
"Judicial Allowances: Equality vs. Classification"



RCBHC



RESEARCH CENTER, HIGH COURT OF BALOCHISTAN

COURT: **Hon'ble Mr. Justice Ejaz Ahmed Sawathi BHC**

SUBJECT: **Constitutional Law/Service Laws**

DATE: **January 09, 2025**

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Queries

Q. No. 1: - Are the employees of the Balochistan Judicial Academy (BJA) considered at par with the employees of the High Court Establishment, and therefore entitled to the Special Judicial Allowance granted to High Court employees?

Q. No. 2: - Does the refusal to grant the Special Judicial Allowance to BJA employees constitute discrimination under the Constitution, or can a lawful and reasonable classification exist between the two categories of employees?

In response to the quires, it is submitted as follows: -

Background on Special Judicial Allowance (SJA)

Before addressing the queries, it is essential to review the ***origin*** and ***initial*** grant of ***Special Judicial Allowance*** (SJA) to employees of ***judicial establishments***. The Special Judicial Allowance was initially sanctioned to the employees of the Supreme Court of Pakistan and the Federal Shariat Court, following a directive from the Prime Minister, with effect from July 1, 2009. Shortly thereafter, employees of the Lahore High Court were granted the same allowance through a notification issued on August 4, 2009, ensuring consistency in benefits across judicial establishments. Similarly, the Sindh High Court extended this benefit to its staff via an office memorandum dated May 24, 2010, which also provided arrears retroactive to August 3, 2009. In the Peshawar High Court, employees sought similar relief through judicial intervention. Following a writ petition decided on July 6, 2010, the court directed the provincial government to provide the allowance. A subsequent notification issued on July 27, 2010, granted the benefit retroactively from July 1, 2009, aligning the treatment of its employees with those of other high courts.

As regards the employees of the Balochistan High Court, they, observing the allowances granted in other jurisdictions, petitioned for equal treatment. The High Court of Balochistan ruled in favor of the employees, directing the provincial government to disburse the allowance starting January 1, 2011, and to pay arrears from July 1, 2009, to December 31, 2010. This decision was meant to harmonize the treatment of Balochistan High Court employees with their counterparts in other provinces, further solidifying the principle of equality under Article 25 of the Constitution.

***Query 1: Parity Between
BJA & High Court
Employees***

Reverting to the query, it is crucial to notice that the Balochistan Judicial Academy is a statutory body with corporate status, possessing perpetual succession and the ability to acquire, hold, and dispose of property and operates under its own legal framework established by the ***Balochistan Judicial Academy Act, 2010***. This Act outlines the aims and functions of the Academy. The appointments and governance of employees at the Balochistan Judicial Academy are regulated under the Balochistan Judicial Academy Act, 2010. Employees may be appointed through direct recruitment, transfer, deputation, or on a contract basis, as prescribed by the Board of Governors. The Act vests the Board with the power to frame rules governing the terms and conditions of service, including service duties, disciplinary action, leave, retirement, and other employment-related matters. Under this authority, specific rules (***Balochistan Judicial Academy (Employees) Service Rules, 2012***) have been framed to ensure the effective management and smooth functioning of the Academy.

Contrariwise, the employees of the High Court Establishment are governed by the ***High Court Establishment (Appointment and Conditions of Service) Rules, 2020****, which are framed under Article 208 of the Constitution of Pakistan. Under the Constitution of Pakistan, the ***Chief Justices of the superior courts hold significant powers concerning the remuneration and allowances of High Court employees***. This autonomy reflects the constitutional principles of judicial independence and separation of powers, reinforced by Articles 121 and 122, which

*Previously followed LHRO

designate the administrative expenses of the High Court, including staff remuneration, as "charged expenditures" on the Provincial Consolidated Fund. Reference may be made to the case of **Syed Riaz Ali Zaidi vs. GoP through Chief Secretary, Lahore and 3others (P L D 2015 Lahore 463).**

As is obvious from the above comparison, the employees of the Balochistan Judicial Academy and the High Court Establishments are governed by ***distinct legal frameworks*** and authorities. Therefore, grant of an allowance is the prerogative of their ***respective authorities***. In **Muhammad Javed Iqbal Kasi v. Federal Government of Pakistan (2022 P L C (C.S.) 607)**, the Islamabad High Court ruled that the ***grant or withdrawal of an allowance is the prerogative of the authority determining the terms and conditions of an incumbent's appointment***. It held that employees do not possess a vested right to claim allowances, and even if granted, such allowances can be withdrawn at the competent authority's discretion. The petitioner's claim for a judicial allowance, based on his functions as a member of the Federal Service Tribunal, was dismissed, emphasizing that entitlement to allowances must conform to the terms prescribed by the competent authority. This case underscores the principle that the discretion to grant financial benefits like allowances lies exclusively with the designated authority and cannot be assumed as an inherent entitlement by employees.

