For the respondents.....

Ch. Muhammad Akram, AOR.
Syed Faiz Ali Shah, in person.

Date of hearing 15.03.2010

...

**ORDER**

**IFTIKHAR MUHAMMAD CHAUDHRY, CJ.:** Secretary Finance, Controller General of Accounts in Islamabad alongwith the Accountant General, Punjab in pursuance of judgment of the Federal Service Tribunal dated 05.12.2008 were directed to take up the issue of upgradation of the

---

Mr. Justice Khalil-ur-Rehman Ramday

**CIVIL PETITIONS NO.325 TO 397 AND 429 OF 2010**
(Against the judgment dated 19.12.2009 of the Federal Service Tribunal, Islamabad, passed in Miscellaneous Petitions No.706 to 712, 714 to 724, 726 to 741, 743 to 745, 747 to 767 and 769 to 782 of 2009)

Ministry of Finance through Secretary Finance, Government of Pakistan, Islamabad and others. ...**Petitioners.**
(in all petitions)

**VERSUS**

Syed Faiz Ali Shah. ... in C.P.325/2010
Syed Munawar Hussain Shah etc. ... in C.P.326/2010
Shaukat Ali Asad etc. ... in C.P.327/2010
Muhammad Umar Hayat etc. ... in C.P.328/2010
Shafaqat Ali etc. ... in C.P.329/2010
Zulfiqar Ali Asai. ... in C.P.330/2010
Muhammad Afzal. ... in C.P.331/2010
Shahid Mehmood Qureshi. ... in C.P.332/2010
Syed Tahir Mahmood Sherazi. ... in C.P.333/2010
Basit Maqbool Hashmi. ... in C.P.334/2010
Ch. Asif Javed. ... in C.P.335/2010
Fazal Qayyum. ... in C.P.336/2010
Khurshid Abid Bhatti. ... in C.P.337/2010
Arif Hussain. ... in C.P.338/2010
Syed Ejaz Hussain Bukhari. ... in C.P.339/2010
Nayyar Latif. ... in C.P.340/2010
Abdul Khaliq Javed. ... in C.P.341/2010
Jawed Ashraf. ... in C.P.342/2010
Iftikhar Ahmed. ... in C.P.343/2010
Shahid Mahmood. ... in C.P.344/2010
Abdul Wahid. ... in C.P.345/2010
Muhammad Ayub Khan. ... in C.P.346/2010
Abdul Khalil. ... in C.P.347/2010
Muhammad Arshad. ... in C.P.348/2010
Muhammad Tufail Malik. ... in C.P.349/2010
Zaheer-ud-Din Bhatti. ... in C.P.350/2010
Mian Ahmed Saeed. ... in C.P.351/2010
Shaukat Ali Saleemi. ... in C.P.352/2010
Obaidullah Khan. ... in C.P.353/2010
Tariq Hussain. ... in C.P.354/2010
Faqir Hussain Shah. ... in C.P.355/2010
Abdul Rasheed. ... in C.P.356/2010
Nasir Mahmood. ... in C.P.357/2010
Muhammad Ilyas. ... in C.P.358/2010
Zahid Hussain. ... in C.P.359/2010
Shahid Ahmed. ... in C.P.360/2010
Muhammad Akhtar. ... in C.P.361/2010
Faqeer Muhammad. ... in C.P.362/2010

---

Establishment Division had any reservation it could have come forward against the judgment dated 05.12.2008 passed by the Federal Service Tribunal to show its reservation of whatsoever nature. It is also important to note that this is not the first case of the respondents wherein the question of upgradation has been raised. There are so many other departments wherein the upgradation has already taken place and

---

Federal Service Tribunal in view of its judgment referred hereinbefore passed the impugned order, para-2, therefore, is reproduced herein below:-

