

JUDGMENT SHEET
IN THE PESHAWAR HIGH COURT,
D.I.KHAN BENCH

(Judicial Department)

Writ Petition No.489-D/2019 with
Interim Relief

Syed Shuja Haider etc
Vs.
Govt. of Khyber Pakhtunkhwa etc

For Petitioners: Muhammad Anwar Awan Advocate.

For respondents: Mr. Adnan Ali, Assistant Advocate
General.

Date of hearing **12.04.2022**

JUDGMENT



MUHAMMAD FAHEEM WALI, J.- Through instant petition filed under Article 199 of the constitution of Islamic Republic of Pakistan, 1973, petitioners, being employees of Higher Education Department and serving as Lab. Assistants, are seeking their upgradation at the analogy of the upgradation policy of Junior Clerks.

2. Concise facts of the case are that the petitioners have been serving as Laboratory Assistants BPS-07 in the Higher

Education Department, Khyber Pakhtunkhwa, and previously they were having no service structure and for this purpose they filed writ Petition No.1250/2013 before the Principal Seat of Peshawar High Court which was decided vide Judgment dated 19.12.2013 and finally service structure for Laboratory Assistants was notified vide Notification NO.SO(Colleges-II)/HED/XI-68/Vol-II/2013 dated 03.09.2014. According to petitioners, previously the pay scale of Junior Clerk and that of Lab Assistants was one and the same i.e. BPS-05, which was later-on upgraded to BPS-07. However, posts of Junior Clerks were further upgraded to BPS-9 and then BPS-11; but petitioners have since been stuck in BPS-7, without any further upgradation. Thus, petitioners made efforts for their upgradation, and accordingly, their case was placed before the Upgradation Committee of Finance Department but the same was regretted vide decision dated 25.01.2018. Thereafter, the case of petitioners was placed before the Restructuring Committee of the Establishment Department and the same met with the same fate vide letter dated 11.03.2019. Now petitioners approached this Court seeking upgradation to the scale equivalent to the pay scale of Junior Clerks.



3. Respondent No.4 in compliance of the order of this Court submitted para-wise comments wherein issuance of desired writ was opposed.

4. Arguments of the learned counsel for parties heard and record gone through with their valuable assistance but for the sake of brevity, without reproducing the arguments of the counsels, same will be adequately dealt with at appropriate stages in this judgment.

5. Record transpires that, petitioners have been serving as Laboratory Assistants BPS-7 in the Higher Education Department and they are seeking upgradation to BPS-11 equivalent to the Pay Scale of Junior Clerks on the ground that in the past, pay scales of the Lab. Assistants and Junior Clerks were same i.e. BS-05 but due to manifold upgradations, junior clerks have been upgraded to BS-07, BS-09 and now they have been serving in BPS-11 whereas, scale of Lab. Assistant has not been upgraded further from BPS-07. Thus, their pay scale is liable to be brought at par with that of the junior Clerks. In this context, when we look into the job description of the Junior Clerks and Lab. Assistants as well as qualification for their initial recruitment, it transpires that there is much difference between nature of responsibilities of both the posts. According to secretariat instructions, a Clerk is responsible for:



- a) *receipt and dispatches;*
- b) *diarising (including entry with red ink on notes files) and maintenance of prescribed register;*
- c) *sorting, distribution and filing of papers;*
- d) *maintenance of registers relating to office files, recorded files, files destroyed and movement register showing the whereabouts of the files received in or sent out of the Section. He should also keep a register showing the files required to be submitted for issuance of reminders or otherwise on due dates and a register of reference books available in the Section;*
- e) *record keeping;*



- f) establishment and Accounts matters (preparation of pay bills, T.A. bills etc.);*
- g) handling of cash, if posted as cashier;*
- h) to do typing work as and when required; and*
- i) stationery indenting, storing and distribution.*

Whereas, general duties of a Lab Assistant can be defined as:



- a) Prepare lab equipment for upcoming research experiments;*
- b) Report data and compile information into graphs and documents;*
- c) Clean and maintain lab equipment*
- d) Use testing items and subjects to gather results;*
- e) Gather data and information from test subjects;*

f) Monitor ongoing tests and experiments, noting any differences

6. Likewise, minimum qualification for the post of Laboratory Assistant is “at least Second-Class Secondary School Certificate with Science”; whereas, for the post of Junior Clerk the requisite qualification is Secondary School Certificate (without distinction of Humanities Group or Science) with knowledge of typing. Therefore, both the posts i.e. Junior Clerk and Lab Assistant cannot be equalized to each other, and as such, Lab. Assistants cannot claim to be at par with the Junior Clerks.

