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HIGH COURT OF SINDH BENCH AT SUKKUR

Present:

Mr. Justice Ahmed Ali M. Sheikh &
Mr. Justice Aftab Ahmed Gorar

Const. Petition No. D-810 of 2011.

1. For hearing of CMA 2310-11.
2. For Katcha Peshi.
3. For hearing of CMA 2311-11.

Deedar Hussain Jakhrani and 50 others.....Petitioners

VERSUS

Federation of Pakistan and others.....Respondents

For the Petitioners: Mr. Zamir Ghumro Advocate.

For Respondents: Mr. Nizamuddin Balouch, D.A.G along
with Ajmal Khan Khoso, SPO,
National Highway & Motorway Police.

Date of hearing: 24th October, 2012

ORDER

Ahmed Ali M. Sheikh. J. Through this constitution petition, the
petitioners have prayed as under:

"i. Declare that failure of the respondents to
allow adhoc allowance at the rate of 50% of basic
pay to the petitioners is illegal, unlawful,
unconstitutional, discriminatory and in violation of
principles of natural justice, equity and fairness
and direct the respondents to forthwith allow
adhoc allowance to the petitioners with effect from
1st July, 2010.

ii. Declare that impugned letter dated 6th July,
2010 is illegal, unlawful, unconstitutional,
discriminatory and in violation of principles of
locus potentiae, natural justice, equity and fairness
and set aside the same forthwith.

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iii. Declare that failure of the respondents to allow the petitioners and their colleagues medical facilities in accordance with the office memorandum dated 3rd March, 2000 is illegal, unlawful, unconstitutional, discriminatory and in violation of principles of natural justice, equity and fairness and direct the respondents to provide medical facilities to the petitioners strictly in accordance with office memorandum dated 3rd March, 2000.

iv. Suspend the operation of impugned letter dated 6th July, 2010 till final adjudication of the captioned petition.

v. Any further relief which this Honorable Court deems proper and appropriate in the circumstances of the case.

vi. Grant costs of the Petition.

2. From the pleadings, it appears that the petitioners are employees of National Highway & Motorway Police and are discharging their duties in various capacities; some of the petitioners are performing their duties as Senior Patrol Officer while others as Patrol Officer and Assistant Patrol Officer at their respective posting places. It further appears that in the year 1997, a professional, modern, trained, and well equipped force was established in the name of Motorway Police. Initially, its operation was confined to Islamabad-Lahore Motorway, but subsequently after assessing its performance, its area of operation was extended to all highways of Pakistan. It is pertinent to mention here that the petitioners were appointed in Motorway Police on the following terms and conditions:

"i. House Rent Ceiling as prescribed for various stations to personnel who are not provided official residential accommodations. No deduction may be made from the pay of personnel who are provided official residential accommodation to make it rent free.

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ii. 20 days fixed DA to all officers and personnel operational duties.

iii. Medical Facilities: The members of the force are performing their duties in remote areas and no proper medical facilities exists, therefore, the competent authority has agreed to create the posts of doctors for each police camp to give initial treatment as well as refer to any suitable hospitals as per requirement would be enlisted in consultations with Medical Officer to be appointed on deputation basis from Government Hospitals.

iv. Insurance cover for death or injury while on duty".

3. On 6th July, 2010, the respondent No.1 issued letter to DIG (Motorways), Islamabad, DIG N-5(Central), DIG N-5(North), DIG N5 (South), DIG (West), the Commandant Training Centre, NH & MP, Sheikhpura and DDO, NH & MP, CPO(HQ) to stop further payments of House Rent Ceiling to the employees of NH & MP, posted in any city other than Islamabad, Rawalpindi, Lahore, Quetta, Peshawar and Karachi and recover the amount irregularly paid from the concerned employees and deposit into public exchequer. For the sake of convenience, said letter is reproduced herein below:

"Government of Pakistan Ministry of
Communication National Highways &
Motorway Police, House # 07 Kaghan Road
F-8/3 Islamabad.

Subject: AUDIT PARA REGARDING
IRREGULAR PAYMENT OF HOUSE RENT
CEILING TO EMPLOYEES OF NH & MP
OTHER THAN SPECIFIED SIX STATION

The undersigned is directed to refer to the M/O Communications letter No. 9(5)/2008-09/F&A/PAC dated 29-6-2010 on the subject noted above (copy enclosed).

The M/O Communications has intimated that the competent authority i.e. PAO has approved that

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the directives of DAC decisions be complied with and to stop further payments of House Rent Ceiling to the employees of NH & MP posted at other than Islamabad, Rawalpindi, Lahore, Quetta, Peshawar and Karachi and to recover the amount irregularly paid from the concerned employees and deposit into public exchequer.