Consequently, the employees of the Balochistan Judicial Academy may be claiming grant of Special Judicial Allowance on the application of ***Principle of Equality, Similarities of Duties and Function*** or ***Doctrine of Parity***. Therefore, such claim is required to be tested on the touchstone of these principles.

Query 2: Equality and Discrimination

Undeniably equality is one of the magnificent cornerstones of a society, which has been followed in each and every system to run the state. The principle of equality before the law, ***as enshrined under article 25 of the Constitution***, requires that persons similarly situated be treated alike. However, equality does not mean that all individuals or groups are entitled to identical benefits or treatment; rather, it requires a reasonable and justifiable basis for differentiation. Employees of the judicial academy *perform primarily educational, training, and research functions aimed at enhancing judicial capacity, which differ fundamentally from the administrative, adjudicative, and support roles performed*

by the employees of the high court. This distinction provides a reasonable and lawful basis to treat the two groups differently under the law.

In this regard reliance is placed on the judgment **Brig. (Retd.) F.B. Ali and another v. The State** (PLD 1975 SC 506) wherein it was held:

"Equal protection of the laws does not mean that every citizen, no matter what his condition, must be treated in the same manner. The phrase 'equal protection' of the laws means that no person or class of persons shall be denied the same protection of laws which is enjoyed by other persons or other class of persons in like circumstances in respect of their life, liberty, property, or pursuits of happiness. This only means that persons, similarly situated or in similar circumstances, will be treated in the same manner. Besides this, all law implies classification, for, when it applies to a set of circumstances, it creates thereby a class and equal protection means that this classification should be reasonable. To justify the validity of a classification, it must be shown that it is based on reasonable distinctions or that it is on reasonable basis and rests on a real or substantial difference of distinction."

In another case **I.A. Sharwani v. Government of Pakistan** (1991 SCMR 1041) following principles were deduced:---

- (i) *that equal protection of law does not envisage that every citizen is to be treated alike in all circumstances, but it contemplates that persons similarly situated or similarly placed are to be treated alike;*
- (ii) *that reasonable classification is permissible but it must be founded on reasonable distinction or reasonable basis;*
- (iii) *that different laws can validly be enacted for different sexes, persons in different age groups, persons having different financial standings, and persons accused of heinous crimes;*
- (iv) *that no standard of universal application to test reasonableness of the classification can be laid down as what may be reasonable classification in a particular set of circumstances, may be unreasonable in the other set of circumstances;*
- (v) *that a law applying to one person or one class of persons may be constitutionally valid if there is sufficient basis or reason for it, but the classification which is arbitrary and is not founded on any rational basis is no classification as to warrant its exclusion from the mischief of Articles 25;*
- (vi) *that equal protection of law means that all persons equally placed be treated alike both in privileges conferred and liabilities imposed;*
- (vii) *that in order to make a classification reasonable, it should be based---*
 - a) *on an intelligible differentia which distinguishes persons or things that are grouped together from those who have been left out;*
 - b) *that the differentia must have rational nexus to the object sought to be achieved by such classification.*

In **Syed Azam Shah v. Federation of Pakistan through Secretary Cabinet Division, Cabinet Secretariat, Islamabad and another** (2022 SCMR

201), the Supreme Court of Pakistan further held that the concept of reasonableness is rationally a fundamental component of equality or non-arbitrariness.

This question was earlier elaborated by the Supreme Court in the case of **Dr. Mobashir Hassan v. Federation of Pakistan** (PLD 2010 Supreme Court 265), wherein the Court held that intelligible differentia distinguishes persons or things from the other persons or things, who have been left out. The Court held that the definition of classification "intelligible differentia" means differentiating between two sets of the people or objects, all such differentiations should be easily understood and should not be artificial.

Similarly in the case of **Secretary Economic Affairs Division, Islamabad and others v. Anwarul Haq Ahmed and others** (2013 SCMR 1687), the Supreme Court further held that by now it is well settled that equality clause does not prohibit classification for those differently circumstanced provided a rational standard is laid down.

The entitlement to specialized benefits, such as the Special Judicial Allowance, hinges on the *principle of similarity of duties and functions* or on the *Doctrine of Parity*. High court employees are directly involved in supporting the judiciary's *core* adjudicative functions, ensuring the administration of justice, and facilitating court operations. In contrast, judicial academy employees support on preparing judicial officers and court personnel through training programs and curriculum development. These roles, while important, do not align with the core functions of judicial administration and adjudication, which seeks to incentivize and support them.

