

IN THE LAHORE HIGH COURT LAHORE.

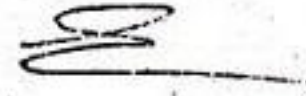
W.P.NO. 26022 /2010.

In re:

ABDUL RAZZAQ KHAN NIAZI, ETC.
VS.
GOVERNMENT OF THE PUNJAB, ETC.

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PETITIONERS

IN THE LAHORE HIGH COURT, LAHORE.

W.P.NO. _____/2010.

1. ABDUL RAZZAQ KHAN NIAZI S/O GHULAM HASSAN KHAN, ELEMENTARY SCHOOL EDUCATOR, GOVERNMENT PRIMARY SCHOOL, MACHHI WALA, TEHSIL AND DISTRICT MIANWALI.
2. SHAHZAD SADIQ FARIDI S/O SUBEH SADIQ R/O FATEH SHER ROAD, H.NO.25/4, MOHALLAH OLD CIVIL LINE, P.O. CITY SAHIWAL.
3. MUHAMMAD AFZAL S/O MUHAMMAD SADDIQ R/O SIALKOT ROAD, MOHALLAH ABU-BAKAR TOWN, GUJRANWALA.
4. MIAN MUHAMMAD SULEMAN S/O MIAN MUHAMMAD ASHRAF R/O KALIANWALA P.O; KHAS TEHSIL & DISTRICT HAFIZABAD.
5. SHABBIR HUSSAIN S/O MUHAMMAD SHARIF R/O MADINA COLONY, ST.NO.7, HADOKI, QILLA BINA, P.O. MANDI MURIDKE, TEHSIL MURIDKE DISTRICT SHEIKHUPURA.
6. MIAN MUHAMMAD IDREES S/O MUHAMMAD SHABBIR R/O SOKAN ROAD TEHSIL PASRUR DISTRICT SIALKOT.
7. MUNAWAR HUSSAIN KAMAL S/O FALAK SHER R/O BASTI MUHAMMAD PURA P.O. SHUJA ABAD DISTRICT MULTAN.
8. MEHR MUHAMMAD SHAKEEL S/O MUHAMMAD SHARIF R/O ST. MIAN MEHR WALI, MOHALLAH GAJRIANWAL DISTRICT KHUSHAB.
9. GULZAR HUSSAIN SHAHID S/O MUHAMMAD RAMZAN R/O WATER SUPPLY TANKI, BASTI DEWANWALI TEHSIL & DISTRICT JHANG.
10. FAISAL MAHMOOD AWAN S/O GHULAM MAHMOOD R/O H.NO.P-926, BLOCK NO.15, LIAQAT ROAD, SHAUKAT HAYAT COLONY, SARDOGHA..
11. RANA MUHAMMAD SHABBIR KHAN S/O MUHAMMAD ISMAIL R/O CHAK NO.70/GB TEHSIL KAMALIA DISTRICT T.T. SINGH.
12. MUHAMMAD ZAFAR MIAN S/O MUHAMMAD ABDULLAH R/O CHAK NO.35, TEHSIL CHAK JHUMRA DISTRICT FAISALABAD.
13. AKHTAR ALI SHAHID S/O MUHAMMAD SHAFI R/O CHAK NO.37/GB, TEHSIL JARANWALA DISTRICT FAISALABAD.
14. ABDUL RAUF S/O ASHIQ ALI R/O ST.NO.4 MOHALLAH BASTI PARK DISTRICT T.T.SINGH.
15. MUHAMMAD AHMAD ZAFAR S/O MUHAMMAD HUSSAIN, R/O H.NO.489, LINE PAR FORTABBAS DISTRICT BAHAWALNAGAR.
16. AMANAT ALI SAJID S/O KHURSHID AHMAD R/O CHAK NO.11, P.O. KHAS TEHSIL ARIFWALA DISTRICT PAKPATTAN.

