

SUPREME COURT OF AZAD JAMMU & KASHMIR
[Appellate Jurisdiction]

PRESENT:

Ch. Muhammad Ibrahim Zia, CJ
Ghulam Mustafa Mughal, J.

Civil Appeal No.82 of 2016
(PLA filed 10.3.2017)

Dr. Abdul Majeed Bandy, Deputy Director (Admin), Directorate of Education Extension, having his office at Naluchi, Muzaffarabad.

.... APPELLANT

versus

1. Azad Government of the State of Jammu & Kashmir through its Chief Secretary, having his office at New Secretariat Complex, Lower Chattar, Muzaffarabad.
2. Secretary Finance, Azad Government of the State of Jammu & Kashmir, having his office at New Secretariat Complex, Lower Chattar, Muzaffarabad.
3. Accountant General, Azad Jammu & Kashmir, Muzaffarabad.

..... RESPONDENTS

4. Secretary Elementary & Secondary Education, Azad Government of the State of Jammu & Kashmir, having his office at New Secretariat Complex, Lower Chattar, Muzaffarabad.
5. Director Public Instructions, Elementary & Secondary Education, Azad Government of the State of Jammu & Kashmir, having his office at District Headquarter Complex, Saheli Sarkar Road, Muzaffarabad.

..... PROFORMA RESPONDENTS

(On appeal from the judgment of the High Court, Dated 12.1.2017 in Civil Appeal No.287/2016)

FOR THE APPELLANT: Ch. Muhammad Manzoor, advocate.

FOR THE RESPONDENTS: Mr. Raza Ali Khan, Advocate-General.

Date of hearing: 18.5.2017

JUDGMENT:

Ghulam Mustafa Mughal, J.—This appeal with our leave is directed against the judgment passed by the High Court on 12.1.2017 in writ petition No.287/2016.

2. Precise facts forming background of the captioned appeal are that Dr. Abdul Majeed Bandy, appellant herein, filed a writ petition under section 44 of the Azad Jammu & Kashmir Interim Constitution Act, 1974, before the High Court and sought a direction to the respondents to pay Ph.D allowance to him from the date of degree, i.e. 21.11.2012. It was further requested that the said

allowance may be paid on the basis of parity with Punjab @ Rs.10,000/- per month. The precise case of the appellant, herein, before the High Court was that he is a permanent employee of the Education Department and is serving as Deputy Director (Admin), Directorate of Education Extension (B-18). He got his degree of Doctor of Philosophy in Education, in the year 2012, from the University of Punjab. The Vice Chancellor, University of Punjab, issued the notification of the petitioner, appellant herein, in this regard on 21.11.2012. The Secretariat of Elementary & Secondary Education, Azad Government of the State of Jammu & Kashmir, sanctioned Ph.D. allowance in favour of the appellant @ Rs.5,000/- per month from the date of degree of Ph.D. He requested for the issuance of Ph.D. allowance but was told that at the moment, there was ban from the Finance Department, therefore, the matter shall be referred for relaxation. It was claimed that the Secretariat Elementary & Secondary Education wrote a letter to respondent No.2 on 17.2.2015 but no order for relaxation regarding Ph.D. allowance has been issued. It was claimed that the Azad Jammu & Kashmir Government has adopted the service structure of Punjab Government on parity basis. The Finance Department, Government of Punjab, issued a notification on 21.6.2012 whereby Ph.D/DSC allowance is allowed @ Rs.10,000/- per month to the degree-holders. It was stated that the Government of Azad Jammu & Kashmir has already adopted the service structure of Punjab Government, hence is bound to pay the allowances on parity basis with Punjab @ Rs.10,000/- per month. The petition was resisted by the respondents by filing written statement. It was pleaded that vide notification dated 28.9.2012 issued by the Finance Department, Azad Government of the State of Jammu & Kashmir, the rate of Ph.D. allowance is admissible @ Rs.2250/- per month whereas the Education Department has sanctioned Rs.5000/- per month to the petitioner as Ph.D. allowance in violation of the notification, hence Rs.5000/- per month cannot be granted to him. It was claimed that pay and allowances is a matter relating to the terms and conditions of service, therefore, writ petition is not maintainable and is liable to

