

SUPREME COURT OF AZAD JAMMU AND KASHMIR

[Appellate Jurisdiction]

PRESENT:

Ch. Muhammad Ibrahim Zia, C.J.

Sardar Abdul Hameed Khan, J.

1. Civil Appeal No.197 of 2016

(PLA filed on 21.04.2016)

Commissioner Inland Revenue, Azad Jammu & Kashmir Council, Mirpur.

.....APPELLANT

VERSUS

1. Mohammad Naseer Qureshi (R) Headmaster Education Department, Muzaffarabad.
2. Muhammad Hussain Abbasi (R) Headmaster Education Department, Muzaffarabad.
3. Abdul Aziz Awan (R) Headmaster Education Department, Muzaffarabad.
4. Muhammad Bashir (R) Headmaster Education Department, Muzaffarabad.

.....RESPONDENTS

5. Azad Govt. of the State of Jammu & Kashmir through its Chief Secretary Muzaffarabad having his office at New Secretariat, Muzaffarabad.
6. Azad Jammu & Kashmir Council through its Secretary having his office at Islamabad.
7. The Additional Commissioner Inland Revenue, Azad Jammu & Kashmir Council, Mirpur.
8. The DCIR, Salary Circle 6, Muzaffarabad.
9. Accountant General Azad Jammu and Kashmir Muzaffarabad, having his office at Sathra Muzaffarabad.

.... PROFORMA RESPONDENTS

(On appeal from the judgment of the High Court
dated 23.02.2016 in writ petitions No.1151 and
1306 of 2014)

FOR THE APPELLANT: Raja Iqbal Rasheed
Minhas, Advocate.

FOR THE RESPONDENTS: Miss Kokab Al Saba
Roohi, Advocate.

2. Civil Appeal No.198 of 2016
(PLA filed on 21.04.2016)

Commissioner Inland Revenue, Azad Jammu &
Kashmir Council, Mirpur.

.....APPELLANT

VERSUS

1. Syed Azad Hussain Headmaster, President
Headmaster Association of Azad Jammu &
Kashmir.
2. Raja Muhammad Muneer Headmaster High
School Niazpura, District Muzaffarabad.
3. Khurshid Alam Headmaster High School Noor
Pur, District Muzaffarabad.
4. Mohammad Khurshid Qureshi Headmaster High
School Komi Kot, District Muzaffarabad.
5. Hukamdad Khan, Headmaster High School
Knoor, District Muzaffarabad.
6. Nazur-ul-Islam Headmaster High School Timbi,
District Muzaffarabad.
7. Gul Hussain Shah Headmaster High School
Ashrian, District Muzaffarabad.
8. Mumtaz Bukhari Headmaster High School Ali
Akbar Awan Upper Chatter, Muzaffarabad.

9. Mohammad Hafiz Headmaster High School Chatter Kalas, District Muzaffarabad.
10. Mohammad Ayub Kiani Headmaster High School Bagna Khairabad, District Muzaffarabad.
11. Mohammad Akram Pricnipal Higher Secondary School Maira Saru, District Muzaffarabad.
12. Sarfraz Abbasi Headmaster Principal High Secondary School Barnala, District Muzaffarabad.
13. Murtaza Abbasi Headmaster High School Awan Pati, District Muzaffarabad.
14. Abdul Hameed Lone Headmaster Chakar, District Hattian Bala.
15. Muhammad Shabeer Shaheen Headmaster High School Karli Chakar, District Hattian Bala.
16. Raja Abdul Razaq Headmaster High School Salmia Chakar, District Muzaffarabad.
17. Muhammad Sharif Naz Headmaster High School Chanalbang, District Muzaffarabad.
18. Raja Mohammad Munsaf Khan Headmaster High School Metaie, District Muzaffarabad.
19. Abdul Hameed Awan Headmaster High School Rara, District Muzaffarabad.
20. Iqbal Butt Headmaster High School Gojra, District Muzaffarabad.
21. Gulol Nasreen Headmaster High School Ghan Chatter Rajvian, District Muzaffarabad.
22. Sardar Naheem Khan Headmaster High School Rawalakot. F
23. Sardar Abid Hussain Headmaster High School Haroin Poonch.
24. Chaudhary Mohammad Aslam Headmaster High School Bagh.
25. Mohammad Sardar Hashmi Headmaster High School Hajira, District Poonch.

