

**JUDGMENT SHEET**  
**IN THE PUNJAB SERVICE TRIBUNAL LAHORE**

**Appeal No.2974 of 2012.**

Chaudhry Abdul Sattar Hans, (Deputy Accountant) presently posted at District Accounts Officer, Okara.

..... Appellant

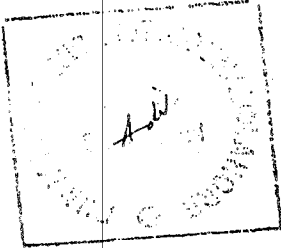
**VERSUS**

1. Government of the Punjab, through its Chief Secretary, Civil Secretariat Punjab, Lahore.
2. Ministry of Finance, through Secretary Finance Department, Government of Punjab, Lahore.
3. Secretary Finance Department, Government of Punjab, Lahore.

..... Respondents

**Appellant by:** Ch.Amir Hussain Adv,  
Counsel for the appellants.

**Respondents by:** 1. Mr. Raja Muhammad Zubair,  
District Attorney.  
2. Tariq Muhammad Mirza,  
Dy.Secretary Finance Department,  
Departmental Representative.  
3. Abdul Samad Dy.Secretary Finance,  
Departmental Representative.  
4. Sh.Muhammad Idrees Senior Law  
Officer, Finance Department.



**Date of hearing:** 28.10.2013.

**JUDGMENT**

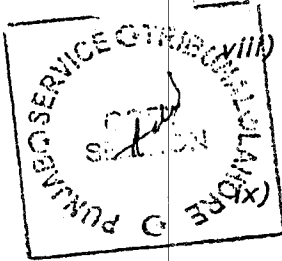
**Justice (R) Muhammad Sayeed Akhtar, Chairman:-** A common questions of law and facts are involved In the following thirty appeals, the same are being disposed of through this single judgment:-

- i) *Chaudhry Abdul Sattar Hans Vs Government of the Punjab, through Chief Secretary, etc (Service Appeal No.2974/2012);*
- ii) *Muhammad Ayub Vs Government of the Punjab, through Chief Secretary, etc, (Service Appeal No.2975/2012);*

JUDGMENT SHEET

Appeal No.2974/2012

- iii) Nazam ud Din Vs Government of the Punjab, through Chief Secretary, etc, (Service Appeal No.2976/2012);
- iv) Muhammad Ayub Khan Vs Government of the Punjab, through Chief Secretary, etc, (Service Appeal No.2977/2012);
- v) Khalid Mehmood Vs Government of the Punjab, through Chief Secretary, etc, (Service Appeal No.2978/2012);
- vi) Abdul Rauf Khan Vs Government of the Punjab, through Chief Secretary, etc, (Service Appeal No.2979/2012);
- vii) Atta ur Rehman Vs Government of the Punjab, through Chief Secretary, etc, (Service Appeal No.2980/2012);
- x) Akhtar All Vs Government of the Punjab, through Chief Secretary, etc, (Service Appeal No.2981/2012);
- xi) Fazal ur Rehman Vs Government of the Punjab, through Chief Secretary, etc, (Service Appeal No.2982/2012);
- xii) Amjad Iqbal Vs Government of the Punjab, through Chief Secretary, etc, (Service Appeal No.2983/2012);
- xiii) Naseem Ullah Vs Government of the Punjab, through Chief Secretary, etc, (Service Appeal No.2984/2012);
- xiv) Ahmed Naeem Vs Government of the Punjab, through Chief Secretary, etc, (Service Appeal No.2985/2012);
- xv) Malik Ijaz Ali Vs Government of the Punjab, through Chief Secretary, etc, (Service Appeal No.2986/2012);
- xvi) Rana Zulifqar Ali Vs Government of the Punjab, through Chief Secretary, etc, (Service Appeal No.2987/2012);



(32)

JUDGMENT SHEET

Appeal No.2974/2012

- xv) Mian Muhammad Khalid Vs Government of the Punjab, through Chief Secretary, etc, (Service Appeal No.2988/2012);
- xvi) Muhammad Shakeel Ahmad Vs Government of the Punjab, through Chief Secretary, etc, (Service Appeal No.2989/2012);
- xvii) Talib ul Maula Vs Government of the Punjab, through Chief Secretary, etc, (Service Appeal No.2990/2012);
- xviii) Shahid Rafique Vs Government of the Punjab, through Chief Secretary, etc, (Service Appeal No.2991/2012);
- xix) Muhammad Yasin Vs Government of the Punjab, through Chief Secretary, etc, (Service Appeal No.2992/2012);
- xx) Muhammad Toufeeq Gill Vs Government of the Punjab, through Chief Secretary, etc, (Service Appeal No.2993/2012);
- xxi) Irfan Ahmed Vs Government of the Punjab, through Chief Secretary, etc, (Service Appeal No.2994/2012);
- xxii) Muhammad Ashraf Vs Government of the Punjab, through Chief Secretary, etc, (Service Appeal No.2995/2012);
- xxiii) Zafar Iqbal Awan Vs Government of the Punjab, through Chief Secretary, etc, (Service Appeal No.2996/2012);
- xxiv) Mahmood Ahmad Sabri Vs Government of the Punjab, through Chief Secretary, etc, (Service Appeal No.2997/2012);
- xxv) Shahid Younas Vs Government of the Punjab, through Chief Secretary, etc, (Service Appeal No.2998/2012);

