

Order Sheet  
**IN THE HIGH COURT OF SINDH,  
CIRCUIT COURT, HYDERABAD**

CP No. D- 804 of 2009

---

DATE	ORDER WITH SIGNATURE OF JUDGE
------	-------------------------------

---

**Present:**

Mr. Justice Aziz-ur-Rehman

Mr. Justice Muhammad Faisal Kamal Alam

Date of Hearing : 22.10.2018

Date of Order : 01.11.2018

Mr. Irfan Ahmed Qureshi, Advocate along with Petitioner  
Mr. Muhammad Arshad S. Pathan, Advocate for Respondents.  
Mr. Allah Bachayo Soomro, Addl.A.G.

**ORDER**

**MUHAMMAD FAISAL KAMAL ALAM, J.-** The Petitioner through the present petition, has challenged the Office Order dated 19.5.2007 issued by Respondent No.3, whereby, the decision to grant BPS-15 to the Petitioner from 14.10.1991 was revised and instead she was granted BPS-15 from 13.10.1994. Following relief has been claimed:

*“Hold that the modification order (Annexure G) is illegal, void, abinitio, mala fide, violative of natural justice and misconceived.*

*Restore the Order of grant of BPS-15 w.e.f. 14.10.1991 (Annexure E refers) with all back benefits.*

*Award any other relief as deemed just and proper in the circumstances of the case.”*

2. Mr. Irfan Qureshi, Advocate (for the Petitioner) has argued that the impugned decision dated 19.5.2007, revising the grant of BPS-15 to Petitioner is tainted with *mala fide* and is a result of colourful exercise of authority by the Respondents. He has further argued that the impugned Office Order (of 19.5.2007), Annexure `G` with the petition (at page 25 of the court file) is even against the policy decision taken by Respondent No.1 in its 406<sup>th</sup> Meeting, subsequently issued / notified vide Office Memorandum dated 23.4.1988. Per learned counsel, the Prescribed Yardstick (Annexure `A`) with this Memorandum, does not contain any requirement that BPS-15 is to be granted to teachers who are working in regular

posts, on completion of 03 years satisfactory performance after they (teachers) acquire B.Ed qualification. He has further drawn our attention to his departmental appeal, which though finally was rejected by Respondent No.2 vide his Order dated 15.7.2009 (Annexure `L` to the petition), but, the Respondent No.3 (HESCO) in its correspondence of 8.3.2008 (annexure `I` of the petition), addressed to Respondent No.1, has supported the case of the Petitioner. The learned counsel has argued, that even the Departmental Appeal (dated 15.7.2009, *ibid*) of the Petitioner has not been decided within the parameters of law but in a slipshod manner, as is evident from the above decision itself.

3. Mr. Muhammad Arshad Pathan, learned counsel appearing for the Respondents, has controverted the arguments of Petitioner's side. As per learned counsel, BPS-15 with effect from 1991 was wrongly granted to the Petitioner, which was subsequently rectified by issuing the impugned Office Order (of 19.5.2007). He further disputed the claim of the Petitioner that there is any malafide on the part of Respondents, because, subsequently, the Respondents have promoted the Petitioner to next higher grade BPS-16 with effect from 26.4.1993. The gist of arguments of Respondent No.2 is mentioned in paragraph 7 and 11 of his parawise comments; whereas, parawise comments dated 18. 11.2014 of Respondent No.3 has clarified that present Petitioner was not promoted in BPS-16 with effect from 26.4.1993 but according to the Executive Decision taken in 526<sup>th</sup> Meeting of Respondent No.1, held on 26.4.1993, the Trained Graduate Teachers of WAPDA Middle School were placed in BPS-16.

4. Heard arguments and record perused.

5. None of the Respondents have disputed the basic fact of the case, that the Petitioner is a regular employee of Respondents working as Trained Graduate Teacher (TGT), in WAPDA Middle School (NTPS Hyderabad). The Office Order of 17.5.2006 (Annexure E, at page 21 of the court file) is relevant through which the Petitioner was given BPS-15 with effect from 14.10.1991, that is, the date of acquiring B.Ed qualification. **Similarly**, fixation of Petitioner's pay in BPS-16, vide letter dated 19.9.2006, issued by Respondent No.3 (annexure `F` with the petition) has not been disputed. It is pertinent to note that this last document about the fixation of pay (dated 19.9.2006) mentions the fact that the same has been issued after seeking clarification from Director Finance, WAPDA, WAPDA House at Lahore / Respondent No.1.

