

**IN THE SUPREME COURT OF PAKISTAN**  
(Appellate Jurisdiction)

**PRESENT:**

MR. JUSTICE AMIR HANI MUSLIM  
MR. JUSTICE MUSHIR ALAM  
MR. JUSTICE MAQBOOL BAQAR

**CIVIL APPEAL NO.992 OF 2014**

(On appeal against the judgment dated 19.2.2014  
passed by the Lahore High Court, Lahore, in ICA  
No.303/2011)

Chief Commissioner, Inland Revenue  
and another ... Appellants

**VERSUS**

Muhammad Afzal Khan and others ... Respondents

**For the Appellants**

(Appellant No.1)

(Appellant No.2)

: Hafiz S. A. Rehman, Sr. ASC  
: Mr. Ibrar Ahmed, ASC  
: Syed Razaqat Hussain Shah, AOR

**For the Respondents**

(R.No.3,19,20 &amp; 32)

(R.No.1-2,4 to 18, 21 to 31  
and 33 to 39)

: Syed Ali Zafar, ASC  
: Mr. Zahid Nawaz Cheema, ASC  
: Mr. Hamid Khan, Sr. ASC  
: Mr. M. S. Khattak, AOR

In C.M.A.No.1698/2015 : Syed Faiz Ali Hamdani (In-person).

Date of hearing : 11-01-2016

**JUDGMENT**

**AMIR HANI MUSLIM, J.-** This Appeal, by leave of the Court,  
is directed against the judgment dated 19.02.2014, passed by the Lahore  
High Court, Lahore, whereby the Intra Court Appeal filed by the Appellant  
was dismissed.

2. The facts necessary for the present proceedings are that the  
Respondents were appointed as Senior Auditors in the Central Board of  
Revenue (now Federal Board of Revenue), after qualifying test and  
interview conducted by the Federal Public Service Commission. The Post of

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Senior Auditor was re-designated as Inland Revenue Audit Officer, by the Federal Board of Revenue, vide Notification dated 03.08.2010. The Finance Division (Regulation Wing) vide Office Memorandum dated 17.05.2010 upgraded the post of Audit Officer of Pakistan Audit Department and Auditor General of Pakistan and other departments, falling under its administrative control. The Respondents filed representation for upgradation of their posts on the analogy of Audit Officers of aforesaid departments which was turned down. Therefore, they filed Writ Petition before the Lahore High Court, Lahore, pleading therein that the Audit Officers working in Auditor General of Pakistan, Accountant General Punjab and Controller General of Accounts were upgraded from BS-16 to BS-18, as such, being similarly placed they are also entitled to the benefit of the upgradation from BS-16 to BS-18, in terms of the judgment of this Court dated 15.3.2010 passed in Civil Petitions No.325 to 397 of 2010 in which it was categorically held that once there is a policy and some of the departments have already been allowed upgradation then there should be no discrimination to extend such benefit to the other departments of the Government if the nature of job of the employees is similar.

3. The learned High Court, vide judgment dated 24.5.2011 allowed the Writ Petition of the Respondents and held them entitled to the benefit of upgradation of their posts from BS-16 to BS-18. The Appellants filed Intra Court Appeal against the judgment dated 24.5.2011, which was dismissed by the impugned judgment dated 19.02.2014. Hence this Appeal.

4. The learned Counsel for the Appellant has contended that the jurisdiction of the High Court to adjudicate issue of upgradation is barred in

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view of the Article 212 (3) of the Constitution, as the term "Upgradation" falls within the contemplation of terms and conditions of service.

5. The learned Counsel next contended that by allowing Writ Petition, the Respondents have not acquired the benefit of upgradation although the Federal Board of Revenue has already issued Notification dated 27.11.2010, introducing a separate cadre for the Audit Officers of the Board. He submitted that upgradation of the Audit Officers working in the Controller General of Accounts, Accountant General of Pakistan and Accountant General Punjab under the Office Memorandum dated 21<sup>st</sup> January, 2001, has no nexus with the working of the Respondents, as their job description is distinct from the Audit Officers of these departments. In support of his contentions, the learned Counsel has relied upon the judgment of this Court reported as Contempt Proceedings against the Chief Secretary, Sindh (2013 SCMR 1752).

6. He further contended that in another judgment of this Court in the case of Ali Azhar Khan Baloch vs Province of Sindh (2015 SCMR 456), it has been held that upgradation can only be granted if conditions mentioned therein are fulfilled but in the case in hand, the conditions referred to in the judgment have not been complied with, which aspect has lost sight of the learned High Court while allowing the Writ Petition of the Respondents.