JUDGMENT SHEET

Appeal No.2974/2012

xxvi) Malik Qaisar Zaman Vs Government of the Punjab, through Chief Secretary, etc, (Service Appeal No.2999/2012);

xxvii) Muhammad Asif Vs Government of the Punjab, through Chief Secretary, etc, (Service Appeal No.3000/2012);

xxviii) Munir Ahmed Vs Government of the Punjab, through Chief Secretary, etc, (Service Appeal No.3001/2012);

xxix) Asghar Ali Vs Government of the Punjab, through Chief Secretary, etc, (Service Appeal No.3002/2012); &

xxx) Muhammad Javed Iqbal Vs Government of the Punjab, through Chief Secretary, etc, (Service Appeal No.3003/2012);

2. The appellants are Deputy Accountants in BS-14. They seek up-gradation of their posts from BS-14 to BS-16 on the basis of judgment of the Federal Service Tribunal, dated 5.12.2008 passed on appeals No.209 to 255 to 263, 265 to 325, 357 to 374, 399 to 456, 511 to 514, 573 to 626, 633 to 641 and 264 & 627(R) CS/2007 upheld by the Hon'ble Supreme Court of Pakistan in its judgment dated 15.3.2010 passed on Civil Petitions No. 325 to 397 and 429 of 2010.

3. Learned counsel for the appellants contends that as per arrangement in District Account Offices some employees of the Finance Division of the Federal Govt. and the some incumbents of the Finance Department of the Govt. of Punjab work under same District Accounts Officer (BS-18). The appellants are Dy. Accountants being employees of the Finance Department of the Govt. of Punjab. The Senior Auditors (Federal Govt. employees) and Dy. Accountants (Punjab Govt. employees) were in BS-14, having the same

JUDGMENT SHEET

Appeal No.2974/2012

qualifications, performing the similar duties for instance pre Audit, post maintenance of accounts and post audit, etc. Sometimes, the assignment is given to the Deputy Accountant and at other to Senior Auditor. They work under the same officer and under the same roof. Only difference is the designation and the nomenclature. It is urged that Senior Auditor(employee of Federal Govt.), counterpart of Dy.Accountant (employee of Govt. of Punjab), is serving in BS-16 whereas the appellants are working in BS-14. The appellants are citizens of Pakistan and are entitled to receive the same grade and pay as their counterparts in Federal Govt. draw. The appellants are being meted out discriminatory treatment. The comparative table of the incumbents of the posts of the Federal Govt. and that of the Provincial Govt. is given in the grounds of appeal.

Conversely learned District Attorney and Deputy Secretary Finance have vehemently opposed these appeals. It is stated that the appellants were granted BS-14 vide notification dated 12.9.2005. By another notification dated 28.7.2009, the existing nomenclature of the appellants was changed to new nomenclature and they are being paid BS-14. It is further urged that there is a ban on the up-gradation of the posts by the Chief Minister of the Punjab and that if the appellants are given(BS-16) the entire service structure will be affected. It is further urged that if the posts of the appellants are up-graded the govt. will have to suffer extra financial burden amounting to Rs.4,64,43,600(46.44 Million). It is also argued that Provincial Govt. works independently under the Constitution of Islamic Republic of Pakistan, 1973 and is not

JUDGMENT SHEET

Appeal No.2974/2012

bound to follow the rules or the service structure of the Federal Govt. Employees. Reliance was placed on 2009 SCMR 980 and 2013 PLC(CS) 1031 to contend that this Tribunal has no jurisdiction in respect of up-gradation of posts. Previously the request of the appellants was turned down by the Chief Minister. The case was remanded to the Finance Department, after the decision by it, the appellants have not availed the remedy of departmental appeal.