6. The Petitioner and other teachers who fall in the category of Trained Graduate Teachers were placed in BPS-16 with effect from 26.04.1993, as evident from Office Order (dated 3.11.1993) issued by Director Education of Respondent No.1 which has been placed on record as Annexure `C` with the Memo of Petition.

7. The above referred Policy Decision which was incorporated in the Office Memorandum of 13.4.1988, appended as Annexure `C` with the parawise comments of Respondents, has been examined. It is mentioned in the said Office Memorandum that to provide better quality of education to the children, the Respondent No.1 has made amendments in their earlier Education Policy and to achieve this object the Respondents have introduced a new Yardstick for Academic and Ancillary Staff, which has been attached as **Annexure `A`** with this Office Memorandum. The case of the Petitioner undisputedly falls in Category B-Middle School. The requirement of 03 [three] years teaching-cum-administrative experience as Trained Graduate Teacher is mentioned only for Headmaster / Headmistress of the Middle School, as apparent from S.No.1 under the heading Middle School. Similarly, in Paragraph-C, subparagraph-3 of this Policy (Office Memorandum), it is clearly mentioned that teachers shall be considered for promotion to BPS-15 only when they acquire the requisite qualification of B.Ed., which qualification undisputedly the Petitioner possesses.

8. There is substance in the arguments of learned counsel for the Petitioner when he has produced a letter dated 15.8.2006, a clarification issued by Respondent Nos.1 and 2, which was the basis for issuance of the afore-referred correspondence of 19.9.2006 by Respondent No.3 about fixation of pay (Annexure `F` with the petition). This clarification of 15.8.2006 has clarified that the Petitioner be treated as promotee from BPS-09 to BPS-15 with effect from 14.10.1991 in terms of Note C(3) of the aforementioned Office Memorandum. It is further stated that the said post has been upgraded to BPS-16 with effect from 26.4.1993. It would be advantageous to reproduce hereinunder the relevant paragraphs of the said clarification:

***“ 1. The teacher may be treated as promotee from BPS-09 to BPS-15 w.e.f. 14.10.1991 in terms of Note C(3) of Annex-A of Director (Education) O.M. No. GM(A)/Dir.Edu/100-iii/948-1164 dated 23.04.1988. The pay of the teacher will be fixed at the stage next above. However, on up-gradation the post from BPS-15 to 16 w.e.f. 26.4.1993 the pay of the teacher will be fixed at the corresponding stage of BPS-16.***

2. *Three advance increments on the basis of M.A qualification are admissible to her w.e.f. 14.10.1991 in BPS-15 in terms of para-13(I) of this Division O.M.No.F.O(R&I)BPS-83/10-126/5766-5966 dated 24.08.1983.*
3. *However 3 more advance increments will also be admissible on the basis of M.Ed qualification in BPS-16 from the date applied for or passing the M.Ed examination whichever is later, in terms of this Division O.M. dated 24.08.1983.”*

9. The stance of Respondents is self contradictory, as on the one hand the above referred impugned Office Order was issued revising the grant of BPS-15 to the Petitioner w.e.f. 13.10.1994, instead of 14.10.1991 and on the other hand, as per the parawise comments of Respondents, the Petitioner is presently working in BPS-16 which was granted to her with effect from 26.4.1993.

10. Looking at the undisputed facts of present petition, it would be relevant to mention the two earlier decisions of Hon’ble Supreme Court handed down in the cases of\_

- (i) Nighat Yasmin v. Pakistan International Airlines Corporation, Karachi and another **(2004 SCMR 1820)**.
- (ii) Walayat Ali Mir v. Pakistan International Airlines Corporation through its Chairman and another **(1995 SCMR 650)**.

The crux of the above reported decisions is that even departmental rules, regulations and instructions, which are non-statutory, have to be adhered to and an employer (Organization) cannot deviate from such rules and instructions, which are in the nature of a contract, binding on the parties. With regard to policy matters, it has been held, that even in the absence of a vested right, the principle of policy is enforceable. The dictum of the above reported judgments are applicable to the present case and the Respondents should not have issued the impugned Office Order, which has retrospectively adversely affected the employment of Petitioner.

11. In addition to what has been discussed herein above, the Respondents have failed to justify the issuance of impugned Office Order (dated 19.5.2007), which *ex facie* is violative of the policy decision of Respondent No.1 contained in the Office Memorandum dated 13.4.1988 besides being unreasonable, hence, having no legal sanctity. Consequently, the impugned Office Order is of no consequence and is set aside. Accordingly, this petition is accepted and the grant of BPS-15 to the Petitioner is restored with effect from 14.10.1991 and her other service benefits have to be fixed and calculated accordingly.

12. Parties to bear their costs.

JUDGE

JUDGE

karar\_hussain/PS\*