

Phone: 99212327

NO: C.A 86 - K OF 2018
SUPREME COURT OF PAKISTAN

Karachi, the 24th Oct., 2019

From:

The Senior Court Associate,
Supreme Court of Pakistan,
M.R. Kayani Road,
Karachi.

14679
INWARD TO
BRANCH
DATE 25/10/19
HIGH COURT OF SINDH AT KARACHI

To,

The Registrar,
Hon'ble High Court of Sindh,
Karachi.


SUBJECT:- CIVIL APPEAL NO: 86 - K OF 2018
(House Building Finance Co. Ltd. &
others Vs. Muhammad Irfan Khan &
others)

On appeal from the Judgment/Order of
the High Court of Sindh, Karachi. Dated
26-11-2018, in C.P No.D-5773/2016.

In continuation of this Courts letter of even number dated:
07-09-2019, I am directed to enclose herewith for information and necessary
action a certified copy of the detail Order of this Court dated: 04-09-2019,
Allowing the above-cited Civil Appeal.

2. The receipt of this letter along-with its enclosure may kindly be
acknowledged.

Encl:- Certified copy of detail Order.


(SYED ZAFAR ALI)
Sr. Court Associate
C.A.

THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

PRESENT:

MR. JUSTICE MUSHIR ALAM
MR. JUSTICE FAISAL ARAB
MR. JUSTICE SAJJAD ALI SHAH

Civil Appeal No.86-K OF 2018

(On appeal from the judgment dated 26.11.2018 passed by High Court of Sindh, Karachi in C.P. No.D-5773 of 2016)

House Building Finance Company Limited ...Appellant (s)

VERSUS

Muhammad Irfan Khan & others ...Respondent(s)

For the Appellant (s): Mr. Munir A Malik, Sr. ASC
Mr. Ghulam Qadir Jatui, AOR
Mr. Tariq Rehman, Head HR.
Malik Nasir Ayaz, Head Legal
Mr. Zulfiqar Ali, Manager Legal

For the Respondent(s): Mr. Abdul Mujeeb Pirzada, Sr. ASC

Date of Hearing: 04.9.2019

ORDER

MUSHIR ALAM, J.— Instant appeal arises out of leave granting order dated 27.12.2018 against the judgment dated 26.11.2018 passed by High Court of Sindh at Karachi arising out of C.P. No.D-5773 of 2016 whereby the Appellant-House Building Finance Company Limited (HBFCL) through Managing Director etc was directed to include pay and allowances and the emoluments of the respondents in accordance with the increase in emoluments of the executive staff on the ground, *inter alia*, that there is no intelligible differentia between the two sets of employees of the Appellant-HBFCL and they are entitled for equal treatment in accordance with Article-25 of the Constitution of Pakistan, 1973.

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Senior
Supreme Court

2.

Mr. Munir. A. Malik, learned Sr. ASC for the appellant submits that the learned Bench of the High Court misdirected itself while

treating two different categories of employees i.e. 'Workmen' and 'Officers and Executives' at par. According to the learned ASC for the Appellant both the category of employees have different job descriptions, rights and obligations. The first category of employees enjoy right to 'Collective Bargain' as recognized by the statutory dispensation under Industrial Relation Act, 2012 whereas, no such statutory dispensation is available to the 'Officers and Executives' category of the employees. It was further urged that the salary structure of the appellant's Officers and Executives category is controlled by Regulation No.7.4.2 of the House Building Finance Corporation Service Regulation, 1957, which legal aspect was not appreciated by the learned Bench. It was next urged that the principle of classification as laid down in the case of Federation of Pakistan versus Agri-tech Limited and others (PLD 2016 Supreme Court 676) whereby the policy to subsidize fertilizer of a particular grade was approved and the same principle was applied, in the case of Appellant HBFC, policy while granting increase in the salary structure of 'Officers and Executives' cannot be claimed as a matter of right by the other set of employees of altogether different grades and class.

3. According to the learned Sr. ASC for the appellant there was a rational justification to distinguish between two categories of employees while implementing the policy as the increase in salary of the Officers and Executive cadre was directly linked with the performance of the Officers and Executives to intensify their work in order to take out the appellant from heavy losses. Had the appellant not implemented such a policy, it would have sinked and faced winding up and all the employees would have suffered substantially.

4. Mr. Munir.A. Malik, learned Sr.ASC for the appellant besides the above case law has also relied on the judgment rendered by the High Court of Delhi titled as Sail Ex-employees Association vs. Steel Authority

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Secretary General
Supreme Court of Pakistan
Islamabad

[Signature]

of India Ltd and Ors [2010(124)FLR410] to bring home the points as argued before us, which recognizes the principle that employees who were workmen constituted an altogether different class from the employees who were Managers and Officers, being members of the various executive cadres of the respondent-company. Para-9 of the judgment (Supra) reflects the stated position in following terms:

"Even otherwise, the employees who are workmen, constitute an altogether different class from the employees who are Managers and Officers, being members of various executive cadres of the respondent/company. The pay structure, allowances and service conditions of employees forming part of managerial/officer cadres are altogether different from the pay structure, allowances and service conditions of employees constituting non-executive cadres. Those who belong to executive cadres get not only higher salary but also better allowances, more perks and more favourable service conditions. In fact, executive cadres and non-executive cadres are altogether different classes and cannot be compared with each other. Differential treatment based on intelligible differentia is permissible under the constitution so long as it has a reasonable nexus with the objective sought to be achieved in this behalf. Only those who are similarly situated are entitled to equal treatment. Since the employees forming part of managerial cadres belong altogether to a different class, they cannot claim, as a matter of right, the same treatment which is given to the non-executive employees on account of a binding agreement between them and the respondent company. Therefore, this is no violation of Article 14 of the Constitution in payment of gratuity to the Executive as per their statutory entitlements while paying gratuity to the non-Executives in terms of the agreement between them and the management."

