

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

PRESENT:

MR. JUSTICE JAMAL KHAN MANDOKHAIL
MR. JUSTICE MUHAMMAD ALI MAZHAR

CIVIL APPEAL NO. 512 OF 2021

(Against the Judgment dated 17.09.2018
passed by Federal Service Tribunal,
Islamabad in Appeal No.848 (R) CS/2016)

Senior General Manager, Pakistan Railways, etc. ...Appellants

VERSUS

Muhammad Pervaiz ...Respondent

For the Appellants: Mr. Jawad Mehmood Pasha, ASC
(Via video-link from Lahore)

For Respondent: Ms. Shireen Imran, ASC

Date of Hearing: 20.11.2023

JUDGMENT

MUHAMMAD ALI MAZHAR, J. This Civil Appeal with leave of the Court is directed against the judgment dated 17.09.2018 passed by the Federal Service Tribunal, Islamabad ("**Tribunal**") in Appeal No.848(R)CS/2016 whereby the appeal filed by the instant respondent was allowed and the respondent was held to be entitled to receive advance increments from the date of acquiring the higher qualification of L.L.B. (*Legum Baccalaureus*/Bachelors in Law).

2. Succinctly stated, the facts of the case are that the respondent was initially appointed as an Assistant Station Master in Pakistan Railways (alternatively, the "**appellant-department**") in the year 1981. He subsequently acquired the qualification of L.L.B. in the year 1999, and at the time of filing his service appeal he was performing his duties as a Special Ticket Examiner. Based on this higher qualification, the respondent applied for four advance increments according to the incentive scheme of 1966, but his application dated 24.03.2016 was rejected by the competent authority for not being covered under the relevant rules. The respondent consequently filed an appeal in the Tribunal for seeking the benefit of the judgment dated 17.02.2011, passed by the Tribunal in Service Appeals No.53-85(L)CS/2010, wherein advance increments were granted on the achievement of a higher qualification.

3. Leave to appeal was granted by this Court *vide* order dated 01.06.2021 in the following terms:-

"Learned counsel for the petitioners contends that the respondent on passing of his M.A. examination was paid advance increment in terms of rule contained in SI. No. 32 at page 29 of the paper-book. Contends that L.L.B. degree is counted as equivalent to M.A. and thus on acquiring of L.L.B. degree, no further advance increment could be granted nor is admissible under the rules.

2. The contentions raised require consideration. Leave to appeal is granted to consider, *inter alia*, the same. The appeal shall be heard on the present record, however, the parties are at liberty to file additional documents, if any, within a period of one month. As the matter relates to service, office is directed to fix the appeal expeditiously, preferably, after three months.

Civil Misc. Application No.10938/2018:

3. In the meantime, the operation of the impugned judgment is suspended".

4. The learned counsel for the appellants argued that as the representation of the respondent was time-barred, hence the appeal before the Tribunal was also time-barred, and this crucial aspect was ignored by the learned Tribunal. It was further contended that the respondent has already received advance increments on acquiring the higher qualifications of B.A. and M.A., and L.L.B. degree was never considered for grant of advance increments in the scheme pertaining thereto. He further argued that the notification regarding the policy of advance increments had been discontinued *vide* subsequent Notification dated 13.09.2001. He also referred to paragraph 6 of the law points raised in the memo of appeal before this Court and argued that the Tribunal failed to consider that the respondent had already been granted advance increments for attaining the higher qualification of M.A. (Master of Arts), and his pay was fixed accordingly on 26.02.2001.

5. The learned counsel for the respondent contended that the respondent is entitled to the same relief that has already been extended to the other employees of the same department, and the appellant-department cannot act discriminatorily in this respect. She further argued that the respondent is entitled to the equal protection of law and the decision to deprive him of the incentive of advance increments is a discriminatory act as persons similarly situated are to be treated in a like manner. It was further contended that the same relief was extended by this Tribunal in Appeal No. 53(L)CS/2010.

