has elaborated on the concept of reasonableness which is a fundamental component of equality or non-arbitrariness. In the case of Dr. Mobashir Hassan v. Federation of Pakistan (**PLD 2010 SC 265**), the Honorable Supreme Court has held that intelligible differentia distinguishes persons or things from the other persons or things, who have been left out. The definition of classification "intelligible differentia" means differentiating between two sets of people or objects, all such differentiations should be easily understood and should not be artificial. Whereas

in the case of the Secretary Economic Affairs Division, Islamabad and others. v. Anwarul Haq Ahmed and others (2013 **SCMR 1687**), the Honorable Supreme Court held that by now it is well settled that the equality clause does not prohibit classification for those differently circumstanced provided a rational standard is laid down. The protection of Article 25 of the Constitution can be denied in peculiar circumstances of the case on basis of reasonable classification founded on an intelligible differentia which must have rational nexus to the object sought to be achieved by such classification. Reference is safely made in the cases of I.A. Sherwani v. Government of Pakistan, 1991 **SCMR 1041** and Tariq Aziz-ud-Din and others (Human Rights cases Nos.8340 of 2009, etc.) 2010 **SCMR 130** and Muhammad Shabbir Ahmed Nasir v. Secretary, Finance Division, Islamabad and another, 1997 **SCMR 1026**.

8. The petitioners have contended that the respondents have meted out discriminatory treatment to them and deprived them of such allowances while the same allowances are being paid to the other regular employees. On the subject issue, the Honorable Supreme Court has articulated the principles of reasonable classification in the following manner:

(i) that equal protection of law does not envisage that every citizen is to be treated alike in all circumstances, but it contemplates that people similarly situated or similarly placed are to be treated alike;

(ii) that reasonable classification is permissible but it must be founded on reasonable distinction or reasonable basis;

(iii) that different laws can validly be enacted for different sexes, persons in different age groups, persons having different financial standings, and persons accused of heinous crimes;

(iv) that no standard of universal application to test the reasonableness of classification can be laid down as what may be reasonable classification in a particular set of circumstances, may be unreasonable in the other set of circumstances;

(v) that a law applying to one person or one class of persons may be Constitutionally valid if there is sufficient basis or reason for it but a classification that is arbitrary and is not founded on any rational basis is no classification as to warrant its exclusion from the mischief of Article 25;

(vi) that equal protection of law means that all persons equally placed be treated alike both in privileges conferred and liabilities imposed;

(vii) that to make a classification reasonable, it should be based;

(a) on an intelligible differentia which distinguishes persons or things that are grouped from those who have been left out;

(b) that the differentia must have rational nexus to the object sought to be achieved by such classification.”

9. Keeping in view the above facts and circumstances of the case, prima-facie, the case of petitioners is akin to the decision rendered by the learned Division Bench of Peshawar High Court of Peshawar as discussed supra and in addition to the jurisdiction conferred upon this Court under Article 199 (1)(c) of the Constitution 1973, we deem it appropriate to direct the competent authority of Pakistan Bait-ul-Mal, to disburse the

subject allowances to the petitioners in the same terms as decided by the learned Division Bench of Peshawar High Court of Peshawar, however, the decision of this Court shall be subject to the outcome of CPLA No.876-P/2018 filed by Pakistan Bait-ul-Mal in the Hon'ble Supreme Court of Pakistan against the above-cited judgment.

10. This petition stands disposed of in the above terms.

Let a copy of this order be transmitted to the competent authority of respondents for compliance.

J U D G E

J U D G E

Nadir*