19. MUHAMMAD ASHIQ S/O DOST MUHAMMAD R/O RAJPUT COLONY, DISTRICT DERA GHAZI KHAN.
20. MUBARAK ALI S/O MUKHTAR AHMAD, C/O R/O SOKAN ROAD TEHSIL PASRUR DISTRICT SIALKOT.
21. JAVAD AZIZ KHAN S/O ABDUL AZIZ AZAD R/O KACHI MANDI, H.NO.44, LIAQAT PUR DISTRICT RAHIM YAR KHAN.
22. NASRULLAH KHAN S/O FALAK SHER R/O CHAK NO.56, TEHSIL & DISTRICT VEHARI.
23. AMJAD MAHMOOD S/O MUHAMMAD YAQOOB R/O DHALLAH TEHSIL AND DISTRICT RAWALPINDI.
24. CH. NISAR AHMAD S/O CH. MUHAMMAD BOOTA R/O H.NO.44, MARZI PUR DISTRICT KHANEWAL.
25. ABDUL WAHID S/O MUHAMMAD ANWAR, R/O SAHARAN TEHSIL AND DISTRICT NAROWAL.
26. MUHAMMAD BILAL S/O FAIZ BUX R/O BAKHAIR NOON, TEHSIL KOT ADHU DISTRICT MUZAFFAR GARH.
27. ABDUL MALIK KHAN S/O AJAB KHAN, R/O KORAK PIND SULTANI TEHSIL JHAND DISTRICT ATTOCK.
28. KAMRAN AZIZ S/O AZIZ AHMAD R/O H.NO.102/D, MALIKABAD ROAD, REHMANABAD, RAWALPINDI.
29. GHULAM MURTAZA S/O MUSHTAQ AHMAD R/O SOHAWA JAMLANI TEHSIL AND DISTRICT MANDI BAHAUDDIN.

... **PETITIONERS.**

VERSUS

1. SECRETARY SCHOOLS, GOVERNMENT OF THE PUNJAB, EDUCATION DEPARTMENT, CIVIL SECRETARIAT, LAHORE.
2. GOVERNMENT OF THE PUNJAB THROUGH CHIEF SECRETARY, CIVIL SECRETARIAT, LAHORE.

... **RESPONDENTS.**

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

Respectfully Sheweth;

That the petitioners are aggrieved persons, have no other adequate, speedy and efficacious remedy available to him except to invoke the extra-ordinary Constitutional jurisdiction of this Honourable Court on the strength of *RULE OF CONSISTENCY* as well as the law laid down by the superior Courts in a number of reported judgments like;

Brief facts of the case are;

1. That the petitioners were appointed on contract basis in the year 2000, 2002, 2004, 2006, 2009 have performed their duties with full devotion, zeal and zest and in the meantime, the Government of the Punjab School Education Department, issued Notification dated 19.10.2009, whereby the contract employees were regularized and on the analogy of the said Notification, the petitioners also approached the Departmental Authorities for enforcement of their right of regularization from the date of appointment and ultimately the grievance raised by the petitioners was redressed by way of regularizing the petitioners' services, but partially excluding certain benefits to the petitioner without any plausible rhyme or reasons.
2. That while treating the petitioners differently, the Departmental Authorities lost the sight of the fact that similarly placed employees/civil servants of the Provinces of Punjab and Baluchistan have been extended the same benefits and as such the petitioners being aggrieved of the modus operandi adopted by the Respondents voiced their grievance through their Association before the high-ups and Secretary School, Education Department, Government of the Punjab, who took the cognizance of the matter and by giving patient hearing assured the redress of petitioners' grievance and expressed views about the genuineness and veracity of the petitioners' grievances, but



assurance of the Respondents, no remedial step was taken by the Respondent, rather the non-seminal attitude was displayed by the Respondents and the matter was kept in limbo for a considerable long time without any lawful justification, hence, this Writ Petition on the following amongst other;

:-G R O U N D S:-

- a. That the act of the Respondents virtually revolves around Discrimination, which is not only violation of Article, 3, 4 and 25 of the Constitution of Pakistan, but is also negation of law laid down by the Apex Court in a number of cases like;

2009 SCMR 187.

To buttress this assertion, it is submitted with respect that in Punjab Worker Welfare Board, the Government of the Punjab vide Notification dated 01.03.2010, the pay of the employees has been protected, but in the same breath, the petitioners are being made a subject of discrimination without any plausible rhyme or reason.

