

SUPREME COURT OF AZAD JAMMU AND KASHMIR

[Appellate Jurisdiction]

PRESENT:

Raja Saeed Akram Khan, ACJ.

Ghulam Mustafa Mughal, J.

Civil Appeal No.385 of 2019

(PLA filed on 20.8.2019)

1. Riaz Ahmed, Head Constable No.464,
2. Ishtiaq Ahmed, Constable No.1238,
3. Khursheed Ahmed, Follower,
4. Muhammad Ahmed Mughal, Follower,
5. Manzoor Ahmed Khan, Constable No.963,
6. Amjid Ali Khan, Head Constable No.1837,
7. Muhammad Ismail Khan, Sub-Inspector,
8. Mushtaq Ahmed, Sub-Inspector,
9. Zahir Ahmed, Head Constable No.1145,
10. Ameen Ahmed, Constable No.1177,
11. Raja Faisal Khan, Constable No.1374,
12. Waqas Ahmed, Constable No.770,
13. Rustam Hussain, Head Constable No.111 S
14. Mushtaq Hussain, Head Constable No.21 0
15. Muhammad Zahoor, Head Constable No.1,
16. Muhammad Nazir, Constable No.1200,
17. Muhammad Khadim, Head Constable No.1
18. Shakeel Ahmed, ASI,
19. Muhammad Javed, Head Constable No.15,
20. Tahir Farid, Constable No.1490,
21. Raja Nasim Khan, ASI,
22. Naseer Ashraf, Constable No.2420,

23. Dildar Ahmed, Constable No.1402,
24. Muslim Hussain Shah, Constable No.429,
25. Muhammad Shahid, Constable No.199,
26. Tasawar Hamid, Constable No.51,
27. Lal Hussain, ASI,
28. Naveed Mumtaz, Head Constable No.76,
29. Muhammad Shahzab, Constable NO.1529,
30. Muhammad Rafi, Constable No.1174,
31. Abdul Aziz, Head Constable No.842,
32. Muhammad Zubair, Constable No.453,
33. Muhammad Iqbal, Constable No.966,
34. Maroof Ahmed, Constable No.1151,
35. Muhammad Banaras, Head Constable No.1194,
36. Javed Akbar, Head Constable No.1126,
37. Majid Hussain, Constable No.472,
38. Mumtaz Ahmed, Constable No.622,
39. Alam Din, Constable No.1 086,
40. Masood-ur-Rafique, Senior Clerk,
41. Zohaid Naseem, Junior Clerk,
42. Tanveer Shah, Junior Clerk,
43. Sohaib Saleem, Constable No.952,
44. Amjid Shaheen, Constable No.2457,
45. Sadheer Ahmed, Constable No.1237,
46. Tahir Ameen, Constable No.640,
47. Muhammad Aftab, ASI,
48. Khalid Parveez, Constable No.1783
49. Bilal Ahmed, Follower,
50. Amjid Ali Gillani, Head Clerk,
51. Fciheem Arshid, Constable No.1562,
52. Sheraz Ahmed, Constable No.153,
53. Malik Zahir, Constable No.712,
54. Muhammad Naseem ASI,
55. Muhammad Gulfam, Constable No.446,
56. Kamran Naseem, Constable No.688,
57. Muzammil Hussain, Head Constable No.1760,
58. Nazakat Hussain, Constable No.212,
59. Naseem Khan, Constable No.522,
60. Mukhial Ahmed, Constable No.846,

61. Sadaqat Hussain, Head Constable No.1795,
62. Manzoor Hussain Shah, Head Constable No.1105,
63. Muhammad Bashir, Sub-Inspector,
64. Muhammad Fayyaz, Head Constable No.82,
65. Muhammad Amjid, Constable No.148,
66. Gulzaman, Head Constable No.1677,
67. Saeed Alam, Constable No.2056,
68. Muhammad Bashir, Constable No.2382,
69. Muhammad Sarfraz, ASI,
70. Karamat Khan, Constable No.851,
71. Muhammad Sohrab, Head Constable No.1227,
72. Tahir Naheem, Constable NO.104,
73. Asid Mehmood, Constable No.641,
74. Muhammad Aftab, Constable No.1927,
75. Muhammad Sarfraz, Constable No.2363,
76. Shoaib Naseem, Junior Clerk, All employees of AJ&K Reserve Police.