> *"The departmental representative of the Accountant General Punjab has submitted a copy of letter dated 19.11.2009 addressed to the Controller General of Accounts, Islamabad. In this letter it is stated that demand made by the petitioners for upgradation of their posts is genuine and the same be placed before the Finance Division, Islamabad on priority level to get the notification of upgradation issued on urgent basis. In view of this letter we find that report of the Finance Division that the parent departments of the petitioners are not considering the proposal of upgradation is not correct. Even otherwise the parent departments of the petitioners, the Establishment Division of the Government of Pakistan and the Finance Division are bound by the judgment of the Federal Service Tribunal. This judgment has to be implemented in letter and spirit even if any department is not in favour of upgradation. The judgment of the FST has attained finality since it has not been challenged in the apex Court. All the respondents including the parent departments and the Establishment Division are under a legal obligation to ensure implementation of the judgment. We accordingly direct that the judgment of the FST shall be implemented by all the respondents. Non-implementation for any reason would tantamount to disobedience and violation of the judgment which would not be legal."*

2. It is to be noted that during the pendency of the matter a report was submitted, perusal whereof suggests that the Establishment Division has strongly opposed the upgradation of the said posts, for convenience, the contents of the said para are reproduced herein below: -

case, like some of the other cases where upgradation had taken place in the year 2007, whereas, the argument being raised for declining such relief is that there is no direction of the Prime Minister. The sorry state of affairs is that everyone cannot approach the Prime Minister to get such direction in their favour. Once there is a policy and some of the departments have already been allowed to upgrade their posts then there should have not been any discrimination towards other departments like the Controller General of Accounts, Islamabad and Accountant General, Punjab and such issue should have been resolved amicably without consulting to the Establishment Division as it was never the party before the Service Tribunal nor it had any reservation against the impugned judgment dated 05.12.2008.

6. Thus, for the foregoing reasons petitions are dismissed with the directions to the Finance Secretary, Government of Pakistan, the Controller General of Accounts in Islamabad as well as the Accountant General, Punjab to implement and dispose of the cases of the respondents strictly keeping in view of the observations made in the judgment dated 05.12.2008 within the period of fifteen days from

---

*... recommends the proposal of up-gradation and Finance Secretary approved the up-gradation of posts from BPS-1 to BPS-19 finally. But the same is considered on merit if forwarded by the Department concerned formally. In this case Establishment Division has strongly opposed the up-gradation of the said posts (Annex-IV) and stated that it is not possible to upgrade these posts because it is not according to the policy of the up-gradation.*

*(iii) Since the parent Departments of appellant are not supporting the proposal and Establishment Division has also not recommended, therefore, despite formal efforts, their posts cannot be upgraded."*

3. Learned counsel for the petitioners contended that the criteria laid down in policy was not fulfilled by the respondents, therefore, the Establishment Division has opposed the upgradation. We have time and again drawn the attention of the learned counsel towards the judgment of the Tribunal dated 05.12.2008 and pointed out to him that as far as the Establishment Division is concerned, it has nothing to do with the matter as it was the Finance Division or the Controller General of Accounts in Islamabad as well as the Accountant General, Punjab who have to dispose of the cases of respondents, however, he stated that because a policy is laid down by the Establishment Division therefore their concurrence was essential for disposal of the cases.

4. A perusal of the above para indicates that if at all the

violation of their fundamental rights under Article [illegible]
of Islamic Republic of Pakistan.

5. Learned counsel for the caveat contended that as far as the Controller General of Accounts, Islamabad is concerned it has consented for the upgradation at the time of hearing of the appeal out of which the judgment dated 05.12.2008 was passed and this is for the first time that the representative of the Controller General is coming forward with a contrary stand. We have noticed with great concern that Government department, Controller General of Accounts in Islamabad, has failed to take consistent stand in respect of the employees especially of the instant case, like some of the other cases where upgradation had taken place in the year 2007, whereas, the argument being raised for declining such relief is that there is no direction of the Prime Minister. The sorry state of affairs is that everyone cannot approach the Prime Minister to get such direction in their favour. Once there is a policy and some of the departments have already been allowed to upgrade their posts then there should have not been any discrimination towards other departments like the Controller General of Accounts, Islamabad and Accountant General, Punjab and such issue should have been resolved amicably without consulting to the Establishment Division as it was never the party before the Service Tribunal nor it had any reservation against the impugned judgment dated 05.12.2008.