The direction of M/O Communications be complied with and forward the compliance report for the information of the M/O Communications.

(Syed Kashif Kazmi)
Deputy Director Audit"

4. Learned counsel for the petitioners has impugned the above letter on the ground that the same is based on discrimination and is against the equal treatment of law. Per learned counsel, petitioners are performing their duties at the remote areas without any residential accommodations as the authorities have failed to provide them residential accommodations. Besides, some of the petitioners are residing with their families at their posting places and got houses on rents, whereas other employees, who are posted at Islamabad, Rawalpindi, Lahore, Quetta, Peshawar and Karachi or other big cities, are provided residential accommodations and they are also getting House Rent Ceiling allowance, which amounts to discrimination on the part of the respondents. Learned counsel further contended that the impugned letter dated 6th July, 2010 has been issued in violation of Article 25 of the Constitution of Islamic Republic of Pakistan, 1973, therefore, same is may be declared to be of no legal effect.

5. Conversely, Mr. Nizamuddin Baloch, DAG assisted by Ajmal Khan Khoso, SPO, NH & MP, who appeared on behalf of the respondents, defended the impugned letter and argued that the letter in question is based on reasonable classification, therefore, petitioners cannot assail the same on the basis of equal protection of law. He further argued that neither petitioners have been discriminated in any

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anner nor have respondents violated any provision of law, rules or regulations.

6. On 19.9.2012, learned DAG and Mr. Ajmal Khan Khoso, SPO, NH & MP were directed to place on record any document to show that only those employees are entitled to House Rent Ceiling allowance who are posted at Islamabad, Rawalpindi, Lahore, Quetta, Peshawar and Karachi and other employees are excluded from that benefits; to which Mr. Khoso sought time to place on record such document/letter. However, on 24.10.2012, when the matter was fixed for arguments, learned DAG and Mr. Khoso very frankly conceded that they are not in a position to produce such document.

7. We have heard the learned counsel for the parties and examined the entire record including the comments filed by the respondents.

8. Admittedly, petitioners were getting House Rent Ceiling allowance after their appointment and it is also not disputed that they are performing their duties at remote areas and till June, 2010, they availed the House Rent Ceiling allowance without any hindrance. No doubt, it is prerogative of the authorities to make rules and regulations or grant any incentive package or allowance to the employees but authority cannot extend such favour to one group of employees and deprive others, who are falling in the same category. In their comments, the respondents as well as learned DAG did not produce any document or criterion for such distinction. Under Article 25 of the Constitution, all citizens are equal before law and are entitled to equal protection of law. Equal protection is conferred to the persons, who are similarly placed. It is worthwhile to mention here that equal protection of laws does not mean that every citizen, no matter what is his condition, must be treated in the same manner. The phrase 'equal protection' of the laws means that no person or class of persons shall be denied the same protection of laws, which is enjoyed by other

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persons or other class of persons in the like circumstances in respect of their life, liberty, property, or pursuits of happiness. This only means that persons similarly situated or in similar circumstances, will be treated in the same manner. Beside this, all laws implied classification, for, when it applies to a set of circumstances, it creates thereby a class and equal protection means that this classification should be reasonable. To justify the validity of a classification, it must be shown that it is based on reasonable distinctions or classifications, it must be shown that it is based on reasonable distinctions or that it is on reasonable basis and rests on real or substantial difference of distinction. It is repeatedly held by our superior Courts that persons similarly placed would have equal rights when certain rights were declared to be available to one or more of such persons, then all such persons similarly placed with them would stand declared entitled to such rights. Denial of such rights to such persons would be sheer discrimination and contravention of Article 25 of the Constitution.

9. A perusal of impugned letter reveals that all the employees of authority, who are posted at Islamabad, Rawalpindi, Lahore, Quetta, Peshawar and Karachi, are entitled to House Rent Ceiling allowance whereas other employees including the petitioners could not avail such benefit. It is pertinent to mention here that when other employees of NH & MP authority, who were appointed in similar fashion, are enjoying such benefit though they are posted at Federal capital, Provincial capitals and big cities, where civic facilities including residential accommodations, education and health care facilities are available and the petitioners, who have no access to such facilities, deserve more incentives because they are discharging their duties in quite unfavourable circumstances. Therefore, we are of the considered view that the impugned letter dated 6th July, 2010 is based on discrimination and is against the principle of law as well as in violation of Article 25 of the Constitution as the respondents have failed to make any reasonable classification to justify their action.

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10. These are the reasons in support of our short order dated 24th October, 2012, whereby the instant petition was allowed to the extent that impugned letter dated 6th July, 2010 was set aside being illegal and unlawful.



JUDGE



JUDGE

Ahmed.