..... APPELLANTS

v e r s u s

1. Accountant-General, Azad Jammu & Kashmir, Muzaffarabad.
2. Azad Government of the State of Jammu & Kashmir through Secretary Finance, Civil Secretariat, Muzaffarabad.
3. Additional Secretary Finance (Regulations), Civil Secretariat, Muzaffarabad.

..... RESPONDENTS

[On appeal from the judgment of the High Court, dated 13.6.2019, in writ petition No.1963/2017]

FOR THE APPELLANTS: Mr. Abdul Rasheed Abbasi,
advocate.

FOR THE RESPONDENTS: Raja Akhlaque Hussain
Kiani, Additional Advocate-
General and Raja Ayaz
Ahmed, Assistant
Advocate-General.

Date of hearing: 19.7.2020

JUDGMENT:

Ghulam Mustafa Mughal, J.—The titled appeal by leave, arises out of the judgment passed by the High Court on 13.6.2019, whereby the writ petition filed by the appellants, herein, has been dismissed.

2. The gist of the facts giving rise to the filing of the captioned appeal is that the appellants, herein, filed a writ petition before the Azad Jammu and Kashmir High Court on 27.11.2017, alleging therein that they are members of the Police force and performing their duties in different capacities like Followers, Constables, Head Constables, Assistant Sub-

Inspectors, Sub-Inspectors etc. It was averred that vide Office Memorandum dated 15.9.2010, the Government of Azad Jammu and Kashmir sanctioned the Risk Allowance at the rate of one month pay equal to the initial of relevant pay scale in favour of the officers/officials of the Azad Jammu and Kashmir Police. It was further averred that the competent authority vide Office Memoranda dated 27.7.2015, 19.7.2016 and 20.7.2017 mentioned the Risk Allowance granted to the police officers/officials vide memorandum dated 15.9.2010 as special pay and allowances and froze the same at the level of its admissibility as on 30.6.2015, 30.6.2016 and 30.6.2017. It was claimed that in the Budget Book for the year 2016-17, 100% Risk Allowance was provided by the Government but the Accountant General, without any justification, has deducted the 50% amount of allowance, which is illegal, arbitrary and without lawful authority. The writ petition was

contested by the respondents by filing comments, which were treated as written statement on their request, whereby the claim of the appellants was refuted. Finally after hearing the parties, the writ petition has been dismissed vide impugned judgment dated 13.6.2019, hence this appeal by leave.

3. Mr. Abdul Rasheed Abbasi, advocate, the learned counsel for the appellants, submitted that the appellants, herein, who are the Police personnel of Azad Government of the State of Jammu and Kashmir, were granted the Risk Allowance w.e.f. 1.7.2010 at the rate of one month's pay equal to the initial of their relevant pay scales, vide notification dated 15.9.2010. He submitted that the special pay and certain allowances, which have categorically been mentioned in the pleadings, were withdrawn while awarding the said allowance. The learned counsel next argued that the pay-scales of civil servants of Azad Jammu and Kashmir were revised w.e.f. 1.7.2011, vide notification

dated 25.7.2011, whereby the House-Rent Allowance and the Risk Allowance granted to the Police employees and the Special Judicial Allowance, granted to the employees of the Judiciary, were ordered to stand frozen at the rate of their admissibility as on 30.6.2011. The learned counsel submitted that the pay-scale and allowances of the civil servants of Azad Jammu and Kashmir were again revised w.e.f. 1.7.2015, vide notification dated 27.7.2015 and again, vide para No.10 of the said notification, the Risk Allowance granted to the Police employees and the Special Judicial Allowance granted to the employees of Judiciary were ordered to stand frozen at the rate of their admissibility, as on 30.6.2015. He added that once again the basic pay-scales and allowances of the civil servants of Azad Jammu and Kashmir were revised w.e.f. 1.7.2017, vide notification dated 20.7.2017 and the Risk Allowance granted to the Police employees, Health allowance granted to the Health personnel in

