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IN THE LAHORE HIGH COURT BAHAWALPUR BENCH,
BAHAWALPUR.

W.P.No. 2853 2021 BWP.

For Private Use

Examiner Copy Branch,
Lahore High Court,
Bahawalpur Bench,
Bahawalpur

1. Zahid Mehmood, Assistant Professor (physics) Government S.E College, Bahawalpur (Batch No.2002)
2. Rajjab Ali, Assistant Professor (Chemistry) Government Post Graduate College, Bahawalpur (Batch No.2002).
3. Muhammad Jamil Khan Assistant Professor (Math) Government S.E College Bahawalpur (Batch No.2002)
4. Liaquat Ali Assistant Professor (Chemistry) Government S.E College Bahawalpur (Batch No.2002).
5. Zafar Mehmood Assistant Professor (Statistics) Government Degree College Bahawalpur (Batch No.2002).
6. Abdul Nasir Assistant Professor (English) Government S.E College Bahawalpur (Batch No.2002)
7. Mushtaq Ahmed Assistant Professor (Physics) Government S.E College Bahawalpur (Batch No.2002).
8. Sajid ur Rehman Assistant Professor (Pak Studies) Government S.E College Bahawalpur (Batch No.2002).
9. Muhammad Ubaid Ur Rehman Ashraf Assistant Professor (Math) Government S.A.P.G College Dera Nawab Sahib (Batch No.2002).
10. Ilyas Rashid, Assistant Professor (Zoology) Government S.E College Bahawalpur (Batch No.2002).
11. Muhammad Imran Anjum Assistant Professor (Chemistry) Government S.E College Bahawalpur (Batch No.2002).
12. Fareeha Mumtaz Assistant Professor, Government Degree College, Kud Wala (Batch No.2002).

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28. Mushtaq Ahmed, Assistant Professor (Physics) Government P.G College, Bahawalpur (Batch No.2005).
29. Mushtaq Lecturer (Phy), Government S.E College Bahawalpur (Batch No.2002).
30. Zafar Iqbal Assistant Professor, (Chemistry), Government SA/PG College Dera Nawab Sahib (Batch No.2005).
31. Khalid Nazeer Bhatti, Assistant Professor (Urdu) Government SA/ PG College Dera Nawab Sahib (BatchNo.2005)
32. Muhammad Rashid Assistant Professor (English) Government Degree College, Samma Satta, Bahawalpur (Batch No.2005).
33. Rizwana Tabasum, Assistant Professor, Government Degree College, Khairpur Tamewali (Batch No.2005).
34. Ayusha Tuseef Assistant professor (Physics) Government S.E College Bahawalpur (Batch No.2005).
35. Ishrat Noureen Assistant Professor Government Degree College (W) Kud Wala (Batch No.2005).
36. Nadia Wasti, Assistant Professor (Chemistry) Government Degree College, Samma Satta (Batch No.2005).
37. Sajida Fatima Assistant Professor (Math) Government Degree College (W) Ahmedpur East (Batch No.2005)
38. Tayiba Sultana, Assistant Professor (Physics) Government Degree College (W) Ahmedpur East District Bahawalpur (Batch No.2005).
39. Sadia Rashid, Assistant Professor (Physiology) Government College Hasilpur District Bahawalpur (Batch No.2002).
40. Rhana Yousaf Assistant Professor (Urdu) Government College for Women Hasilpur (Batch No.2005).
41. Rizwana Kausar, Assistant Professor (Economics), Government Degree College (W) Satellite Town, Bahawalpur (Batch No.2005).
42. Shaban Wahid, Assistant Professor Government Degree College, Bahawalpur (Batch No.2005).