Another glaring example of Discrimination in the instant matter is that vide order dated 23.12.2006 issued by the Government of Baluchistan, similarly placed colleagues of the petitioners were regularized w.e.f. the date of their appointments, but in the petitioners' case a different verdict has adopted without any lawful justification



- b. That similarly placed employees feeling aggrieved of the illegal and unlawful act of the Departmental Authorities filed Service Appeal No.251/1991 titled Abdul Ghafoor and others Vs. Secretary Education, the same was allowed vide judgment dated 16.02.1995. Against which, the Government filed C.P.L.A. Nos.578 to 580/L and 593 to 594/L of 1995 titled as Director Public Instructions Punjab Vs. Miss Neelam Amar and others before the Honourable Supreme Court of Pakistan and ultimately the judgment of the learned Tribunal was upheld by the Honourable Supreme Court of Pakistan while observing that the employees past service shall be counted for the purpose of seniority, monetary benefits etc., but the petitioners are being treated differently without any cogent and confidence inspiring reasons.

To augment this assertion, it is submitted with respect that the superior Courts of Pakistan have always been leaning to bridled the discretionary powers of the Executive by way of impressing upon the Rule of Consistency and deprecating the conduct of the Authorities in dragging and entangling the employees in unnecessary and futile litigation on the touchstone of parity as well as on the strength of well settled principle of Administration of justice that;



Wherein, it is held that;

"If Court decides a point of law, the benefit of that judgment should not be only extended to those, who litigated, but also be extended to those, who were not party in the litigation."

To further augment this assertion, the impugned action of the Respondents is violative of provisions of Article 189, 190 and 201 of the Constitution of Pakistan, 1973, which impress upon the authorities to follow the authoritative law laid down by the superior Courts of Pakistan on the touchstone of rule of consistency.

Even in India where by virtue of Article 141 of their Constitution, the law declared by the Supreme Court is considered to be binding on all Courts the Supreme Court took the view, as per page 5958 of Volume-V of Constitution of India by Dr. Durga Das Basu, Eighth Edition "the law declared by the Supreme Court is binding on the State, and, therefore, its officers are bound to follow it, whether they are parties or not in the litigation", but unfortunately in the instant matter the judgment of the superior courts are being whittled down or washed away on wrong premises.

The Departmental Authorities are resting their defense on such flimsy grounds to deny the benefits to the petitioners, who had been working for it. In Messrs Pfizer Laboratories



observations made in Messrs Shiv Shanker Dal Mills and others v. State of Haryana and others and others AIR 1980 SC 1037, that the public bodies should not take the plea of limitation in returning the money to the public nor "a negative plea of alternate remedy" should be taken; and that in writ jurisdiction "it is perfectly open for the Court, exercising this flexible power, to pass such order such as public interest dictates and equity projects". In the instant matter this Honourable Court by accepting this petition, is simply to give effect to the judgment of the Court and redress the grievance of the employees as they were not being treated justly and fairly and in consonance with the judgment of the superior Courts in compliance of dictates of Article 189 of the Constitution of Islamic Republic of Pakistan, 1973.

Even otherwise, to buttress this assertion, it is submitted with respect that Justice (Retd.) Fazal Karim in his work "Judicial Review of Public Actions" has dealt with this subject in Volume-II at pages 512, 521 and 533 and observed:---

"The matter can be looked at as follows. The superior Courts serve, while deciding cases, two purposes; one, the private purpose of deciding disputes between the parties and two, the public purpose of making law to ensure uniformity and thereby to ensure confidence in the administration of justice and in appropriate cases to clarify the law, the practice and procedures and thereby to



only as between the parties to the proceedings in which it was made, the application of the doctrine of precedent has the consequence of enabling the benefit of it to accrue to all other persons whose legal rights have been interfered with in relying on the law which the statutory instrument purported to declare".