the Health Department and Special Judicial Allowance granted to the employees of the Judiciary, were ordered to stand frozen at the level of their admissibility, as on 30.6.2017. The learned counsel argued that the office of the Accountant General, while releasing the pay of the Police employees for the month of July 2017, made a deduction by 50% of the of the Risk Allowance, whereupon the appellants, herein, were constrained to file the writ petition before the High Court. The writ petition was accepted, however, on appeal by the respondents, before this Court, the case was remanded to the High Court with the direction to place the same before the larger bench but the division bench of the learned High Court has dismissed the writ petition through the impugned judgment dated 13.6.2019. The learned counsel submitted that the impugned judgment is illegal and violative of law as well as the direction of this Court and deduction of the Risk Allowance from the pay of

the appellants, herein, is also discriminatory and illegal for the reason that the Accountant General has no lawful authority to interpret the law and deduct the allowance at its own from the pay of the appellants and pay the same to some similarly placed employees. The learned counsel argued that the Judicial Allowance is being paid from the date fixed in the notification to the employees of the Judiciary; similarly the Health Allowance is also being paid to the employees of the Health Department and the Risk Allowance is being paid to all the employees of the Police Department in different provinces of Pakistan but the appellants have been discriminated, thus, the principle of equality before law and equal protection of law has been violated by the respondents without any justification. The learned counsel further argued that this Court in its judgment dated 14.5.2020, has declared even the Health employees serving with the Health Department entitled to receive the Health Allowance, irrespective

of the fact that they are serving in the hospitals or in the offices, thus, the employees of the Police Department cannot be discriminated and their fundamental right cannot be infringed. The learned counsel argued that paragraphs 6 and 9 of the Office Memorandum dated 20.7.2017 are independent provisions and both deal with the two different eventualities. He argued that paragraph 6 deals with the ad-hoc allowance whereas paragraph 9 deals with the special pay and allowances, therefore, rather cannot be read together. The interpretation on the basis of which the Accountant General office has deducted the Risk Allowance admissible to the members of the Police force is illegal, erroneous and violative of law. The learned counsel next argued that it is well settled law that such interpretation of law and rules has to be adopted, which does not cause repugnancy; rather it reconciles both the provisions of the Statute. He also submitted that the learned High

Court failed to appreciate that the statutory provision later in order, is to be given preference over the one, which is earlier in order. The learned counsel added that paragraph 9 of the Office Memorandum dated 20.7.2017 is a special provision in the same notification, which deals with special allowances to special categories of the employees, which has to prevail as against paragraph 6, which deals in general with all the employees and it is settled principle of law that special law/provision shall prevail in case of two different provisions. He submitted that the respondents, while adopting and applying the Office Memorandum, have ignored this principle of law. The learned counsel lastly submitted that the learned High Court also failed to take into consideration the settled principle of law that if two methods or provision are provided by law, the one beneficial to the subject (citizen) has to be adopted. The learned counsel referred to and relied upon the following case-law:-

- I. *Rafique Akhtar Chaudhary vs. Azad Jammu and Kashmir Government* [PLD 1982 SC (AJ&K) 124].
- II. *Azad Jammu and Kashmir Government & others vs. Muhammad Younas Tahir & others* [1994 SCR 341],
- III. *Ch. Javaid Mehdi, advocate vs. Chief Election Commissioner AJ&K, Muzaffarabad & 3 others* [PLJ 2004 SC (AJ&K) 245],
- IV. *Qaiser Javed Malik vs. Pervaiz Ahmed & 2 others* [2009 SCMR 846],
- V. *Dr. Mobashir Hussain & others vs. Federation of Pakistan & others* [PLD 2010 Supreme Court 265],
- VI. *Imran Ali vs. Public Service Commission, Azad Jammu and Kashmir, through its Secretary, Civil Secretariat, Chattar, Muzaffarabad & 4 others* [2013 SCR 795],
- VII. *Mirza Abdul Aziz vs. Muhammad Ayub & 2 others* [2013 SCR 827],
- VIII. *Syed Subtain Hussain Kazmi, Tehsildar presently posted at Bagh Development Authority & 2 others vs. Syed Mumtaz Hussain Kazmi, Naib Tehsildar, presently posted at the office of Deputy Commissioner, Bagh, Haveli & 5 others* [2013 SCR 889],
- IX. *Muhammad Yousaf Haroon vs. Competent Authority & 4 others* [2014 SCR 1180],