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 Supreme Court of Pakistan
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5. Mr. Abdul Majeeb Pirzada, learned Sr. ASC for the respondents when confronted, though conceded that the nature of duty of both categories of employees are different nonetheless states that in past whenever there was revision in salary it was for all categories of

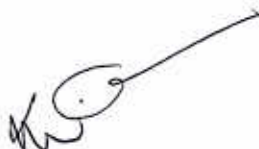
employees irrespective of their cadres. He stressed that if there is an increase in inflation, it affects both the respondents and other categories of employees alike. Therefore, Article, 25 of the Constitution of Pakistan, 1973 requires that all employees should be dealt with in accordance with law and equality.

6. We have heard the arguments of the learned counsels for the parties and perused the record with their assistance. There is no cavil to the proposition that the Appellant-HBFCL Officers and Executive category form part of the managerial officer cadres and are responsible to implement/execute the policy of extending loan and enforcing recoveries and it is their performance that matters for the prosperity and growth of the company. Other categories of employees who are not before us are merely menial or supportive staff neither having any say in the policy matters nor any role in extending and or recovery of loan process, which requires intelligent and effective field force comprising of the categories of the appellant belonging to executive officer class.

7. We have noted that the learned Bench of the High Court in para-12 of the impugned judgment after discussing a large number of cases came to a conclusion as noted in para-12 which reads as follows:

"On merits, the Petitioners' counsel vehemently emphasized that the Respondent have increased pay scales and allowances in respect of staff (clerical and non-clerical) of HBFCL with effect from 01.01.2016, whereas the same benefits have been denied to the Petitioners in violation of article 25 of the Constitution. However the claim of the petitioners has been refuted by the management of HBFCL, who offered the petitioners to increase their salary with effect from 01.01.2019. In our view this classification made between the two categories of the employees of the respondent Company did not constitute intelligible differentia having rational nexus to the very object of the policy that must be objective and reasonable therefore the Respondent-

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Company has no legal justification to deny the petitioners the same relief as granted to the other staff of the Respondent-Company. Our view is supported by the decision rendered by the Hon'ble Supreme Court in the case of Federation of Pakistan Vs. Agri-tech Limited & others (PLD 2016 Supreme Court 676)."

To arrive at the conclusion as noted in para-12 as reproduced above, no rational basis has been identified as to how the 'Officers and Executive' cadre which does not enjoy a statutory protection of collective bargaining could be equated with the workmen cadre in service of HBFCL. We have also noted that Government of Pakistan in a recent fiscal year, 2019-2020 increased the salary from Grade-01 to Grade-16 employees and revision was ordered to the extent of 10% whereas for the Gazetted Officers of Grade-17 to Grade-20 the increase was only ordered to the extent of 05% and salary of BPS-21 and above was not increased. Even we have noted that no increase was considered in respect of the armed personnel on account of the financial crunch faced by the State of Pakistan. As such, financial exigency as has been expressed above, do empower the employer to consider different yardstick for revision in the salary of different categories of its employees. All employees cannot claim to be treated alike irrespective of their grades, domain and class. There is a clear distinction between the employees covered by the labour laws and other statutory dispensation vis-à-vis employees in 'Executive and Officers' cadre. This principle was so held in Sail Ex-Employees Association case (Supra). In a case reported Muhammad Shabbir Ahmed Nasir versus Secretary, Finance Division, Islamabad (1997 SCMR 1026) and Farman Ali versus State (PLJ 1997 Supreme Court 1994) it was held by this Court that grouping for good governance by the employer of its employees serving in BPS-01 to BPS-16 into one category and those serving in BPS-17 to BPS-22 to another category for the purpose of granting greater monetary benefit, cannot be challenged on ground of

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arbitrariness or unreasonable classification and as violative of article 25 of the Constitution.

8. Above proposition is also supported by the judgments rendered in the cases of V.Markendeya and others versus State of Andhra Pradesh and others (1989) 3 Supreme Court Cases 191, Ajay Hasia v. Khalid Mujib (AIR 1981 Supreme Court 487) and E.P Royappa v. State of Tamil Nadu (AIR 1974 Supreme Court 555).

9. In view of the foregoing, the impugned judgment dated 26.11.2018 is set aside and appeal is allowed. The above are the reasons for our short order dated 4.9.2019, which reads as follow:

"For the reasons to be followed, this appeal is allowed."

Sd/= Mushir Alam, J
Sd/= Faisal Arab, J
Sd/= Sajjad Ali Shah, J



KARACHI
04th September, 2019
ars/hed/

Approved for Reporting

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24/9/2019
D.R.(K).

CERTIFIED TO BE TRUE COPY
[Signature]
24/9/19
Court Associate
Supreme Court of Pakistan
Karachi.