7. As against this, Mr. Ali Zafar, learned ASC for the Respondents No.3, 19, 20 and 32, has contended that the learned High Court has the jurisdiction to decide the issue of upgradation, as it does not relate to the

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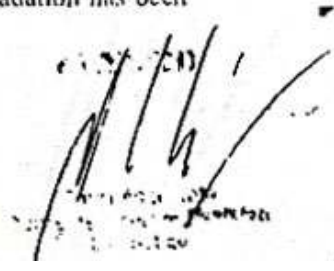
terms and conditions of service. He next contended that job description of the present Respondents was similar to the Audit Officers of Controller General of Accounts, Accountant General Punjab and Accountant General Pakistan Revenues.

8. The learned Counsel further contended that this Court in the case of Civil Petitions No.325 to 397 of 2010, has directed the Government to allow upgradation to Audit Officers of Controller General of Accounts and Accountant General, Punjab.

9. He next contended that the present proceedings were not competently filed, as neither the Government nor the Ministry of Finance have challenged the impugned judgment. On the contrary, by a letter dated 9.6.2011, the Ministry of Finance has directed the Federal Board of Revenue to implement the impugned judgment of the learned High Court. He submitted that instead of complying with the said directives, the Chief Commissioner Inland Revenue has incompetently filed the present proceedings, which act was beyond his domain.

10. Mr. Hamid Khan, learned Sr.ASC for Respondents No.1, 2, 4 to 18, 21 to 23 and 33 to 39, has contended that the issue of upgradation could only be decided by the Ministry of Finance with the concurrence of the Establishment Division and the Appeal has neither been filed by the Establishment Division nor the Ministry of Finance, therefore, the Instant Appeal being incompetently filed is liable to be dismissed.

11. We have heard the learned Counsel for the parties and have perused the record with their assistance. The issue of upgradation has been



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dealt with by this Court in the case reported as Ali Azhar Khan Baloch vs. Province of Sindh (2015 SCMR 456) as under:-

MECHANISM FOR UPGRADATION OF POSTS

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 there-under, 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. We have noticed that some of the civil servants have been promoted to higher posts against the tenural limitations, without qualifying the requisite departmental examinations/trainings under the garb of upgradation. Such civil servants having not been promoted in accordance with law need to be reverted to their substantive ranks/posts which they were holding immediately before their upgradation and their seniority shall be determined along with their hatchmates. The Sindh Government shall undertake this exercise and report compliance within 4 weeks through the Chief Secretary, Sindh.

12. This Court in its aforesaid judgment has clearly held that upgradation cannot be construed as Promotion but could be granted through a policy of the Government. The contention of the learned Counsel for the Appellant that this Court in para 177 in the case of Contempt Proceedings Against Chief Secretary Sindh (supra) has held that the High Court did not have the jurisdiction, is not correct. In fact while explaining this position in review, this Court has clearly held that terms and conditions of service

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regulated by Civil Servants Act and Rules framed there-under can only be determined by a Service Tribunal. However, upgradation of Civil Servants can be made through a policy which does not require amendment either in the Civil Servants Act or the Rules framed there-under and can be challenged in a Constitutional Petition before the High Court. The Service Tribunals have no jurisdiction to entertain an Appeal relating to upgradation, which does not form part of the terms and conditions of service of a Civil Servant.

13. The contention of the learned Counsel for the Appellant that a separate cadre has been created for the Auditors Officers/Assistant Audit Officers, therefore, the Respondents are not entitled to the benefit of the policy of upgradation, we have noticed that this separate cadre has been introduced after the judgment of the learned High Court passed in the Writ Petition, and even such dispensation in no way take away the rights of the Respondents granted by the Court prior to the said legislation.

14. The creation of a separate cadre for the Respondents will not debar them from availing the benefit of judgment of the learned High Court, by which the other employees with similar job description have been extended the benefit of upgradation in terms of the judgment of this Court passed in Civil Petitions No.325 to 397 of 2010. The Notification issued by the Federal Board of Revenue clearly spells out the job description of the present Respondents, which are similar to the Audit Officers/Assistant Audit Officers working in Controller General of Accounts and Accountant General Punjab. All the cases of upgradation of employees of these departments are

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initiated through the Ministry of Finance in terms of the notification and required concurrence of the Establishment Division.

15. We, for the aforesaid reasons, we do not find any merit in this Appeal which is accordingly dismissed.

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The case of Syed Faiz Ali Hamdandi stands on the same footing and, therefore, he is also entitled to the same benefit extended to the Respondents.

Sd/- Amir Hani Muslim,J  
Sd/- Mushir Alam,J  
Sd/- Maqbool Baqar,J

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