..... Petitioner

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13. Saadia Hussain Assistant Professor (English) Government Degree College Women Ahmedpur East (Batch No,2002).
14. Syeda Saina Batool Zaidi Assistant Professor Government College for Women Dubai Mahal Bahawalpur (Batch No.2002).
15. Shamyla Afzal Assistant Professor, Government Degree College Women Satellite Town Bahawalpur (Batch No.2002)
16. Shumyla Hanif Assistant Professor, Government Degree College Women Satellite Town Bahawalpur (Batch No.2002).
17. Rehana Anwar Assistant Professor, Government Degree College W Samma Satta Bahawalpur (Batch No.2002).
18. Iram Hanif Assistant Professor Government Degree College Women Satellite Town Bahawalpur (Batch No.2005).
19. Muhammad Asif Assistant Professor (Education) Government S.E College Bahawalpur (Batch No.2005).
20. Nazra Perveen, Assistant Professor (Psychology) Government Degree College (W) Samma Satta Bahawalpur (Batch No.2005),
21. Abdul Rauf Anjum, Assistant Professor (Math) Government S.E College, Bahawalpur (Batch No.2005)
22. Hafiz Jamshed Ahmed, Assistant Professor (Urdu), Government S.E College, Bahawalpur (Batch No.2005).
23. Shahid Rafique Lecturer (Math), Government S.E College Bahawalpur (Batch No.2005).
24. Kamran Ahmed Assistant Professor (Economics), Government S.E College, Bahawalpur (Batch No.2005).
25. Muhammad Mehmood Ahmed Shaheen, Assistant Professor (English) Government S.E College Bahawalpur (Batch No.2005).
26. Muhammad Yousif Khan , Lecturer (English) Government S.E College, Bahawalpur (Batch No.2005).
27. Muhammad Zafar, Assistant Professor (Physics), Government S.A / P.G College Dera Nawab Sahib (Batch No.2005)

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VERSUS:

1. The Government of Punjab through its Secretary to Higher Education Department Punjab Lahore.
2. The Punjab Finance Department Lahore through its Secretary.
3. The Accountant General Punjab Lahore.
4. The District Accounts Officer Bahawalpur.

..... Respondents

WRIT PETITION UNDER ARTICLE 199 OF
CONSTITUTION OF ISLAMIC REPUBLIC OF PAKISTAN,
1973.

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Bahawalpur.

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Judgment Sheet
IN THE LAHORE HIGH COURT
BAHAWALPUR BENCH BAHAWALPUR
JUDICIAL DEPARTMENT

W.P. No.2953 of 2021.

Zahid Mahmood.

VERSUS

Govt. of Punjab etc.

J U D G M E N T

Date of hearing	<u>22.09.2022</u>
Petitioners by	Mr. Nadeem Iqbal Ch., Advocate
Respondents by	Sh. Shoukat Ali, Assistant Advocate General, Punjab.

SAFDAR SALEEM SHAHID, J.:- The petitioner has filed instant constitutional petition with the following prayer:-

“that services of the petitioner be ordered to be regularized from the date of his initial appointment with all benefits accordingly by declaring the impugned order dated 23.10.2019 illegal, against law and facts and having no legal effect on the rights of the petitioner.”

2. Brief facts for disposal of instant writ petition are that petitioners No.1 to 16 in the year 2002 and co-petitioners No.17 to 39 in the year 2005 were recruited as Lecturers on contract basis with respondent/department. As per contract, petitioners were entitled to draw a fixed salary with annual increment of Rs.465/-. In 2007, their contract job was converted to pay scale BS-17 with 30% social security. The respondents vide notification dated 16.08.2009, 03.06.2010 regularized the services of the petitioners with “protection of last pay drawn by them excluding 30% amount of social security benefits” and petitioners have been drawing their salaries along with various allowances accordingly. The District Accounts Officer, Bahawalpur, under the colour of ‘Refixation of Salary’ started deduction in the salaries of the petitioners from April 2018, on account of amendment

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in the terms and conditions of regularization vide notification No.SO(CE-III)61-18/2010 P-III (18), dated 09.07.2013, despite the fact that the said notification issued by Higher Education Commission regarding withdrawal of pay protection and conversion of increments into personal allowance was not applicable on the case of the petitioners as their services were regularized before issuance thereof. The District Accounts Officer, was asked to stop the deduction from the salary of the petitioners in the light of judgment of this Court dated 18.10.2016 but he refused vide order dated 19.05.2018. The petitioners filed Writ Petition No.5460 of 2018 before this Court challenging the said order of District Accounts Officer which was disposed of vide order dated 25.02.2020 with the direction to respondent No.2 to proceed in the matter in line with the order of august Supreme Court of Pakistan dated 28.02.2019 passed in C.P. No.1696-L to 1706-L of 2018 and C.P. No.3569-L of 2016 treating that petition as representation and decide it after hearing the petitioners and all concerned through speaking order preferably within a period of 30 days and it was further ordered that till then no illegal deduction shall be made. The said representation was dismissed by respondent No.2 vide order dated 30.11.2020.