4. I have carefully considered the arguments of learned counsel for the parties and perused the record.

5. I would like to first decide the preliminary objection that the upgradation of the posts was outside the scope and ambit of the Service Tribunal. The matter stands clinched by the Hon'ble Supreme Court of Pakistan in a number of cases. The first being the Province of the Punjab and another Vs. Kamal-ud-Din and an 30 others(PLD 1983 SC 126), PST had directed the Punjab Govt. to upgrade the posts of the readers in High Court (BS-16). The judgment was upheld by the Hon'ble Supreme Court. In Ahmad Hussain Vs. Director of Education etc 2001 SCMR 955, the Federal Service Tribunal had dismissed the appeals for up-gradation of the posts but the same was allowed by the Hon'ble Supreme Court of Pakistan. In the case of 2009 SCMR 981 relied upon by the respondents it was held as follows:-

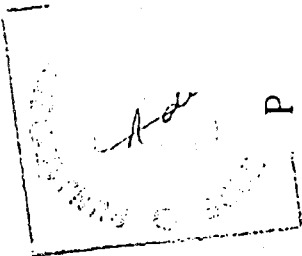
"It may be possible that persons discharging similar duties appointed in different departments may claim that they may be given the same status and benefits but a person, whose nature of duties is altogether different and his terms and conditions are also not alike, cannot claim as of right that he may also be allowed the same benefits and emoluments which are not part of and covered by the

JUDGMENT SHEET

Appeal No.2974/2012

terms and conditions of his service. It would be pertinent to mention here that in both the above referred cases i.e. Ahmad Hussain(supra) and Kamaluddin(supra), the nature of duties of the appellants and respondent were alike; in first referred case they were Readers and were serving as such though in different departments and in the second referred case they were teachers serving in the same department, but in the instant case nature and duties of the Medical Technologists(Clinical Group) and the Refractionist post being altogether different and that too, in two different Provincial Governments i.e. Government of Punjab and NWFP, how could the petitioners be treated alike.

12. As to the contention that since the Punjab Government had placed the post of Medical Technologist in BPS-17 w.e.f 29.3.1983, therefore, the Government of NWFP should have also allowed upgradation of the said post from the said date, it may be pointed out here that it is the prerogative of the Government to determine terms and conditions of service of a particular post which cannot be challenged. In fact the appellants under the garb clog of financial benefits want upgradation of the post from 1.7.1978 instead of 1.1.1994 which being outside the scope and ambit of the Service Tribunal Act, but the Tribunal has rightly refused to grant the relief."



It is clear that the employees of the NWFP were not similarly placed and were seeking the upgradation of the posts from the date the Punjab Govt. had done. The case helps the appellants rather than respondents. The Hon'ble Supreme Court of Pakistan in its judgment dated 15.3.2010 passed on Civil Petitions No. 325 to 397 and 429 of 2010 upheld the judgment of Federal Service Tribunal dated 5.12.2008 upgrading the posts.

The second objection of the respondents that the appellants have not availed the remedy of departmental appeal, suffice to say that previously the order of the Finance Department as well as that of Chief Minister was assailed before this Tribunal and the matter was remanded to the Finance Department for reconsideration but the

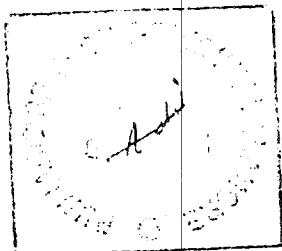
**JUDGMENT SHEET**

**Appeal No.2974/2012**

upgradation has been declined. In these circumstances, no question would arise for filing the departmental appeal again.

6. The comparative chart of the Federal Govt. employees and their counterparts in the Provincial Govt. given in the grounds of appeal is as follows:

<b>Audit Department</b>	<b>Treasury Department</b>
Junior Auditor	Junior Clerk
Senior Auditor(BS-16)	Deputy Accountant (BS-14)
Asst.Accounts Officer (BS-17)	Deputy Distt.Account Officer (BS-17)
Distt.Accounts Officer (BS-18)	Distt.Accounts Officer (BS-18)



The Senior Auditor of the Federal Govt. is counterpart of the Dy.Accountant of the Punjab Govt. Both the incumbents possess the same qualifications, perform the similar duties under the same roof and work under the same officer with different nomenclature. It does not appear to reason that employees of the Federal Govt. should receive higher salary (BS-16) than the employees of the Punjab Govt. BS-14 sitting on the same bench. In a recent judgment of Lahore High Court 2004 PLC(C.S) 586 it was observed as under:-

"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 not been explained that when



## JUDGMENT SHEET

Appeal No.2974/2012

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 petitioner in BS.8 when the post 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 the 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.'