6. Thus, for the foregoing reasons petitions are dismissed with the directions to the Finance Secretary, Government of Pakistan, the Controller General of Accounts in Islamabad as well as the Accountant General, Punjab to implement and dispose of the cases of the respondents strictly keeping in view of the observations made in the judgment dated 05.12.2008 within the period of fifteen days from

the date of the receipt of this Order and compliance report should be sent to the Registrar of this Court for our perusal in Chambers

Islamabad, the
15th March, 2010
Arif/
NOT APPROVED FOR REPORTING

19.3.2010

*departments of the petitioners are not considering the proposal of upgradation is not correct. Even otherwise the parent departments of the petitioners, the Establishment Division of the Government of Pakistan and the Finance Division are bound by the judgment of the Federal Service Tribunal. This judgment has to be implemented in letter and spirit even if any department is not in favour of upgradation. The judgment of the FST has attained finality since it has not been challenged in the apex Court. All the respondents including the parent departments and the Establishment Division are under a legal obligation to ensure implementation of the judgment. We accordingly direct that the judgment of the FST shall be implemented by all the respondents. Non-implementation for any reason would tantamount to disobedience and violation of the judgment which would not be legal."*

2. It is to be noted that during the pendency of the matter a report was submitted, perusal whereof suggests that the Establishment Division has strongly opposed the upgradation of the said posts, for convenience, the contents of the said para are reproduced herein below: -

| | |
|---|---|
| Muhammad Tahir Maqbool. | ... in C.P.367/2010 |
| Mushtaq Ahmed. | ... in C.P.368/2010 |
| Muzaffar Ali. | ... in C.P.369/2010 |
| Khalid Mehmood Nadeem. | ... in C.P.370/2010 |
| Muhammad Ashraf Naz. | ... in C.P.371/2010 |
| Tariq Sharif. | ... in C.P.372/2010 |
| Muhammad Akram. | ... in C.P.373/2010 |
| Aziz-ur-Rehman. | ... in C.P.374/2010 |
| Shahid Sultan Gondal. | ... in C.P.375/2010 |
| Muhammad Ashraf Javed. | ... in C.P.376/2010 |
| Allah Ditta Butt. | ... in C.P.377/2010 |
| Munawar Hussain. | ... in C.P.378/2010 |
| Nazir Ahmed. | ... in C.P.379/2010 |
| Inayatullah. | ... in C.P.380/2010 |
| Muhammad Safiq Ahmed. | ... in C.P.381/2010 |
| Muhammad Sher Khan. | ... in C.P.382/2010 |
| Raja Muhammad Hanif. | ... in C.P.383/2010 |
| Muhammad Tariq. | ... in C.P.384/2010 |
| Rana Mubashir Khan. | ... in C.P.385/2010 |
| Muhammad Afzal. | ... in C.P.386/2010 |
| Ejaz Ahmed. | ... in C.P.387/2010 |
| Liaqat Ali. | ... in C.P.388/2010 |
| Gulshad Hafeez. | ... in C.P.389/2010 |
| Javed Akhtar. | ... in C.P.390/2010 |
| Nadeem Anwar Khan. | ... in C.P.391/2010 |
| Muhammad Azhar. | ... in C.P.392/2010 |
| Munawar Saeed. | ... in C.P.393/2010 |
| Iftikhar Amjad. | ... in C.P.394/2010 |
| Jawad Tanveer Ahmed. | ... in C.P.395/2010 |
| Mohammad Anis. | ... in C.P.396/2010 |
| Khurram Islam. | ... in C.P.397/2010 |
| Tariq Bashir Malik | ... in C.P.429/2010 |
| | **...Respondents.** |

...

For the petitioners: Dil Muhammad Khan Alizai, DAG.
Syed Zafar Abbas Naqvi, AOR.
Syed Ishtiaq-ur-Rehman, Director C.G.A.,
Asghar Ali, S.O., Finance Division.

For the respondents: Mr. Muhammad Akram Sheikh, Sr. ASC.