- X. *Haider Ali & another vs. Qurat-ul-Ain Latif & 9 others* [2014 SCR 196],
- XI. *Mst. Nafeesa Manzoor vs. AJ&K University & 7 others* [2016 SCR 304],
- XII. *Azad Government & 5 others vs. Inhabitants of Village Baghar* [2016 SCR 696],
- XIII. *Abdul Majeed & 2 others vs. AJ&K Government & 6 others* [2017 SCR 397],
- XIV. *Chairman AJ&K Council & 2 others vs. Muhammad Munir Raja & another* [2017 SCR 1168],
- XV. *Azad Government & another vs. Dr. Khalid & 10 others* [2019 SCR 493],
and
- XVI. *Finance Department of Azad Jammu and Kashmir & 2 others vs. Asif Javaid & others* (Civil Appeal No.153/2020, decided on 14.5.2020).

4. Conversely, Raja Ikhalque Hussain Kiani, the learned Additional Advocate-General and Raja Ayaz Ahmed, Assistant Advocate-General, appearing on behalf of the official respondents, submitted that the appellants are not aggrieved persons; hence their writ petition has rightly been dismissed by the learned High Court. They submitted that the payment of Risk

Allowance to the employees of the Police Department has rightly been discontinued in the light of paragraph 6 of the Office Memorandum dated 20.7.2017. They further submitted that the appellants were not receiving 50% ad-hoc allowance 2010, which has been added in their basic pay scales in the year 2017, vide Office Memorandum dated 20.7.2017 and 50% Risk Allowance granted to them in the year 2010 has been reduced in the light of same Office Memorandum, hence no illegality has been committed on behalf of the respondents. At one hand, the appellants are receiving 50% ad-hoc allowance 2010 in pursuance of the Office Memorandum dated 20.7.2017 while on the other hand, they have challenged the deduction of 50% Risk Allowance. They submitted that the deduction of the Risk Allowance is justified, while considering the same as an ad-hoc allowance, in the light of observations of this apex Court. They also submitted that the Government is competent to

enhance or reduce any specific allowance or to merge it into basic pay. A specific amount of allowance has been mentioned so as to allocate the budget in the specific head. They lastly submitted that the stance of the appellants was rightly rejected by the learned High Court, being without any just cause, as, according to the pay-slips, the appellants are receiving more salary after deduction of 50% Risk Allowance after addition of 50% Ad-hoc Allowance, 2010, therefore, the impugned judgment does not require any interference by this Court. The learned Additional Advocate-General and Assistant Advocate-General prayed for dismissal of appeal.

5. We have heard the learned counsel for the parties and perused the record along with the impugned judgment.

6. The controversy involved in the case in hand is regarding 50% deduction of the Risk Allowance, admissible to the appellants at the rate of 100% of the

basic pay in their respective pay scales, which was being paid to them. The appellants feeling aggrieved from the said deduction in the Risk Allowance, sought redressal of their grievance by filing writ petition before the High Court. In the earlier round of litigation the writ petition filed by the appellants, herein, was accepted by the High Court. On appeal by the respondents, herein, this Court while accepting the appeal of the respondents, herein, remanded the matter to the High Court with the following observations:

“.....In sub-paras (ii) and (iii), a clear distinction has been drawn between the Ad-hoc Allowance and the allowance equal to 100% of basic pay but these sub-paras have neither been properly considered nor appreciated. The impugned judgement is lacking the wisdom of the high Cour on these sub-para. In our considered opinion, for proper appreciation not only paragraph 6 along with its sub-paras and paragraph 9 of Office Memorandum dated 20.07.2017 have to be appreciated but the Office Memorandum dated 15.09.2010 and other relevant Office Memorandums

relating to BPS-2008 as on 30.06.2011 and basic pay scale-2010 as on 30.06.2015, have to be appreciated in juxtaposition.”