7. Another argument of the learned counsel for petitioner was that upgradation is also the right of petitioners, like promotion, to ventilate stagnation particularly in view of the provisions of Article 25 of the Constitution of Pakistan where posts of other cadres have been upgraded. We are not in agreement with the said contention of learned counsel for petitioners for the reason that, previously, owing to the demand of Lab. Assistants, provincial government formulated their service structure vide Notification NO.SO(Colleges-II)/HED/XI-68/Vol-II/2013 dated 03.09.2014 whereby they have been provided a line of



promotion upto BPS-16 i.e. Lab Superintendent with the following steps:

- Laboratory Assistant (BPS-7)
- Senior Laboratory Assistant (BPS-9)
- Laboratory Supervisor (BPS-14)
- Lab. Superintendent (BPS-16)

8. As for the contention of learned counsel for petitioner that upgradation is the right of petitioners like promotion, suffice it to say that there is much difference between upgradation and promotion. The basic difference between promotion and upgradation is that when an incumbent is placed in a higher pay scale with a change in the designation with an additional qualification and change in the nomenclature, responsibility and duties shall be regarded as promotion, but where the post is placed in higher scale of pay with or without change in designation without requirement of any new qualification for holding the post in the higher grade, not specified in the recruitment rules for the existing post, and without involving change in the responsibility and duties, then the same may be treated as upgradation. The promotion is always granted to an employee under the prescribed rules, while upgradation is extended to ensure that



an employee who may not get a chance of promotion on account of a service in a cadre should at least be placed in upper grade in his pay with acclivity in grade to prevent stagnation. Promotion is not a vested right of a civil servant but “right to be considered for promotion would accrue in favour of the civil servant on his fulfilling the requisite prescribed qualification, as the same is dependent upon the seniority, eligibility and fitness. Reliance is placed on the reported judgment of the august Supreme Court of Pakistan titled *Muhammad Zahir Raja Vs. Federation of Pakistan and others* (2012 SCMR 971).

9. In-fact the up-gradation is different from the promotion which is not defined either in the Civil Servants Act or the Rules framed thereunder and guidance in this regard is sought from the case of *Regional Commissioner Income Tax v. Syed Munawar Ali* (2016 SCMR 859). As upgradation is not a promotion, therefore, upgradation is not a part of the terms and conditions of service rather the claim of petitioners is to be seen at the touchstone of Articles 4 and 25 of the Constitution. It is inalienable right of the petitioners to be treated in accordance with law, as in law there should be no discrimination, as all citizens are equal before law and are entitled to equal protection of law. Undeniably, equality



before law is subject to reasonable classification. Guidance in this regard has been taken from the verdict of Honourable Supreme Court, rendered in the case of *I.A. Sharwani and others Vs. Government of Pakistan through Secretary, Finance Division, Islamabad and others* (1991 SCMR 1041).

10. As discussed hereinabove, there is difference between nature of job and pre-qualifications of Junior Clerk and Lab Assistants, therefore, no question of a similar treatment within the contemplation of Article 25 of the Constitution could arise, nor the element of exploitation is there, particularly, when a specific line of promotion has been given to the cadre of Lab. Assistants. In the case of *Federal Public Service Commission through Secretary vs. Anwar-ul-Haq (Private Secretary) Islamabad and others* (2017 SCMR 890), the august Supreme Court of Pakistan held that up-gradation is carried out under a policy and specified scheme. It is only resorted to for the incumbents of isolated posts, which have no avenues or channel of promotion at all.

11. Most importantly, the upgradation cannot be claimed as a matter of right but it is in fact based on a policy decision of the competent authority for its implementation across the board for the particular

categories of employees jot down in the scheme/notification who fulfilled the required qualification which is normally a particular length of service in a particular pay scale. While rendering this view, we are fortified by the verdict laid down by the worthy Apex Court in the case of *Fida Muhammad VS. Government of Khyber Pakhtunkhwa through Secretary Education, Peshawar and others* (2021 SCMR 1895). In the case of *Ali Azhar Khan Baloch and others v. Province of Sindh and others* (2015 SCMR 456), the Honourable Supreme Court was pleased to held:

138. During the hearing of the review petitions, we have noticed that the Sindh Government has upgraded certain posts of individuals without any mechanism of upgradation to benefit them. The expression 'upgradation' is distinct from the expression 'promotion' which has not been defined either in the Act or the Rules framed thereunder, and is restricted to the post and not with the person occupying it. The upgradation cannot be made to benefit a particular individual in



terms of promoting him to a higher post or further providing him with the avenues of lateral appointment or transfer or posting. In order to justify the upgradation, the Government is required to establish that the department needs restructuring, reform or to meet the exigency of service in public interest. In the absence of these pre-conditions, upgradation is not permissible.

Same view was further reiterated by the worthy Apex Court in the case of *Regional Commissioner Income Tax v. Syed Munawar Ali* (2016 SCMR 859).

12. It is an admitted fact that the Upgradation Committee of the Finance Department Khyber Pakhtunkhwa, and the Restructuring Committee of Establishment Department Khyber Pakhtunkhwa, both have refuted the claim of petitioner for upgradation, therefore, in the absence of any discrimination with the same class of employees, posts of Lab. Assistants cannot be ordered to be upgraded. The same being policy matter of the provincial government and the concerned administrative department fall within their own discretion and this Court cannot indulge into the matter

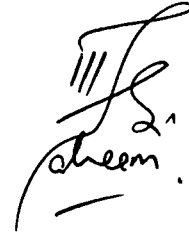
particularly when the case of petitioners does not fall within the ambit of provisions of Section 2 & 25 of the Constitution.

13. For the foregoing reasons, we see no merit in this petition which is thus dismissed.

Announced.
12.04.2022
*(*M/Subhan)*



JUDGE



JUDGE

(D.B)
Hon'ble Mr. Justice Shakeel Ahmad
Hon'ble Mr. Justice Muhammad Faheem Wali