3. Respondents No.2 to 4 in their reports and parawise comments submitted that the instant petition is not maintainable in view of the fact that it directly relates to the terms and conditions of services of the petitioners and that the decisions taken by a department in its lawful discretion cannot be interfered with in constitutional jurisdiction of this Court. Further submitted that although while regularizing the services of the petitioners their pay was protected as they were drawing in BS-17 as per para-2(xi) of their regularization order, yet in view of the policy issued by the Regulations Wing, S&GAD vide notification No.DS(O&M)5-3/2004/CONTRACT(MF), dated 14.10.2009, Chief Secretary vide order dated 03.04.2013 directed the Finance Department to advise the Higher Education Department and Health Department to rectify the errors and notifications in accordance with law. As a result,

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the Higher Education Department amended para-2(xi) of notification impugned herein. Further contended that an illegality cannot be pleaded as a ground for discrimination, nor can it be allowed to be perpetuated while exercising powers under Article 199 of the Constitution.

4. Arguments heard. Record perused.

5. To resolve the instant controversy perusal of the order for regularization of services of the petitioners as well as the amended notification is necessary. The relevant part of order for regularization of services of the petitioners is para-2(xi) thereof, which is reproduced as under:-

“The officer shall enjoy protection of pay that he/she is drawing in BS-17 except Social Security benefit of 30% admissible under the Contract Appointment Policy, 2004. He/she shall also be governed by the Government policies regarding pay & allowances in future. In case of any anomaly the matter will be resolved in consultation with the Finance Department.”

Amendment made in para-2(xi) of the terms and conditions of order of regularization through the impugned notification No.SO(CE-III)61-18/2010 P-III (18), dated 09.07.2013, reads as under:-

“The pay of the contract employees being appointment in the basic pay scales shall be fixed at the initial stage of respective pay scale and increment(s) already earned during the period of contract appointment shall be converted into Personal Allowance.”

6. A bare reading of para-2(xi) of the order of regularization of service of the petitioners, reproduced above, reflects that while protecting their pay as they were drawing in BS-17, they were also directed to be governed by the Government policies regarding pay and allowances in future, whereas notification regarding amendment thereof does not mention anything to the effect that it was applicable with retrospective effect. It is well settled that a Notification is always prospective in nature and cannot be retrospective in operation. Reliance can be placed in this regard on the case of Maqsood Ali vs. Government

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of Singh through Secretary Local Government Department and 2 others
(2012 PLC (C.S.) 1135).

7. Even otherwise, the respondent-department despite of withdrawal of earlier notification, offered the same terms and conditions relating to pay protection, which the petitioners had accepted, joined services and performed duties by taking decisive steps, thereafter the respondents were not justified to unilaterally withdraw the said terms. In such circumstances, the said amendment should not be made basis for re-fixation of salary of the petitioners in view of the terms of their services. In this regard reliance can be placed on the case of Mst. Attiyya Bibi Khan and others vs. Federation of Pakistan through Secretary of Education (Ministry of Education), Civil Secretariat, Islamabad and others (2001 SCMR 1161).

8. As regards the contention of the respondents that an illegality cannot be pleaded as a ground for discrimination, nor can it be allowed to be perpetuated while exercising powers under Article 199 of the Constitution, it is observed that condition for protection of pay was not offered or accepted by the petitioners on their overt act of fraud, misrepresentation or even any concealment of material facts, therefore, the pecuniary benefits accrued and already received by them in pursuance of an illegal order passed by the competent authority cannot be recovered from them in view of the principle of locus poenitentiae. Reliance in this regard can be placed on the cases of Government of the Punjab, Education Department through Secretary Higher Education, Punjab Civil Secretariat Lahore and others vs. Muhammad Imran and others (2019 SCMR 643) and Mst. Sajida Javed vs. Director of Secondary Education, Lahore Division and others (2007 PLC (C.S.) 364).

9. It is also important to note that the authority that has the power to make an order has also the power to undo it, however, subject to the exception that where such an order has taken legal effect and certain rights pursuant thereto have been created in favour of any individual,

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such an order cannot be withdrawn or rescinded to the detriment of the said rights. Reliance in this regard can be placed on the cases of Pakistan through the Secretary, Ministry of Finance vs. Muhammad Himayatullah Farukhi (PLD 1969 SC 407).

10. For what has been discussed above, the instant petition is allowed, the impugned orders dated 30.11.2020 and 19.05.2018 are set aside and the respondents are directed to refund the salaries of the petitioners, if already deducted. There shall, however, be no order as to costs.

(Signature)
(Safdar Saleem Shahid)
Judge

MA Naeem
28/3/22

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Bahawalpur

Application No. 1726
Date of presentation of Application 05 OCT 2022
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