6. Heard the arguments. In order to resolve the bone of contention, we would like to refer to the relevant Standing Instruction (SI.) No.32,

available at page 1043 of the Estacode (2007 Edition), Volume-II as under:-

CHAPTER 10
PAY, ALLOWANCES AND OTHER BENEFITS

Sl. No. 32

Grant of Advance Increments to Officials for Possessing/Attaining Higher Educational Qualifications

[(a) (i) From 1-6-1991 onwards, advance increments shall be allowed without the condition of the second Division to the officials] *[in BPS 1-16] for possessing or acquiring higher educational qualifications over and above prescribed qualifications in the relevant Recruitment Rules to the extent given below:-

Number of advance increments for obtaining

		Matric	F.A./F.Sc.	B.A./B.Sc.	M.A./M.Sc.
a)	Where the prescribed qualification is Non-Matric.	2	4	6	8
b)	Where the prescribed qualification is Matric.	Nil	2	4	6
c)	Where the prescribed qualification is F.A./F.Sc.	Nil	Nil	2	4
d)	Where the prescribed qualification is B.A./B.Sc.	Nil	Nil	Nil	2

The advance increments already allowed in terms of para 6 of O.M.No. F.1(7)Imp-II/87, dated the 1st July, 1987 would be doubled from 1-6-1991.

(ii) The advance increments shall be allowed at the time of recruitment or acquisition of higher qualification, whichever is later. In cases where the employee is already at the maximum of the scale, he may be allowed the number of advance increments beyond the maximum of the scale as personal pay to be absorbed at the time of his move-over/promotion. Those employees who had acquired higher qualification in 3rd Division prior to 1-6-1991 and were not granted advance increments earlier would henceforth would be allowed advance increments w.e.f. 1-6-1991.

(b) Engineers and doctors shall also be allowed four advance increments in case they possess or acquire a post-graduate degree in their relevant field for which they have not been allowed any qualification pay.

(c) The advance increment/increments shall be allowed at the time of recruitment or acquiring higher qualification during service. In cases where the employee is already at the maximum of his pay scale, he would be allowed the requisite number of increments as personal pay to be absorbed on moving over/promotion to higher pay scale.

[Authority: Finance Division O.M. No. 1/7/Imp.II/87, dated 1-7-1987]

The two relevant Office Memorandums (O.M.) pertaining to the advance increments policy of the appellant-department are also reproduced as under (at page 27 of the paper-book):-

"Office Memorandum

The undersigned is directed to refer to the Ministry of Railways O.M.No.E-IV/94-IC/(E-I) dated 19-10-2000 on the above subject and to say that in terms of Finance Division's O.M.No.F.3(6)Imp/97 dated 12-1-2000 (copy enclosed) advance increments on acquiring L.L.B degree are admissible to the employee of Courts only.

Sd/-
(Abdul Sattar Sadiq)
Deputy Secretary (R:II)

Copy of Finance Division's Islamabad's O.M.No.F.3(6)Imp/97 dated 12-1-2000 addressed to all Ministries/Divisions".

“Office Memorandum

In partial modification of this Division's Office Memorandum Nos.F.1/7/Imp. II/87 dated 1-7-87, 1(12) Imp. II/91 dated 29-6-91 and 6(10) Imp/91-Vol-III dated 8-7-96, the undersigned is directed to convey the approval on the competent authority to allow 2 advance increments on acquiring LLB Degree being equal to MA/M.Sc to all the officials, with immediate effect who are working in the organizations which are either dispensing justice or directly connected with the work of dispensing justice.

Sd/-
(Abdul Sattar Sadiq)
Deputy Secretary(R.II)

Copy of Ministry of Communications & Railways (Railway Division) Islamabad's letter No. E-II/94-10(E-II) dated 16-1-2001 addressed to the G.M/P.P.R.Hd Qrs. Office, Lahore”.