After remand of the case, the learned High Court has dismissed the writ petition. A perusal of the impugned judgment reveals that the learned High Court has not followed the direction of this Court while disposing of the writ petition. The learned High Court has not made juxtaposed examination of para 6, its sub-paras and para 9 of the Office Memorandum, as desired by this Court. Even para No.9 has neither been described nor has any independent observation been made about it. Instead, it seems that the learned High Court has been influenced much from the observations of this Court recorded in the remand order, which was only regarding the interpretation of relevant clauses of the Office Memorandum dated 20.7.2017. As a considerable time has been consumed by the parties in litigation, therefore, further remand would not be justified in the interest of justice, thus, we have

decided to dispose of the controversy by ourselves, without further remand. For proper appreciation of the controversy, para No.6 along with its sub-paras and para No.9, of the Office Memorandum of the Finance Department, dated 20.07.2017, is reproduced as under:-

“Part-II (Allowances)

6. Ad-hoc Allowance-2010:

(i) The Ad-hoc Allowance-2010 @ 50% granted w.e.f. vide Finance Department's O.M.No. FD/R/165/06/09/2010 dated 09.08.2010 shall cease to exist with effect from 01.07.2017.

(ii) For those who are in receipt of an allowance equal to 100% of basic pay in BPS-2008 as on 30.06.2011 and not in receipt for Ad-hoc Allowance-2010 @ 50%, the existing amount of 100% allowance (being drawn at frozen level) shall be reduced by 50% w.e.f. 01.07.2017. The remaining amount shall continue to be drawn at reduced frozen level;

(iii) For those who are in receipt of an allowance equal to 100% of basic pay in BPS-2011 as on

30.06.2015 and not in receipt of Ad-hoc Allowance-2010 @50%, the existing amount 100% allowance (being drawn at frozen level) shall be reduced w.e.f. 01.07.2017 by 50% of the amount to be calculated at the level admissible on 30.06.2011, the remaining amount shall continue to be drawn at reduced frozen level.”

“9. Special Pay and Allowances: All the Special Pays, Special Allowances or the Allowances admissible as percentage of pay (excluding those which are capped by fixing maximum limit) including House Rent Allowance and Risk Allowance equal to one month pay (initial of the relevant pay scales) granted to Police Employees, Prison Allowance equal to one month basic pay granted to officers/officials of Prison Department, Health Allowance equal to one basic pay granted to health personnel in Health Department and Special judicial Allowance equal to three times of the initial substantive pay scale granted to the employees of judiciary shall stand frozen at the level of its admissibility as on 30.06.2017.”

Part-i of the subject Office Memorandum deals with the Pay, while Part-II (Allowances) deals with the different kinds of allowances. Para No. 6(i) of

the Office Memorandum declares that the Ad-hoc Allowance-2010, @50%, dated 09.08.2010, shall cease to exist with effect from 01.07.2017. Para No.6(ii) prescribes that those civil servants who are in receipt of an allowance equal to 100% of basic pay in BPS-2008, as on 30.06.2011 their such 100% allowance shall be reduced by 50% w.e.f. 01.07.2017, and remaining 50% amount shall continue to be paid at reduced and frozen level. Para No. 6(iii) declares that those civil servants who are getting an allowance equal to 100% of basic pay in BPS-2011, as on 30.06.2015, such 100% allowance shall be reduced by 50% of the amount to be calculated at the level admissible on 30.06.2011, w.e.f. 01.07.2017. Para No.9, as reproduced hereinabove provides that all the special pays, special allowances or the allowances admissible as percentage of pay including House Rent Allowance and Risk Allowance equal to one month pay, granted to Police Employees, Prison Allowance equal to one

month basic pay granted to employees of Prison Department, Health Allowance granted to employees of Health Department and Special Judicial Allowance granted to judiciary shall stand frozen at the level of its admissibility as on 30.06.2017.