26. Sardar Shafat Khan Headmaster High School Hajira, District Poonch.
27. Ch. Mohammad Karam Headmaster High School Kotli.
28. Ch. Ajaib Headmaster High School, Mirpur.
29. Sardar Azam Khan Headmaster High School Murshadabad, District Pallandri.
30. Mohammad Jameel Janjua, Headmaster Thob Bhimber.
31. Sardar Iftikhar UI Azam Headmaster Tarkundi, District Koli.
32. Habib Ullah Naveed Headmaster High School Kahota, Haveli.
33. Sardar Abid Hussain Bukhari Headmaster High School Soli, District Haveli, Kahuta.
34. Katib Awan Headmaster Athmuqam, District Neelum.
35. Mohammad Akbar Headmaster High School Gahail, District Muzaffarabad.
36. Ghulam Murtaza Headmaster High School Awan Pati, District Muzaffarabad.
37. Hussain Din Incharge Headmaster High School Kundalshahi, District Neelum.
38. Syeda Zahida Nasreen Headmistress High School, Bagh.
39. Ifzal Baig Headmaster now serving as District Education Officer (Male), Muzaffarabad.
40. Nazira Begum Headmistress Elementary College Female Poonch, Rawalakot.
41. Raja Tariq Khan Headmaster Elementary College, Mirpur.
42. Ch. Mohammad Khurshid Headmaster Bhimber.

.....RESPONDENTS

43. Azad Govt. of the State of Jammu & Kashmir through its Chief Secretary Muzaffarabad

having his office at New Secretariat, Muzaffarabad.

44. Azad Jammu & Kashmir Council through its Secretary having his office at Islamabad.
45. The Additional Commissioner Inland Revenue, Azad Jammu & Kashmir Council, Mirpur.
46. The DCIR, Salary Circle 6, Muzaffarabad.
47. The DCIR, Salary Circle 7 Mirpur.
48. Accountant General, Azad Jammu & Kashmir, Muzaffarabad having his office at Sathra, Muzaffarabad.
49. The officer Inland Revenue, Azad Jammu and Kashmir Council, District Muzaffarabad.
50. The officer Inland Revenue, Azad Jammu and Kashmir Council, District Mirpur.
51. The officer Inland Revenue, Azad Jammu & Kashmir Council, District Kotli.
52. The officer Inland Revenue, Azad Jammu & Kashmir Council, Bhimber.
53. The officer Inland Revenue, Azad Jammu & Kashmir Council, Rawalakot.
54. The Officer Inland Revenue, Azad Jammu & Kashmir Council, Bagh.

.... PROFORMA RESPONDENTS

(On appeal from the judgment of the High Court dated 23.02.2016 in writ petitions No.1151 and 1306 of 2014

FOR THE APPELLANT: Raja Iqbal Rasheed Minhas, Advocate.

FOR THE RESPONDENTS: Miss Kokab Al Saba Roohi, Advocate and Mr. Shakil Ahmed, Additional

Commissioner Inland
Revenue.

Date of hearing: 01.11.2017.

JUDGMENT:

Ch. Muhammad Ibrahim Zia, C.J.– The captioned appeals by leave of the Court have arisen out of the consolidated judgment of the High Court dated 23.02.2016, whereby the writ petitions filed by the respondents, herein, have been accepted.

2. Some of the respondents, herein, are retired Headmasters, whereas, the others are holding the offices of Headmasters and Principals in the respective institutions. They claim that according to Part III of second schedule of Income Tax Ordinance, 2001 (*hereinafter to be referred as Ordinance, 2001*) they are entitled to reduction up to 75% of tax payable on income from salary. They were enjoying the said tax concession, however, vide Finance Act, 2013 certain amendments have been made in Ordinance, 2001 which have been explained vide circular No.6 of 2013 issued on

19.07.2013 by the Federal Board of Revenue Government of Pakistan. According to the said circular the tax liability on income from salary equivalent to 75% has been reduced to 40% with the clarification that the teachers performing the administration jobs such as Principals, Headmasters, Directors, Vice Chancellors etc. are not entitled for such tax concession. Subsequently, the Commissioner (Inland Revenue) appellant, herein, issued letter dated 21.08.2013 to all the officers of Inland Revenue directing them to implement the circular No.6 of 2013. The respondents, herein, feeling aggrieved filed separate writ petitions before the High Court while claiming therein that the recovery of tax from them with retrospective effect i.e. from the date when they were promoted as Headmasters etc., is against their rights accrued in the light of Ordinance, 2001, hence, the amendment in Part III clause (2) of second Schedule of Income Tax Ordinance, 2001, is illegal, arbitrary and without lawful authority. They prayed for declaring the letter dated 21.08.2013

against law, rules and the fundamental rights. The learned High Court after necessary proceedings accepted the writ petitions as under:-

“In view of above, by accepting both the petitions it is ordered that the respondents shall not recover the arrears of Income Tax, rebate given equal to 75% for the period of 2001 to 2013 and it is held that the petitioners are entitled to the same benefits/concessions as were available to their counterparts in the province of Punjab and it is further declared that the amended clause to the extent of exclusion of the petitioners from the category of full time teachers is against the law and facts and in-operative upon the rights of the petitioners.”

As identical legal and factual propositions are involved, hence, it is felt advised to decide both the appeals through this single judgment.