7. The learned Tribunal observed that the policy of advance increments was discontinued by Pakistan Railways *vide* Notification dated 13.09.2001. In fact, the office of the Auditor General of Pakistan, Islamabad, in consultation with the Finance Division, decided that two advance increments are admissible on acquiring either L.L.B. degree or M.A. or M.Sc. (Master of Science) degree to the employees in BS-1 to BS-15 working in organizations which are either dispensing justice, or directly connected with the work of dispensing justice, with a further rider that employees who have obtained two advance increments on acquiring M.A./M.Sc. degree are not entitled to any advance increments on acquiring L.L.B. degree and vice versa [Ref: Letter dated 06.07.2001]. It is an admitted fact that the respondent has been allowed the benefit of two increments on attaining the qualification of M.A. in accordance with the instructions contained in SI. No.32. Moreover, according to the aforementioned O.M. dated 12.01.2000, the policy of granting advance increments on acquiring L.L.B. degree was only available to the employees of the courts. The O.M. dated 16.01.2000 on the other hand conveyed the approval of the competent authority for allowing two advance increments on acquiring L.L.B. degree, being equal to a M.A./M.Sc. degree, to all the officials working in the organizations which are either dispensing justice or directly connected with the work of dispensing justice, with immediate effect. The learned counsel for the respondent neither argued that the respondent was ever engaged in or assigned any duty which was directly related to court work or directly connected with the work of dispensing justice, nor was she able to highlight that any other persons were granted advance increments on qualifying L.L.B. in addition to, or in spite of already having been granted advance increments on qualifying M.A./M.Sc.

8. In our view, the learned Tribunal failed to consider the rationale or motive behind introducing the grant of advance increments on

qualifying L.L.B. The respondent was already allowed advance increments according to Sl. No.32, hence any further claim of advance increments was not justified. Though the Tribunal observed in the impugned judgment that the policy of advance increments was discontinued *vide* Notification dated 13.09.2001, whereas the respondent acquired his L.L.B. degree in 1999, these observations were not construed in light of the correct exposition of law. While deciding the matter the Tribunal should have looked at the pith and substance of the scheme which evinced a clear purpose of granting advance increments for L.L.B. only to those persons who were engaged in work directly related to court work or directly connected with the work of dispensing justice.

9. In fact, the acuity of higher education in the academic quest, characterizes a transmutation segment in the educational initiative and it also promotes as an access to astuteness, proficiency and emboldens individuals to specialize in the preferred and opted branch of learning thereby encouraging personal growth, character building, the development of skills and the advancement of knowledge in the elected traits. Higher education plays an essential role in sculpting the future and successful careers. The sole purpose of government policies propounding or awarding additional increments to staff members on attaining higher education is to persuade and encourage individuals to not only gain more knowledge and expertise for themselves in the required field, but also to perform their duties with more excellence and adeptness. The visible objective of conferring the incentive of additional increments is to motivate employees to attain higher education on the job in the required field thereby adding value and enhancing the performance and efficiency of the employee in the assigned duties and responsibilities. Even in this case, the scheme conferring advance increments to law graduates was introduced purposely keeping in view the assignment of jobs in the field of law, and with the rider that if advance increments have been granted on Master Degrees then no further increment shall be allowed on law graduation. The learned counsel could not convince us how such scheme or policy was discriminatory or unreasonable when it was applied across the board without any favoritism, bias or discrimination.

10. The ambit and purview of judicial review of government policies is now well settled and defined and thereunder the Court can neither act as an appellate authority with the aim of scrutinizing the propriety,

suitability, and/or adequacy of a policy, nor may it act as an advisor to the executive on matters of policy which they are entitled to formulate. The object of judicially reviewing a policy is to ascertain whether it violates the fundamental rights of the citizens, or is at variance to the provisions of the Constitution, or opposed to any statutory provision, or demonstrably arbitrary or discriminatory. The court may invalidate laws, acts and governmental actions that are incompatible with a higher authority, or an executive decision for being unlawful which maintains a check and balance. Such a declaration can be sought on the ground that the decision-maker misdirected itself in law, exercised a power wrongly or improperly or purported to exercise a power that it did not have, which is known as acting *ultra vires*; a decision may be challenged as unreasonable if it is so unreasonable that no reasonable authority could ever have come to it, or due to a failure to observe the statutory procedures. The dominance of judicial review of the executive and legislative action must be kept within the precincts of the constitutional structure so as to avoid any misgivings or apprehension that the judiciary is overstepping its bounds by engaging in unwarranted judicial activism. In the present case we do not find any justification to cause any interference in the policy decision of the appellant-department which does not seem to be unjust or discriminatory and is applicable across the board.

11. This Civil Appeal was fixed for hearing on 20.11.2023 when it was allowed *vide* our short order, which is reproduced as under:

“For the reasons to be recorded later, the appeal is allowed. The judgment of the Federal Service Tribunal, Islamabad dated 17.09.2018 is set aside”.

12. Above are the reasons assigned in support of our short order.

Judge

Judge