

Hafeez Ahmad v. Govt. of the Punjab etc.

JUDGMENT

Date of hearing: 18.10.2016.

Petitioners by: Syed Ijaz Qutab and Syed Shahab Qutab, Advocates.

Respondents by: Rana Shamshad Khan, Additional Advocate General with Huma Khalid, S.O. Higher Education Department.

Shujaat Ali Khan, J: - Through this petition, under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973, the petitioners have groused against recovery of amount received by them on account of Adhoc Relief Alowances after regularization of their services.

2. Unnecessary details apart, the facts, relevant for the disposal of instant petition, are that petitioners No.1 to 95 were appointed as Lecturers in Education Department on contract basis in the year 2002 whereas petitioners No.96 to 145 joined the department as such in the year 2005. Later on Government of the Punjab, through Notifications issued in the years 2009

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and 2010 regularized the services of the petitioners and they were held entitled for protection of the pay drawn by them at the relevant time excluding the amount of social security benefit. After regularization of their services the petitioners started drawing their salary, however, later on the District Accounts Officer on account of some clarification issued by the Accountant General Punjab started recovery of the amount already received by them on account of various Adhoc Relief Allowance; hence this petition.

3. Learned counsel for the petitioners submits that though in the matter of school teachers the Finance Department has clarified that they were not entitled to Adhoc Relief Allowances granted prior to their regularization but as case of the petitioners was entirely distinct one the said clarification could not be used against them; that the petitioners had been drawing their salaries as determined by the competent authority and in case of any omission or commission on the part of the competent authority they cannot be made to suffer in the shape of recovery; that once anything is paid to a government servant the same cannot be recovered back; that if any adverse order was to be passed against the petitioners they were entitled to notice but having not done so the principle of *audi alteram partem* has not

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been followed and that the case of the petitioners is fully covered under the principle of *locus poenitentiae*.

4. Learned Law Officer, while defending the impugned act of the respondents submits that since an Anomaly Committee has already been constituted by the government to hear such disputes, instead of passing any order in this petition it is in the fitness of things that the matter be referred to the said Committee; that benefit availed by a person to which he was not otherwise entitled is not covered under the principle of *locus poenitentiae* as it only comes to play when there is vested right in favour of a party and that protection of pay does not mean the admissibility of allowances which were freezed much prior to their regularization.

5. Learned counsel for the petitioners, while exercising his right of rebuttal, submits that there is no cavil with the preposition that for future admissibility of Adhoc Relief Allowances the petitioners can approach the said Committee, however, the question regarding recovery of deducted amount cannot be decided by the Committee.

6. I have heard learned counsel for the parties at considerable length and have also gone through the documents annexed with this petition.

7. The Anomaly Committee has been constituted to decide as to whether the employees whose services have been regularized are entitled to Adhoc Relief Allowances or not but the said Committee in no way can decide the fate of the amount already received by the petitioners in that behalf, so to that extent matter cannot be remitted back to it.

8. Insofar as merits of the case are concerned, it is not case of the respondents that due to any misstatement or misrepresentation or concealment of facts the petitioners have succeeded to receive Adhoc Relief Allowances in the previous years. If they were not entitled for such relief why the respondents included said amount in their monthly salaries. Moreover, there is nothing on record to show as to what action has been taken against the persons responsible for payment of aforesaid Allowances to the petitioners. The august Supreme Court of Pakistan, while dealing with somewhat similar situation, in the case of Mst. Sajida Javed v. Director of Secondary Education, Lahore Division and others (2007 PLC (C.S.) 364) has *inter-alia* observed as under: -

"7.....This Court has consistently declared in a large number of cases that the payment made to a civil servant in the course of employment, due to inadvertence on the part of the employer, cannot be allowed to be recovered as arrears of salary wrongly paid."

.. the case of the petitioners is considered on the touchstone of the afore-quoted portion of the judgment passed by apex Court of the country there leaves no ambiguity that the respondents could not ask for recovery of the Adhoc Allowances, paid to the petitioners due to inadvertence on the part of departmental authorities.

9. It is important to note that cases of the petitioners were not taken up independently rather after issuing clarification in the matter of the school teachers the department also sought clarification in the matter of the petitioners whereupon the respondents came to know that the petitioners were not entitled to receive Adhoc Relief Allowances which were freezed much prior to their regularization. The slackness on the part of departmental authorities is floating on the scene, thus, the petitioners cannot be compelled to repay the amount already received them.

10. For what has been discussed above, instant petition is allowed. The recovery proceedings initiated against the petitioners are set aside and the departmental authorities are directed to refund the amount, if recovered from any of the petitioners on that account.