3. Raja Iqbal Rasheed Minhas, Advocate, the learned counsel for the appellants (in both the appeals) after narration of necessary facts submitted that the impugned judgment of the High Court is against the facts and law. It appears that the judgment has been delivered basically relying upon the decision of Federal Tax Ombudsman, Islamabad who has got no legal and territorial

jurisdiction. According to the provisions of section 9 of the Federal Tax Ombudsman Ordinance, 2000 the Federal Tax Ombudsman has got no jurisdiction to investigate or inquire into the matters relating to the assessment of income or wealth, determination of liability of tax or duty, classification of liability or tax or duty, classification or valuation of goods, interpretation of the rules and regulations relating to such assessment, determination, classification or valuation in respect of which legal remedies of appeal, review or revision are available under the relevant Legislation. He further argued that under law, the Board of Revenue is empowered to issue circular, thus, impugned circular No.6 of 2013 dated 19.07.2013 has been rightly issued. The learned High Court has fell in error of law while handing down the impugned judgment as the respondents are not full time teachers, thus, they cannot claim the exemption. He further argued that the writ petition can only be filed in absence of alternate remedy, whereas, in the present case under section 127 of the Ordinance, 2001 the alternate remedy of

appeal is available, thus, the constitutional writ petitions were not competent.

4. Conversely, Miss Kokab Al Saba Roohi, Advocate, the learned counsel for the respondents in both the appeals forcefully defended the impugned judgment and submitted that the arguments advanced on behalf of the appellant are misconceived. Neither any substantial amendment has been introduced nor given retrospective effect. The respondents approached the High Court against illegal retrospective enforcement of the circular. According to the constitutional provisions, the right once accrued cannot be snatched through such interpretation and extending retrospective effect, thus, the High Court has rightly accepted the writ petitions. The appellant has got no locus standi. She referred to the case reported as *Accountant General & another vs. Shahid Mehmood & another* [2005 SCR 255].

5. We have considered the arguments of the learned counsel for the parties and examined the record made available. The respondents

approached the High Court with the following common prayer in the writ petitions:-

“In view of above it is very humbly prayed that by accepting this writ petition the amendment in part (iii) clause (2) of Income Tax Ordinance, 2001 regarding in Tax concession and excluding the petitioners from such concession which has been implemented by the respondents through circular dated 21.08.2013 may kindly be declared against the law rules and fundamental rights of the petitioners. It is further more prayed that the respondents may kindly be restrained from calculating tax demand from the petitioners under the garb of circular dated 21.8.2013 with retrospective effect from the date whereby petitioners were promoted, transferred as Headmasters. The respondents may kindly be directed to issue NOC in favour of the petitioners. Any other relief which the Hon’ble Court deems fit may also be granted.”

The circular dated 21.08.2013 has been challenged in the writ petitions which has been actually issued for implementation of the adopted circular No.6 of 2013 dated 19.07.2013. For resolution of the controversy, the said circular is reproduced as under:-

“Government of Pakistan
Revenue Division
Federal Board of Revenue
C.NO.4(36)ITP/2013 Islamabad, the 19 July, 2013

CIRCULAR NO.6 OF 2013

Income Tax

Subject: Finance Act, 2013 --- Explanation regarding important amendments made in the Income Tax Ordinance, 2001.

Salient features of the amendments made in the Income Tax Ordinance, 2001 through Finance Act, 2013 are explained as under:-

1.
2.
3.
4. Amendments in Second Schedule:
 - (a)
 - (b) In Part-I a new clause (58A) has been added providing that income of a university or other educational institution being run by a non-profit organization as defined in sub-section (36) of section 2 of the Income Tax Ordinance, 2001 existing solely for educational purposes and not for purposes of profit shall be exempt.
 - (c) In Part-III in clause (1) a proviso has been added that the reduction in tax liability is available @ 2.5% on so much amount of the flying allowance or the submarine allowance as does not exceed an amount equal to the basic salary received by pilots, flight engineers, navigators of Pakistan Armed Forces, Pakistani Airlines or Civil Aviation Authority, Junior Commissioned Officers or other ranks of Pakistan Armed Forces, and submarine allowance by the officers of the Pakistan navy.
 - (d) In Part-III in clause (2) reduction in tax liability of the tax payable on income from salary equal to 75% has been reduced to 40% in the case of:
 - (i) a full time teacher employed in a non profit educational institution duly recognized by Higher Education Commission, a Board of Education or a University recognized by the Higher Education Commission, including government training institutions.
 - (ii) a full time researcher employed in a research institution duly recognized by Higher Education Commission, a Board of Education or a University

recognized by the Higher Education Commission, including government research institution.