A comparative analysis of Para No. 6(i) and 6(ii) with Para No.9 clearly reflects that Para No.(i) and (ii) deal with all such allowances, in general, which are equal to the 100% of basic pay in BPS-2008 and BPS-2011 and same shall be reduced by 50% and remaining 50% amount shall continue to be paid at reduced frozen level. On the other hand, Para 9 particularly distinguishes all Special pays, Special Allowances, Risk Allowance as admissible to Police personnel, Prison Allowance, Health Allowance and Judicial Allowance, from the categories of allowances falling into the allowances coming within ambit of Para. No.6(i) and 6(ii). Para No. 9 clearly lays down that the mentioned allowances shall stand frozen at the level of

admissibility as on 30.06.2017. Had there been intention of the framers of Office Memorandum dated 17.07.2017 to reduce by 50%, the 100% Risk Allowance, there would have no need to provide para 9 to protect the Risk Allowance.

7. It may be stated here that the Court has to dig out the true intention of the legislature while interpreting a statute, regulation or rule and for that purpose, the Court has to look into the provisions of a statute as a whole. No such interpretation can be made through which the Court may assume the role of legislature or which nullifies another provision of the statute or a regulation or rule. In the case reported as *Farid Khan vs. Gulzar Khan & 10 others* [PLD 1985 SC (AJ&K) 74], this Court has observed at page 83 of the report, as under:-

“20. Interpretation of a statute or any of its provision is conducted with a view to ascertain the intention of the legislature when the language employed in it is ambiguous. But then

it is to be done within a certain permissible limit. The purpose of it is to give clarity and remove the doubts and not to cloth the provision with altogether different meanings, not conveyed by the language employed in the statute or in any of its relevant provision and stretch it to an extent where the Court is made to appear as assuming the role of legislature.”

Again, in the case reported as *Khalid Mehmood Butt & another vs. Managing Director, AKLASC & 4 others* [2002 SCR 158], it was observed by this Court that a statute should be read as a whole and no part or word of it should be omitted from consideration while interpreting it. In para 7 of the report, it has been observed as under:-

“7. It is the fundamental principle relating to the interpretation of a statute that it should be read as a whole and no part or word of it should be omitted from consideration. It is also an admitted principle of interpretation of statute/rules, that the intention behind the statute/rules must be taken into consideration which can be gathered from looking into the statute/rules as a whole and further that all attempts should be made to reconcile various provisions

of the statute for rational meaning avoiding redundancy to any provision thereof.”

8. Our perusal of the above provisions of the Office Memorandum dated 20.7.2017, as a whole leads to the conclusion that there is no inconsistency between para 6 and 9 of the Memorandum, because both deal with separate situations, under different headings and if it is assumed for the sake of arguments that there is doubt regarding the application of both the provisions, even then law is well-settled and has rightly been argued by Mr. Abdul Rasheed Abbasi, advocate, that in case of conflict between two provisions dealing with the same subject, the later provision, which directly relates to the matter, overrides the earlier. The learned counsel in this regard placed reliance on the case reported as *State v. Hakam Deen & 115 others* [2005 SCR 374], in which, it was observed by this Court as under:-

“14. We have consciously used the word redundant in relation to sub-

section (5) of section 173, Cr.P.C. Although it is on the statute book, for the reason that it is suppressed by the provisions of section 244 and 265-F of the Code of Criminal Procedure. In case of inconsistency and conflict between the two, the later which directly relates to the matter, overrides the earlier. This is a settled principle of jurisprudence which is accepted in the civilized world of jurisprudence.

15. The courts have to harmonize the provisions of law in case any repugnancy or inconsistency is found in different provisions of law, and it shall adopt such view, which is in consonance with the spirit of the law and purpose for which it is enacted. The Courts are obliged to apply and interpret the law in a manner that it advances the cause of justice at the least inconvenience and expenses of the parties or state. That is why this provision is not adhered and is deemed by the Courts to be redundant.”