be rejected. It was further submitted that the petitioner did not submit his bill during current financial schedule. As per Finance Department's letter dated 25.2.2014, read with Notification No.FD/R/(233)02/2004, dated 6.6.2005, the petitioner is entitled to Rs.2250/- per month. It was further claimed by the respondents in the High Court that Science and Technology Allowance is not admissible to the petitioner. The learned High Court, after hearing the parties, has opined that without challenging the validity of notification dated 11.5.2016, the petitioner is not entitled to claim the allowance. It was further opined by the High Court that Secretariat Elementary & Secondary Education was not competent to grant Ph.D. allowance to the petitioner @ Rs.2250/- per month from the date of degree, without obtaining the financial concurrence.

3. Ch. Muhammad Manzoor, advocate, appearing for the appellant, while reiterating the facts pleaded in the memorandum of appeal as well as the writ petition before the High Court, has vehemently argued that the appellant was granted Ph.D. degree on 21.11.2012. He submitted that the competent authority i.e. the Secretary Elementary & Secondary Education, granted Ph.D. allowance to the appellant @ Rs.5000/- per month from the date of degree i.e. 21.11.2012. The appellant claimed Rs.10,000/- as Ph.D. allowance from the date of issuance of Ph.D. degree but the Finance Department on the pretext of restriction, has refused to grant the allowance, however, the Secretariat Elementary & Secondary Education again wrote a letter but no order has been passed. The learned advocate contended that the High Court has erroneously dismissed the petition on the ground that the appellant is not entitled to the special Science and Technology Allowance @ Rs.5000/- per month. The fact of the matter is that the appellant got degree of Ph.D. Education, which is a social science, as has been replied by the University Grants Commission in response to the letter of the Azad Jammu & Kashmir Public Service Commission (annexure PK). The learned advocate contended that the judgment of the High Court runs counter to the principle of parity, which has been admitted in various pronouncements of this Court.

4. Mr. Raza Ali Khan, the learned Advocate-General, on the other hand, argued that the Secretary Elementary & Secondary Education Schools was not competent to grant the allowance @ Rs.5000/- per month without prior approval of the Finance Department, hence the notification is illegal, against law and *coram-non-judice*, which cannot be implemented in writ jurisdiction and has rightly not been implemented. He further argued that all the Ph.D. degree-holders have been granted allowance @ Rs.10,000/- per month and the appellant is also receiving the same. The learned Advocate-General submitted that he has no objection, if the relief to the extent of admissible allowance is granted to the appellant. The learned advocate submitted that no discrimination is pointed out in the notification dated 16.5.2016, which is not made applicable retrospectively by the competent authority and the appellant cannot claim any benefit of the notification nor any such prayer was made before the High Court.

5. We have heard the learned counsel for the parties and perused the record with utmost care.

6. Before proceeding further, it may be stated that the objection of the respondents that the appellant is not Ph.D. degree holder in social sciences, stands nullified as per letter of the Secretary University Grants Commission dated 5.6.1997. The Education is very much included in natural and social sciences.

7. So far as the case of the appellant that he is entitled to Rs.5000/- from the date of acquiring Ph.D. qualification is concerned, that has no substance. At the relevant time, as per notification dated 28.9.2012, an allowance of Rs.2250/- per month was admissible, however, the same was discontinued from 16.5.2016 and all Ph.D./DSC degree-holders were declared entitled to Rs.10,000/- per month. The appellant, in our considered view, is entitled to Rs.2250/- per month from the date of Ph.D. degree till the issuance of notification dated 16.5.2016, whereby allowance for Ph.D. degree holder is enhanced at the rate of ten thousand rupees. He shall be paid accordingly, if has not received already.

8. So far as the notification issued by the Secretary, Elementary & Secondary Education Schools, in favour of the appellant, is concerned, that is without lawful authority because the approval of the Finance Department was not obtained by the concerned Department before issuing the notification. As stated above, it has been brought into our notice that now all the degree-holders are entitled to Rs.10,000/- Ph.D. allowance from issuance of notification dated 16.5.2016. The appellant shall also be entitled to the same from the date, the other Ph.D. degree holders are receiving.

The judgment passed by the High Court stands modified in the terms indicated above. The appeal stands disposed of.

JUDGE

CHIEF JUSTICE

Muzaffarabad

Announcement Date 31-05-2017