"The classic example of such a decision being binding upon third parties is *Cooper v. Aaron*. Although the State of Arkansas was not a party in the historical *Brown* case, yet the governor and the legislature of that state were held bound by the Supreme Court's decision in *Brown*."

"The use of precedent also promotes equality, namely, the ideal that like cases should be treated alike, which is one of the most important ingredients of justice. "Like cases must be decided alike, not only to achieve distributive justice but primarily to maintain the certainty".

Hence, on the strength of law supra and judicial work done to evolve the principle of Administration of Justice, the kind indulgence of this Honourable Court is once again requested.

c. That it is well settled law laid down in;

Ittefaq Foundry Vs. Federation of Pakistan
PLD 1990 Lahore 121,

wherein, this Honourable Court has categorically held that;

"Technicalities cannot prevent High Court from exercising its Constitutional jurisdiction and affording relief, which otherwise, the petitioner is found entitled to receive."

In the same judgment, it is also held that the provisions of Article 2-A and 3 read with fundamental rights guaranteed by the Constitution are in no way less in meaning and import than the "Due Process of Law" clause.



In another important judgment reported as;

Javed Hussain Qureshi Vs. Federation of Pakistan
2004 PLC (CS) 586,

this Honourable Court has resolved the same issue, which is under challenge in the present Application in the following manner:

- "7. The Principle of "Equal pay for equal work" has not been mentioned either as a Fundamental Right or as a Principle of Policy in our Constitution. However, if the equality clause in Article 25 of the Constitution has to have some meanings, the said principle has to be read in Article 25 to give effect to it. Persons similarly placed have to be similarly treated except on the basis of reasonable classification. In this case it has to be explained that when qualification for both the posts was the same i.e. Graduation and both the official were performing the same duties, what was the basis to treat the petitioner differently. I specifically questioned the representative of Director General Health as to the reason for appointment of the petitioner in BS-8 when the posts as sanctioned was in BS-10. He had no answer to it. The principle i.e. "equal pay for equal work" although not specified in our Constitution as a Principle of Policy, yet it is built in Article 3 of the Constitution, which is reproduced as under:-

"The State shall ensure elimination of all forms of exploitation and the gradual fulfillment of the fundamental principle, from each according to his ability, to each according to his work."

Reference may also be usefully made to the following provision of the Objective Resolution, (Article 2-A) of the Constitution:-

"wherein shall be guaranteed fundamental rights including equality of status, of opportunity and before law, social economic and political justice and



Equality of opportunity contemplated by the Objective Resolution includes equal opportunity in the public employment. I may add there that public employment, before and after entry into public service, is not a bounty of the Crown to permit the State and its ornamental parts to differently treat two public servants identically placed in all respects in the matter of pay. Reference may be made to clause (e) of Article 37 of the Constitution which enjoins the State to:-

"make provision for securing just and humane conditions of work ensuring that children and women are not employed in vocations unsuited to their age or sex, and for maternity benefits of women in employment." (Emphasis supplied)

Although Article 2-A, 3 and 37 of the Constitution are not declared as fundamental rights in our Constitution, yet these are Constitutional goals, have to be kept in mind and given due regard while interpreting the Constitution and the law in the light of the following observations of the Honourable Supreme Court in *Miss Benazir Bhutto v. Federation of Pakistan and others* (PLD 1988 SC 416):-

"The intention of the framers of the Constitution is to implement the principles of social and economic justice enshrined in the Principles of Policy within the framework of the Fundamental rights. Chapters 1 and 11 of the Constitution, which incorporate Fundamental Rights and directive principles of State Policy, respectively occupy a place of pride in the scheme of the Constitution, as they constitute the main thrust of commitment to socio-economic justice. The directive principles of State Policy are to be regarded as fundamentals to the governance of the State, but they are not enforceable by any Court. Nonetheless, they are the basis of legislative and executive actions by the State for implementing the principles laid down therein."



beyond their lawful authority, hence, the kind interference of this Honourable Court is requested.