- (iii) It is further clarified that a full time teacher means a person employed purely for teaching and not performing any administrative or managerial jobs e.g. principals, headmasters, directions, vice chancellors, chairman, controllers etc. Similarly a full time researcher means a person purely employed for research job only in a research institution and such institution is purely performing research activities.

- (e)
- (f)"

The pivotal proposition in this case revolves around the term "full time teacher" For determination of this proposition the survey of legislative history of the fiscal law is necessary which reveals that through the Finance Act, 2013 relating to the subject matter neither any amendment has been introduced nor any change in the relevant provisions of law has been made. Schedule II, Part I, clause 58A of Finance Act, 2013 does not relate to the individual rather it relates to income of University or any other educational institution, however, same has been omitted through enforcement of Finance Act, 2014 (Act IX of 2014) thus, it is no more on the statute book.

The controversy involved in this case relates to Schedule II, Part III (Reduction in tax liability) sub-clause (2) of clause (1) of Ordinance, 2001 which reads as follows:-

“(2) The tax payable by a full time teacher or a researcher, employed in a non profit education or researcher institution duly recognized by Higher Education Commission, a Board of Education or a University recognized by the Higher Education Commission, including government training and research institution, shall be reduced by an amount equal to 40% of tax payable on his income from salary.”

This referred clause was substituted through Finance Act, 2006. Prior to this, the clause was as follows:-

“(2) In addition to reduction specified in sub-clause (1), the tax payable by a full time teacher or a researcher, employed in a non profit education or recognized by a Board of Education or a University or the Higher Education Commission, shall be further reduced by an amount equal to 75% of the tax payable after the aforesaid reduction.”

Thus, from the legislative history it is crystal clear that through Finance Act, 2006 or 2013 no change relating to the term “full time teacher” has been made or introduced rather only

the rate of reduction in the tax liability has been substituted which prior to the year 2006 was 50%, substituted with 75% vide Finance Act, 2006 and now with 40% through Finance Act, 2013. Thus, except substitution of rate of reduction in tax liability no amendment relating to the term "full time teacher" has been introduced. It is clear that since long the term "full time teacher" has been interpreted and enforced without any explanation made by the Federal Board of Revenue through any circular. The instant controversy has arisen on issuance of impugned circular No.6 of 2013 regarding explanation relating to important amendments made in the Ordinance, 2001 through Finance Act, 2013.

6. As mentioned hereinabove that through Finance Act, 2013 no amendment or change has been made in relation to term "full time teacher", thus, the circular which has been issued for clarification of Finance Act, 2013 cannot be applied against the practice operative in the department since long. Even otherwise, according to the

provisions of section 206 of Ordinance, 2001 the circular has to be issued in consistency with the provisions of the Ordinance and only such circular is binding upon the tax payers.

7. So far as the argument of counsel for the appellant that the writ petitions were not maintainable in view of availability of the alternate remedy under section 127 of Ordinance, 2001 is concerned, it appears to be misconceived. According to this section the remedy of appeal is provided against the order passed under the sections enumerated therein, whereas, the instant matter relates to legality of the circular which has been issued under the provisions of section 206 which finds no place under the provisions of section 127. Thus, this argument appears to be misconceived as according to the nature of the proposition involved no remedy of appeal is available.

8. The next argument of the counsel for the appellant is that the Federal Tax Ombudsman has got no jurisdiction, appears to be result of

superficial approach. According to the provisions of section 9 of Federal Tax Ombudsman Ordinance, 2000 there is no total ouster of jurisdiction rather it is conditional that the matters relating to which the legal remedy of appeal, review or revision is available under the relevant legislation shall not be entertained by the Federal Tax Ombudsman. As in view of the proposition involved, no such remedy is available, thus, the Federal Tax Ombudsman's jurisdiction does not stand ousted. So far as the question that the Federal Tax Ombudsman has got no territorial jurisdiction to the extent of Azad Kashmir is concerned, there is no cavil in this regard but it is not the matter of implementation of the judgment of the Federal Tax Ombudsman rather it has only been referred in context of legal reference.

9. As hereinabove mentioned that the appellant has based his stand on the circular dated 19.07.2013 issued under section 206 of the Ordinance, 2001 and this circular relates to the interpretation of provisions of law introduced

through Finance Act, 2013, whereas, through Finance Act, 2013 no legal change has been introduced relating to the proposition in hand, thus, it can safely be held that the circular which relates to the Finance Act, 2013 has got no relevance.

10. For the above stated reasons, finding no force, both these appeals stand dismissed with no order as to costs.

Before parting with the judgment we would also like to appreciate efforts of Mr. Shakeel Ahmed, Additional Commissioner Income Tax Department who has taken keen interest in pleading the case. He remained present in the Court during hearing of the case and also filed written arguments. The efforts of the officer are commendable, irrespective of the result of the case.

CHIEF JUSTICE

JUDGE
(J-III)

Muzaffarabad,

Date of announcement: 13.11.2017