

IN THE HIGH COURT OF SINDH AT KARACHI

C. P. NO. D-3808 / 2014

Present:-

Mr. Justice Sajjad Ali Shah.

Mr. Justice Muhammad Junaid Ghaffar.

Zaheeruddin Laghari -----Petitioner

Versus

Election Commission of Pakistan and others ----- Respondents

C. P. NO. D-1267 / 2015

Dr. Zafar Ahmed Khan Sherwani -----Petitioner

Versus

The State ----- Respondent

Date of hearing: 30.09.2015

Date of judgment: 06.10.2015

**Petitioner: Through M/S M. M. Aqil Awan and Bhajandas
Tejwani Advocates.**

Respondent: Mr. Asim Mansoor Khan DAG.

J U D G M E N T

Muhammad Junaid Ghaffar, J. Through this common judgment, we intend to dispose of the aforesaid petitions as they involve a common question for determination. In C.P. No. D-3808 of 2014 the petitioner has sought directions against respondents for payment of Special Judicial Allowance and Transport Monetization Allowance, whereas in the other case, a representation was made by the Presiding Officer of Election Tribunal at Karachi, against stoppage of Special Judicial Allowance and the recovery of payments already made in this regard which has been converted on the note of the Registrar into a Constitutional Petition by the Hon'ble Chief Justice vide order dated 7.3.2015.

2. Briefly the facts are that both the petitioners were appointed as Presiding Officers of Election Tribunal at Karachi and Sukkur respectively, by the Election Commission of Pakistan vide Notification dated 28.5.2013 on contract basis with effect from the date they assumed the charge of the post for a period up to 30.6.2014 and during such employment they were entitled for pay, perks and privileges as admissible to a BPS-22 serving Officer. Such appointment was made in consultation with the Hon'ble Chief Justice of this Court. Insofar as the petitioner in C.P. No.D-3808 of 2014 is concerned, his case is that he is entitled for payment of Special Judicial Allowance as well as Monetization of Transport Allowance admissible to a Grade 22 serving Officer, whereas, the case of the petitioner in C.P. No. D-1267 of 2015 is that the respondents be restrained from seeking recovery of the Special Judicial Allowance already paid and to pay the balance of such allowance, whereas, he has not claimed Monetization of the Transport allowance.

3. Mr. M. M. Aqil Awan learned Counsel for the petitioner(s) has contended that insofar as the Monetization of the Transport Allowance is concerned, the same is governed by the Notification of the Cabinet Division, Government of Pakistan dated 12.12.2011, which provides in Clause xix that BS-20 to BS-22 officers shall be eligible for Transport Monetization of Rs. 95,901/- per month and such monetization is compulsory for the Civil Servants, whereas, the petitioner in CP No. D-3808 of 2014 has not been provided any transport, and, therefore is entitled for such monetization. Learned Counsel has further contended that insofar as the controversy with regard to Special Judicial Allowance is concerned, the same has already been settled by this Court in C.P. No. D-1930 of 2012 and various other connected petitions vide judgment dated 24.5.2011, whereby, the Government of Sindh was directed to pay Special Judicial Allowance equal to three times of the initial substantive pay scale, to all the Judicial Officers of the District Judiciary, including those working on Ex-cadre posts and per learned Counsel, the present appointment of the petitioners is of an Ex-cadre post, therefore, they are entitled for payment of Special Judicial Allowance.

4. Conversely, the learned DAG has vehemently opposed the aforesaid petitions and has contended that insofar as petitioner in Cp No. D-3808 of 2014 is concerned, he is not entitled for any Monetization of the

Transport Allowance as he has been appointed on contract basis, whereas, the judgment of this Court as referred to by the learned Counsel for the petitioners in respect of Special Judicial Allowance is not applicable to the case of the petitioners. Learned DAG has further contended that the Cabinet Division, pursuant to its Notification dated 12.12.2011 has been pleased to further clarify the rules for Monetization of the transport facility and vide serial No. 6 of such clarification, the monetization policy is applicable only to the Civil Servants in BS-20 to BS-22, who are working in Ministries and attached departments and is not applicable to officers of autonomous / semi-autonomous organization, corporations, as well as to the Officers drawing pay against Constitutional posts appointed on contract basis and such category of officers are supposed to avail the transport facility.