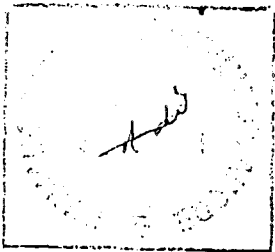
Reference may also be usefully made to the following provision of the Objective Resolution. (Article 2-A) of the Constitution:---

' Wherein shall be guaranteed fundamental rights including equality of status, of opportunity and before law, social economic and political justice, and freedom of thought, express belief faith, worship and association, subject to law and public morality'.

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 Articles 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."

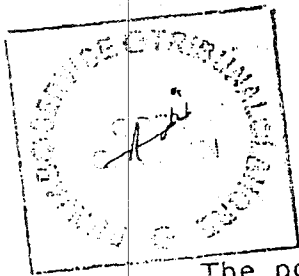


JUDGMENT SHEET

Appeal No.2974/2012

The said case has been cited with approval in a very recent judgment of the Sindh High Court 2013PLC(C.S)592 where it was held as follows:

" In the present case petitioners have successfully demonstrated that other persons in Finance Department, in Services, General Administration and Coordination Department and even in various departments of Federal Government including Ministry of Religious Affairs and Statistics Division with similar qualifications and similar nature of jobs are placed in BS-16. Learned A.A-G. has not been able to demonstrate as on what basis discrimination is being maintained between Data Processing Assistant in Finance Department on the one hand and other persons having same qualification and same job in other departments on the other hand."



The posts of Data Processing Assistants(BS-16) in the Ministry of Religious Affairs and Statistic Division were filled by the Federal Service Commission, the Data Processing Assistants in Finance Department, Govt. of Sindh sought the upgradation of their posts from BS-12 to BS-16 which was allowed.

In the same judgment reliance was placed on a judgment of the Hon'ble Supreme Court passed on Civil Petition No. 40 of 1999 Abdul Shakoor Vs. Govt. of Pakistan through Secretary, Establishment Division, Islamabad and 2 others where it was laid down:-

" From the above quoted cases, it can be deduced that persons holding similar posts with similar duties should not be treated differently in their pay scales simply for the reason that they belong to different departments.

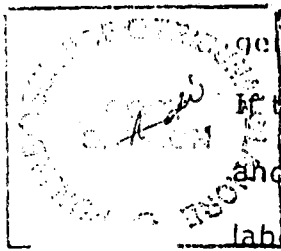
Under Articles 37 and 38 of the Constitution of Pakistan, the State is bound to promote social justice, social and economic well being of the people and particularly under clause(e) of Article 38 it is the obligation of the State to reduce disparity

## JUDGMENT SHEET

Appeal No.2974/2012

in the income and earnings of individuals, including persons in various classes of the service of Pakistan, thus, it is the duty of the State to remove disparity and discrimination in pay scales of similarly placed persons in various classes of service of Pakistan."

The appellants possess the similar qualifications, nature of the duties performed are similar, work under the same roof and same officer. Similarly placed are to be treated similarly. No doubt the Provincial Govt. works independently under the Constitution but generally it follows the pay scales sanctioned by the Federal Govt.



If two different pay scales are given to the Federal Govt. employees and the Provincial Govt. employees it may amount to extracting labour and exploitation under Article-3 of Constitution of Islamic Republic of Pakistan. I tend to agree with the judgment of Lahore High Court 2004 PLC(CS) 586 that it is violation of articles 2-A, 3, 25, 37 and 38 of the Constitution of Islamic Republic of Pakistan, 1973.

As far as the other two contentions of the respondents that the service structure will be affected and Punjab Govt. will have to bear extra financial burden of Rs. 46.44 millions, suffice to say that the service structure and financial constraints cannot stand in the way of Constitution. According to the chart placed on record by the appellants, respondent Provincial Govt. will have to bear extra burden of Rs.209,370/- whereas as per calculation of the respondent Finance Department the financial impact would be Rs.46.44 million. This Tribunal has no expertise in accounts,

JUDGMENT SHEET

Appeal No.2974/2012

not a big loss for the Provincial Govt. The law has to prevail. The Upgradations have already been made in Education Department, Police Department, Excise & Taxation Department, Jail Department etc, there seem to be no reason that upgradation should not be granted to the appellants.

8 In this view of the matter, all the appeals are **accepted**, impugned order dated 26.7.2012 is set aside. The appellants are declared to be entitled to BS-16. The Secretary Finance, Govt. of Punjab is directed to pass necessary orders in the light of the observations made above in order to remove the disparity/discrimination.

Announced  
28.10.2013.

Shahzad/\*

Punjab Treasury & Accounts Service Association

*[Handwritten Signature]*  
CHAIRMAN

*[Handwritten Signature]*  
7/11/13



2015 7.11.13

7.11.13

P-12

-48/-  
-48/-

7.11.13