9. We have no quarrel with the proposition that if two possible interpretations are available, then one favouring the state-subjects is to be adopted. In the present case, as the Risk Allowance is to be paid to the police personnel, which has erroneously been

curtailed by the Accountant-General's office, without any lawful authority, therefore, interpretation, which favours the police employees is liable to be adopted, as the same is beneficial to the citizens/employees as a class, as has been observed by this Court in the case reported as *Muhammad Asif Khan & 173 others vs. Azad Government of the State of Jammu and Kashmir through its Chief Secretary, Muzaffarabad and 14 others*, [PLJ 2014 SC (AJ&K) 163], as under:

“.....It is golden principle of the interpretation of statutes that whenever there are two provision applicable with regard the rights of a citizen, one favourable to the subjects, be given preference over the other. Now it is well settled principle of construction that where it is possible without doing any violence to the language of the state, a beneficial construction may be adopted while interpreting a statute, which infringes upon the right of a citizen or party.....”

10. It has already been observed that para 6(i) and (ii) generally deal with the reduction in allowances, which are equal to 100% of basic pay in BPS-2008 and

BPS-2011, whereas para 9 specifically deals with the special pay and allowances, i.e. the Risk Allowance, Prison Allowance, Health Allowance, Judicial Allowance etc. and there is nothing regarding the reduction of these allowances. The special provision has overriding effect on the general provision. It is golden principle of interpretation that when there is any conflict with regard to the operation of the general provision and the specific provision, then nothing will construe that general provision may interfere or obstruct the operation of specific provision. Our this view is fortified by the case titled *Al-Jehad Trust through Raeesul Mujahideen Habib-ul-Wahabb-ul-Khairi and others v. Federation of Pakistan & others*, reported as [PLD 1997 SC 324], wherein it has been held as under:

“69. In fact, there is no cavil with the prospection that if there are two provisions in the same statute and one is general and the other is special, then while interpreting the provisions the presumption would be that the general provision was not intended to interfering with the operation of

special provision.”

14. As mentioned hereinabove, in the remand order this Court had clearly directed that the matter may be appreciated while considering the relevant provisions of the impugned Memorandum in juxtaposition but the learned High Court has not considered the same as per direction contained in the remand order. The matter has also not been placed before the larger bench, as it was already decided by the division bench of the High Court. Under Article 42-B of the Azad Jammu and Kashmir Interim Constitution, 1974, any decision of the Supreme Court shall, to the extent that it decides a question of law or is based upon or enunciates the principle of law, be binding on all the Courts in Azad Jammu and Kashmir. It was imperative for the learned High Court to constitute a larger bench to examine the controversy, as was directed in the light of the above provision of law, read with article 42-A(3) of the Constitution. It is noticed that the learned High Court has mainly relied

upon the report of the anomaly committee. The report was not relevant at all because there is no anomaly in the matter in hand. The question involved in the case was only with regard to the interpretation of the relevant provisions of the impugned Office Memorandum, which is the sole prerogative of the Courts. We are of the considered view that the Accountant General's, office has stopped the payment and started deduction of the Risk Allowance in violation of the provision of para 9 of the Office Memorandum dated 20.7.2017, therefore, the action of the Accountant General is declared without lawful authority.

In view of the above, the appeal is accepted. While setting aside the impugned judgment passed by the High Court on 13.6.2019, the writ petition filed by the appellants, herein, before the High Court stands accepted and the action of the respondents regarding deduction in the Risk

Allowance of the Police employees is declared without lawful authority. The Accountant General office is directed to pay the risk-allowance in the light of para 9 of the Office Memorandum dated 20.7.2017 forthwith from the date, when the payment of the same was curtailed, to all the employees of the Azad Jammu and Kashmir Police Department, who were already in receipt of the same. The appeal stands disposed of accordingly, with no order as to costs.

JUDGE

ACTING CHIEF JUSTICE

Muzaffarabad