5. We have heard the learned Counsel for the petitioners as well as the learned DAG and have perused the record. Insofar as the facts in both the petitions are concerned, they are not in dispute and the controversy is only to the extent of payment of Special Judicial Allowance and the Monetization of the Transport Allowance. Both the petitioners were appointed as Presiding Officers of the Election Tribunal pursuant to a Notification for a period of one year up to 30.6.2014. Thereafter vide Notification dated 30.6.2014 their term was extended for a further period of six months up to 31.12.2014. Subsequently, the tenure of the petitioner in C.P.No.D-1267 of 2015 was further extended for two months up to 28.2.2015. The Notification of initial appointment dated 28.5.2013 reads as under:-

“ELECTION COMMISSION OF PAKISTAN

Islamabad, the 28th May, 2013

NOTIFICATION

No.F.14(3)/2012-Estt-II(1).- Dr. Zafar Ahmed Khan Sherwani, retired District & Sessions Judge is appointed as Election Tribunal at Karachi on contract basis with effect from the date he assumes charge of post for a period up to 30th June, 2014. *During employment pay, perks and privileges will be admissible to him equivalent to BPS-22 serving Officer.*

No.F.14(3)/2012-Estt-II(2).- Mr. Zaheeruddin S. Leghari, retired District & Sessions Judge is appointed as Election Tribunal at Sukkur on contract basis with effect from the date he assumes charge of post for a period

up to 30th June, 2014. *During employment pay, perks and privileges will be admissible to him equivalent to BPS-22 serving Officer.*

No.F.14(3)/2012-Estt-II(3).- Mr. Ashfaq Ahmed Baloch, retired District & Sessions Judge is appointed as Election Tribunal at Hyderabad on contract basis with effect from the date he assumes charge of post for a period up to 30th June, 2014. During employment pay, perks and privileges will be admissible to him equivalent to BPS-22 serving Officer.

2. The appointment of the above officers during the period of contract shall be liable to termination on thirty days' notice on either side or payment of basic pay in lieu thereof, without assigning any reason. All terms and conditions during employment will be as mentioned in annexure-A.

The above appointments have been made by the Election Commission in consultation with and on the recommendations of the Hon'ble Chief Justice of Sindh High Court, Karachi.

Sd/-28.5.2013
(Iftikhar Ahmed)
Additional Director General (Admn)"

6. Perusal of the aforesaid Notification reflects that the petitioners who are retired District & Sessions Judges, have been appointed as Presiding Officers of Election Tribunals on contract basis with effect from the date they assume charge of the post for a period up to 30.6.2014 which has been subsequently extended as stated hereinabove, and during employment, pay, perks and privileges will be admissible to them equivalent to a BS-22 serving officer. Insofar as the controversy with regard to payment of travelling allowance is concerned, the terms and conditions of their appointment Notification read with annexure "A" thereon, entitles them to such allowance which is admissible to a Civil Servant of the corresponding pay scale under the Rules. The petitioners case in CP No.D-3808 of 2014 is that he is entitled for monetization of the transport allowance pursuant to the Notification of the Cabinet Division dated 12.12.2011, which stipulates that the Federal Government has been pleased to approve the Compulsory Monetization of transport facility for Civil Servants in BS-20 to BS-22, with effect from 1.1.2012. The relevant portion of the said Notification reads as under:-

“GOVERNMENT OF PAKISTAN
CABINET SECRETARIAT
(CABINET DIVISION)

Subject: RULES/POLICY FOR MONETIZATION OF TRANSPORT FACILITY FOR CIVIL SERVANTS (BS-20 TO BS-22).

- (i) -----
- (ii) Monetization of the transport facility will be *compulsory for all Civil Servants in BS-20 to BS-22* with effect from the date of enforcement.
- (iii) -----
- (iv) -----
- (v) -----
- (vi) -----
- (vii) -----
- (viii) -----
- (ix) -----
- (x) -----
- (xi) -----
- (xii) -----
- (xiii) -----
- (xiv) -----
- (xv) -----
- (xvi) -----
- (xvii) -----
- (xviii) -----
- (xix) On the basis of the expenditure being incurred on provision / maintenance of the official transport, allocated to the Civil Servants form BS-20 to BS-22, the entitled officers shall be eligible for following transport monetization per month:

BS-22	BS-21	BS-20
Rs. 95,910	Rs. 77,430	Rs. 65,960

7. Perusal of the aforesaid rules / policy of monetization reflects that the monetization of the transport facility is compulsory for all Civil Servants in BS-20 to BS-22 with effect from the date of enforcement and