- d. That the duties and qualifications of the petitioners are similar to that of the other similarly placed colleagues of the petitioners in the Provinces of Punjab and Baluchistan, who have been given the benefits leaving the petitioners curious for the enforcement of their legitimate rights, hence, the petitioners were legitimate expectants for the same, which has been recklessly denied by the respondents in violation of the law laid down by the superior Courts in a number of cases like;

PLJ 1996 SC 882
2003 SCMR 291

Hence, the kind interference of this Honourable Court is requested for the enforcement of legal rights.

- e. That the petitioners specifically aired their grievances before the high-ups and the Secretary School Education, who realized the same and even assured to redress the same, but unfortunately, the modus operandi adopted by the Respondents is not only against their own words and conduct, but also negates the provisions of the Section 24-A of the General Clauses Act, which manifestly impress upon the Authorities to redress the grievances of the employees by way of passing speaking orders.



consideration the provisions of Article 4 of the Constitution, which is basket of legal principles, which includes, natural justice, fairness, procedural propriety, procedural due process, reasonableness, transparency, openness and even the provisions of Article 4 are citadel of administrative and judicial governance in the country and amounts to constitutional reminder especially conveyed to the Government and its functionaries to treat everyone in accordance with law, but unfortunately, the petitioners are being treated differently instead of in accordance with law and rules by the Respondents, who are adopting dilatory tactics detrimental to the lawful rights of petitioners.

Reliance in this respect is placed on;

1998 SCMR 1863
2009 PLC (CS) 966
2010 PLC (CS) 783.

Hence, the kind indulgence of this Honourable Court is requested.

In view of the above, it is most respectfully prayed that;

- i. An appropriate Writ may very kindly be issued.
- ii. That the Respondents may very kindly be directed to;
 - a. Treat the petitioners at par with similarly placed colleagues of the Provinces of Baluchistan,



- c. grant increment of December 2009.
 - d. count the petitioner's previous service towards pensionary/allied benefits/emoluments/seniority etc.
 - e. grant basic pay scale according to qualification.
- iii. Writ may very kindly be accepted with all consequential/back benefits.

Any other relief, which this Honourable Court deems just and proper may also very kindly be granted to the petitioner in the interest of justice.

Through:

PETITIONERS

(HAFIZ TARIQ NASIM & CO.)
9-Fane Road, Lahore.

Dated:

CERTIFICATE:

It is certified that as per instructions of the Petitioner this is first Writ Petition against the impugned call letters.

CERTIFICATE:

Certified that this Petition has arisen from violation / non-fulfillment of obligation under the provisions of Article, 2-A, 3, 4 25 and 199 of the Constitution of Pakistan, 1973.

LIST OF BOOKS

1996 SCMR 1185
1996PLC(CS)323
2009 SCMR 1
2009 SCMR 187.
2010 SCMR739

NOTE:

Office is requested to kindly put up W.P.No.10926/2010 decided by his Lordship Mr. Justice Iqbal Hameed ur Rehman on 15.09.2010 alongwith this petition.

IN THE
IN THE LAHORE HIGH COURT, LAHORE.

In re:
In re:

W.P.NO. _____/2010.

ABDUL RAZZAQ NIAZI ETC.

VS.
GOVERNMENT OF THE PUNJAB ETC.

AFFIDAVIT OF
AFFIDAVIT OF

ABDUL RAZZAQ NIAZI S/O GHULAM HASSAN KHAN,
ELEMENTARY SCHOOL EDUCATOR, GOVERNMENT
PRIMARY SCHOOL, MACHHI WALA, TEHSIL AND
DISTRICT MIANWALI.

I, the above named
I, the above named deponent do hereby solemnly affirm and
declare as under:
declare as under: -

That the content
That the contents of the accompanying Writ Petition are true and
correct to the best of
correct to the best of my knowledge and belief.


DEPONENT

VERIFICATION
VERIFICATION:

It is verified on oath at
It is verified on oath at Lahore on this _____ day of November, 2010
that the contents of the above
that the contents of the above affidavit are true and correct to the best
of my knowledge and belief.
of my knowledge and belief.