The judiciary and its staff form a *distinct class* due to their direct role in the dispensation of justice and enforcement of constitutional rights. Judicial academy employees, despite their valuable contributions to the judicial system, do not form part of this class, as their work is ancillary and does not directly involve the day-to-day functioning of courts or the resolution of disputes. The distinction between these classes is clear and justified, and it supports the conclusion that judicial academy employees are not entitled to the same benefits as high court staff.

In **Government of Khyber Pakhtunkhwa v. Syed Sadiq Shah** (2021 S C M R 747), the Supreme Court of Pakistan held that *while the government has*

a constitutional obligation under Article 38(e) of the Constitution to reduce disparities in income and earnings, classification based on intelligible differentia is permissible and necessary in certain circumstances. The Court observed that *not all employees are similarly situated, and policies distinguishing between categories, such as those receiving special allowances and others, are valid as long as the classification is logical and bears a rational nexus to the objective of the policy.* In this case, employees drawing special judicial or other allowances were excluded from receiving additional ad-hoc relief, a decision upheld by the Court as reasonable and consistent with financial constraints. The ruling emphasizes that policies addressing financial disparities must balance equity with practical governance, and courts should refrain from interfering in such policy decisions unless they lack a reasonable basis.

In **Muhammad Shabbir Ahmed Nasir Vs. Secretary, Finance Division (1997 SCMR 1026)**, a five Member Bench of August Apex Court held that classification on the basis of low paid or high paid employees placed in different grades, irrespective of functional similarity, is a reasonable classification and BPS 1-16 and BPS 17-22 can be grouped into two different classes. It would be advantageous to reproduce the relevant portion of the judgment, which reads as under:-

“12. In the light of the rationale laid down by this Court in I.A. Sherwani's case (supra) the grouping by the Government of its employees serving in BPS 1 to 16 into one category, distinct from the category of those serving in BPS 17 to 22 for the purposes of granting greater monetary benefit to the former category could not be challenged on the grounds of arbitrariness or unreasonable classification. A glance on the old pay scales of employees serving in BPS 1 to 22 will show that there was substantial difference between the minimum and maximum amount of pay drawn by the employees serving in BPS 1 to 16 as compared to those serving in BPS 17 to 22. Therefore, if the Government, decided, while revising upward the pay scales of its employees in BPS 1 to 22, to extend more monetary benefit to the low-paid employees by putting them in a separate category, the classification did not suffer from any infirmity. In our view the categorization of the employees on the basis of low-paid and high-paid employees was a reasonable classification and did not suffer from any arbitrariness.”

In case of **Abdul Kabir Awan v. Azad Government of the State of Jammu and Kashmir (2021 P L C (C.S.) Note 19)**, Forest Protection Officers claimed judicial allowance on the premise that their functions were of a judicial nature. The High Court of Azad Jammu and Kashmir rejected their claim, reasoning that their administrative control under the Forest Department precluded them from being equated with Civil Judges, who are directly under the High

Court's supervision. The Court emphasized that while their role involves judicial functions, their terms and conditions, including allowances, must adhere to their administrative structure, unless their administrative control is shifted to the judiciary.

It may not be out of place to highlight here that the employees of the Sindh Judicial Academy filed a constitutional petition (In the matter of **Bashir Ahmed and Others vs. Province of Sindh and Others**, in the Sindh High Court seeking parity in salaries, allowances, and service benefits with employees of the Federal Judicial Academy and other Provincial Judicial Academies. The Sindh High Court noted that the employees of the Sindh Judicial Academy were governed by the Sindh Judicial Academy Establishment (Appointment and Condition of Service) Regulations, 2015, which were non-statutory in nature. The court held that the employees of the academy were not civil servants and that their appointments were contractual and temporary. Consequently, their conditions of service could not be enforced through constitutional writ jurisdiction. The court also observed that each judicial academy operates independently and determines its terms and conditions of employment based on its financial resources and policies. Therefore, the claim for parity with employees of other judicial academies was not sustainable.

Findings on the Two Queries

Employees of the Balochistan Judicial Academy (BJA) and the High Court Establishment are governed by distinct frameworks. High Court employees' allowances reflect their critical role; therefore, this disparity can be classified reasonably based on intelligible differentia and rational nexus to objectives. Consequently, denial of Special Judicial Allowance to BJA employees is lawful under **Article 25**, permitting valid distinctions.

The End