by virtue of clause (xix) as above, the said officers are entitled for expenditure being incurred on provision / maintenance of the official transport for a transport monetization of Rs. 95,901/- per month. The only ground which has been urged by the learned DAG for refusal on the part of the respondents to pay such transport monetization allowance, is that since the petitioners are contract employees, therefore, they are not entitled for such monetization allowance. However, we are not inclined to accept such proposition for the reason that the very appointment Notification entitles them to all perks and privileges as are admissible to or equivalent to a BS-22 "servicing officer" and therefore, the transport monetization allowance cannot be refused on the ground that the petitioners are on contract basis. If the intention of the appointing authority would have been such, then the language employed in the said Notification would have been otherwise, whereby it would have been clearly spelt out that no such allowance would be admissible to the petitioners. Once the appointing authority considers them to be entitled for perks as are available to a BS-22 "Servicing Officer", it is immaterial as well as illogical to contend that they have been appointed on contract basis, hence not entitled for such allowance. If a serving officer of BS-22 is entitled for such transport monetization, which otherwise is compulsory as directed by the Cabinet Division, the petitioners though on a contract, cannot be denied such facility of monetization as they are otherwise entitled to the same perks as are admissible to a serving officer of BS-22. Even otherwise, we are also of the view that the appointment of the petitioners cannot be termed as an appointment on contract basis, merely for the reason that the Notification so states, as in our opinion, the Election Tribunals are constituted after conduct of general elections normally for an initial period of one year in terms of Section 57 of The Representation of the People Act, 1976. The office of Election Tribunal is not a permanent Tribunal, for which a person could be appointed either permanently or on contract basis. The appointment of the petitioners is itself creation of the Election Tribunals by nominating them as the Presiding Officers, and therefore, the very creation of the Election Tribunal is dependent upon the appointment of such Presiding Officers. Hence, such appointment cannot be called or termed as a contract appointment on a permanent post *stircto senso*. In view of the observations hereinabove, we are of the view that the petitioner in CP.

No.D-3808 of 2014 is entitled for monetization of the transport allowance as admissible to a BS-22 officer during the period of his appointment.

8. Insofar as the second issue in respect of payment of Special Judicial Allowance to the petitioners is concerned, we would like to refer to the judgment dated 24.5.2011 passed by a Division Bench of this Court in C.P. No. D-1930 of 2012 and others, relevant portion whereof reads as under:-

- “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 12.8.2000 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 Honorable 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 & Sessions Judges, Additional District & Sessions Judges, Senior Civil Judges, all Civil Judges and Judicial Magistrates working under their 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 offices 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 installment 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.”

9. The learned DAG has contended that the case of the petitioners falls in Para 2 of the aforesaid judgment as the same refers to the Courts and Tribunals established under Federal or Provincial law, whereas, the same is only in respect of employees and servants of such establishments and not in respect of judicial officers like the petitioners who are retired District & Session Judges. Therefore, per learned DAG the petitioners are not entitled for any Special Judicial Allowance. However, we are of the view that the case of the petitioners is more appropriately covered by Para 1 of the aforesaid judgment, through which the Government of Sindh was directed to pay Special Judicial Allowance equal to three times of the initial substantive pay scale to all the judicial officers of the District Judiciary including those working on *Ex-cadre* basis which shall include the District & Sessions Judges, Additional District & Sessions

Judges, Senior Civil Judges, all Civil Judges and Judicial Magistrates working under their control, superintendence, and within the territorial jurisdiction of the High Court of Sindh per Article 203 of the Constitution, 1973. The Constitution of the Election Tribunal has been done in consultation with the Hon'ble Chief Justice of this Court, whereas, the same in our view is an Ex-cadre appointment, and therefore, by virtue of Para 1 of the aforesaid judgment dated 24.5.2011, the petitioners are also entitled for payment of Special Judicial Allowance. Even otherwise it is also an admitted position that all the retired District & Sessions Judges, who are being appointed in Special Courts and Tribunal on Ex-cadre posts, are being paid Special Judicial Allowance by the Provincial and the Federal Government and therefore, we do not see any reason, when such officers of same cadre are appointed as Presiding Officer of Election Tribunal, they should not be paid the Special Judicial Allowance. Reference in this regard may be made to the pay slip of the Presiding Officers of Special Courts (Offences in Banks) Karachi issued by the office of AGPR Karachi and the Member of the National Industrial Relations Commission NIRC Karachi annexed with representation in CP NoD-1257 of 2015.

10. In view of hereinabove facts and circumstances of the instant case we are of the considered opinion that both the petitioners are entitled for payment of Special Judicial Allowance as well as Monetization of the Transport Allowance, if they have not availed the Transport Facility provided by Respondent No.1. Accordingly, the respondents are directed to make payment of Special Judicial Allowance and Monetization of Transport allowance to petitioner in CP No.D-3808 of 2014, whereas, the recovery notice issued to petitioner in CP No.D-1257 of 2015 is hereby quashed and set aside, with further directions to pay the balance Special Judicial Allowance, if any. Compliance report in this regard shall be furnished before this Court within a period of 30 days from today through MIT-II. The aforesaid petitions are allowed as above.

Dated: 06.10.2015

JUDGE

JUDGE

ARSHAD/